COUNCIL OF THE EUROPEAN UNION

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COVER NOTE

From:	Mr Marc Jaeger, President of the General Court of the European Union
date of receipt:	14 March 2014
To:	Mr Evángelos Venizélos, President of the Council of the European Union
Subject:	Draft Rules of Procedure of the General Court

Delegations will find attached a copy of the abovementioned letter and the annexes thereto.

GENERAL COURT
OF THE
EUROPEAN UNION

President

Luxembourg, 14 March 2014

Mr Evángelos Venizélos
President of the Council
of the European Union
Rue de la Loi, 175

B -1048 BRUSSELS

Dear President,

With reference to the fifth paragraph of Article 254 of the Treaty on the Functioning of the European Union, a provision which is also applicable to the Treaty establishing the European Atomic Energy Community in accordance with Article 106a thereof, I hereby submit for the approval of the Council, in agreement with the Court of Justice, draft new Rules of Procedure of the General Court, to replace those currently in force.

The explanatory notes, to which I should like to refer you, set out the objectives of this draft of the new Rules of Procedure, and the changes proposed in relation to the existing text.

The draft is provided in all the official languages.

Yours faithfully,

Marc JAEGER

14 March 2014

DRAFT RULES OF PROCEDURE OF THE GENERAL COURT

Introductory explanatory notes

Like the Court of Justice, the General Court has, from the outset, adopted rules of procedure to establish the essential rules relating to its organisation and functioning and to specify, in detail, the rules governing the conduct of proceedings before it. The Rules of Procedure of the Court of First Instance (now General Court) were originally adopted on 2 May 1991 [1] *and have been amended a number of times,* [2] *in particular in order to take account of the successive enlargements of the European Union, to equip the General Court with rules to enable it to deal with new types of proceedings and to adapt the rules to the specific nature of certain proceedings. However, the structure of the Rules has remained broadly the same.*

Created in 1988 to improve the judicial protection of individual interests by the establishment of a second court and to enable the Court of Justice to ensure uniform interpretation of Community law, the General Court has seen the continual expansion of its jurisdiction. Although limited initially to competition proceedings, Community civil service cases and actions for damages, the jurisdiction of the General Court has been extended a number of times by the Council [3] *and has, since 1 February 2003 — the date on which the reforms resulting from the Treaty of Nice came into force — covered all direct actions, 'with the exception of those assigned to a judicial panel and those reserved in the Statute for the Court of Justice',* [4] *and actions or proceedings brought against decisions of the*

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1 OJ 1991 L 136, p. 1, corrigendum OJ 1991 L 317, p. 34.

2 As at 1 July 2013, the Rules of Procedure had been amended 18 times.

3 Article 1 of Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 amending Decision 88/591 (OJ 1993 L 144, p. 21), and Article 1 of Council Decision 94/149/ECSC, EC of 7 March 1994 amending Decision 93/350 (OJ 1994 L 66, p. 29).

4 Article 225(1) EC.

judicial panels at first instance, [5] now 'specialised courts', since the entry into force of the Treaty of Lisbon on 1 December 2009. [6] In this instance the Council, by decision of 2 November 2004, on the basis of Article 225a EC and Article 140b Euratom, established the European Union Civil Service Tribunal ('the Civil Service Tribunal'), [7] the third component element of the institution and the first specialised court of the European judicial system. As a result of that development, the General Court has jurisdiction to hear and determine, as the court of first instance, direct actions brought by natural and legal persons and by the Member States [8] and, as the court of cassation, appeals against decisions of the Civil Service Tribunal.

Cases brought before the General Court can be divided into three main categories, each of which is subject to a specific procedural regime.

First, the General Court rules on direct actions brought by individuals and Member States seeking annulment of acts of the institutions, bodies, offices and agencies of the Union, a declaration that those institutions, bodies, offices or agencies have unlawfully failed to act, or compensation for damage sustained, and also actions based on arbitration clauses. Leaving aside intellectual property cases which are subject to special procedural rules (see next paragraph), the current procedural regime applicable to direct actions is as follows. The basic written procedure consists of an exchange of pleadings (application and defence), followed, unless considered unnecessary, by a second exchange (reply and rejoinder). The time-limit laid down by the Rules of Procedure for the lodging of the defence is two months, extended on account of distance by a period of 10 days, and the time-limit set for the lodging of the reply and rejoinder is one month, extended on account of distance by a period of 10 days. Those time-limits are without prejudice to any extension that may be granted on request (in the case of the defence, in exceptional circumstances, under Article 46(3) of the Rules of Procedure in force). It is essentially in the context of such proceedings that applications to intervene are submitted by individuals, Member States and institutions, as are applications for confidential treatment of procedural documents vis-à-vis the parties to the proceedings and/or the public. The number of applications to intervene submitted by individuals as well as by Member States, to which the number of applications for confidential treatment of information contained in the case-files is linked, is high. 190 applications were lodged in 2012, with a peak in 2011 of 378 applications (compared with 107 applications lodged in 2006). [9] In 2012,

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5 Article 225(2) EC.

6 Article 256(2) TFEU.

7 Council Decision 2004/752/EC, Euratom establishing the European Union Civil Service Tribunal (OJ 2004 L 333, p. 7).

8 With the exception of those reserved to the Court of Justice, as provided for by Article 51 of the Statute.

9 The increase in the number of applications to intervene is most clearly seen in the rolling three-year average (i.e. the rolling three-year average for year 'n' is the average of the data for the three years 'n', 'n -1' and 'n-2'):

Rolling 3-yr average	*2007*	*2008*	*2009*	*2010*	*2011*	*2012*
Applications to intervene	151	161	178	185	252	263

direct actions represented 47% of cases brought before the General Court (51.2% in 2011 and 51.6% in 2010) and 63.9% of pending cases (66% in 2011 and 2010).

Secondly, the General Court rules on actions for annulment of decisions taken by the Boards of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) and of the Community Plant Variety Office (CPVO). Where such cases bring together the applicant, the Office and the other party before the Board of Appeal, they are subject to procedural rules requiring, in particular, that the applicable language of procedure of each case be determined prior to the written procedure. The number of new cases of this type has been rising consistently since 1998, the year in which the first intellectual property case was registered. In 2012, this type of action represented 38.6% of cases brought before the General Court (30.3% in 2011 and 32.5% in 2010) and 31.4% of pending cases (27.6% in 2011 and 29.4% in 2010). [10]

Thirdly, the General Court rules as the court of cassation when appeals are lodged against decisions of the Civil Service Tribunal. This procedure, involving the parties who participated in the proceedings before the Civil Service Tribunal, includes a shortened form of written procedure — a second exchange of pleadings being granted only on a reasoned application — and an oral procedure which is not mandatory. In 2012, this type of action represented 1.6% of cases brought before the General Court (6.1% in 2011 and 3.7% in 2010) and 2% of pending cases (3.6% in 2011, 2.4% in 2010).

In addition to those traditional types of action, there are cases entailing special forms of procedure which include rectification, failure to adjudicate, applications to set aside judgments by default, third-party proceedings, interpretation of judgments, revision of judgments, taxation of costs and legal aid. Cases entailing special forms of procedure represented 12.6% of all cases brought in 2012 (12.2% in 2011 and 12.1% in 2010) and 2.6% of all pending cases (2.7% in 2011 and 2.1% in 2010).

Lastly, the categorisation outlined above is without prejudice to the possibility for a party to the proceedings to request the Court to rule very quickly either on an interim basis, by submitting an application for interim measures in order to obtain suspension of operation or any other interim measure, or definitively on the substance, by requesting that the case be dealt with under an expedited procedure. Interim measures cases are within the jurisdiction of the President of the General Court, whereas it falls to the Chamber of the General Court to which the case was assigned to elect to deal with it under an expedited procedure. If the expedited procedure is approved, the Chamber rules under a shortened form of procedure which is essentially structured

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[10] The increase in the number of new and pending intellectual property cases is most clearly seen in the rolling three-year average (i.e. the rolling three-year average for year 'n' is the average of the data for the three years 'n', 'n -1' and 'n -2'):

Rolling 3-yr average	*2007*	*2008*	*2009*	*2010*	*2011*	*2012*
Intellectual property cases brought	136	170	191	204	211	221
Intellectual property cases pending	245	285	320	351	366	377

around the oral procedure. Twenty-one applications for interim measures were lodged in 2012 (44 in 2011 and 41 in 2010) and 26 requests for an expedited procedure (43 in 2011 and 24 in 2010).

The number of cases brought before the General Court has risen continually since the Court was established. The purpose of the creation of the Civil Service Tribunal in November 2004 was to address, in the interests of litigants, the concerns occasioned by the increase in the number of pending cases and in the average duration of proceedings. It helped to bring about a reduction in the number of pending cases before the General Court, but that improvement was only fleeting, since the number of new cases each year soon once again exceeded the number of cases brought before jurisdiction was transferred to the Civil Service Tribunal. Not only is there a consistent trend in the increase in the number of new cases, [11] *there is also an ever-greater diversification of proceedings.*

Faced with this situation, the General Court has adopted numerous measures to increase its effectiveness and improve efficiency. The objective of achieving maximum effectiveness with minimum resources is one that is constantly pursued by the General Court. Among the measures adopted, reference should be made to the amendments to the Rules of Procedure which have enabled the General Court to proceed to judgment without an oral part of the procedure in intellectual property cases (OJ 2008 L 179, p. 12) and to those which clarified the status of interveners in that type of case (OJ 2009 L 184, p. 10). Mention should also be made of the key measures relating to working methods and the organisation of the General Court: the decision taken in 2007 to organise itself in eight different formations — that number rising to nine in September 2013 when the twenty-eighth Judge of the General Court took up his duties — and the Appeal Chamber; introduction of a strict system for monitoring internal time-limits for dealing with cases; making it general practice in every type of case for the report for the hearing to be drawn up in summary form; broad interpretation of 'connection', so as to allow the President of the General Court to assign new cases to those formations of the Court already responsible for cases raising legal questions of the same kind; adoption of new methods for the drafting of judgments and orders; development of efficient IT applications enabling the immediate availability of documents and allowing for rapid exchanges between Chambers, between Chambers and the Registry, and between Chambers and the departments of the institution.

Those measures have helped to bring about a significant increase in the number of cases disposed of, the quantitative leap in 2011 with 714 cases disposed of having been consolidated in 2012 (688 cases disposed of), and an — albeit modest — reduction in the number of pending cases as at 31 December 2012, thanks to a cyclical reduction of approximately 15% in new cases brought. In the light of the overall increase in the caseload that has been observed over a decade, the change noted in 2012 does not affect the difficult situation in which the General Court finds itself and

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[11] The increase in the total number of new cases is most clearly seen in the rolling three-year average (i.e. the rolling three-year average for year 'n' is the average of the data for the three years 'n', 'n -1' and 'n -2'):

Rolling 3-yr average	*2007*	*2008*	*2009*	*2010*	*2011*	*2012*
Cases brought (all areas of law)	474	528	573	611	642	658

which is at the heart of the proposal for amendment of the Protocol on the Statute of the Court of Justice of the European Union so as to increase by 12 the number of Judges of the General Court, which the Court of Justice sent to the Parliament and to the Council in March 2011. Notwithstanding the fact that those involved in the legislative process recognise the need for and the urgency of structural reform, this has not yet been achieved.

The present draft has a number of objectives.

The ***first objective*** *is to adapt the Rules of Procedure to the reality of the proceedings that are currently brought before the General Court by making a clear distinction between the three classes of action to be heard and determined by the General Court, that is direct actions, actions in the field of intellectual property and appeals against decisions of the Civil Service Tribunal. Successive and numerous amendments to the Rules of Procedure have enabled procedures to be adapted and improved according to need and according to developments, but that piecemeal process has reached its limits, and the task of consolidating and restructuring the original text clearly now needs to be undertaken.*

The ***second objective*** *is to consolidate and continue the General Court's efforts to maintain its capacity to deal with cases within a reasonable time and in accordance with the requirements of a fair trial. This wish reflects a requirement in the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union which, since the entry into force of the Treaty of Lisbon, has acquired the same legal value as the Treaties. It is also intended to give concrete expression to a need for increased judicial productivity which has become more pressing given the heavy budgetary constraints faced by the institution, its departments and the Registry of the General Court. That requirement makes it necessary for the procedural framework to be adjusted so as to enable certain procedural situations to be dealt with even more efficiently. The present draft therefore follows on directly from those reflections and is also designed to introduce into the Rules of Procedure provisions which will further improve efficiency in the work of the General Court, using the available resources. Relevant measures in that context include, in particular: extending the scope of application of provisions relating to a single Judge; simplification of the rules relating to the determination of the language of the case and the removal of the second round of pleadings in intellectual property cases; the setting of shorter legal time-limits than those currently prescribed for the submission of applications to intervene and requests for hearings; simplification of the rules on intervention by the removal, as a category of intervention, of those which may be admitted after expiry of the legal time-limit of six weeks following publication of the notice in the* Official Journal of the European Union *provided for in Article 24(6) of the existing Rules of Procedure; provision for the General Court to be able to rule without an oral part of the procedure in direct actions if none of the main parties has requested a hearing and if it considers that it has sufficient information available to it from the material in the file, and to be able to rule without an oral part of the procedure in appeals; clarification of the rights conferred on interveners; the transfer of certain decision-making powers of the Chamber to the Presidents of Chambers, the general rule being that the President of the Chamber exercises his powers after hearing the Judge-Rapporteur; an increase in the number of circumstances in which a ruling is to be given by means of a simple decision, in particular grant of leave to intervene where applied for by Member States and institutions if there is no application for confidential treatment; and simplification of the default procedure.*

There is no doubt that, taken in isolation, none of the aforementioned measures can alter the trend of an increase in the number of cases pending or in the duration of proceedings. The General Court nevertheless remains convinced that these measures, if adopted in good time, will together enable

the General Court satisfactorily to continue to fulfil its task of ensuring that the law is observed in the interpretation and application of the Treaties.

*The **third objective** is to ensure consistency in the procedural provisions governing proceedings brought before the Courts of the European Union. The new Rules of Procedure of the Court of Justice [12] entered into force on 1 November 2012, and the present draft incorporates, where necessary, the provisions adopted by the Court of Justice, while taking into account the specific nature of direct actions between a natural or legal person or a Member State and an institution of the Union, and, statistically, the preponderance of such actions before the General Court.*

*The **fourth objective** is to equip the General Court with rules enabling it to adopt the method of organisation it considers most appropriate depending, inter alia, on the number of Judges comprising the General Court and the rules intended to give practical effect to the changes to the Statute relating to the creation of the post of Vice-President of the General Court. [13]*

*The **fifth objective** is to provide solutions to procedural situations which are currently not addressed in the Rules of Procedure in force. There are, therefore, articles governing, inter alia, the circumstances in which a case may be reassigned, modification of the form of order sought in an application in the course of proceedings, the action to be taken after a document has been produced pursuant to a measure of inquiry ordered by the General Court, and the procedural treatment of confidential information or material pertaining to the security of the Union or of its Member States or to the conduct of their international relations.*

*In addition to its intention of optimising efficiency in its work, the General Court also intends to clarify some of the rules it applies. That is the **final objective** of this reform. On that basis, rules have been simplified, particularly those relating to the formal documents that have to be produced by the representatives of legal persons governed by private law. Others have been clarified, in particular as regards the lodging and service of procedural documents, the formalities for procedural documents, their content and the time-limit for submission of such documents. In the same vein, every article of the draft Rules has been given a heading and, within those articles, each paragraph has been numbered. This process has, in certain cases, required existing passages to be split into several separate articles so that each article has a subject of its own. Although this has resulted in an increase in the number of articles, the advantage is that the Rules of Procedure as a whole are easier to understand.*

Lastly, the General Court has endeavoured, in the context of this reform, to pay particular attention to the terminology used in its Rules of Procedure. Analysis has shown that, over the course of successive amendments, the Rules of Procedure in force have sometimes used several different terms to denote the same concept, which can give rise to questions about the true purport of the

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[12] OJ 2012 L 265, p. 1, as amended (OJ 2013 L 173, p. 65).

[13] Regulation (EU, Euratom) No 741/2012 of the European Parliament and of the Council of 11 August 2012 amending the Protocol on the Statute of the Court of Justice of the European Union and Annex I thereto (OJ 2012 L 228, p. 1).

provisions concerned. For those reasons, the present draft has been produced also with a view to harmonising and rationalising the terms used in the various language versions of the Rules of Procedure. A specific legal concept should, therefore, be denoted by a single term.

The General Court has considered it preferable in these introductory notes to confine itself to the general scheme and objectives of the draft Rules. Amendments to the existing provisions are detailed at the beginning of each of the six titles of the present draft and, as necessary, in respect of each of the provisions concerned. The similarities and differences between the present draft and the Rules of Procedure in force can also be identified directly using the correlation table drawn up in respect of the two texts.

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RULES OF PROCEDURE OF THE GENERAL COURT

The GENERAL COURT,

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

Having regard to the Treaty on the Functioning of the European Union, and in particular the fifth paragraph of Article 254 thereof,

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

Having regard to the Protocol on the Statute of the Court of Justice of the European Union, and in particular the sixth paragraph of Article 19, Article 63 and the second paragraph of Article 64 thereof,

Whereas:

(1) The Rules of Procedure of 2 May 1991 have been amended numerous times in order to equip the General Court gradually with provisions enabling it to deal under the best possible conditions with different kinds of cases falling within increasingly varied areas.

(2) Full revision of the text is necessary in order to give this set of rules a new coherence, to promote consistency in the procedural provisions governing proceedings brought before the Courts of the European Union, to preserve the capacity of the General Court to rule on cases within a reasonable time, to clarify parties' rights, to specify the General Court's expectations regarding the parties' representatives and to adjust a certain number of provisions to take account of certain changes, including technological changes, in relation to the lodging and service of procedural documents, and of difficulties encountered in their implementation.

(3) Actions brought in the field of intellectual property and appeals lodged against decisions of the European Union Civil Service Tribunal must, on account of their specific nature, be subject to particular procedural rules set out in special titles, while being otherwise governed by the procedural provisions applicable to direct actions. The rules relating to direct actions, actions in the field of intellectual property and appeals therefore constitute the framework of these Rules.

(4) In the light of experience, it is also necessary to supplement or to clarify for the benefit of litigants the rules that apply to each procedure. The rules in question concern, in particular, the extent of the rights conferred on the main parties and that of the rights afforded to interveners or, in intellectual property cases, the acquisition of the status of intervener and extent of his rights. Observance of the adversarial principle and the need, in certain situations, to preserve the confidentiality of sensitive information which is relevant to the outcome of the proceedings are the subject of specific provisions. With regard to appeals against decisions of the Civil Service Tribunal, a clearer distinction must in addition be drawn between appeals and cross-appeals following the service of an appeal. A similar distinction must be drawn, with regard to cases in the field of intellectual property, between

the original action and the cross-claim brought by an intervener, following service of the application initiating proceedings.

(5) The excessive complexity of certain procedures has come to light on their implementation. It is appropriate, therefore, to simplify them. On that basis, the rules for determining the language of the case in intellectual property cases ensure greater predictability of situations for the benefit of those concerned and a 'light touch' by the General Court. The rules relating to the default procedure are intended to enable cases to be disposed of more promptly, in the interests of the applicant, who, if successful, is exposed to the risk of the defendant applying for the judgment in default to be set aside.

(6) In the interests of making the Rules easier to understand, all requests and applications relating to judgments and orders, currently to be found in a number of separate titles and chapters of the Rules of Procedure, should be brought together in the title relating to direct actions. Similarly, to assist the reader, the procedures following referral by the Court of Justice, either after a decision has been set aside, or after review, are set out in a single title.

(7) Although required to deal with an ever-increasing caseload, the General Court must continue to deliver its rulings within a reasonable time. It is therefore essential to continue the efforts undertaken to reduce the duration of proceedings before the General Court, in particular by providing for the written part of the procedure in intellectual property cases to be limited to a single exchange of pleadings, managing applications to modify the form of order sought in the application, reducing certain legal time-limits, simplifying the rules on intervention by removing as a category of intervention those which may be allowed after expiry of the legal time-limit following publication in the *Official Journal of the European Union,* making provision for the General Court to be able to rule without an oral part of the procedure in direct actions if none of the main parties has requested a hearing and if it considers that it has sufficient information available to it from the material in the file in the case, and to be able to rule without an oral part of the procedure in appeals, increasing the decision-making powers of the Presidents of Chambers and, lastly, increasing the circumstances in which a ruling is to be given by means of a simple decision.

(8) With the same objective, provisions have been added to the title relating to the organisation of the General Court with a view, in particular, to specifying the circumstances in which a case may be reassigned and extending the powers of a single Judge so as to enable him to hear and determine intellectual property cases.

(9) The fact that proceedings are to be conducted in accordance with the adversarial principle is confirmed by the affirmation of that principle in a specific article and by a strict set of rules governing the circumstances in which preservation of the confidentiality of certain information provided by a main party which is necessary in order for the General Court to rule in the case justifies, exceptionally, the non-communication of that information to the other main party. New provisions also provide the General Court with a formal framework in the event of a Judge's withdrawal from a case or of his being excused. The reform is also intended to elevate to the status of rules of procedure provisions which were previously contained in practice directions to parties, such as that relating to the length of pleadings, or in instructions to the registrar of the General Court, such as the provision concerning anonymity and that specifying the circumstances in which a third party may be given access to the file in the case.

(10) Lastly, the text has been made easier to read by the removal of certain rules which are outdated or not applied, the numbering of every paragraph of the articles in these Rules, the addition of a specific heading for each article and the harmonisation of terminology.

With the agreement of the Court of Justice,

With the approval of the Council given on …,

HAS ADOPTED THESE RULES OF PROCEDURE:

INTRODUCTORY PROVISIONS

Article 1
Definitions

1. In these Rules:

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

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

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

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

   (e) 'EEA Agreement' means the Agreement on the European Economic Area; [1]

   (f) 'Council Regulation No 1' means Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community. [2]

2. For the purposes of these Rules:

   (a) 'General Court' means, in cases assigned or referred to a Chamber, that Chamber, and, in cases delegated or assigned to a single Judge, that Judge;

   (b) 'President', unless otherwise specified, means:

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[1] OJ 1994 L 1, p. 3.

[2] OJ, English Special Edition 1952-1958 (I), p. 59.

– in cases not yet assigned to a formation of the Court, the President of the General Court;

– in cases assigned to Chambers, the President of the Chamber to which the case is assigned;

– in cases delegated or assigned to a single Judge, that Judge;

(c) 'party' and 'parties', unless otherwise specified, means any party to the proceedings, including interveners;

(d) 'main party' and 'main parties' means the applicant or the defendant or both of them, as the case may be;

(e) 'representatives of the parties' means the lawyers and agents, the latter assisted, where appropriate, by an adviser or lawyer, representing the parties before the General Court in accordance with Article 19 of the Statute;

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

(g) 'Office' means the Office for Harmonisation in the Internal Market (Trade Marks and Designs) or the Community Plant Variety Office, as the case may be;

(h) 'EFTA Surveillance Authority' means the European Free Trade Association surveillance authority referred to in the EEA Agreement;

(i) 'direct actions' means actions brought on the basis of Articles 263 TFEU, 265 TFEU, 268 TFEU or 272 TFEU.

In this first article of the draft, additional information has been added to the existing text.

The first amendments consist in the addition to paragraph 1 of a point (a) containing a reference to the Treaty on European Union and a point (f) incorporating the full reference to Council Regulation No 1, which is cited several times in the Rules of Procedure in force, without being formally defined.

The amendments in paragraph 2 are intended to supplement the definition of certain terms or expressions in order to remove any ambiguities to which the existing text may give rise or to simplify the wording of certain provisions. Thus, all the terms referred to at points (a) and (e), as well as those referred to at points (g) and (i), are defined. The definitions at points (c) and (d) are intended to clarify, in the interests of legal certainty, to whom the articles of this draft apply, since the extent of the rights and obligations differs, depending on whether the status of the party to the proceedings is that of a main party or of an intervener. As regards the change to point (f), this is intended to bring the text of that point in line with Article 1 of the Rules of Procedure of the Court of Justice, thus dispelling any doubts that may have arisen, following the entry into force of the Treaty of Lisbon, as to the precise meaning of 'institutions of the European Union'. The draft expressly refers to Article 13(1) of the Treaty on European Union ('TEU'), in which those institutions are named.

Article 2
Purport of these Rules

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

This new provision is intended to define the purport of these Rules. Reflecting the terms of the fifth paragraph of Article 254 of the Treaty on the Functioning of the European Union ('TFEU') and Article 63 of the Protocol on the Statute of the Court of Justice of the European Union ('the Statute'), this article recalls the essential function of the Rules of Procedure: to implement and supplement, so far as necessary, the provisions of the acts referred to above. This article is identical to Article 2 of the Rules of Procedure the Court of Justice.

TITLE I
ORGANISATION OF THE GENERAL COURT

As in the Rules of Procedure in force, Title I of the draft Rules of Procedure concerns the organisation of the General Court. This title — which itself echoes Articles 47 to 50 and 52 of the Statute — is intended, in essence, to define the responsibilities of the General Court's key officeholders and to set out rules governing the working of the General Court and the principles of and procedures for the determination of the formations of the Court.

Comprising seven chapters, Title I of the present draft includes one more chapter than Title I of the Rules in force, while the chapters concerning languages and the rights and obligations of the parties' representatives have been moved to become, respectively, a separate Title II and one section of the chapter on general provisions in Title III concerning direct actions. The chapters in Title I have therefore been reorganised, as compared with the order currently in place, to make the text easier to read.

Formal changes have been made in Title I in order to align the wording of the provisions with that of the corresponding articles in the Rules of Procedure of the Court of Justice.

A new provision is inserted to supplement Article 18 of the Statute and to give the General Court a procedural framework for dealing with situations in which a Judge withdraws from a case or is excused. Similarly, an article has been added dealing specifically with the designation of a new Judge-Rapporteur and reassignment of a case. The present draft confirms the abandonment of the plenary session as a judicial formation of the General Court but, at the same time, sets out the powers of the plenum, a body that brings together all the Judges of the General Court. The rules relating to the Registry are clarified or supplemented by the addition of a provision relating to access to the case-file. Lastly, the current provision concerning the oath of officials and other servants whose task is to assist directly the President, the Judges and the Registrar of the General Court is maintained and clarified. The other changes are designed to refine the provisions in force.

However, it will be noted that three important changes have been made to existing arrangements regarding those involved in proceedings.

First of all, following the amendment of the Statute establishing the office of Vice-President of the General Court, the General Court gives effect to that change by setting out in the Rules of Procedure the procedure for designating the Vice-President and his responsibilities. The text is largely based on that of the Rules of Procedure of the Court of Justice.

Next, pursuant to that amendment, and also the amendment increasing from 13 to 15 the number of Judges sitting in the Grand Chamber of the Court of Justice, the General Court also raises the number of Judges forming the Grand Chamber from 13 to 15, states that the quorum is increased to 11, sets out the procedure to be followed if the President, the Vice-President, a President of a Chamber, a member of the formation of the Court or a single Judge is prevented from acting, and clarifies the procedural consequences if the Grand Chamber or a Chamber sitting with three or five Judges ceases to be quorate.

Lastly, the jurisdiction of a single Judge is extended to intellectual property cases, as the provision under the Rules in force precluding an intellectual property case from being referred to a single Judge has been removed. The referral of cases to a single Judge is also subject to a more flexible

procedural regime, since the decision to refer is taken by the Chamber deciding by majority, instead of unanimously as is presently required.

Chapter 1
MEMBERS OF THE GENERAL COURT

Article 3
Duties of Judge and Advocate General

1. Every Member of the General Court shall, as a rule, perform the duties of a Judge.

2. Members of the General Court are hereinafter referred to as 'Judges'.

3. Every Judge, with the exception of the President, the Vice-President and the Presidents of Chambers of the General Court, may, in the circumstances defined in Articles 30 and 31, perform the duties of an Advocate General in a particular case.

4. References to the Advocate General in these Rules shall apply only where a Judge has been designated as Advocate General.

This article corresponds to Article 2 of the Rules of Procedure in force, with the addition, in the interests of clarification, of a reference in paragraph 3 to Judges who may not perform the duties of an Advocate General.

Article 4
Commencement of the term of office of Judges

The term of office of a Judge shall begin on the date fixed for that purpose in the instrument of appointment. In the absence of any provision in that instrument regarding the date of commencement of the term of office, that term shall begin on the date of publication of the instrument in the *Official Journal of the European Union*.

Under Article 3 of the Rules of Procedure in force, the term of office of a Judge is, in principle, to begin on the date laid down in his instrument of appointment.

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

For that reason, it was deemed necessary to amend Article 3 of the existing Rules to refer, from now on, to the date of commencement of the 'période du mandat' ['term of office' in the sense of the period referred to in the instrument of appointment] of a Judge, rather than to that of his 'période de fonctions' ['term of office' in the sense of the period during which his duties are actually exercised].

This article is based on Article 3 of the Rules of Procedure of the Court of Justice.

Article 5
Taking of the oath

Before taking up his duties, a Judge shall take the following oath before the Court of Justice, provided for in Article 2 of the Statute:

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

This article corresponds to Article 4(1) of the existing Rules of Procedure, with the addition, in the interests of clarification, of a reference to Article 2 of the Statute, which sets out the content of the oath to be taken by Judges.

Article 6
Solemn undertaking

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

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

Article 7
Depriving a Judge of his office

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

2. The General Court shall state the reasons for its opinion.

3. An opinion to the effect that a Judge of the General Court no longer fulfils the requisite conditions or no longer meets the obligations arising from his office must receive the votes of a majority of the Judges composing the General Court according to Article 48 of the Statute. In that event, particulars of the voting shall be communicated to the Court of Justice.

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

This article corresponds to Article 5 of the existing Rules of Procedure, the terms of which are reproduced. In the interests of clarification, the draft also cites the article of the Statute to which effect is given here, and deletes the words 'in closed session', the meaning of which was not entirely clear. In addition, a reference to Article 48 of the Statute has been added to paragraph 3. Lastly, as in the hearing of the Judge concerned under the procedure conducted in the absence of the Registrar in accordance with Article 5 of the existing Rules, the new article makes it clear in paragraph 4 that voting also is to proceed in the absence of the Registrar.

Article 8
Order of seniority

1. The seniority of Judges shall be calculated according to the date on which they took up their duties.

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

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

Like Article 6 of the Rules of Procedure in force, this article lays down the Judges' order of seniority. The new wording, including the title, is based on that of Article 7 of the Rules of Procedure of the Court of Justice, and emphasises Judges' seniority in terms of the taking up of their duties.

This article must be read in conjunction with Articles 12, 20 to 22 and 43 of this draft, which, moreover, include a reference to the provision at issue.

Chapter 2
PRESIDENCY OF THE GENERAL COURT

Article 9
Election of the President and of the Vice-President of the General Court

1. The Judges shall, immediately after the partial replacement provided for in the second paragraph of Article 254 TFEU, elect one of their number as President of the General Court for a term of three years.

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

3. The elections provided for in this Article shall be by secret ballot. The Judge obtaining the votes of more than half the Judges composing the General Court according to Article 48 of the Statute shall be elected. If no Judge obtains that majority, further ballots shall be held until that majority is attained.

4. The Judges shall then elect one of their number as Vice-President of the General Court for a term of three years, in accordance with the procedures laid down in paragraph 3. Paragraph 2 shall apply if the office of the Vice-President of the General Court falls vacant before the normal date of expiry of the term thereof.

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

The first three paragraphs of this article correspond, in essence, to the three paragraphs of Article 7 of the existing Rules of Procedure. In the interests of clarification, a reference to Article 48 of the Statute has been added to paragraph 3.

Paragraph 4 of this article arises from the amendments to the Statute (OJ 2012 L 228, p. 1) establishing the office of Vice-President of the General Court, Article 9a of the Statute being applicable to the General Court pursuant to the first paragraph of Article 47 thereof. It is proposed that that Judge, who is required to assist the President in carrying out his responsibilities, be elected in accordance with the same procedures as those used for the election of the President, and that, as in the case of the President of the General Court, if the office of the Vice-President of the General Court falls vacant before the normal date of expiry of the term thereof, his successor should be elected only for the remainder of the term.

For the sake of completeness, paragraph 5 of this article provides that the names of the President and Vice-President elected in accordance with this article are to be published in the Official Journal*, as already provided for in relation to the Presidents of Chambers (currently Article 15(5)).*

The counterparts to paragraphs 4 and 5 which it is proposed to add to this article are to be found in Article 8(4) and (5) of the Rules of Procedure of the Court of Justice.

Article 10

Responsibilities of the President of the General Court

1. The President of the General Court shall represent the General Court.

2. The President of the General Court shall direct the judicial business and the administration of the General Court.

3. The President of the General Court shall preside at the plenum referred to in Article 42.

4. The President of the General Court shall preside over the Grand Chamber. In that case Article 19 shall apply.

5. If the President of the General Court is attached to a Chamber, he shall preside over that Chamber. In that case Article 19 shall apply.

6. In cases not yet assigned to a formation of the Court, the President of the General Court may adopt the measures of organisation of procedure provided for in Article 89.

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

Paragraph 1 of this article thus refers to the role of representing the General Court both internally vis-à-vis the Court of Justice and the Civil Service Tribunal and externally in regard to the Member States, institutions, bodies, offices and agencies of the Union and the various interlocutors of the General Court.

The content of paragraphs 2 and 3 of this article reflects what is traditionally at the very heart of the function of President of the General Court, that is: to direct the judicial business of the General Court; to ensure the proper functioning of the jurisdiction, in close collaboration with the Registrar of the General Court, using the resources available; and, at regular intervals, to preside at the plenum (referred to in Article 42 of the draft), a body which brings together all the Members of the General Court.

Paragraphs 4 and 5 of Article 10 essentially reproduce the content of Article 8 of the existing Rules, which describes the presidential prerogative of presiding over the Grand Chamber and over any other Chamber to which the President might be attached, referring to it, however, by reference to the provision relating to the powers of the President of a Chamber.

Paragraph 6 contains a new rule. This provision, spurred by the quest for efficiency, is intended to give the President the power to adopt measures of organisation of procedure at a very early stage, when the application has been lodged at the Registry but before the case is assigned to a Judge-Rapporteur. In that brief period, it may be that measures have to be taken to clear up one or other aspect of the procedure as soon as possible, so as to ensure that the formation of the Court which will ultimately be seised of the case has all the information needed to rule on it promptly if necessary. A typical situation is that in which there is evidence to suggest that a lawyer is bound to his client by an employment relationship and is therefore not acting independently, as settled case-law requires. A second example is where the original version of an application initiating proceedings is lodged more than 10 days after its receipt by fax. In such cases it is essential to

obtain as soon as possible the applicant's observations as to whether the conditions for a possible case of force majeure *or unforeseeable circumstances that would account for the late lodging are satisfied, without having to wait for the case to be formally assigned. A final example concerns the need to identify the party against whom the action is brought with a view to the case possibly being renamed, quite simply on account of the need to effect valid service of the application.*

Article 11
Responsibilities of the Vice-President of the General Court

1. The Vice-President of the General Court shall assist the President of the General Court in the performance of his duties and shall take the President's place when the latter is prevented from acting.

2. He shall take the President's place, at the latter's request, in performing the duties referred to in Article 10(1) and (2).

3. The General Court shall, by decision, specify the conditions under which the Vice-President of the General Court shall take the place of the President of the General Court in the performance of his judicial duties. That decision shall be published in the *Official Journal of the European Union*.

4. Subject to Article 10(5), if the Vice-President of the General Court is attached to a Chamber, he shall preside over that Chamber. In that case, Article 19 shall apply.

This new provision is the logical consequence of the creation of the post of Vice-President of the General Court under Article 9a of the Statute, which applies to the General Court by virtue of Article 47, and implements the second paragraph of Article 39 of the Statute, which applies to the General Court by virtue of Article 53, by defining the responsibilities of the Vice-President of the General Court. In essence, the Vice-President has the duty of assisting the President in carrying out his responsibilities and taking his place when the President is prevented from acting. Paragraphs 1 to 3 of this article are based on Article 10 of the Rules of Procedure of the Court of Justice.

The provision in paragraph 4 is intended to make clear that the Vice-President is not only the person who takes the place of the President of the General Court but may also be a full Judge responsible for conducting preparatory inquiries in cases. Consequently, if he is attached to a Chamber, it is envisaged that he will preside over that Chamber, as is already provided for in the case of the President of the General Court (see Article 10(5) of this draft) unless the latter is already sitting in that Chamber and, accordingly, he will have the powers conferred on Presidents of Chambers.

Article 12

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

When the President and the Vice-President of the General Court are simultaneously prevented from acting, the functions of President shall be exercised by a President of a Chamber or, failing that, by one of the other Judges, according to the order of seniority laid down in Article 8.

The present article reproduces, but simplifies and supplements, the content of Article 9 of the existing Rules of Procedure. It is intended to specify the order in which the Member who is to assume the functions of President of the General Court is determined when both the President and the Vice-President are simultaneously prevented from acting. The General Court is to follow the order of seniority referred to in Article 8 of the present draft by calling, first, on the President of a Chamber with the greatest seniority, then, if the latter is prevented from acting, on the President of a Chamber next in order of seniority, and so on until there is an effective replacement. This article, based on Article 13 of the Rules of Procedure of the Court of Justice, implements the third paragraph of Article 39 of the Statute.

Chapter 3
CHAMBERS AND FORMATIONS OF THE COURT

This new chapter has been created to make the text easier to read by the regrouping of all the provisions relating to formations of the court, except for those concerning the assignment and reassignment of cases, referral to another Chamber and delegation to a single Judge, which are dealt with in a separate chapter. This new Chapter 3 is divided into three sections.

Section 1. Constitution of the Chambers and composition of the formations of the Court

Article 13
Constitution of Chambers

1. The General Court shall set up Chambers sitting with three and with five Judges.

2. The General Court shall decide, on a proposal from the President of the General Court, which Judges shall be attached to the Chambers.

3. The decisions taken in accordance with this Article shall be published in the *Official Journal of the European Union*.

Article 13 of the draft reproduces, in essence, the terms of Article 10 of the Rules of Procedure in force, a provision which has fully met the organisational needs of the General Court.

The change made in paragraph 1 does not affect the General Court's method of working and is intended merely to take account of the fact that the number of Judges sitting is not necessarily the same as the number of Judges attached to a Chamber. Thus, a Chamber may be composed of a higher number of Judges than the number of Judges sitting and there may therefore be several formations of the Court within one Chamber.

Furthermore, unlike Article 10 of the existing Rules, Article 13 of the draft states, in paragraph 2, that the General Court is to decide which Judges are to be attached to the Chambers on the basis of a proposal from the President of the General Court. That point merely documents the practice that has been followed from the outset.

Article 14
Competent formation of the Court

1. Cases before the General Court shall be heard and determined by Chambers sitting with three or with five Judges in accordance with Article 13.

2. Cases may be heard and determined by the Grand Chamber under the conditions laid down in Article 28.

3. Cases may be heard and determined by a single Judge where they are delegated to him under the conditions laid down in Article 29.

This provision largely reproduces the terms of Article 11 of the Rules of Procedure in force. The text has, however, been amended to reflect further the current practice of the General Court. It is proposed to remove the possibility of a case being heard and determined by the General Court sitting in plenary session, a formation of the Court that has fallen into disuse. It is pointed out in that respect that only three cases have been brought before the General Court sitting in plenary session since the General Court was created (Case T-51/89 Tetra Pak *v* Commission *[1990] ECR II-309; Case T-24/90* Automec *v* Commission *[1992] ECR II-2223; and Case T-28/90* Asia Motor France and Others *v* Commission *[1992] ECR II-2285) and none since 1992. The need to create a more efficient formation of the Court than the plenary session has in the past been reflected by the creation of the Grand Chamber, which resulted in an amendment to the Rules of Procedure of the General Court that entered into force in 2003, and it has been found since then that a plenary session composed of 25 Judges, and particularly if that number increases, is more akin to a deliberating assembly than a collegiate judicial formation.*

The removal of the formation of the Court that is constituted by the General Court sitting in plenary session does not, however, mean that the Members of the General Court are prevented from meeting in a common forum in the future. Indeed, all the Judges take part in the plenum in order to take the decisions referred to in Article 42 of the present draft.

Paragraph 2 of Article 11 of the existing Rules of Procedure has been deleted as a result of the inclusion of defined terms in Article 1(2)(a) of the draft.

Article 15
Composition of the Grand Chamber

1. The Grand Chamber shall be composed of 15 Judges.

2. The General Court shall decide how to designate the Judges composing the Grand Chamber. The decision shall be published in the *Official Journal of the European Union*.

The present article raises the number of Judges composing the Grand Chamber from 13 to 15. Following the increase in the number of Judges of the General Court owing to the accession to the European Union of Bulgaria and Romania in 2007 and of Croatia in 2013, it appears desirable to provide for increased participation of Judges in cases referred to the Grand Chamber by means of an increase in the number of Judges composing that formation of the Court. Fifteen is, moreover, the same number as that which has applied in respect of the Grand Chamber of the Court of Justice

since the entry into force of Regulation (EU, Euratom) No 741/2012 of the European Parliament and of the Council of 11 August 2012 amending the Protocol on the Statute of the Court of Justice of the European Union and Annex I thereto (OJ 2012 L 228, p. 1).

Again following the example of the Court of Justice, it is proposed that a general provision relating to the composition of the Grand Chamber be included in the Rules of Procedure of the General Court.

However, the General Court has at least one Judge per Member State and that number can be changed by means of an amendment of the Statute. Given the possibility that the number of Judges may be increased, the General Court considers that, unlike the text of Article 27 of the Rules of Procedure of the Court of Justice, it is preferable not to set in stone in the Rules of Procedure the method of designating the Judges composing the Grand Chamber, and the less rigid formula of an enabling provision allowing the General Court to adopt the system most appropriate to the way in which it is organised has therefore been retained. Observance of the requirements of transparency and foreseeability nevertheless warrants the official publication of the decision on the method of designating the Judges participating in the Grand Chamber, as is currently the case.

Article 16
Withdrawal and excusing of a Judge

1. Where a Judge considers, in accordance with the first and second paragraphs of Article 18 of the Statute, that he should not take part in the disposal of a case, he shall so inform the President of the General Court who shall exempt him from sitting.

2. Where the President of the General Court considers that a Judge should not, in accordance with the first and second paragraphs of Article 18 of the Statute, take part in the disposal of a case, he shall notify the Judge concerned and shall hear that Judge before giving his decision.

3. In accordance with the third paragraph of Article 18 of the Statute, in the event of any difficulty arising as to the application of this Article, the President of the General Court shall refer the matters referred to in paragraphs 1 and 2 to the plenum. In that case, voting shall be by secret ballot in the absence of the Registrar after the Judge concerned has been heard; the latter shall not take part in the deliberations.

This provision is new. Its inclusion is justified by a number of factors.

First, the procedure relating to the withdrawal of a Judge from participation in the judgment of a case and the procedure for excusing a Judge warrant being specified in the interests of transparency, the requirements contained in Article 18 of the Statute being summary in nature.

Secondly, proceedings before the General Court have specific characteristics that justify, in the light of the principles of both objective and subjective impartiality, a Judge's being allowed to withdraw from sitting in a case or to be excused from conducting preparatory inquiries in a case on the initiative of the President of the General Court. If there is any doubt as to the application of Article 18 of the Statute, provision is made for the President of the General Court to refer the matter to the plenum.

Thirdly, this provision has its equivalent in numerous documents governing judicial proceedings in the Member States. On an international level, the rules of procedure of the European Court of Human Rights and those of the International Criminal Court contain a similar provision.

Article 17

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

1. If in the Grand Chamber the number of Judges provided for by Article 15 is not attained as a result of a Judge's being prevented from acting before the deliberations have begun or before the case is pleaded, the President of the General Court shall designate a Judge to complete that Chamber in order to restore the requisite number of Judges.

2. If in a Chamber sitting with three or five Judges the number of Judges provided for is not attained as a result of a Judge's being prevented from acting before the deliberations have begun or before the case is pleaded, the President of that Chamber shall designate another Judge of that Chamber to replace the Judge prevented from acting. If it is not possible to replace the Judge prevented from acting with a Judge of the same Chamber, the President of that Chamber shall notify the President of the General Court, who shall designate another Judge in order to restore the requisite number of Judges.

3. If the Judge to whom the case has been delegated or assigned as a single Judge is prevented from acting, the President of the General Court shall designate another Judge to replace that Judge.

Article 17 concerns the replacement of a member of a formation of the Court (Grand Chamber in paragraph 1, Chamber sitting with three or five Judges in paragraph 2, single Judge in paragraph 3) before the deliberations have begun or before the case is pleaded. It reproduces, in essence, the solutions contained in the third subparagraph of Article 32(3) and in Article 32(5) of the Rules of Procedure in force, but sets them out clearly in respect of each formation of the Court that includes the Member who is prevented from acting.

The second sentence of paragraph 2 covers the situation in which a Judge is to be replaced by another Judge who does not usually sit in the same Chamber as the Judge prevented from acting. It is stated in that regard that, in practice, the Judge replacing the Judge prevented from acting will be designated by the President of the General Court in order to restore the number of Judges provided for, according to the order laid down in Article 8 of the draft, with the exception of the President, the Vice-President and the Presidents of Chambers. However, the President of the General Court may derogate from that order in order to ensure that the workload is distributed evenly. In the interests of transparency, the General Court will record that commitment as to the method of designating the Judges replacing Judges who are prevented from acting in the notice concerning the assignment of Judges to Chambers published in the Official Journal of the European Union.

Since a Judge who is prevented from acting is necessarily absent, it has been decided for ease of drafting to refer exclusively to Judges being prevented from acting.

Section 2. Presidents of Chambers

Article 18
Election of Presidents of Chambers

1. The Judges shall elect from among their number, in accordance with Article 9(3), the Presidents of the Chambers sitting with three and with five Judges.

2. The Presidents of Chambers sitting with five Judges shall be elected for a term of three years. They may be re-elected once.

3. The Presidents of Chambers sitting with three Judges shall be elected for a defined term.

4. The election of the Presidents of Chambers sitting with five Judges shall take place immediately after the elections of the President and the Vice-President of the General Court provided for in Article 9.

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

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

This article reproduces, in essence, the provisions of Article 15 of the existing Rules of Procedure. It is however supplemented by the addition in paragraph 4 of a reference to the election of the Vice-President of the General Court.

Article 19
Powers of the President of a Chamber

1. The President of a Chamber shall exercise the powers conferred on him by these Rules after hearing the Judge-Rapporteur.

2. The President of a Chamber may refer any decision falling within his remit to the Chamber.

This article, which has no equivalent in the Rules of Procedure in force, states in paragraph 1 that the powers of the Presidents of Chambers are conferred powers, and governs, more generally, the procedures for the exercise of the powers of President of a Chamber in that it provides that the President is to exercise his powers after hearing the Judge-Rapporteur and, moreover, that he may refer any decision falling within his remit to the Chamber.

The laying down of general rules in this article obviates the need to restate them in every provision referring to a power of the President of Chamber, as is the case in the existing Rules of Procedure, and thus contributes significantly to the simplification of the wording of the provisions concerned.

Article 20

Where the President of a Chamber is prevented from acting

Without prejudice to Article 10(5) and Article 11(4), when the President of a Chamber is prevented from acting, his functions shall be exercised by a Judge of that formation of the Court according to the order laid down in Article 8.

This new provision, added for the purpose of transparency, governs the question of the presidency of a Chamber where the President of that Chamber is prevented from acting. It supplements Article 12 of the draft, concerning the situation in which the President and the Vice-President of the General Court are prevented from acting.

Section 3. Deliberations

Article 21

Procedures concerning deliberations

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

2. When a hearing has taken place, only those Judges who participated in that hearing shall take part in the deliberations.

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

4. The conclusions reached by the majority of the Judges after final discussion shall determine the decision of the General Court. Votes shall be cast in reverse order to the order laid down in Article 8, with the exception of the Judge-Rapporteur who shall vote first and the President who shall vote last.

This article corresponds, in essence, to Article 33(1) to (3) and (5) of the Rules of Procedure in force. The text has been slightly amended to reflect, in paragraph 2, the possibility that the General Court may rule on a case without a hearing and, in paragraph 4, the order in which the votes of the Judges are actually cast at present.

Article 22

Number of Judges taking part in the deliberations

Where, as a result of a Judge's being prevented from acting, there is an even number of Judges, the most junior Judge for the purposes of Article 8 shall abstain from taking part in the deliberations unless he is the President or the Judge-Rapporteur. In the latter case, the Judge immediately senior to him shall abstain from taking part in the deliberations.

This article corresponds, in essence, to the first subparagraph of Article 32(1) of the Rules of Procedure in force. Since Article 8, to which reference is made, does not contain any reference to

Presidents of Chambers, it is expressly provided that unless it is the President who is prevented from acting he is to remain in the formation of the Court.

More generally, and with a view to simplifying the wording of the text, the reference to the absence of a Judge has been removed, since the reference to a Judge's being prevented from acting is considered sufficient to cover situations in which a Judge is absent, an absent Judge necessarily being one who is prevented from acting.

It should be stated that Article 22 of the draft does not, unlike the second subparagraph of Article 32(1) of the existing Rules, govern the situation in which there is an even number of Judges in the General Court sitting in plenary session, since that no longer features among the formations of the Court.

Article 23
Quorum of the Grand Chamber

1. Decisions of the Grand Chamber shall be valid only if 11 Judges are sitting.

2. If, as a result of a Judge's being prevented from acting, that quorum has not been attained, the President of the General Court shall designate another Judge in order to attain the quorum of the Grand Chamber.

3. If the quorum is no longer attained but the hearing has taken place, the Judge prevented from acting shall be replaced as provided in paragraph 2 and a new hearing shall be organised at the request of a main party. It may also be organised by the General Court of its own motion. If no new hearing is organised, Article 21(2) shall not apply.

The objective of the present article is twofold.

It specifies, in the first place, the quorum of the Grand Chamber, which is increased from 9 to 11 Judges. In the reform of the Statute (OJ 2012 L 228, p. 1), the number of Judges constituting the Grand Chamber of the Court of Justice was increased to 15 (Article 16 of the Statute) and the quorum to 11 Judges (Article 17 of the Statute). Since Article 50 of the Statute refers to the Rules of Procedure of the General Court for the cases in and conditions under which that court is to sit in a Grand Chamber, the General Court considers it appropriate to lay down the same rules as those which the Statute lays down in respect of the Court of Justice.

In the second place, the present article is intended to clarify the consequences of several Judges being simultaneously prevented from acting after the case has been pleaded, so that the quorum required for a valid decision of the Grand Chamber cannot be achieved. If one or more other Judges are designated but the hearing has already taken place, a new hearing will be organised either of the General Court's own motion or at the request of a main party. If no request has been made and if the General Court considers that it is not necessary to organise a new hearing, it will rule without hearing the parties again. That procedure was applied, to the satisfaction of parties and of the General Court, in a number of cases in 2010 and 2012 following the departure of two Judges of the General Court.

The situation in which several Judges of the Grand Chamber are simultaneously prevented from acting after the hearing is to be clearly distinguished from the situation in which a Judge is prevented from acting before the hearing, which is governed by Article 17(1) of this draft.

Article 24

Quorum of the Chambers sitting with three or with five Judges

1. Decisions of the Chambers sitting with three or with five Judges shall be valid only if three Judges are sitting.

2. If, as a result of a Judge's being prevented from acting, the quorum has not been attained in a Chamber sitting with three or with five Judges, the President of that Chamber shall designate another Judge of the same Chamber to replace the Judge prevented from acting. If it is not possible to replace the Judge prevented from acting with a Judge of the same Chamber, the President of the Chamber concerned shall notify the President of the General Court, who shall designate another Judge in order to attain the quorum of the Chamber.

3. If the quorum is no longer attained but the hearing has taken place, the Judge prevented from acting shall be replaced as provided in paragraph 2 and a new hearing shall be organised at the request of a main party. It may also be organised by the General Court of its own motion. A new hearing must be held if more than one Judge who took part in the original hearing has to be replaced. If no new hearing is organised, Article 21(2) shall not apply.

The present article of the draft has the same objectives as the preceding article but relates in this instance to the situation in which the quorum can no longer be attained in a Chamber sitting with three or five Judges.

The second sentence of paragraph 2 covers the situation in which a Judge is to be replaced by another Judge who does not usually sit in the same Chamber as the Judge prevented from acting. It is stated in that regard that, in practice, the Judge replacing the Judge prevented from acting will be designated by the President of the General Court in order to restore the quorum, according to the order laid down in Article 8 of the draft, with the exception of the President, the Vice-President and the Presidents of Chambers. However, the President of the General Court may derogate from that order in order to ensure that the workload is evenly distributed. In the interests of transparency, the General Court will record that commitment as to the method of designating the Judges replacing Judges who are prevented from acting in the notice concerning the assignment of Judges to Chambers published in the Official Journal of the European Union.

Paragraph 3 governs the situation in which a Judge is designated in order to restore the quorum but the hearing has already taken place. In that situation, a new hearing will be organised either of the General Court's own motion or at the request of a main party. If no request has been made and if the General Court considers that it is not necessary to organise a new hearing, the General Court will rule without hearing the parties again. By contrast, a new hearing must be organised if more than one Judge who took part in the original hearing has to be replaced.

The situation in which several Judges in Chambers sitting with three or five Judges are simultaneously prevented from acting after the hearing is to be clearly distinguished from the situation in which a Judge is prevented from acting before the hearing, which is governed by Article 17(2) of this draft.

Chapter 4
ASSIGNMENT AND REASSIGNMENT OF CASES, DESIGNATION OF JUDGE-RAPPORTEURS, REFERRAL TO FORMATIONS OF THE COURT AND DELEGATION TO A SINGLE JUDGE

Article 25
Assignment criteria

1. The General Court shall lay down criteria by which cases are to be allocated among the Chambers. The General Court may make one or more Chambers responsible for hearing and determining cases in specific matters.

2. The decision shall be published in the *Official Journal of the European Union*.

This article reproduces Article 12 of the existing Rules of Procedure and supplements it by the addition of a second sentence in paragraph 1. This text constitutes the legal basis of the system of allocating cases among the Chambers of the General Court.

On the basis of the article in force, the General Court adopts — in principle for a three-year period corresponding to that of the presidencies of Chambers — a decision which specifies the criteria for assigning cases to Chambers. Under the most recent decision adopted by the General Court on 23 September 2013 (OJ 2013 C 313, p. 4), appeals against decisions of the Civil Service Tribunal are assigned to the Appeal Chamber, composed of the President of the General Court and the Presidents of Chambers. Other cases are allocated to the (currently) nine Chambers in turn, following three separate rotas relating respectively to: (i) cases concerning application of the competition rules to undertakings, the rules on State aid and the rules on trade protection measures; (ii) cases concerning intellectual property rights; (iii) cases other than those referred to above.

According to the aforementioned decision, the President of the General Court, who is empowered to assign cases, may derogate from those rotas on the ground that cases are related or with a view to ensuring an even spread of the workload.

This system of assigning cases therefore follows pre-set objective criteria which enable cases to be distributed evenly among the Chambers. It thus satisfies the 'fair trial' requirements arising from the Charter of Fundamental Rights of the European Union. At the same time, the permitted derogations allow the President of the General Court a certain flexibility in the practical application of the rules. The application of these rules is by no means mechanical. The derogations in respect of the connections between cases — understood in a broad sense as covering not only cases which have the same subject-matter but also cases which are closely linked or in which the legal issues are similar — and in respect of the workload leave the President of the General Court some discretion when assigning cases, so as to ensure that they are allocated among the Chambers in a way that is both consistent and efficient.

As implemented, these arrangements are not comparable to those which would result if the organisation of the General Court took the form of specialised Chambers. There is an essential difference between a system of assigning cases that enables account to be taken of the fact that the relief sought is the same or that the legal issues are similar, and a system in which cases are

mechanically assigned to one or more Chambers solely on the basis of the subject-matter. The General Court considers that the case assignment system in force is perfectly suited to the generalised nature of a court that currently comprises 28 Members and, moreover, that it provides the flexibility crucial to enabling cases to be distributed while having regard to changes in caseload, which the rigidity of a system of assignment of certain types of action to specialised Chambers within the General Court would preclude.

The General Court is strongly attached to the case assignment system in force for those reasons of transparency, objectivity and foreseeability, and sees no reason to change it.

An increase in the number of Judges or the arrival of a huge number of cases concerning a particular area are significant events which might warrant a decision to adjust the criteria for assigning cases as a result. That is why the General Court proposes to supplement the existing Article 12 by providing expressly that it may make one or more Chambers responsible for hearing and determining cases in specific matters, thus making it perfectly clear that adjustment of the system in force is possible if the circumstances warrant it.

Article 26

First assignment of a case and designation of the Judge-Rapporteur

1. As soon as possible after the document initiating proceedings has been lodged, the President of the General Court shall assign the case to a Chamber according to the criteria laid down by the General Court in accordance with Article 25.

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

3. If in any Chamber sitting with three or with five Judges the number of Judges assigned to that Chamber is higher than three or five respectively, the President of the Chamber shall decide which of the Judges will be called upon to take part in the judgment of the case.

The first two paragraphs of this article reproduce, in essence, Article 13 of the Rules in force. The procedures for assigning cases therefore remain as follows: the President assigns the case to a Chamber according to the criteria laid down by the General Court, then the President of the Chamber seised of the case proposes to the President of the General Court the designation of a Judge to act as Rapporteur and the President of the General Court decides on the proposal. The active participation of the Presidents of Chambers at a very early stage in the case distribution process enables them to become acquainted immediately with the cases assigned to their Chamber and, moreover, to make proposals regarding the reasonable application within the Chamber of the rota criterion and of the derogations in respect of connections between cases and the workload, thereby helping to decentralise implementation of the whole system.

Paragraph 3 corresponds in essence to Article 32(4) of the Rules of Procedure in force.

Article 27

Designation of a new Judge-Rapporteur and reassignment of a case

1. If the Judge-Rapporteur is prevented from acting, the President of the competent formation of the Court shall notify the President of the General Court, who shall designate a new Judge-Rapporteur. If the new Judge-Rapporteur is not attached to the Chamber to which the case was first assigned, the case shall be heard and determined by the Chamber in which the new Judge-Rapporteur sits.

2. In order to take account of a connection between cases on the basis of their subject-matter, the President of the General Court may, by reasoned decision and after consulting the Judge-Rapporteurs concerned, reassign the cases to enable the same Judge-Rapporteur to conduct preparatory inquiries in all the cases concerned. If the Judge-Rapporteur to whom the cases have been reassigned does not belong to the Chamber to which the cases were first assigned, the cases shall be heard and determined by the Chamber in which the new Judge-Rapporteur sits.

3. In the interests of the proper administration of justice, and by way of exception, the President of the General Court may, before the presentation of the preliminary report referred to in Article 87, by reasoned decision and after consulting the Judges concerned, designate another Judge-Rapporteur. If that Judge-Rapporteur is not attached to the Chamber to which the case was first assigned, the case shall be heard and determined by the Chamber in which the new Judge-Rapporteur sits.

4. Before designating the Judge-Rapporteur as provided in paragraphs 1 to 3, the President of the General Court shall seek the views of the Presidents of the Chambers concerned.

5. Where the composition of the Chambers has changed as a result of a decision of the General Court on the assignment of Judges to Chambers, a case shall be heard and determined by the Chamber in which the Judge-Rapporteur sits following that decision, unless the deliberations have commenced or the oral part of the procedure has been opened.

This is a new provision, proposed in order to supplement procedural arrangements which, as matters stand, do not provide for the reassignment of cases.

Paragraphs 1 to 3 of this new provision are therefore a response to the lack of any express legal basis for the President of the General Court to designate a new Judge-Rapporteur in certain circumstances and, as a result, to reassign a case.

Three different situations are envisaged. The first is where the Judge-Rapporteur is prevented from acting, a situation which requires the designation of a new Judge-Rapporteur either from within the Chamber in which the first Judge-Rapporteur was sitting or from another Chamber. The second is linked to the late identification of cases as being connected on the basis of their subject-matter. Although this rarely happens, a procedural framework is needed in order for those cases to be reassigned. The last case of reassignment is one that is based on considerations of the proper administration of justice, since certain circumstances may, exceptionally, warrant the designation of a new Judge-Rapporteur. Thus, preparatory inquiries in a series of voluminous cases by one Judge-Rapporteur may cause an unreasonable delay in the handling of other cases on which the same Judge is to report, which would warrant the designation of a new Judge-Rapporteur for the examination of those other cases.

The reassignments provided for in paragraphs 2 and 3 are subject to certain conditions being satisfied that are intended to ensure that the General Court complies with the requirements of a fair trial in all circumstances. Thus, the designation of a new Judge-Rapporteur, covered in paragraph

2, is permitted, provided that the cases are connected by subject-matter, an inherently objective criterion. The reassignment of a case on the basis of paragraph 3 is possible only in the interests of the proper administration of justice, exceptionally, and before the preliminary report has been presented. In each case, the matter is determined by reasoned decision of the President of the General Court, after he has heard the Judges and the Presidents of the Chambers concerned.

Paragraph 5 seeks merely to codify the current practice of the General Court, for the purpose of transparency.

Article 28
Referral to a Chamber sitting with a different number of Judges

1. Whenever the legal difficulty or the importance of the case or special circumstances so justify, a case may be referred to the Grand Chamber or to a Chamber sitting with a different number of Judges.

2. The Chamber seised of the case or the President of the General Court may, at any stage in the proceedings, either of its or his own motion or at the request of a main party, propose to the plenum that the case be referred as provided for in paragraph 1.

3. The decision to refer a case to a formation sitting with a greater number of Judges shall be taken by the plenum.

4. The decision to refer a case to a formation sitting with a lesser number of Judges shall be taken by the plenum, after the main parties have been heard.

5. The case shall be heard and determined by a Chamber sitting with at least five Judges where a Member State or an institution of the Union which is a party to the proceedings so requests.

In the interests of clarity and legibility, the present article includes all the provisions relating to the referral of cases to a formation composed of a different number of Judges (Chamber sitting with three Judges, with five Judges or Grand Chamber), currently to be found in Articles 14(1) and 51(1) of the Rules of Procedure and which are essentially reproduced. It therefore covers the circumstances in which a case is referred, on the initiative of the Chamber seised of that case or of the President of the General Court, to a formation composed of a larger number of Judges, and those in which cases are referred to a formation composed of a smaller number of Judges, the decision to refer being taken by the plenum in all cases, although the main parties are to be heard only if the case is to be referred to a formation composed of fewer Judges.

Article 29
Delegation to a single Judge

1. The following 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 those cases and to the absence of other special circumstances, they are suitable for being so heard and determined and have been delegated under the conditions laid down in this Article:

(a) cases referred to in Article 171 below;

(b) cases brought pursuant to the fourth paragraph of Article 263 TFEU, the third paragraph of Article 265 TFEU and Article 268 TFEU that raise only questions already clarified by established case-law or that form part of a series of cases in which the same relief is sought and of which one has already been finally decided;

(c) cases brought pursuant to Article 272 TFEU.

2. Delegation to the single Judge shall not be possible:

(a) in cases which raise issues as to the legality of an act of general application;

(b) in cases concerning the implementation of the rules:

– on competition and on control of concentrations,

– relating to aid granted by States,

– relating to measures to protect trade,

– relating to the common organisation of the agricultural markets, with the exception of cases that form part of a series of cases in which the same relief is sought and of which one has already been finally decided.

3. The decision relating to the delegation of a case to the single Judge shall be taken, after the main parties have been heard, by the Chamber sitting with three Judges before which the case is pending. Where a Member State or an institution of the Union which is a party to the proceedings objects to the case being heard and determined by the single Judge the case shall be maintained before the Chamber to which the Judge-Rapporteur belongs.

4. The single Judge shall refer the case back to the Chamber if he finds that the conditions justifying its delegation are no longer satisfied.

In order to make them easier to read, the provisions of Article 14(2) and of Article 51(2) of the Rules of Procedure in force are combined in the text of this article, in paragraphs 1, 2 and 4, and in paragraph 3, respectively.

It will be recalled that in February 1997 the Court of Justice put before the Council of the European Communities a proposal for amendment of the decision of October 1988 establishing the Court of First Instance, so as to introduce the possibility of that court giving decisions when constituted by a single Judge. In April 1999, the Council, acting unanimously, amended its decision of October 1988 to include that possibility (Council Decision 1999/291/EC, ECSC, Euratom of 26 April 1999 amending Decision 88/591/ECSC, EEC, Euratom establishing a Court of First Instance of the European Communities to enable it to give decisions in cases when constituted by a single Judge (OJ 1999 L 114, p. 52)). The Council considered that amendment to be necessary in the light of the workload of the General Court, which had increased considerably since its creation, and which was expected to increase further given the arrival of new cases relating to intellectual property rights and, in particular, to the application of Council Regulation No 40/94 of 20 December 1993 on the Community trade mark. The amendments to the Rules of Procedure of the

General Court laying down the circumstances in which a case could be referred to a single Judge and the procedures for the delegation of a case to that formation of the Court were approved by the Council, acting unanimously, then adopted by the General Court on 17 May 1999.

Only a limited number of cases have been referred to a single Judge since 1999, as the conditions for the delegation of cases laid down by the Rules of Procedure, as interpreted by the Court of Justice in Case C-171/00 P Libéros *v* Commission *[2002] ECR I-451, are particularly strict. In the last 10 years, apart from the staff cases (which the General Court is no longer required to hear and determine at first instance), the General Court has adopted only four decisions when constituted as a single Judge (Case T-138/05* Commission *v* Impetus *(arbitration clause); Case T-190/07* KEK Diavlos *v* Commission *(Community funding); Case T-388/07* Commune di Napoli *v* Commission (ERDF)*; and Case T-259/09* Commission *v* Arci Nuova associazione comitato di Cagliari and Gessa *(arbitration clause)). The use of that formation of the Court may therefore be regarded as negligible.*

In the light of those points, the General Court proposes to amend the Rules of Procedure to enable cases to be referred to a single Judge in the most straightforward intellectual property cases by removing the exclusion, by reason of their nature, of intellectual property cases. The most substantial amendment therefore relates to the possibility of referring the intellectual property cases referred to in Article 171 of this draft to a single Judge. In addition, it is proposed to make the procedural mechanism more flexible since, under paragraph 3, the Chamber's power to assign cases is no longer to be exercised unanimously but by a simple majority of the Judges of the Chamber.

Chapter 5
DESIGNATION OF ADVOCATES GENERAL

Article 30
Circumstances in which an Advocate General may be designated

The General Court may be assisted by an Advocate General if it is considered that the legal difficulty or the factual complexity of the case so requires.

This article reproduces in essence Article 18 of the Rules in force.

Article 31
Procedures concerning the designation of an Advocate General

1. The decision to designate an Advocate General in a particular case shall be taken by the plenum at the request of the Chamber to which the case has been assigned or referred.

2. The President of the General Court shall designate the Judge called upon to perform the function of Advocate General in that case.

3. After being so designated, the Advocate General shall be heard before the decisions provided for in Articles 16, 28, 45, 68, 70, 83, 87, 90, 92, 98, 103, 105, 106, 113, 126 to 132, 144, 151, 165, 168, 169 and 207 to 209 are taken.

A third paragraph has been added to this article, which otherwise corresponds in essence to Article 19 of the Rules of Procedure in force. Paragraph 3 groups together all the articles providing for decisions in respect of which the designated Advocate General must be heard before the decision is adopted. This consolidation means that the references to the Advocate General currently spread over a considerable number of articles can be removed in the interests of improved legibility.

Chapter 6
REGISTRY

Section 1. The Registrar

Article 32
Appointment of the Registrar

1. The General Court shall appoint the Registrar.

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

3. Voting shall take place in accordance with the procedure laid down in Article 9(3).

4. The Registrar shall be appointed for a term of six years. He may be reappointed. The General Court may decide to renew the term of office of the incumbent Registrar without availing itself of the procedure laid down in paragraph 2. In that case paragraph 3 shall apply.

5. The Registrar shall take the oath set out in Article 5 and sign the declaration provided for in Article 6.

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

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

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

This article corresponds, in essence, to Article 20 of the existing Rules of Procedure, which it nevertheless supplements in two respects. It is largely identical to Article 18 of the Rules of Procedure of the Court of Justice, subject to a clarification in the last sentence of paragraph 4.

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

Secondly, the draft simplifies the procedure applicable when the term of office of an incumbent Registrar is to be renewed. It states, in paragraph 4, that the General Court can decide not to avail

itself of the procedure for election of the Registrar if he is willing to be reappointed and the General Court wishes to renew his term of office. This amendment addresses both the concern to avoid what is a relatively cumbersome procedure for the General Court and the desire to avoid creating expectations outside the General Court which will inevitably be disappointed if it has decided to renew the term of office of the incumbent Registrar.

Article 33
Deputy Registrar

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

This article corresponds to Article 21 of the existing Rules of Procedure, which it modifies only in purely formal respects. The article thus recalls the main duty of a Deputy Registrar, which is to assist the Registrar and to take his place if he is prevented from acting.

Article 34
Where the Registrar and Deputy Registrar are prevented from acting

Where the Registrar is prevented from acting and, if necessary, where the Deputy Registrar is so prevented, the President of the General Court shall designate an official or servant to carry out the duties of Registrar.

This provision, which exists in Article 22 of the Rules of Procedure in force, the terms of which are essentially reproduced, constitutes the legal basis for empowering the Registry's administrators to perform the judicial administration duties conferred on the Registrar.

Article 35
Responsibilities of the Registrar

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

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

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

4. The Registrar shall be responsible, under the authority of the President of the General Court, for the administration of the General Court, its financial management and its accounts, and shall be assisted in this by the departments of the Court of Justice of the European Union.

5. Save as otherwise provided in these Rules, the Registrar shall attend the sittings of the General Court.

Like Articles 10 and 11, in relation to the responsibilities of the President and the Vice-President of the General Court, the present article defines the main responsibilities of the Registrar. It combines within a single article the content of Articles 25, 26, 27 and 30 of the existing Rules of Procedure, albeit slightly rephrased.

Article 36
Keeping of the register

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

2. When a document has been registered, the Registrar shall make a note to that effect on the original procedural document or on the version deemed to be the original of that document for the purposes of decisions adopted pursuant to Article 74, and, if a party so requests, on any copy submitted for the purpose.

3. Entries in the register and the notes provided for in paragraph 2 shall be authentic.

The three paragraphs which constitute this article correspond, in essence, to paragraphs 1 to 3 respectively of Article 24 of the existing Rules of Procedure. Paragraph 2 has, however, been slightly amended to reflect the current situation since lodging procedural documents in electronic format became possible by means of the e-Curia application.

Article 37
Consultation of the register

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

This article corresponds, in essence, to Article 24(5) of the Rules of Procedure in force. It is based on Article 22(1) of the Rules of Procedure of the Court of Justice and extends the possibility of consulting the Registry's register and obtaining copies or extracts of the register on payment of a charge to anyone. The need to organise consultation of the register under the best possible conditions and to know in advance the charge applicable requires the adoption of certain rules the place for which is not, however, in the Rules of Procedure.

Article 38
Access to the file in the case

1. Subject to the provisions of Article 68(4), Articles 103 to 105 and of Article 144(7), any party may have access to the file in the case and, on payment of the appropriate charge referred to in

Article 37, may obtain copies of procedural documents and authenticated copies of orders and judgments.

2. No third party, private or public, may have access to the file in a case without the express authorisation of the President of the General Court, once the parties have been heard. That authorisation may be granted, in whole or in part, only upon written request accompanied by a detailed explanation of the third party's legitimate interest in having access to the file.

The source of this article is both the second subparagraph of Article 24(5) of the Rules of Procedure of the General Court in force, in the case of paragraph 1, and Article 5(8) of the Instructions to the Registrar of the General Court, in the case of paragraph 2.

The scope ratione personae *of this article varies in accordance with each paragraph. Paragraph 1 concerns access to the file by the parties themselves. Paragraph 2 governs requests for access to the case-file made by third parties. The General Court considers it necessary in that regard to incorporate into the Rules of Procedure the procedural regime for third-party requests for access to material in a court file, which, until now, has been provided for in the Instructions to the Registrar of the General Court, in order to highlight that provision.*

Section 2. Other departments

Article 39
Officials and other servants

1. The officials and other servants whose task is to assist directly the President, the Judges and the Registrar shall be appointed under the conditions laid down in the regulation laying down the staff regulations of officials and the conditions of employment of other servants. They shall be responsible to the Registrar, under the authority of the President of the General Court.

2. They shall take one of the following two oaths before the President of the General Court in the presence of the Registrar:

   'I swear that I will perform loyally, discreetly and conscientiously the duties assigned to me by the General Court.'

   or

   'I solemnly and sincerely affirm that I will perform loyally, discreetly and conscientiously the duties assigned to me by the General Court.'

This provision reproduces in essence Articles 28 and 29 of the Rules in force. The wording of the form of oath to be taken is included in the Rules of Procedure for a technical reason and for a reason of principle. The technical reason lies in the fact that the existing Article 29 refers to a form of oath provided for by an article of the Rules of Procedure of the Court of Justice that no longer exists. The reason of principle is linked to the fact that the taking of the oath before the President of the General Court by officials and servants attached to the Registrar of the General Court under

the authority of the President of that Court helps to ensure the functional independence of the General Court within the institution of the Court of Justice of the European Union.

Chapter 7
THE WORKING OF THE GENERAL COURT

Article 40
Location of the sittings of the General Court

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

This article corresponds to Article 31(2) of the existing Rules of Procedure.

Article 41
Calendar of the General Court's judicial business

1. The judicial year shall begin on 1 September of each calendar year and end on 31 August of the following year.

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

3. In a case of urgency, the President of the General Court and the Presidents of Chambers may convene the Judges and, if necessary, the Advocate General during the judicial vacations.

4. The General Court shall observe the official holidays of the place where it has its seat.

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

6. The dates of the judicial vacations shall be published annually in the *Official Journal of the European Union*.

This article corresponds, in essence, to Article 34 of the existing Rules of Procedure, which it nevertheless supplements by specifying in paragraph 1 the dates of the beginning and end of the judicial year. By contrast with the existing Article 34, however, Article 41 of the draft no longer includes in the Rules of Procedure a reference to the precise dates of the judicial vacations, the existing provision having ceased to reflect the true position. Those dates must be determined by the General Court and then published in the Official Journal of the European Union*, as is the case for the list of official holidays drawn up by the Court of Justice, referred to in Article 58(3) of the present draft.*

The proposed amendments are based on Article 24 of the Rules of Procedure of the Court of Justice.

Article 42
Plenum

1. Decisions concerning administrative issues and the decisions referred to in Articles 7, 9, 11, 13, 15, 16, 18, 25, 28, 31 to 33, 41, 74, 224 and 225 shall be taken by the General Court at the plenum in which all the Judges shall take part and have a vote. The Registrar shall be present, unless the General Court decides to the contrary.

2. If, after the plenum has been convened, it is found that the quorum referred to in the fourth paragraph of Article 17 of the Statute has not been attained, the President of the General Court shall adjourn the sitting until there is a quorum.

This article is novel since, for the first time, decisions within the ambit of the plenum — the body that has the power to determine administrative issues, as already provided for in Article 33(7) of the Rules of Procedure in force — and the decisions provided for in the present draft are listed in a single provision. In the interests of consistency, paragraph 1 is put forward as the counterpart to Article 25 of the Rules of Procedure of the Court of Justice concerning the 'General meeting', on which it is based.

Paragraph 2 reproduces, in essence, the wording of Article 32(2) of the existing Rules of Procedure of the General Court, but specifies the provision of the Statute relating to the quorum required for the General Court pursuant to the first paragraph of Article 47 of the Statute.

Article 43
Drawing-up of minutes

1. Where the General Court sits in the presence of the Registrar, the Registrar shall, if necessary, draw up minutes which shall be signed by the President of the General Court or by the President of the Chamber, as the case may be, and by the Registrar.

2. Where the General Court sits without the Registrar being present it shall, if necessary, instruct the most junior Judge for the purposes of Article 8 to draw up minutes which shall be signed by the President of the General Court or by the President of the Chamber, as the case may be, and by that Judge.

Paragraph 1 of this article has no equivalent in the Rules in force. It states that minutes are in principle to be drawn up by the Registrar when the General Court sits in his presence, while paragraph 2, which reproduces in essence Article 33(8) of the Rules of Procedure in force, specifies the status of the person who is to draw up those minutes when the General Court sits without the Registrar being present.

Paragraph 1, which codifies the general rule followed in respect of the drawing-up of minutes, has been rephrased in the interests of clarity and as a useful adjunct to paragraph 2.

TITLE II
LANGUAGES

In order to make them more readily identifiable and easier to read, the provisions relating to languages, currently scattered among several parts of the Rules of Procedure (Chapter 5 of Title I; Article 131 in Title IV; Article 136a in Title V), have been placed under an entirely separate title. As a result, Title II contains all the provisions relating to languages applicable to all proceedings within the jurisdiction of the General Court.

In terms of form, this title corresponds to Chapter 5 of Title I of the Rules of Procedure in force, save for paragraphs 3 and 4 of Article 45 of the draft, which are new and which contain, for the reasons already stated, the provisions relating to the language of the case in appeals and in intellectual property cases.

In terms of the substance, the language arrangements for cases other than intellectual property matters have been reprised without amendment. In addition, for reasons relating as much to the very nature of requests and applications that are ancillary to a main case (applications for rectification, applications for the General Court to remedy a failure to adjudicate or to set aside judgments by default, third-party proceedings, applications for interpretation and for revision of a judgment, and applications for taxation of costs) as to the need to preserve the rights of the parties to a case, the draft provides that such proceedings must be initiated in the language of the decision to which they relate, without prejudice to the exceptions currently provided for.

Article 44
Language of a case

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

This article corresponds to Article 35(1) of the existing Rules of Procedure.

Article 45
Determination of the language of a case

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

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

   (b) at the joint request of the parties, the use of another of the languages mentioned in Article 44 for all or part of the proceedings may be authorised;

   (c) at the request of one of the parties, and after the other parties have been heard, the use of another of the languages mentioned in Article 44 as the language of the case for all or part of

the proceedings may be authorised by way of derogation from subparagraph (b); such a request may not be submitted by an institution.

2. Requests as above shall be decided on by the President; where the latter proposes to accede to a request without the agreement of all the parties, he must refer the request to the General Court.

3. Without prejudice to the provisions of paragraph 1(b) and (c),

   (a) in appeals against decisions of the Civil Service Tribunal as referred to in Articles 9 and 10 of Annex I to the Statute, the language of the case shall be the language of the decision of the Civil Service Tribunal against which the appeal is brought;

   (b) in the case of applications for rectification, applications for the General Court to remedy a failure to adjudicate or for it to set aside judgments by default, third-party proceedings and applications for interpretation or revision of a judgment or in the case of disputes concerning the costs to be recovered, the language of the case shall be the language of the decision to which those applications or disputes relate.

4. Without prejudice to the provisions in paragraph 1(b) and (c), in proceedings brought against decisions of the Boards of Appeal of the Office, referred to in Article 1, with respect to the application of the rules relating to an intellectual property regime:

   (a) the language of the case shall be chosen by the applicant if the applicant was the only party to the proceedings before the Board of Appeal of the Office;

   (b) the language of the application, chosen by the applicant from among the languages referred to in Article 44, shall be the language of the case if another party to the proceedings before the Board of Appeal of the Office does not object to this within the time-limit laid down for that purpose by the Registrar after the application has been lodged;

   (c) in the event of an objection to the language of the application by a party to the proceedings before the Board of Appeal of the Office other than the applicant, the language of the decision that is contested before the General Court shall become the language of the case; in such cases, the Registrar shall ensure the translation of the application into the language of the case.

As explained in the introduction to this title, the General Court considered it preferable to bring together in a single title all the provisions relating to languages and to clarify the rules applicable in relation to the language in which appeals and requests or applications such as applications for interpretation or revision, which are associated with existing cases, must be submitted. That approach explains why a third paragraph has been added to this article.

The most significant change proposed concerns the language arrangements in intellectual property cases, set out in paragraph 4. Those changes call for more detailed explanation.

First, it is necessary to take into account the fact that the proposed rules are intended to govern a substantial caseload at the General Court level. The very high number of new intellectual property cases is directly linked to the very high number of decisions delivered by the Boards of Appeal of the Office for Harmonisation in the Internal Market (OHIM) (or the Community Plant Variety Office (CPVO), as the case may be). The increase in the number of decisions of the Boards of

Appeal of OHIM is very significant — in the order of 41.5% in the period from 2007 to 2012 (1 776 decisions handed down by the Boards of Appeal in 2007, as against 2 513 in 2012) — while the rate at which decisions of the Boards of Appeal are challenged before the General Court has invariably been around 10% since that type of litigation was first conducted before the General Court.

*Secondly, the characteristics of such proceedings are such that in-depth consideration has had to be given to how the process can be conducted in the most efficient way possible, given, in particular, the singular nature of '*inter partes*' cases that bring together the applicant, the Office (either OHIM or CPVO) and the other party to the proceedings before the Board of Appeal. These '*inter partes*' cases are currently governed by provisions of the Rules of Procedure which require, in each file, that the applicable language of the case be determined prior to the written procedure. 'Inter partes' cases represented 82% of all intellectual property cases in 2012 (196 cases), a proportion which is constantly rising.*

*In the light of the civil, as opposed to the administrative, nature of '*inter partes*' proceedings, the language arrangements adopted in 1994, which are still in force, enshrined the principle of freedom of choice as to the language used by the applicant and the intervener. However, the radical change of context, the substantial increase in the workload of the General Court, the current lack of structural reform enabling the General Court to achieve a lasting reduction in the backlog of cases, budgetary restrictions, the limited human resources of the General Court and of its Registry and the lessons learned from the experience of the last 15 years further justify extensive revision of the current system.*

The system of determining the language of the case as provided for in Article 131 of the Rules of Procedure in force is very complicated. It is so poorly understood that the General Court deemed it necessary to provide online explanatory material on the Internet site of the Court of Justice of the European Union.

*Under the Rules in force, the first stage of the procedure initiated immediately after the application has been lodged consists of determining the language of the case. This stage is initiated even before the application is served on the Office and on the other party to the proceedings before the Board of Appeal. This preliminary step, which is designed to establish the applicant's view, and that of the other party to the proceedings before the Board of Appeal, on the choice of language to be used during the judicial procedure lasts, on average, between four and eight weeks and, taking into account the high number of new '*inter partes*' cases brought every year, is a significant burden on the General Court.*

During this preliminary stage of the procedure, a party who considers himself to be disadvantaged by the language of the application to the General Court and by that of the application for registration (which becomes applicable if there is an objection to the former) may submit a reasoned request for another language to become the language of the case. However, judicial practice indicates that if two private parties do not agree on which language should be designated the language of the case, a request for the designation, as the language of the case, of a language other than that in which the application for registration was made will not normally be approved. In the period from 2008 to 2012, the General Court refused 78 of the 79 reasoned requests submitted. This is accounted for by the fact that the party making the request must demonstrate that the use of the language of the application for registration does not enable him to follow the proceedings or to defend his interests, and that only the use of the language requested would make it possible to remedy that situation. Yet the rights of that party are actually preserved in so far as a translation of the pleadings into the desired language can always be produced on that party's own

initiative and at his expense and, moreover, it remains open to him to use a language other than the language of the case at the hearing.

The proposed amendments are therefore designed to simplify the rules for determining the language of the case in the light of experience, by providing that the language of the case is that chosen by the applicant or, in the event of an objection, that of the contested decision.

This regime has five main advantages: (i) any of the official languages can be the language of a case before the General Court; (ii) where the other party to the proceedings before the Board of Appeal ultimately does not become a party before the General Court (see the provisions of Title IV relating to the acquisition of the status of intervener) or does not object to the applicant's choice, this option enables the applicant to retain the language in which he can most readily express himself; (iii) it offers legal certainty since the lodging of an objection also determines the language of the case, which then becomes that of the contested decision; (iv) in the event of an objection, the language of the case is that in which the two parties have already conducted the procedure before the Office, which, objectively, is a satisfactory solution for the private parties concerned; (v) the simplification of the procedure due to the removal of the possibility of lodging a reasoned request helps to reduce the duration of the proceedings by curtailing the preliminary stage of determining the language of the case.

In the view of the General Court, these advantages largely outweigh the disadvantages of maintaining the obligation for the institution's translation services to translate the application into the designated language of the case following an objection (that is to say, according to these draft Rules, the language of the contested decision). They also prevail over the inherent consequences of the opposition procedure, which are such that only the five languages of the Office can, in the event of an opposition, become the language of the case before the General Court. The implications of those consequences must be seen in context, as the fact is that since 2008 over 95% of intellectual property cases have been brought in one of the five languages of the Office.

Lastly, private parties can always submit a request for derogation from the language rules on the basis of Article 45(1), which is expressly provided for in paragraph 4.

As to the remainder, the article reproduces, in essence, the content of Article 35(2) of the existing Rules of Procedure.

Article 46
Use of the language of the case

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

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

3. However, in the case of substantial material, translations may be confined to extracts. At any time the President may, of his own motion or at the request of one of the parties, call for a complete or fuller translation.

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

5. The States, other than the Member States, which are parties to the EEA Agreement, and also the EFTA Surveillance Authority, may be authorised to use one of the languages mentioned in Article 44, other than the language of the case, when they intervene in a case before the General Court. This provision shall apply both to written documents and to oral statements. The Registrar shall arrange in each instance for translation into the language of the case.

6. Where a witness or expert states that he is unable adequately to express himself in one of the languages referred to in Article 44, the President may authorise him to give his evidence in another language. The Registrar shall arrange for translation into the language of the case.

7. The President in conducting oral proceedings, Judges and, where appropriate, the Advocate General in putting questions and the Advocate General in delivering his Opinion may use one of the languages referred to in Article 44 other than the language of the case. The Registrar shall arrange for translation into the language of the case.

Article 46 of the draft essentially reproduces the content of Article 35(3) to (5) of the existing Rules of Procedure, subject to simplification of the drafting in paragraphs 1 and 3 of Article 46 by the removal of the reference to the word 'documents', 'documents' being necessarily included in the concept of 'material', and the transfer of powers, referred to in paragraphs 3 and 6, from the General Court to the President of the formation of the Court. As in the case of Article 38(8) of the Rules of Procedure of the Court of Justice, the reference to the preliminary report and the report for the hearing has been deleted in paragraph 7 of Article 46.

Article 47

Responsibility of the Registrar concerning language arrangements

The Registrar shall, at the request of any Judge, of the Advocate General or of a party, arrange for anything said or written in the course of the proceedings before the General Court to be translated into the languages chosen from those referred to in Article 44.

Article 47 corresponds to Article 36(1) of the existing Rules of Procedure.

Article 48

Languages of the publications of the General Court

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

This article corresponds to Article 36(2) of the existing Rules of Procedure.

Article 49

Authentic texts

The texts of documents drawn up in the language of the case or, where applicable, in another language authorised pursuant to Articles 45 and 46 of these Rules shall be authentic.

This article corresponds to Article 37 of the existing Rules of Procedure.

TITLE III
DIRECT ACTIONS

Numerically, direct actions constitute the primary category of cases brought before the General Court. It is logical, therefore, to deal with such actions — consisting for the main part of actions for annulment, but also of actions for failure to act, actions for damages and actions based on an arbitration clause — before intellectual property actions and appeals.

Title III contains all the provisions that apply to direct actions and, owing to the references made in the titles relating to intellectual property cases (Title IV) and to appeals (Title V), the bulk of the present Rules. It brings together Title II 'Procedure' and Title III 'Special forms of procedure' of the Rules in force, but does not include procedures after setting aside or review or referral back to the General Court, which are dealt with in a new Title VI, 'Procedures after a case is referred back to the General Court'.

The comprehensive reform of the procedural rules contained in this title demonstrates the General Court's firm resolve to continue the efforts made to maintain its capacity, in the face of an ever-increasing workload, to deliver high-quality justice in accordance with the requirements of a fair trial by establishing new procedures. Making the text as a whole easier to read, clarification of provisions and of the rights conferred on parties, the simplification of rules for the purpose of rationalisation, consistency between provisions and their uniform application by the General Court, adaptation of the rules to actual procedural situations encountered and the diligent conduct of proceedings by means of efficiency gains are also the objectives of the General Court.

The provisions in this title are mainly those of the Rules in force, but these have been refined or redrafted and arranged quite differently.

The reform given concrete expression in this title includes fewer formalities when an application is lodged by a lawyer authorised by a legal person governed by private law (Articles 51 and 78), rationalisation of the methods for lodging and serving procedural documents by removal of the e-mail option and the address for service in Luxembourg (see Articles 57, 72, 77 and 80) and less formality by dispensing with orders in favour rather of decisions (Article 70 relating to decisions to stay and to resume proceedings; Article 144 relating to decisions allowing interventions without applications for confidential treatment).

The meaning of certain provisions is clarified, both in the interests of the parties and of the General Court itself. Reference is made in that regard to Article 73(1) and (3) relating to the lodging at the Registry of a procedural document in paper form, Articles 84 to 86 in Chapter 4 'Pleas in law, evidence and modification of the application', Article 113 concerning the reopening of the oral procedure, Articles 117 and 119 describing respectively the content of judgments and of orders, and Article 123 concerning the default procedure.

The efforts to achieve greater clarity are reflected in the reorganisation of provisions and the grouping together, by chapter, of a whole series of provisions that are currently scattered throughout the Rules. Thus Chapter 1 brings together the general provisions currently to be found in six different chapters (relating to representation of the parties, rights and obligations of the parties' representatives, service, time-limits, conduct of the proceedings and how cases are dealt with, joinder and stay). Similarly, Chapter 17 brings together the provisions, currently distributed over four separate chapters, concerning requests and applications relating to judgments and orders of the General Court (rectification, failure to adjudicate, applications to set aside, third-party

proceedings, interpretation, revision and disputes concerning the costs to be recovered). Reflecting the concern that such requests be dealt with swiftly, the draft also provides for them to be assigned automatically to the formation of the Court which delivered the decision to which the request or application relates.

This reform also enables provisions which were in the Practice Directions to parties, such as that concerning the length of pleadings (Article 75), or in the Instructions to the Registrar of the General Court, such as those relating to anonymity and to the omission of certain information vis-à-vis the public (Article 66) or to the publication in the Official Journal *of notices of decisions closing proceedings (Article 122), to be elevated to the status of rules of procedure.*

Further details are added to many articles, in particular with regard to the moment when certain documents are lodged (new pleas in law; evidence produced or offered; statement modifying the form of order sought in the application), the reasons to be given depending on the time of lodging (of a new plea in law, evidence or offers of evidence, a request for a measure of organisation of procedure or a measure of inquiry) and the situations in which the parties must be given an opportunity to submit their observations (see in particular Articles 84(3), 85(4) and 88(3)), as well as the authority competent to decide (powers of the President under Article 62 to decide to include in a file a procedural document that has been lodged out of time, under Article 71 to set time-limits after the resumption of proceedings, under Article 75 to authorise that the maximum number of pages be exceeded, under Article 83 to specify the matters contained in a reply or a rejoinder, and under Article 148 to set a time-limit for the other main party before determining an application for legal aid; power of the President of the General Court under Article 115 to decide on a request to hear a recording).

In addition, this title contains important innovations. These undoubtedly include the possibility of ruling without a hearing if none has been requested by a main party and the General Court considers it unnecessary, and the removal from the category of interveners of those able to present their arguments only at the hearing, this removal being closely linked to the now optional nature of the hearing. Also included in the list of important innovations is the provision which clearly sets out how the General Court will treat information or material produced following a measure of inquiry ordered by the General Court which is relevant to the General Court's ruling in the case and is also confidential, the General Court being required to strike a balance between confidentiality and the requirements of the right to effective judicial protection, particularly respect for the adversarial principle. Similarly, the procedural measures that reflect the General Court's intention to accord special treatment to the class of information or material pertaining to the security of the Union or of its Member States or to the conduct of their international relations can be described as a major innovation. Although these are contained in a single article, the General Court wished to concentrate that special procedural regime in an entirely separate chapter. Another innovation, albeit one that cannot be described as major, concerns the possibility for the General Court to decide of its own motion that a case should be determined pursuant to an expedited procedure.

Lastly, in so far as some of the existing rules are satisfactory, it is not proposed to change them. That is in particular the case as regards the rules in Chapter 16 relating to suspension of operation and interim measures, which are not the subject of any substantial amendment.

Article 50
Scope

The provisions of this Title shall apply to direct actions within the meaning of Article 1.

Chapter 1
GENERAL PROVISIONS

Section 1. Representation of the parties

Article 51
Obligation to be represented

1. A party must be represented by an agent or a lawyer in accordance with the provisions of Article 19 of the Statute.

2. The lawyer representing or assisting a party must lodge at the Registry a certificate that he is authorised to practise before a court of a Member State or of another State which is a party to the EEA Agreement.

3. Where the party represented by the lawyer is a legal person governed by private law, the lawyer must lodge at the Registry an authority to act given by that person.

4. If the documents referred to in paragraphs 2 and 3 are not lodged, the Registrar shall prescribe a reasonable time-limit within which the party concerned is to produce them. If the party concerned fails to produce the required documents within the time-limit prescribed, the General Court shall decide whether the non-compliance with that procedural requirement renders the application or written pleadings formally inadmissible.

Representation of the parties by an agent or lawyer is mandatory in proceedings before the General Court. The draft therefore points out this requirement, set out both in Article 19 of the Statute and in Article 43 of the existing Rules of Procedure, at the beginning of the title covering this type of action. Next are listed the documents required in order for a person to be able to take part in proceedings before the General Court, and the possible consequences of not producing them. Those documents and consequences are currently referred to in Article 44 of the Rules of Procedure, specifically in paragraphs 3, 5 and 6 thereof.

In paragraph 3 of the draft, it is proposed to maintain in force the rule under which legal persons governed by private law are obliged to produce the authority to act given to the lawyer. Since the current rules do not include any obligation to produce a power for the agents of the Member States and the institutions of the European Union, it is proposed not to add that obligation, which the General Court has dispensed with from the outset. That proposal is without prejudice to Article 53(1) of the present draft, which mentions the documents that representatives must produce in order to qualify for certain privileges, immunities and facilities.

Section 2. Rights and obligations of parties' representatives

Article 52
Privileges, immunities and facilities

1. Agents, advisers and lawyers who appear before the General Court 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. Agents, advisers and lawyers shall also enjoy the following privileges and facilities:

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

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

This article corresponds, in essence, to Article 38 of the existing Rules of Procedure, except for removal of the reference to the allocation of foreign currency which now seems anachronistic. That reference no longer appears in the corresponding article of the Rules of Procedure of the Court of Justice (Article 43).

Article 53
Status of the parties' representatives

1. In order to qualify for the privileges, immunities and facilities specified in Article 52, persons entitled to them shall furnish proof of their status as follows:

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

   (b) lawyers shall produce a certificate that they are authorised to practise before a court of a Member State or of another State which is a party to the EEA Agreement, and, where the party which they represent is a legal person governed by private law, an authority to act issued by that person;

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

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

As in the case of the preceding article, Article 53 of the draft reproduces in essence, in that respect, the content of Article 39 of the existing Rules of Procedure, which it nevertheless supplements in order to underline the need for lawyers and advisers to submit an authority to act issued by any

legal person governed by private law whom they are representing or assisting and, in every situation, a certificate. This article is based on Article 44 of the Rules of Procedure of the Court of Justice.

Article 54
Waiver of immunity

1. The privileges, immunities and facilities specified in Article 52 are granted exclusively in the interests of the proper conduct of proceedings.

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

This article corresponds to Article 40 of the existing Rules of Procedure.

Article 55
Exclusion from the proceedings

1. If the General Court considers that the conduct of an agent, adviser or lawyer before the General Court, the President, a Judge or the Registrar is incompatible with the dignity of the General Court or with the requirements of the proper administration of justice, or that such agent, adviser or lawyer is using his rights for purposes other than those for which they were granted, it shall inform the person concerned. The General Court 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.

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

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

4. Decisions taken under this Article may be rescinded.

Article 55 of the draft corresponds, in essence, to Article 41 of the existing Rules of Procedure, but supplements it with a reference to agents, since they enjoy the same rights and are subject to the same obligations as advisers and lawyers. The changes to this article are based on those which the Court of Justice made in Article 46 of its new Rules of Procedure.

Article 56
University teachers

The provisions of this Section shall apply to the university teachers referred to in the seventh paragraph of Article 19 of the Statute.

This article corresponds, in essence, to Article 42 of the existing Rules of Procedure.

Section 3. Service

Article 57
Methods of service

1. Without prejudice to Article 77(2) and Article 80(1), where the Statute or these Rules require a document to be served on a person the Registrar shall ensure that service is effected by the method referred to in paragraph 4 or by telefax.

2. Where, for technical reasons or on account of the nature of the document, service of the document in accordance with the procedures laid down in paragraph 1 is impossible or impracticable, the document shall be served at the address of the representative of the party concerned by registered post with a form for acknowledgement of receipt or by personal delivery of the copy against a receipt. The addressee shall be so informed by the method referred to in paragraph 4 or by telefax. 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 in which the General Court has its seat, unless it is shown by the acknowledgement of receipt that the letter was received on a different date or the addressee informs the Registrar, within three weeks of being informed by the method referred to in paragraph 4 or by telefax that the document to be served has not reached him.

3. The Registrar shall prepare and certify the copies of documents to be served pursuant to paragraph 2, save where the parties themselves supply the copies in accordance with Article 73(2).

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

Article 57 of the draft significantly amends Article 100 of the existing Rules of Procedure. The methods of service used by the General Court have to take account of technological developments and to a large extent determine the effectiveness of the work of its registry; the text has therefore been reorganised in order better to distinguish service of documents by a technical means of communication from service effected by a traditional method, recourse to the latter being envisaged only if recourse to a technical means of communication is not possible.

The technical means of communication currently available to the General Court for the service of documents include fax, e-mail and the e-Curia application. However, of these, e-mail is not reliable because it does not allow an undisputable date of receipt to be ascertained. It is therefore proposed not to use that method of service, which is why the only methods mentioned are 'the method referred to in paragraph 4', that is e-Curia, and fax.

If a document cannot be served by e-Curia or by fax for technical reasons or on account of the nature of the document, it is proposed that it be served at the address of the representative of the party concerned. In view of the fact that the Court of Justice has decided to remove the obligation for the parties to have an address for service in Luxembourg (see, in that respect, Article 121 of the Rules of Procedure of the Court of Justice), and that the parties are obliged to be represented, it is appropriate to send the copy of the document to the address of the representative of the party concerned. That proposal must be read in conjunction with Article 76(b), Article 77 and Article 81(1)(b) of the present draft.

Taking into account the fact that service of documents by a technical means of communication presupposes prior acceptance of such a method of service, the method of service of applications on defendants has been specified in Article 80 of this draft.

Section 4. Time-limits

Article 58
Calculation of time-limits

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

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

   (b) a time-limit expressed in weeks, months or years shall end with the expiry of whichever day in the last week, month or year is the same day of the week, or falls on the same date, as the day during which the event or action from which the time-limit is to be calculated occurred or took place; if, in a time-limit expressed in months or years, the day on which it should expire does not occur in the last month, the time-limit shall end with the expiry of the last day of that month;

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

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

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

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

3. 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 General Court.

This article largely reproduces the content of Article 101 of the existing Rules of Procedure, subject to some adjustments to align the text with that of the corresponding article of the Rules of Procedure of the Court of Justice (Article 49).

Article 59
Proceedings against a published measure adopted by an institution

Where the time-limit allowed for initiating proceedings against a measure adopted by an institution runs from the publication of that measure, that time-limit shall be calculated, for the purposes of Article 58(1)(a), from the end of the fourteenth day after publication of the measure in the *Official Journal of the European Union*.

Article 59 corresponds to Article 102(1) of the existing Rules of Procedure.

Article 60
Extension on account of distance

The procedural time-limits shall be extended on account of distance by a single period of 10 days.

This article essentially reproduces the text of Article 102(2) of the Rules of Procedure in force.

Article 61
Setting and extension of time-limits

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

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

This article essentially reproduces the text of Article 103 of the Rules of Procedure in force.

Article 62
Procedural documents lodged out of time

A procedural document lodged at the Registry after expiry of the time-limit set by the President or by the Registrar pursuant to these Rules may be accepted only pursuant to a decision of the President to that effect.

This new provision has been added in order to highlight the fact that a procedural document lodged after expiry of the time-limit set by the President or by the Registrar may be accepted only pursuant to a decision of the President. In other words, this provision seeks to make clear that a document lodged out of time cannot be included in the case-file unless the President of the General Court or of the Chamber, as the case may be, decides otherwise. This article has its equivalent in Article 38(1) of the Rules of Court of the European Court of Human Rights.

Section 5. Conduct of the proceedings and procedures for dealing with cases

Article 63
Conduct of the proceedings

Without prejudice to the special provisions laid down in the Statute or in these Rules, the procedure before the General Court shall consist of a written part and an oral part.

This article follows on from successive amendments to the Statute and to the Rules of Procedure by recalling that, while the ordinary procedure for dealing with a case consists of a written part and an oral part (first paragraph of Article 20 of the Statute), the second part can nevertheless be omitted in certain circumstances.

This provision corresponds to Article 53(1) of the Rules of Procedure of the Court of Justice.

Article 64
Adversarial nature of the proceedings

Subject to the provisions of Article 68(4), Article 104, Article 105(7) and Article 144(7), the General Court shall take into consideration only those procedural documents and items which have been made available to the representatives of the parties and on which they have been given an opportunity of expressing their views.

As the Court of Justice has consistently held, the rights of the defence occupy a prominent position in the organisation and conduct of a fair trial (see, to that effect, Case C-14/07 Weiss und Partner *[2008] ECR I-3367, paragraph 47, and Case C-394/07* Gambazzi *[2009] ECR I-2563, paragraph 28), and the rights of the defence include the right to a fair hearing (see Case C-413/06 P* Bertelsmann and Sony Corporation of America *v* Impala *[2008] ECR I-4951, paragraph 61, and Case C-89/08 P* Commission *v* Ireland and Others *[2009] ECR I-11245, paragraph 50).*

This principle means, as a rule, that the parties to proceedings have a right to be given an opportunity to comment on the facts and documents on which a judicial decision will be based and to discuss the evidence produced and the observations made to the court (Case C-450/06 Varec *v* Belgium *[2008] ECR I-581, paragraph 47) as well as the pleas in law raised by the court of its own motion on which it intends to base its decision (*Commission *v* Ireland*, paragraph 55). In order to satisfy the requirements associated with the right to a fair hearing, it is important for the parties to be able to debate and be heard on the matters of fact and of law which will determine the outcome of the proceedings (Case C-197/09 RX-II* M *v* EMEA *[2009] ECR I-12033, paragraph 41).*

Article 64 of the present draft seeks to affirm the adversarial principle by raising it to the level of a general procedural provision and consequently highlighting the fact that it is not, at present. This fundamental principle features in the Rules in force but is contained in an article relating to measures of inquiry (first subparagraph of Article 67(3)).

Article 65

Service of procedural documents and of decisions taken in the course of proceedings

1. Subject to the provisions of Article 68(4), Articles 103 to 105 and Article 144(7), procedural documents and items included in the file in the case shall be served on the parties.

2. The Registrar shall ensure that decisions taken in the course of the proceedings and included in the file in the case are brought to the attention of the parties.

In view of the wording of Article 57(1) of the present draft, which refers to the situation 'where the Statute or these Rules require a document to be served on a person', it is proposed that a general provision be inserted in relation to service of procedural documents and of decisions included in the file in the case, the non-service of documents being an exception reserved for cases of joinder (Article 68) and of confidentiality of information vis-à-vis a main party (Articles 103 to 105) or intervener (Article 144).

This rule gives effect to the adversarial nature of the judicial procedure, in that it confirms the provisions of the Rules of Procedure which already expressly provide for service of material from the file (see, in particular, Articles 80, 83, 96, 102, 114, 118, 120, 144, 157 and 158), and supplements the procedural arrangements as a whole by providing that procedural documents and decisions taken in the course of proceedings (on an application for joinder, a request for a stay or an application for a measure of organisation of procedure or of inquiry) which are included in the case-file are, respectively, to be served on and brought to the attention of the parties.

Article 66

Anonymity and omission of certain information vis-à-vis the public

On a reasoned application by a party, made by a separate document, or of its own motion, the General Court may omit the name of a party to the dispute or of other persons mentioned in connection with the proceedings, or certain information, from those documents relating to a case to which the public has access if there are legitimate reasons for keeping the identity of a person or the information confidential.

In the interests of transparency, it is proposed that the provision corresponding to the second subparagraph of Article 18(4) of the Instructions to the Registrar of the General Court be inserted in the Rules of Procedure.

This provision allows the identity of a party to a dispute or another person to be withheld if the General Court considers it necessary. Problems can arise where it appears on examination of the action lodged that it contains sensitive information and that this warrants the name of one or more persons or entities being redacted. That is why it is useful to provide for the General Court to be able to proceed accordingly, either on application by one of the parties to the dispute or of its own motion, in order to protect the private life of the persons concerned or to safeguard against their rights being irremediably prejudiced.

This provision also enables public access to certain information in documents available to the public (report for the hearing, notices published in the Official Journal of the European Union*, case-law of the General Court published in the Court Reports or available on the Internet) to be restricted. It must be pointed out, moreover, that this option is being exercised more and more frequently in regard to judicial decisions delivered at the end of legal proceedings between undertakings penalised for infringing competition law and the European Commission.*

Lastly, it is observed that the Civil Service Tribunal has included this rule in its Rules of Procedure from the outset (Article 44(4)). [3]

Article 67

Order in which cases are dealt with

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

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

The Rules in force contain a provision (Article 55) governing the order in which the General Court deals with cases and providing for the possibility of a case being given priority over others. However, that provision falls within the chapter relating to the oral procedure and is therefore limited in its application. It is therefore proposed that the essence of that provision be moved to this new chapter containing the general provisions applicable to direct actions in order to give it general application and to enable the President of the formation of the Court to give a case priority over others when he considers that special circumstances would justify his doing so.

Such an approach ensures that, by way of derogation from the rule as to the order in which cases are to be dealt with, a case can be given priority at various stages of the procedure leading to the

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[3] OJ 2007 L 225, p. 1, as last amended (OJ 2011 L 162, p. 19).

resolution of the dispute (calendar of the Chamber's judicial business, setting the date of the hearing, reading of the draft by the team of readers of judgments, translation of the draft judgment). This priority handling is clearly without prejudice to the possibility of the parties' representatives contributing to the swift disposal of the case by waiving a second round of pleadings or a hearing and, more generally, without prejudice to the cooperation expected of court officers in respect of the proper functioning of the judicial system.

Article 68
Joinder

1. Two or more cases connected by reason of their subject-matter may at any time, either of the General Court's own motion or on application by a main party, be joined for the purposes, alternatively or cumulatively, of the written or oral part of the procedure or of the decision which closes the proceedings.

2. A decision on whether cases should be joined shall be taken by the President. Before taking that decision, the President shall prescribe a time-limit within which the main parties may submit their observations on any joinder, if they have not already expressed their views in that regard.

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

4. All the parties to the joined cases may examine the files in the cases concerned at the Registry. The President may, however, on application by a party, order that certain secret or confidential information from the case-file be excluded from that consultation.

This article corresponds, in essence, to Article 50 of the existing Rules of Procedure, which it clarifies, however, by distinguishing in three different paragraphs the reasons for and purpose of the joinder (paragraph 1), the procedure followed to that end (paragraph 2) and the procedure to be followed in the event of disjoinder (paragraph 3).

Paragraph 4, relating to the legal effects of joinder for the parties to the joined cases, is based on Article 50(2) of the Rules of Procedure in force. However, it modifies that provision to make it easier to read and states that a decision restricting access to the case-file where justified by the protection of secret or confidential information must be in the form of an order.

Article 69
Circumstances in which proceedings may be stayed

Without prejudice to Article 163, proceedings may be stayed:

(a) in the circumstances specified in the third paragraph of Article 54 of the Statute;

(b) where an appeal is brought before the Court of Justice against a decision of the General Court 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 request of a main party with the agreement of the other main party;

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

This article reproduces the content of Article 77 of the Rules of Procedure in force, subject to a single amendment to point (c), the purpose of which is to reflect the true nature of a joint request for a stay. While a request for proceedings to be stayed is sometimes submitted in the form of a joint request, it is more often presented in the form of a request submitted by a main party, to which the other main party agrees.

Article 70

Decisions to stay and to resume proceedings

1. The decision to stay the proceedings shall be taken by the President. Before taking that decision, the President shall prescribe a time-limit within which the main parties may submit their observations on any stay of the proceedings, if they have not already expressed their views in that regard.

2. A decision ordering that the proceedings be resumed before the end of the stay, or as referred to in Article 71(3), shall be taken in accordance with the procedures laid down in paragraph 1.

This article reproduces, in essence, the text of Article 78 of the Rules of Procedure in force, but simplifies it by providing that the proceedings are no longer to be stayed by means of an order but by simple decision of the President which is to be included in the file in the case. The same form is proposed in respect of decisions ordering that the proceedings be resumed, where these are taken before the end of the stay or where the length of the stay was not specified in the decision to stay the proceedings.

Article 71

Length and effects of a stay

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

2. During the period in which proceedings are stayed all procedural time-limits shall be suspended, except for the time-limit prescribed in Article 143(1) for an application to intervene.

3. Where the decision to stay the proceedings does not fix the length of stay, it shall end on the date indicated in the decision to resume the proceedings or, in the absence of such indication, on the date of the latter decision.

4. From the date of the resumption of proceedings, any suspended procedural time-limits shall be replaced by new time-limits as prescribed by the President.

This article, which must be read in conjunction with Article 70, reproduces, in essence, the text of Article 79 of the Rules of Procedure in force, subject to further details regarding the time-limits imposed on the parties following a stay. In the interests of clarification and legal certainty, it is stated in paragraph 4 that the parties will be subject to new time-limits from the date of the resumption of proceedings and that the new procedural time-limits, including the time-limit for lodging the defence, are to be prescribed by the President.

Chapter 2
PROCEDURAL DOCUMENTS

In the interests of greater clarity, Article 43 of the existing Rules of Procedure has been split into three separate provisions concerning the rules applicable to all methods of lodging procedural documents, specific rules relating to the lodging of paper documents and those relating to lodgment via the e-Curia application. That is the aim of Articles 72 to 74.

This chapter also contains the provision relating to the length of pleadings.

Article 72
Common rules for the lodging of procedural documents

1. A procedural document shall be lodged at the Registry either in paper form, where appropriate after transmission of a copy of the original of that document by telefax in accordance with Article 73(3), or by the method referred to in the decision of the General Court adopted pursuant to Article 74.

2. All procedural documents shall bear a date. In the calculation of procedural time-limits, only the date and time in the Grand Duchy of Luxembourg of lodgment at the Registry shall be taken into account.

3. To every procedural document there shall be annexed the material relied on in support of it, together with a schedule listing each item.

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

5. The institutions shall produce, within time-limits laid down by the President, translations of any procedural document into the other languages provided for by Article 1 of Council Regulation No 1.

Article 72 contains, as the heading indicates, common rules for the lodging of procedural documents.

Paragraph 1 lists the approved methods of lodging. It is thus made clear that a procedural document may be lodged at the Registry of the General Court in paper format, preceded by a copy sent by fax where appropriate, or in electronic format only by the method referred to in the decision of the General Court adopted on the basis of an enabling provision, that is to say, in this instance, by e-Curia. The possibility of lodging a procedural document by e-mail, which was authorised by the reference to 'other technical means of communication available to the General Court' in Article 43 of the existing Rules of Procedure, is no longer provided for, since the General Court considers it essential in the interests of the proper administration of justice to encourage the use of the e-Curia system, which is free of charge, reliable and secure.

Paragraphs 2 to 5 reproduce, in essence, the content of paragraphs 2 to 5 of Article 43 of the existing Rules of Procedure, which they amend in three respects.

First, the wording of paragraphs 3 and 4 has been simplified by comparison with that of paragraphs 4 and 5 of Article 43 of the existing Rules.

Secondly, in the interests of clarification and in accordance with the case-law (order of 1 April 2011 in Case T-468/10 Doherty *v* Commission *[2011] ECR II-1497, paragraph 16), the article specifies, in paragraph 2, that the time taken into account for the purpose of checking compliance with procedural time-limits corresponds not to the date on and time at which a procedural document is sent, but to the date on and time at which that document is lodged at the Registry of the General Court, in Luxembourg.*

Thirdly, as regards paragraph 5, which is based on paragraph 2 of Article 43 of the existing Rules, the substitution of the term 'President' for the term 'General Court' reflects the transfer of powers from the General Court to the Presidents of Chambers. Furthermore, there is no longer any requirement that copies of translations should be certified copies, that being an unnecessary formality.

Article 73

Lodging at the Registry of a procedural document in paper form

1. The original paper version of a procedural document must bear the handwritten signature of the party's agent or lawyer.

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

3. By way of derogation from the second sentence of Article 72(2), the date on and time at which a full copy of the signed original of a procedural document, including the schedule of items referred to in Article 72(3), is received at the Registry by telefax shall be deemed to be the date and time of lodgment for the purposes of compliance with the procedural time-limits, provided that the signed original of the procedural document, accompanied by the annexes and copies referred to in paragraph 2, is lodged at the Registry no later than 10 days thereafter. Article 60 shall not apply to that time-limit of 10 days.

This article reproduces in essence the content of paragraphs 1 and 6 of Article 43 of the Rules of Procedure in force, which it nevertheless amends in three respects.

First, it is stated in paragraph 1 that the original paper version must bear the handwritten signature of the party's representative. That requirement has long been confirmed by the case-law (see Case T-223/06 P Parliament *v* Eistrup *[2007] ECR II-1581, paragraph 40).*

Secondly, attention is drawn to the fact that there is no longer any provision for the prior transmission of a procedural document by e-mail. This change in paragraph 3 merely confirms the change in Article 57 of the present draft.

Thirdly, in the interests of legal certainty, paragraph 3 adds an important point of clarification. It is expressly provided that, for the purposes of compliance with the procedural time-limits, the date

and time taken into account are the date on and time at which the full copy of the signed original of a procedural document, including the schedule of items, is received at the Registry by fax.

Article 74
Electronic lodgment

The General Court may, by decision, determine the criteria for a procedural document sent to the Registry by electronic means to be deemed to be the original of that document. That decision shall be published in the *Official Journal of the European Union*.

This article corresponds to Article 43(7) of the Rules of Procedure in force. However, in the light of Article 72 of the draft, the first part of Article 43(7) of the existing Rules no longer serves any purpose and can therefore be deleted.

Article 75
Length of written pleadings

1. The General Court shall set, in accordance with Article 224, the maximum length of written pleadings lodged pursuant to this Title.

2. Authorisation to exceed the maximum number of pages may be given by the President only in cases involving particularly complex legal or factual issues.

Article 75 is a new provision the need for which stems from the General Court's concern to preserve in all circumstances its capacity to rule within a reasonable time on the cases that come before it.

Limiting the number of pages of written pleadings is no novelty. The rule imposing a limit was laid down for the first time in the Practice Directions to parties which the General Court adopted in 2002 (OJ 2002 L 87, p. 48) on the basis of Article 136a of the Rules of Procedure, now Article 150. It must be borne in mind that it is the excessive volume of written material lodged in certain cases and the resulting increase in the duration of proceedings that has led the General Court, which is already concerned to avoid becoming overloaded, to modify the legislative framework. The limitation of the number of pages of pleadings has been restated in successive versions of the Practice Directions to parties and appears in the version now in force (OJ 2012 L 68, p. 23; see point 15 for the length of pleadings; point 16 for circumstances in which authorisation may be given for the limits to be exceeded; and points 65 to 67 regarding cases of regularisation). Its inclusion in the Rules of Procedure, based, moreover, on the inclusion of a provision in the Rules of Procedure of the Court of Justice (Article 58), is intended to underline its importance in the general scheme of the proceedings.

The system in force has beneficial effects that justify its being maintained, particularly in so far as it sets the maximum number of pages by type of pleading and thus gives the parties' representatives a frame of reference. The only amendments made are therefore the reference in paragraph 1 to the content of the practice rules which the General Court will adopt on the basis of the enabling provision laid down to that effect (Article 224 of the present draft), and the confirmation in paragraph 2 of the President's power to accept, in the light of the legal or factual complexity of the

case, a pleading the number of pages of which exceeds the upper limit prescribed by the practice rules.

Although the situation in which it currently finds itself is difficult, the General Court has decided not to amend the machinery in place so as to introduce a more rigid system, since it includes a general rule which, due to the exception based on the legal or factual complexity of a case, does not preclude the possibility of derogating from the upper limit on the number of pages, taking into account the circumstances of that case.

Repeated failure to comply with a request for regularisation owing to the maximum number of pages of pleadings being exceeded can, however, have consequences, as the party concerned runs the risk of being ordered to pay the costs of the proceedings in accordance with Article 139 of this draft.

Chapter 3
WRITTEN PART OF THE PROCEDURE

Article 76
Content of the application

An application of the kind referred to in Article 21 of the Statute shall contain:

(a) the name and address of the applicant;

(b) particulars of the status and address of the applicant's representative;

(c) the name of the main party against whom the action is brought;

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

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

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

This article corresponds largely to Article 44(1) of the existing Rules of Procedure.

Point (b) has been added, taking into account the wording of Articles 57(2) and 77(2) of the present draft.

The amendments at (d) and (f) have been made in the interests of consistency with Article 120 of the Rules of Procedure of the Court of Justice.

Article 77
Information relating to service

1. For the purposes of the proceedings, the application shall state whether the method of service to which the applicant's representative agrees is that referred to in Article 57(4) or telefax.

2. If the application does not comply with the requirements referred to in paragraph 1, 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 the representative of that party. Service shall then be deemed to be duly effected by the lodging of the registered letter at the post office of the place in which the General Court has its seat.

This article, dealing with information relating to service, significantly simplifies the arrangements under Article 44(2) of the existing Rules of Procedure.

The article, which must be read in conjunction with Article 57 of the draft, provides that the application must identify e-Curia or fax as a method of service, failing which service will be

effected by registered letter to the party's representative. In line with the Rules of Procedure of the Court of Justice, this provision reflects the fact that an address for service in Luxembourg is no longer required.

Article 78
Annexes to the application

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

2. An application submitted under Article 272 TFEU pursuant to an arbitration clause in a contract governed by public or private law, entered into by the Union or on its behalf, shall be accompanied by a copy of the contract which contains that clause.

3. An application made by a legal person governed by private law shall be accompanied by recent proof of that person's existence in law (extract from the register of companies, firms or associations or any other official document).

4. The application shall be accompanied by the documents referred to in Article 51(2) and (3).

5. If the application does not comply with the requirements set out in paragraphs 1 to 4, the Registrar shall prescribe a reasonable time-limit within which the applicant is to produce the abovementioned documents. If the applicant fails to put the application in order within the time-limit prescribed, the General Court shall decide whether the non-compliance with these conditions renders the application formally inadmissible.

The present article reproduces, for the main part, the content of paragraphs 4, 5, 5a and 6 of Article 44 of the existing Rules of Procedure, although it is based on the order followed in Article 122 of the Rules of Procedure of the Court of Justice.

The major change is in paragraph 3. That rule provides, as does Article 44 now, for legal persons governed by private law to be obliged to prove their existence in law and, as a result, their capacity to be a party to judicial proceedings. However, unlike Article 44 of the existing Rules, the obligation for legal persons governed by private law to produce proof that the authority granted to the applicant's lawyer has been properly conferred on him by someone authorised for the purpose has been deleted. The General Court considers that production of the authority to act prescribed in Article 51(3) of the draft is sufficient, and that it is therefore unnecessary also to require proof that that authority was issued by someone authorised for the purpose, that being a matter, moreover, which falls within the responsibility of the lawyer representing the legal person governed by private law, not the General Court.

The high rate of regularisation of applications with regard to the obligation to produce the proof referred to in Article 44(5)(b) of the Rules of Procedure in force, and the difficulty of verifying the conclusiveness of the information supplied are two further aspects which support the conviction that the removal of that requirement will significantly simplify the Registry's handling of documents initiating proceedings and enable it to optimise its capacity to process procedural documents. It must be pointed out in that regard that, notwithstanding the clarification provided in respect of the Practice Directions to parties so as to enable representatives to identify the circumstances in which regularisation of applications will be requested, and the availability of useful information online on

the institution's Internet site in the form of an 'Aide-mémoire — Application', requests for regularisation had to be made in respect of 38.4% of applications initiating proceedings in 2012, that is 237 applications of the 617 lodged. There was non-compliance with the requirements in Article 44(3) to (5) of the Rules of Procedure in force in 55% of the cases in question.

Paragraph 5 governs cases in which the rules laid down in paragraphs 1 to 4 have not been observed.

Article 79
Notice in the *Official Journal of the European Union*

A notice shall be published in the *Official Journal of the European Union* indicating the date of lodging of an application initiating proceedings, the names of the main parties, the form of order sought by the applicant and a summary of the pleas in law and of the main supporting arguments.

This article reproduces the text of Article 24(6) of the existing Rules of Procedure which is slightly amended in order better to reflect the exact content of notices published in the Official Journal *concerning new cases brought before the General Court. The changes are based on Article 21(4) of the Rules of Procedure of the Court of Justice.*

Article 80
Service of the application

1. The application shall be served on the defendant in the form of a certified copy sent by registered post with a form for acknowledgement of receipt or by personal delivery of the copy against a receipt. Where the defendant has previously agreed to applications being served on him by the method referred to in Article 57(4) or by telefax, service of the application may be effected accordingly.

2. In cases where Article 78(5) applies, service shall be effected as soon as the application has been put in order or the General Court has declared it admissible notwithstanding the failure to observe the requirements set out in that Article.

This article corresponds to Article 45 of the existing Rules of Procedure.

Paragraph 1 is supplemented by the reference to the method of service of the application. Where the defendant has previously agreed to receive procedural documents by e-Curia or by fax, which in practice is what happens in the case of the institutions and some of the bodies, offices and agencies of the Union, the General Court uses the method of transmission chosen. That provision must be read in conjunction with Article 57(1) of the present draft.

Save for the adjustment to the article number referred to, the formal amendments made to paragraph 2 mirror those made by the Court of Justice in the text of Article 123 of its Rules of Procedure.

Article 81
Defence

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

   (a) the name and address of the defendant;

   (b) particulars of the status and address of the applicant's representative;

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

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

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

2. Article 77 and Article 78(3) to (5) shall apply to the defence.

3. The time-limit laid down in paragraph 1 of this Article may, in exceptional circumstances, be extended by the President at the reasoned request of the defendant.

The present article reproduces, in essence, the terms of Article 46 of the existing Rules of Procedure.

The changes made to paragraph 1 in comparison to the existing regime are: the addition of a provision at (b) which takes account of the wording of Articles 57(2) and 77(2) of this draft; adjustments to the provisions at (c) and (e), in the interests of consistency with Article 124 of the Rules of Procedure of the Court of Justice.

Paragraph 2 of Article 46 of the existing Rules of Procedure, laying down the obligation to produce the complaint in civil service proceedings brought before a first-instance court, is no longer relevant. It has therefore been deleted.

As to the provision in paragraph 2, its scope has been extended beyond that of the second subparagraph of Article 46(1) of the Rules of Procedure in force. While the latter does not cover regularisation and the possible formal inadmissibility provided for by paragraph 6 of Article 44 of the Rules in force, Article 81 of the draft refers to Article 78(5).

Lastly, the text of paragraph 3 corresponds to that of Article 46(3) of the Rules of Procedure in force.

Article 82
Transmission of documents

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

Article 82 corresponds, in essence, to Article 24(7) of the existing Rules of Procedure.

The wording of the article, including the heading, is that of Article 125 of the Rules of Procedure of the Court of Justice, save for the identity of the court concerned.

Article 83
Reply and rejoinder

1. The application initiating proceedings and the defence may be supplemented by a reply from the applicant and by a rejoinder from the defendant unless the General Court decides that a second exchange of pleadings is unnecessary because the contents of the file in the case are sufficiently comprehensive.

2. Where the General Court decides that a second exchange of pleadings is unnecessary it may authorise the main parties to supplement the file in the case if the applicant presents a reasoned request to that effect within two weeks from the service of that decision.

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

Article 83 largely reproduces the text of Article 47 of the existing Rules of Procedure, but restructures it as three paragraphs.

It should be noted that there has been provision for a 'simplified' written procedure enabling the General Court to adjudicate without a second exchange of pleadings since 1 February 2001, when the current version of Article 47 of the Rules of Procedure came into force.

Paragraph 3 is, however, supplemented by a sentence stipulating that the President may specify the matters to which the reply or the rejoinder must relate. This addition is based on the concern that the written part of the procedure should be as useful as possible. Thus, if, after a first round of written pleadings, the crucial issues in the case have already been clearly identified, the President may invite the parties to concentrate on those issues, thereby enabling the parties to avoid expounding in their reply or rejoinder on points in respect of which the General Court considers that it has sufficient information, and, at the same time, encouraging the case to be dealt with more swiftly, since the second round of written pleadings will be confined to matters that are still outstanding. In addition, that amendment confers a further power on the President of a Chamber and is in line with the general proposal to transfer certain powers from the General Court to the Presidents of Chambers. The additional element is based on the second sentence of Article 126(2) of the Rules of Procedure of the Court of Justice.

It must be pointed out that, according to the general scheme of this provision, a second exchange of pleadings is to remain the rule in direct actions. This simply reflects the true position in judicial proceedings, given that it was decided to proceed with a second round of pleadings in over 95% of direct actions in the period from 1 January 2010 to 31 December 2012. That is attributable mainly to the nature of the actions and the complexity of the files, since the second round of pleadings encourages the preparation of cases for hearing and largely obviates the need for measures of organisation of procedure to be taken by the General Court at a very much later stage of the proceedings in order to obtain clarification from the parties. But it is also, in many cases,

connected with the non-availability of translations of applications or defence statements into the language of deliberation at the time when the decision regarding a second round of pleadings is taken (the volume of written statements has proved to be significant in that respect, as an application of more than 50 pages will not generally be translated by the institution's translation services or become available for at least two months) and with the current workload of the General Court, since the Judge-Rapporteur is often not in a position to carry out a sufficiently in-depth initial legal analysis of the file to enable him quickly to form a view as to whether to dispense with the second round of pleadings, priority in the deployment of resources being given to dealing with cases in which the written procedure has been closed.

Chapter 4
PLEAS IN LAW, EVIDENCE AND MODIFICATION OF THE APPLICATION

While the Rules in force include provisions relating to new pleas in law (see Article 48(2)) and evidence offered (see Article 48(1)), the modification of applications in the course of proceedings is not governed by any procedural rule.

This new chapter therefore contains three provisions dealing, respectively, with new pleas in law, evidence produced or offered, and modification of applications in the course of proceedings.

In the interests of consistency with the Rules of Procedure of the Court of Justice (Articles 127 and 128), the articles relating to new pleas in law (Article 84) and evidence produced or offered (Article 85) are set out in the order adopted by the Court of Justice. The article on the modification of the form of order sought is specific to the Rules of Procedure of the General Court and comes last (Article 86).

Article 84
New pleas in law

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

2. Any new pleas in law shall be introduced in the second exchange of pleadings and identified as such. Where the matters of law or of fact justifying the introduction of new pleas in law are known after the second exchange of pleadings or after it has been decided not to authorise a second exchange of pleadings, the main party concerned shall introduce the new pleas in law as soon as those matters come to his knowledge.

3. Without prejudice to the decision to be taken by the General Court on the admissibility of the new pleas in law, the President shall give the other parties an opportunity to respond to those pleas.

This article reproduces in paragraph 1 the text of the first subparagraph of Article 48(2) of the Rules of Procedure in force.

Paragraphs 2 and 3, on the other hand, include new material designed to clarify the rules applicable.

As regards paragraph 2, the General Court's concern for clarification, in the interests both of the parties and of the proper administration of justice, is reflected in terms of form by the identification of the new plea in law introduced in the context of the second exchange of pleadings, which is intended to facilitate the expression of views by every other party to the proceedings, and in terms of timing by the need to introduce a new plea in law either in the second exchange of pleadings, or as soon as the matters justifying that introduction come to the knowledge of the person concerned. The introduction of a plea in law in the context of the second exchange of pleadings or at a later stage is the prerogative of a main party; interveners are not afforded the right to introduce such pleas.

Paragraph 3 modifies the existing rule under which consideration of the admissibility of the plea is to be reserved for the final judgment (third subparagraph of Article 48(2) of the Rules of Procedure in force). The proposed wording, which corresponds in that respect to that of Article 127(2) of the Rules of Procedure of the Court of Justice, is confined to a reference 'to the decision to be taken by the General Court' and — flexibly and efficiently — enables a new plea in law to be rejected as inadmissible either during the written or oral procedure or in the final decision. The power to rule on the admissibility of the new plea in law as well as on its merits remains with the General Court.

Lastly, unlike the Rules in force which envisage a mere possibility, paragraph 3 states that the President must give the other parties an opportunity to respond to those pleas, in order to observe the adversarial principle and to ensure equal treatment of litigants. Those observations do not necessarily have to be submitted in writing and may therefore be presented at the hearing.

Article 85
Evidence produced or offered

1. Evidence produced or offered shall be submitted in the first exchange of pleadings.

2. In reply or rejoinder a main party may produce or offer further evidence in support of his arguments, provided that the delay in the submission of such evidence is justified.

3. The main parties may, exceptionally, produce or offer further evidence before the oral part of the procedure is closed or before the decision of the General Court to rule without an oral part of the procedure, provided that the delay in the submission of such evidence is justified.

4. Without prejudice to the decision to be taken by the General Court on the admissibility of the evidence produced or offered pursuant to paragraphs 2 and 3, the President shall give the other parties an opportunity to comment on such evidence.

This article governs the lodging of evidence and offers of evidence by the main parties during the judicial procedure. It thus closes the gaps in Article 48(1) of the Rules of Procedure in force and, in so doing, clarifies the rules applicable by setting out the general rule for the production of evidence and offers of evidence, expressly stating that the production or offer of evidence after the first exchange of pleadings is subject to the requirement to justify the delay in submission and to provide the other parties with an opportunity to comment on such new evidence.

To that end, Article 85 envisages the stages at which evidence may be produced or offered by distinguishing between the first exchange of pleadings (paragraph 1), the second exchange of pleadings (paragraph 2) and the last stage when it is still possible for a main party to produce or offer evidence, since it is no longer permitted after the oral part of the procedure (paragraph 3), without prejudice to the possibility of a request for the oral part of the procedure to be reopened, as provided for in Article 113(2)(c) of the present draft.

While emphasising the derogating (paragraph 2) and exceptional (paragraph 3) nature of situations in which evidence produced or offered is put forward after the first exchange of pleadings, the draft does not rule out such evidence having any effect on the conduct of the proceedings. Article 85 therefore authorises evidence to be offered or produced, but makes it subject to an express obligation to state the reasons for the delay in the submission of such

evidence, as required by settled case-law (Case C-185/95 P Baustahlgewebe *v* Commission *[1998] ECR I-8417, and judgment of 14 April 2005 in Case C-243/04 P* Gaki-Kakouri *v* Court of Justice, *not published in the ECR), and, in accordance with the adversarial principle, provides that the President is to give the other parties time to comment on such evidence (paragraph 4). While the parties must always be given an opportunity by the President to submit their observations on the evidence produced, to ensure observance of the adversarial principle and equal treatment of litigants by the consistent application of the rules by the Presidents of the various formations of the Court, there is no requirement that such observations be submitted in writing and they may therefore be presented at the hearing.*

*This article summarises the existing provisions of the Rules of Procedure of the Court of Justice (Article 128) and of the Rules of Procedure of the Civil Service Tribunal (Article 42) and transcribes the case-law concerning the General Court's review of the justification given regarding the time of lodging (*Gaki-Kakouri *v* Court of Justice*, paragraph 33). It thus represents a response by the General Court to a need for clarification which had become increasingly evident in the light of the recurring difficulties of dealing with evidence produced or offered caused by the lacunae in the existing legislation.*

Article 86
Modification of the application

1. Where a measure the annulment of which is sought is replaced or amended by another measure with the same subject-matter, the applicant may, before the oral part of the procedure is closed, or before the decision of the General Court to rule without an oral part of the procedure, modify the application to take account of that new factor.

2. The modification of the application must be made by a separate document within the time-limit laid down in the sixth paragraph of Article 263 TFEU within which the annulment of the measure justifying the modification of the application may be sought.

3. The statement of modification shall contain:

   (a) the modified form of order sought;

   (b) where appropriate, the modified pleas in law and arguments;

   (c) where appropriate, the evidence produced and offered in connection with the modification of the form of order sought.

4. The statement of modification must be accompanied by the measure justifying the modification of the application. If that measure is not produced, the Registrar shall prescribe a reasonable time-limit within which the applicant is to produce it. If the applicant fails to produce the measure within the time-limit prescribed, the General Court shall decide whether the non-compliance with that requirement renders the statement modifying the application inadmissible.

5. Without prejudice to the decision to be taken by the General Court on the admissibility of the statement modifying the application, the President shall prescribe a time-limit within which the defendant may respond to the statement of modification.

6. The President shall, where appropriate, prescribe a time-limit within which any interveners may supplement their statements in intervention in the light of the statement modifying the application and the statement in response. Those statements shall be served simultaneously on the interveners for that purpose.

By adding this new article, the General Court is pursuing the objectives of clarity, rapidity and legal certainty. Furthermore, by affirming the right to modify the application when a measure whose annulment is sought is replaced or amended by another measure with the same subject-matter, the General Court offers the applicant a choice of litigation strategy: to retain control of the parameters of the proceedings by opting to modify his application or to bring an action for annulment of the new measure.

The overriding need for such a rule became apparent in 2011 during preparatory inquiries in the very large number of actions brought against acts of the institutions of the Union imposing restrictive measures on persons or entities. The institutions responsible for the acts imposing restrictive measures regularly adopt new acts to update the lists containing the names of the persons or entities concerned. Yet the adoption of those new acts while proceedings are under way has had the effect of multiplying the number of applications lodged with a view to modifying the form of order sought. Of the 90 'restrictive measures' cases pending as at 31 December 2011, 41 applications to modify the form of order sought had been submitted in 26 cases.

The frequency and high number of modifications of the form of order sought in that type of case and the highly negative repercussions of such repeated modifications on the duration of the written procedure, on the one hand, and the legal uncertainty generated by the lack of any procedural mechanism, which is as damaging to the parties as it is to the General Court, particularly with regard to any time-limit within which the application must be modified after the new measure has been adopted, and the need to apply to the General Court for authorisation to modify the application before it is actually modified, on the other, have caused the General Court to reflect on a better way of dealing with such modifications in the course of the proceedings.

Initially, the General Court reacted by deciding in 2012 to adopt the approach of systematically including in the file the application to modify the form of order sought and the statement containing the modification thereof, the decision on the admissibility of that statement being expressly reserved, as the letters which the Registry sends to the parties make clear. That approach has meant that overlapping modifications in the course of proceedings are less frequent, the increase in the duration of the written part of the procedure is contained and the parties' representatives are not misled as to the legal consequences of the General Court's decision to include in the file the statement modifying the form of order sought.

However, the time has come for the next stage: to include in the Rules of Procedure a general provision codifying, in respect of all direct actions, a judicial practice that complies with the principle of the proper administration of justice, is faithful to the requirement of procedural economy and ensures legal certainty.

Article 86 of the present draft comprises six paragraphs.

Paragraph 1 gives the applicant the right to modify his application during the proceedings, provided two conditions are satisfied. The first is substantive, in that the measure whose annulment is sought must have been replaced or amended by a measure with the same subject-matter. The

second is temporal, in that the application must be modified before the oral part of the procedure is closed or before the decision to rule without an oral part of the procedure has been taken.

Therefore, it must be emphasised that paragraph 1 envisages only the modification of the application and does not lay down any prior procedure for examination of a request for permission to modify.

Paragraph 2 specifies the time-limit within which the application must be modified. Since the applicant has the choice of modifying his application or bringing an action against the new measure, the parallels between the two situations justify the application of the same time-limit. The applicable time-limit must therefore be that for bringing an action for annulment as laid down in the sixth paragraph of Article 263 TFEU. Moreover the imposition of a legal time-limit for modifying the application is designed to ensure that legal positions are clear and certain and to avoid any discrimination or arbitrary treatment in the administration of justice.

Paragraph 3 sets out the content of the statement of modification, and makes clear that while the form of order sought in the application must always be modified, the pleas in law and arguments are to be modified only 'where appropriate'. Similarly, the evidence produced or offered in connection with the modification of the form of order sought is to be put forward only 'where appropriate'.

Paragraph 4 provides for a situation where the statement modifying the form of order sought may be inadmissible. While not imposing a mandatory requirement as to form, the non-compliance with which would result in the statement of modification being rendered inadmissible, paragraph 4 constitutes a rule the non-observance of which, in the first instance, requires regularisation. It is only if that fails that the General Court must then decide whether the non-compliance with the requirement to produce the measure justifying the modification of the application renders the statement inadmissible.

Paragraphs 5 and 6 provide that, following the lodging of the statement modifying the form of order sought, the defendant and any interveners are in turn invited to respond to that statement and to supplement their statements in intervention respectively.

Lastly, attention is drawn to a very important point of clarification in paragraph 5, which expressly provides that the processing of a statement of modification (its inclusion in the file and its communication to the defendant and any interveners) is without prejudice to the decision to be taken by the General Court on its admissibility.

Chapter 5
THE PRELIMINARY REPORT

Article 87
Preliminary report

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

2. The preliminary report shall contain an analysis of the relevant issues of fact and of law raised by the action, proposals as to whether measures of organisation of procedure or measures of inquiry should be undertaken, whether there should be an oral part of the procedure and whether the case should be referred to the Grand Chamber or to a Chamber sitting with a different number of Judges, and whether the case should be delegated to a single Judge.

3. The General Court shall decide what action to take on the proposals of the Judge-Rapporteur and, where appropriate, whether to open the oral part of the procedure.

Article 87 corresponds, in essence, to Article 52 of the existing Rules of Procedure.

Paragraph 1 of Article 87 is more succinct than the corresponding paragraph of Article 52 in force in that it sums up in a single sentence all the circumstances in which the written part of the procedure may be closed. That change is based on Article 59(1) of the Rules of Procedure of the Court of Justice.

Paragraph 2 of Article 87 is, on the other hand, more expansive than Article 52(2) of the existing Rules of Procedure. The content of the preliminary report is made clear and express reference is additionally made to the need for the Judge-Rapporteur to state in his preliminary report whether he wishes a hearing to be held or whether the case should be referred to a single-Judge formation.

Paragraph 3 supplements the text of the second subparagraph of Article 52(2) of the Rules of Procedure in force by a reference to the General Court's power to decide whether to open the oral part of the procedure.

Chapter 6
MEASURES OF ORGANISATION OF PROCEDURE AND MEASURES OF INQUIRY

Chapter 6 corresponds to Chapter 3 of Title II of the Rules of Procedure in force in so far as it deals with measures of organisation of procedure and measures of inquiry. However, the provisions have been reorganised and, for the most part, rewritten, and the chapter has been expanded, with new articles in a separate section dealing with the confidential treatment of information, items and documents in connection with measures of inquiry.

These new articles are intended to provide the General Court with procedural arrangements tailored to the true nature of proceedings in direct actions, in which novel situations have arisen that regularly require the General Court to resort to measures of inquiry and to strike a balance between observance of the adversarial principle and the protection of confidential or secret information.

This chapter consists of a general provision and three sections.

Article 88
General

1. Measures of organisation of procedure and measures of inquiry may be taken or modified at any stage of the proceedings either of the General Court's own motion or on the application of a main party.

2. The application referred to in paragraph 1 must state precisely the purpose of the measures sought and the reasons for them. Where the application is made after the first exchange of pleadings, the party submitting that application must state the reasons for which he was unable to submit it earlier.

3. Where an application for measures of organisation of procedure or for measures of inquiry is made, the President shall give the other parties an opportunity to comment on that application.

This article is new.

In order to make the chapter easier to read, this article brings together, with certain amendments, the general rules set down in Article 49 and the first subparagraph of Article 64(4) of the Rules of Procedure in force.

Paragraph 1 provides that measures of organisation of procedure and measures of inquiry may be taken or modified at any stage of the proceedings either on the initiative of the General Court or of a main party. The new text does not provide for an intervener to be able to propose one of these measures, as the General Court considers that the main parties must retain control of the dispute between them.

Paragraph 2 specifies the content of the application submitted by the main party to facilitate the General Court's evaluation of the need for the steps to be taken in the proceedings. In addition, although an application may be submitted at any stage of the proceedings, the main party is

required to provide an explanation if the application is submitted after the first exchange of pleadings.

Lastly, paragraph 3 provides a general rule, consistent, moreover, with the established interpretation of the first subparagraph of Article 64(4) of the Rules of Procedure in force, according to which the other parties are always to be given an opportunity to comment on the application submitted by the main party.

Section 1. Measures of organisation of procedure

Article 89
Purpose

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

2. Measures of organisation of procedure shall, in particular, have as their purpose:

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

   (b) to determine the points on which the parties must present further argument or which call for measures 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;

   (d) to facilitate the amicable settlement of proceedings.

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

   (a) putting questions to the parties;

   (b) inviting the parties to make written submissions on certain aspects of the proceedings;

   (c) asking the parties or third parties for the information referred to in the second paragraph of Article 24 of the Statute;

   (d) asking the parties to produce any material relating to the case;

   (e) inviting the parties to concentrate in their oral pleadings on one or more specified issues;

   (f) summoning the parties to meetings.

This article reproduces in essence the text of Article 64(1) to (3) of the existing Rules of Procedure. Since that article is limited to the purpose of the measures of organisation of procedure, the rule

relating to the power to prescribe them which appears in paragraph 1 of the article in force has been transferred to another article (Article 90).

As regards paragraph 3, its content is specified. First, it provides, in accordance with the requirements of the Statute, that the General Court may request the information referred to in Article 24 of the Statute from third parties (see point (c)). Secondly, mirroring Article 61(2) of the Rules of Procedure of the Court of Justice, it makes clearer the possibility of inviting the parties to concentrate in their oral pleadings on certain aspects of the proceedings, setting out separately at (e) the option that is less explicitly referred to in Article 64(3)(b) of the Rules of Procedure in force. Thirdly, the wording of the text at (f) is simplified to cover situations in which the parties may be summoned, duly represented, to informal meetings with the General Court.

Article 90
Procedure

1. Measures of organisation of procedure shall be prescribed by the General Court.

2. If the General Court decides to adopt measures of organisation of procedure and does not undertake such measures itself, it shall entrust the task of so doing to the Judge-Rapporteur.

This provision reproduces in essence the content of paragraphs 1 and 5 of Article 64 of the Rules of Procedure in force, subject to the adjustments necessitated by the addition of a provision relating to the purpose of the measures of organisation (Article 89 of the draft) and removal of the reference to the General Court sitting in plenary session as a formation of the Court.

As at present, the power to adopt a measure of organisation of procedure falls to the General Court and the form remains that of a simple decision.

Section 2. Measures of inquiry

Article 91
Purpose

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

(a) the personal appearance of the parties;

(b) a request to a party for information or for production of any material relating to the case;

(c) a request for production of documents to which access has been denied by an institution in proceedings relating to the legality of that denial;

(d) oral testimony;

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

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

This article reproduces the text of Article 65 of the existing Rules of Procedure, but clarifies it at (b) by stating that the request for information or production of material is to be made to a party, and supplements it by adding the situation referred to at (c). In regard to that last point, Article 91 of the draft merely follows on logically from the reference to that measure in the third subparagraph of Article 67(3) of the Rules of Procedure in force, which is maintained in Article 104 of the draft.

Article 92
Procedure

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

2. Before the General Court decides on the measures of inquiry referred to in Article 91(d) to (f), the parties shall be heard.

3. A measure of inquiry referred to in Article 91(b) may be ordered only where the party concerned by the measure has not complied with a measure of organisation of procedure previously adopted to that end, or where expressly requested by the party concerned by the measure and that party explains the need for such a measure to be in the form of an order for a measure of inquiry. The order prescribing the measure of inquiry may provide that inspection by the parties' representatives of information and material obtained by the General Court in consequence of that order may take place only at the Registry and that no copies may be made.

4. If the General Court orders a preparatory inquiry and does not undertake such an inquiry itself, it shall entrust the task of so doing to the Judge-Rapporteur.

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

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

7. Evidence may be submitted in rebuttal and previous evidence may be amplified.

Paragraphs 1, 2 and 7 correspond to the first subparagraph of Article 66(1) and to Article 66(2) of the Rules of Procedure in force. Paragraphs 4, 5 and 6 correspond to the second and third subparagraphs of Article 67(1) and to Article 67(2). As in the case of Article 90 of the draft, the reference to the General Court sitting in plenary session as a formation of the Court has been removed.

The novelty is therefore paragraph 3 which, in setting out judicial practice, extends the circumstances in which recourse may be had to a measure of inquiry and includes a new situation. On the one hand, it is established that the General Court is to order the production of a document only if the document has not been communicated to it following a measure of organisation of procedure. If the request for communication of a document is not complied with, the General Court orders the document to be produced. That sequence of events enables the party concerned initially to explain why the document cannot be communicated, which will generally be on account of the

confidential or secret nature of the information it contains. However, the consequence of transmitting a document to the General Court in accordance with a measure of organisation of procedure is that the document will be served on the other main party. If the document requested is not communicated, it falls to the General Court to decide whether an order for its production should be made. The change in the nature of the measure offers the party concerned certain safeguards, since a document produced pursuant to a measure of inquiry will not automatically be communicated to the other party.

On the other hand, if a party informs the General Court that it will not be able to disclose a document in response to a measure of organisation of procedure and explains why, there is some justification for resorting directly to a measure of inquiry without having previously requested that document by means of a measure of organisation of procedure. In fact, in competition proceedings, the Commission already regularly claims that certain documents in the administrative file which have been obtained under the leniency programme cannot be communicated to the General Court except pursuant to a measure of inquiry.

In addition, echoing the situation in which documents have been produced following a measure of inquiry, a second sentence has been added to paragraph 3. The order prescribing a measure of inquiry may provide that the documents produced may be consulted by the other parties' representatives at the premises of the Registry of the General Court, but that they will not be able to make copies of those documents. These more stringent procedures are designed in particular to preserve the effectiveness of the Commission's leniency programme. This addition codifies well-established judicial practice, followed in six cases in 2012 alone (orders of 27 March 2012 in Case T-550/08 Tudapetrol Mineralölerzeugnisse Nils Hansen *v* Commission*; of 12 June 2012 in Case T-551/08* H&R ChemPharm *v* Commission*; of 6 September 2012 in Case T-46/10* Faci *v* Commission*; of 11 September 2012 in Case T-68/09* Soliver *v* Commission*; of 12 October 2012 in Case T-544/08* Hansen & Rosenthal and H&R Wax Company Vertrieb *v* Commission*; and of 5 November 2012 in Case T-562/08* Repsol Lubricantes y Especialidades and Others *v* Commission*).*

Article 93
Summoning of witnesses

1. Witnesses whose examination is deemed necessary shall be summoned by an order, referred to in Article 92(1), containing the following information:

   (a) the name, description and address of the witness;

   (b) the date and place of the examination;

   (c) an indication of the facts to be established and which witnesses are to be heard in respect of each of those facts.

2. Witnesses shall be summoned by the General Court, where appropriate after lodgment of the security provided for in Article 100(1).

The present article reproduces, in essence, in paragraph 1 the text of paragraph 2 of Article 68 of the Rules in force, and, in paragraph 2, the text of paragraph 4 of Article 66 of the Rules of Procedure of the Court of Justice.

The new 'General' provision (see Article 88) and Article 92(1) of the draft make it possible to simplify the text of the present article by comparison with that of Article 68 of the existing Rules of Procedure.

Article 94
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 5 and in Article 97.

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

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

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

5. Subject to the provisions of Article 97, the witness shall, after giving his evidence, take the following oath:

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

6. The General Court may, after hearing the main parties, exempt a witness from taking the oath.

The present article largely reproduces, without substantial changes, the text of paragraphs 4 and 5 of Article 68 of the Rules of Procedure in force.

In view of the wording of Article 102 of this draft, Article 68(6) of the existing Rules, relating to the minutes of the examination of a witness, has not been reproduced.

Article 95
Duties of witnesses

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

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

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

Article 95 of the draft reproduces, in essence, the terms of Article 69 of the existing Rules of Procedure. By contrast with the latter provision, however, there is no longer any reference in the draft Rules to a solemn affirmation equivalent to the oath, which seemed somewhat anachronistic and out of step with the Statute, whereas the possibility for a witness to put forward a valid excuse in order to be spared the pecuniary penalty envisaged is incorporated in paragraph 2 by the addition of the words 'without good reason'.

[Terminological explanation not relevant to the English version.]

The changes made to this article are based on the text of Article 69 of the Rules of Procedure of the Court of Justice.

Article 96
Expert's report

1. The order appointing the expert shall define his task and set a time-limit within which he is to submit his report.

2. After the expert has submitted his report and that report has been served on the parties, the General Court may order that the expert be examined, the parties having been given notice to attend. At the request of one of the parties or of his own motion, the President may put questions to the expert.

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

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

5. Subject to the provisions of Article 97, the expert shall, after making his report, take the following oath before the General Court:

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

6. The General Court may, after hearing the main parties, exempt the expert from taking the oath.

Article 96 of the draft, relating to experts' reports, reproduces yet simplifies the content of the corresponding provision in the existing Rules of Procedure, that is Article 70(1),(5) and (6). The deletion of the first sentence in Article 70(1) of the existing Rules is justified in the light of Articles 88, 91(e) and 92(1) of the present draft.

The simplification proposed and the editorial adjustments are largely based on Articles 70 and 71 of the Rules of Procedure of the Court of Justice.

Article 97
Witnesses' and experts' oath

1. The President shall instruct any person who is required to take an oath before the General Court, 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 Article 94(5) and Article 96(5) or in the manner laid down by their national law.

In the interests of greater clarity, and echoing the provisions of Article 28 of the Statute, applicable to the General Court by virtue of Article 53 thereof, it is proposed that paragraphs 1 and 2 of Article 71 of the existing Rules of Procedure be retained.

Article 98
Perjury by witnesses or experts

1. The General Court may decide to report to the competent authority referred to in the Rules supplementing the Rules of Procedure of the Court of Justice of the Member State whose courts have penal jurisdiction any case of perjury on the part of a witness or expert before the General Court.

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

This provision largely reproduces the terms of Article 72 of the Rules of Procedure in force, but includes a change dictated by necessity. Since Article 207 of the Rules of Procedure of the Court of Justice provides that the rules in relation to reports by the Court of Justice of perjury by witnesses or experts are to be set out in supplementary rules, it is to those supplementary rules that reference should be made.

Article 99

Objection to a witness or expert

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

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

Subject to the deletion of the reference to a solemn affirmation equivalent to the oath, Article 99 reproduces the text of Article 73 of the existing Rules of Procedure.

The amendments made are based on Article 72 of the Rules of Procedure of the Court of Justice.

Article 100

Witnesses' and experts' costs

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

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

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

Like the Court of Justice in Article 73 of its Rules of Procedure, the General Court considers it desirable, in the interests of clarity and transparency, to deal in a single provision with the question of the costs associated with examination of witnesses or an expert's report. Article 100 of the draft thus draws together provisions that are currently spread among three separate articles: Article 68(3), the second subparagraph of Article 70(2) and Article 74 of the Rules of Procedure. By contrast, their content is, in essence, unchanged in the new article.

Article 101

Letters rogatory

1. The General Court may, on application by a main 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. The order shall contain the name, 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 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.

4. The authority named pursuant to paragraph 3 shall transmit the order to the judicial authority which is competent according to its national law.

5. 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 paragraph 3 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.

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

7. The General Court shall defray the expenses occasioned by the letters rogatory without prejudice to the right to charge them, where appropriate, to the main parties.

This provision reproduces the terms of Article 75 of the Rules of Procedure in force, but introduces a change dictated by necessity. Since Article 207 of the Rules of Procedure of the Court of Justice provides that the rules in relation to letters rogatory are to be set out in supplementary rules, it is to those supplementary rules that reference is made in paragraph 3.

The possibility of applying to the General Court for letters rogatory to be issued is available only to the main parties (paragraph 1), who may in certain circumstances become responsible for defraying the expenses (paragraph 7).

Article 102
Minutes of inquiry hearings

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

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

3. The minutes shall be served on the parties.

Article 102 reproduces, in essence, the content of Articles 68(6) and 76 of the existing Rules of Procedure. By contrast with Article 76 of the existing Rules, which simply provides in paragraph 2 for the parties to be able to inspect the minutes of an inquiry hearing at the Registry and to obtain

copies at their own expense, the draft enhances the rights of those parties and provides for those minutes to be served on them by the Registry.

The changes are based on Article 74 of the Rules of Procedure of the Court of Justice.

Section 3. Treatment of confidential information, items and documents produced in the context of measures of inquiry

This section is new, it having been decided in the interests of clarity to give greater prominence to the General Court's treatment of confidential information, items and documents produced following a measure of inquiry.

Article 103 lays down the general arrangements for dealing with confidential information and material produced following a measure of inquiry.

According to those arrangements, the General Court initially examines the relevance to the outcome of the proceedings of the information communicated by a main party and its confidential nature.

After having verified the relevance and confidentiality of the information or material, the General Court then goes on to weigh its confidential nature against the requirements linked to the right to effective judicial protection, particularly observance of the adversarial principle. At the end of that weighing-up, the General Court has two options: either to decide to transmit the information to the other main party, if necessary on undertakings from the parties' representatives, or to make a reasoned order determining the procedures enabling the other main party, to the greatest extent possible, to make his views known.

It is important to emphasise that this provision does not govern cases of information or material the confidential nature of which is based on overriding considerations pertaining to the security of the Union or of its Member States or to the conduct of their international relations, whether produced voluntarily by a main party or in response to a measure of inquiry ordered by the General Court; these are subject to a specific procedure laid down in Article 105.

Article 104 is very specific in its scope. This provision is limited to proceedings in which the legality of a denial of access to a document is challenged, and authorises the General Court not to communicate the document in question to the other parties. The disclosure of the document would effectively deprive the proceedings of their purpose.

Article 103
Treatment of confidential information and material

1. Where it is necessary for the General Court to examine, on the basis of the matters of law and of fact relied on by a main party, the confidentiality, vis-à-vis the other main party, of certain information or material produced before the General Court following a measure of inquiry referred to in Article 91(b) that may be relevant in order for the General Court to rule in a case, that information or material shall not be communicated to that other party at the stage of such examination.

2. Where the General Court concludes in the examination provided for in paragraph 1 that certain information or material produced before it is relevant in order for it to rule in the case and is confidential vis-à-vis the other main party, it shall weigh that confidentiality against the requirements linked to the right to effective judicial protection, particularly observance of the adversarial principle.

3. After weighing up the matters referred to in paragraph 2, the General Court may decide to bring the confidential information or material to the attention of the other main party, making its disclosure subject, if necessary, to compliance with specific undertakings to restrict such disclosure to the representatives of the main party concerned, or it may decide not to communicate such information or material, specifying, by reasoned order, the procedures enabling the other main party, to the greatest extent possible, to make his views known, including ordering the production of a non-confidential version or a non-confidential summary of the information or material, containing the essential content thereof.

4. The procedural regime in this Article shall not apply to the cases referred to in Article 105.

The present article essentially reproduces, in paragraph 1, the second subparagraph of Article 67(3) of the existing Rules of Procedure. Unlike the existing text, however, paragraph 1 specifies that the question of the confidentiality of the information which has justified recourse to a measure of inquiry arises with regard to the main parties, and that it is for the main party invoking confidentiality to put forward the matters of law and of fact justifying it. It may be helpful to bear in mind that the procedural regime of the present section falls within the framework of measures taken by means of an order for a measure of inquiry, and that that regime is without prejudice to the right of the main parties to request confidential treatment of material in the file vis-à-vis interveners, as provided for in Article 144 of the present draft.

There is much to be gained by making clear — which the Rules of Procedure in force do not — what happens to information or material produced following a measure of inquiry since those Rules make no provision for the steps to be taken by the General Court after such information or material has been produced. The new provision in paragraph 2 is intended to fill that gap. When the information or material has been produced, the General Court examines its relevance to the outcome of the proceedings and verifies its confidential nature. If it considers that the information or material is both relevant to the outcome of the proceedings and confidential, it weighs that confidentiality against the requirements linked to the right to effective judicial protection, and particularly to the observance of the adversarial principle.

After weighing up those matters, it is for the General Court to decide what action to take. That is the purpose of paragraph 3. According to the provisions of that paragraph, the General Court has two options.

According to the first option, the General Court may decide that the information or material is to be brought to the attention of the other main party, as the adversarial principle set out in Article 64 of the present draft requires, notwithstanding the confidential nature of that information or material. If necessary, the confidential information or material may be communicated in return for compliance with undertakings from the representatives of the main parties, such as an undertaking from the representative not to communicate to his client the confidential information which has come to his knowledge in the judicial proceedings. Such undertakings have already been used by the General Court when it has invited the representatives of the parties to sign a 'confidentiality'

agreement by which they have undertaken not to communicate to their clients the confidential information contained in the material in the file. That was the approach taken in Case T-464/04 Impala *v* Commission*, and subsequently in other proceedings before the General Court (in particular Case T-282/06* Sun Chemical Group and Others *v* Commission *and Joined Cases T-279/04 and T-452/04* Éditions Odile Jacob *v* Commission*).*

According to the second option, the General Court may decide not to communicate the confidential elements, while allowing the other main party to have non-confidential information so that it can, to the greatest extent possible, make its views known in accordance with the adversarial principle. Formal requirements are called for in that regard. The General Court must rule in the form of an order and the order must be reasoned. In addition, in order to reconcile the preservation of the confidentiality of the information and an individual's right to an adversarial procedure, the General Court must be able to decide, having regard to the circumstances of each case, how certain information should be transmitted; it may, for example, be transmitted in the form of a summary. In such cases the General Court is, in accordance with Article 64 of the present draft, to take into consideration for the purposes of ruling in the case only information on which the representatives of the parties have been given an opportunity of expressing their views.

Lastly, paragraph 4 provides that the procedural regime in question does not concern information or material pertaining to the security of the Union or of its Member States or to the conduct of their international relations, for which a very specific regime, connected with the highly sensitive nature of the information in question, is expressly laid down in Article 105 of the draft.

Article 104

Documents to which access has been denied by an institution

Where, following a measure of inquiry referred to in Article 91(c), a document to which access has been denied by an institution has been produced before the General Court in proceedings relating to the legality of that denial, that document shall not be communicated to the other parties.

This article replicates the text of the third subparagraph of Article 67(3) of the Rules of Procedure in force, subject to the added reference to the legal basis used by the General Court to order that the document be produced.

Chapter 7
INFORMATION OR MATERIAL PERTAINING TO THE SECURITY OF THE UNION OR OF ITS MEMBER STATES OR TO THE CONDUCT OF THEIR INTERNATIONAL RELATIONS

Chapter 7 is new. It embodies the General Court's intention to make categories of highly sensitive information or material subject to very specific treatment by laying down a special procedural regime for situations in which the security of the Union or of its Member States or the conduct of their international relations is at issue.

The General Court has established that the number of actions challenging the lawfulness of acts adopted by the institutions in the sphere of 'restrictive measures' pursuant to Articles 29 TEU and 215 TFEU was high in 2011 and in 2012, with 93 and 60 such cases respectively having been brought before it in that period. Examination of those files has enabled the General Court to learn certain lessons as regards procedure, particularly in relation to the modification in the course of proceedings of the form of order sought (see Article 86 of this draft), and to fill a gap concerning the treatment of information or material the confidential nature of which is based on overriding considerations pertaining to the security of the Union or of its Member States or to the conduct of their international relations. It is at present impossible, in the absence of a strict procedural framework designed to ensure confidentiality, for the institutions to produce to the General Court the information justifying the restrictive measures adopted, even though the General Court may have ordered its production as a measure of inquiry.

This procedural framework is deliberately given prominence by virtue of the addition of an entirely separate chapter, and is laid down in Article 105.

The scope of Article 105 is not limited, however, to actions challenging the lawfulness of acts adopted on the basis of Article 215 TFEU, since the overriding interests mentioned as being worthy of protection (security of the Union, security of its Member States, conduct of the international relations of the Union or of its Member States) may also be put in issue in other proceedings before the General Court.

Article 105

Treatment of information or material pertaining to the security of the Union or of its Member States or to the conduct of their international relations

1. Where, contrary to the adversarial principle set out in Article 64 under which all information and material must be fully communicated between the parties, a main party intends to base his claims on certain information or material but submits that its communication would harm the security of the Union or of its Member States or the conduct of their international relations, he shall produce that information or material by a separate document in which he shall state the overriding reasons which, to the extent strictly required by the exigencies of the situation, justify the confidentiality of that information or material being preserved and militate against its communication to the other main party.

2. The production of the information or material the confidential nature of which is based on the overriding reasons referred to in paragraph 1 may be ordered by the General Court in the form of a measure of inquiry. By way of derogation from Article 103, the procedural regime

applicable to such information or material produced following a measure of inquiry shall be that of the present Article.

3. While the information or material produced by a main party in accordance with paragraph 1 or 2 is being examined as to its relevance to the General Court's ruling in the case and as to its confidential nature vis-à-vis the other main party, that information or material shall not be communicated to the other main party.

4. Where the General Court concludes in the examination provided for in paragraph 3 that the information or material produced before it is relevant in order for it to rule in the case and is not confidential, it shall notify the party concerned of its intention to communicate that information or material to the other main party. If the first party objects to such communication, the information or material shall not be taken into account in the determination of the case and shall be returned to that party.

5. Where the General Court concludes in the examination provided for in paragraph 3 that certain information or material produced before it is relevant in order for it to rule in the case and is confidential vis-à-vis the other main party, it shall not communicate that information or material to that main party and shall weigh the requirements linked to the right to effective judicial protection, particularly observance of the adversarial principle, against the requirements flowing from the security of the Union or of its Member States or the conduct of their international relations.

6. After weighing up the matters referred to in paragraph 5, the General Court shall make a reasoned order specifying the procedures to be adopted to accommodate the requirements referred to in paragraph 5, in particular by inviting the party concerned to produce, for subsequent communication to the other main party, a non-confidential version or a non-confidential summary of the information or material, containing the essential content thereof and enabling the other main party, to the greatest extent possible, to make its views known.

7. Where the General Court considers that information or material which, owing to its confidential nature, has not been communicated to the other main party in accordance with the procedures referred to in paragraph 6 is essential in order for it to rule in the case, it may, by way of derogation from Article 64 and confining itself to what is strictly necessary, base its judgment on such information or material. When assessing that information or material, the General Court shall take account of the fact that a main party has not been able to make his views on it known.

8. The information or material referred to in paragraph 5 shall be returned to the party concerned as soon as the decision closing the proceedings before the General Court is adopted.

9. The General Court shall determine, by decision, the security rules for protecting the information or material produced in accordance with paragraph 1 or paragraph 2, as the case may be. That decision shall be published in the *Official Journal of the European Union*.

Article 105, which consists of nine paragraphs, is intended to fill a legislative gap by according special treatment to information or material pertaining to the security of the Union or of its Member States or to the conduct of their international relations which is produced either voluntarily by a main party in the course of the proceedings or following a measure of inquiry ordered by the General Court.

Two preliminary observations must be made.

First, the General Court seeks to emphasise the adversarial nature of the proceedings, referred to in Article 64 of the present draft, by noting in paragraph 1 of Article 105 that that principle obtains, and by circumscribing very narrowly any derogation therefrom.

Secondly, the scope of that article is not determined by reference to categories of documents with certain formal characteristics (for example, classified documents). The special regime laid down by this article covers any information or material whose confidential nature is based on overriding considerations pertaining to the security of the Union or of its Member States or to the conduct of their international relations. It follows from this that even an unclassified document may be dealt with as provided for by the present article. It must also be made clear that the mere fact that a document is classified does not determine how it will be treated, procedurally, by the General Court, as the cases envisaged in paragraphs 4 and 5 of the present article indicate.

The special regime laid down by this article is to a large extent based on the case-law of the Court of Justice (see Joined Cases C-402/05 P and C-415/05 P Kadi and Al Barakaat International Foundation *v* Council and Commission *[2008] ECR I-6351; Case C-300/11 ZZ [2013] ECR; and Joined Cases C-584/10 P, C-593/10 P and C-595/10 P* Commission and Others *v* Kadi *[2013] ECR).*

Paragraphs 1 and 2 determine the method of production of confidential information or material. Under paragraph 1, production by the main party is voluntary. A main party who, in support of his claims, submits that communication to the other party of the evidence that he has voluntarily produced would harm the security of the Union or of its Member States or the conduct of their international relations must state the overriding reasons justifying the preservation of its confidentiality and its non-transmission to the opposite party. To ensure that the procedure for dealing with the evidence is efficient and to avoid errors in its handling by the General Court, the evidence must be produced by a separate document. Paragraph 2 governs cases where confidential evidence is produced in response to a measure of inquiry decided on in the form of an order. In that regard, and to distinguish the treatment of information or material whose confidentiality is based on considerations relating to the security of the Union or of its Member States or to the conduct of their international relations from the treatment of other information whose confidentiality is founded on considerations of a different kind, it is provided that the regime to be applied is not that of Article 103 of the present draft but the special regime of the present article.

Once the information or material has been communicated to the General Court, the General Court must follow a procedure for dealing with it that comprises several stages. Paragraphs 3 to 7 contain the requirements relating to each stage.

The first stage, described in paragraph 3, is to examine the relevance to the General Court's ruling in the case of the information or material produced by a main party in accordance with paragraph 1 or 2, and its confidential nature vis-à-vis the other main party. The information or material is not communicated to the other main party during that examination.

The second stage is to follow up that examination. Paragraphs 4 and 5 envisage, respectively, the situation in which the General Court considers that the information or material is relevant to its ruling in the case and is not confidential, and that in which the General Court considers that the information or material is relevant to its ruling in the case but is confidential.

In the first case, governed by paragraph 4, the General Court notifies the party concerned of its intention to communicate the information or material to the other main party. If the first party objects to such communication, the information or material is not taken into account by the General Court in determining the case and is returned.

In the second case, governed by paragraph 5, it is proposed that, in line with the case-law of the Court of Justice, a legal basis enabling the General Court not to communicate the confidential information or material to the other main party where the security of the Union or of its Member States or the conduct of their international relations requires protection should be provided, and that the requirements flowing from the protection of those interests should be weighed against those linked to the right to effective judicial protection, particularly observance of the adversarial principle.

Paragraph 6 describes the procedure after that weighing-up of the requirements to be taken into account by the General Court, the objective being to be able to communicate to the other main party information that would enable him to the greatest extent possible to make his views known, in accordance with the adversarial principle. Formal requirements are called for in that regard, since the General Court has to rule in the form of an order and the order must be reasoned. In addition, in order to reconcile the preservation of the confidentiality of the information and an individual's right to effective judicial protection, the General Court must be able to decide, having regard to the circumstances of each case, to transmit certain information in a form in which it could be communicated to the other party; for example it could be submitted in summary form.

Only exceptionally, and only if the mechanism provided for paragraph 6 does not operate in such a way that all the evidence that would enable the other main party to exercise fully his rights of defence can be communicated to him, is it proposed that the General Court may take confidential information or material into consideration without having communicated it to the other main party. That derogation from the adversarial principle is a significant innovation, as the Rules of Procedure in force do not contain any provision with such scope, albeit with the exception of the provision in the last subparagraph of Article 67(3) (reproduced in Article 104 of the draft) concerning proceedings in which the legality of a denial of access to a document is at issue. The Rules of Procedure therefore need to be adjusted to provide that confidential evidence can be examined by the General Court in a way that preserves its confidentiality without the rights of the other main party being unduly prejudiced. That is the purpose of paragraph 7 of Article 105 of the draft.

The interference with the adversarial nature of the procedure must remain proportionate, in accordance with Article 52 of the Charter of Fundamental Rights, as is underlined by the terms of paragraph 7 according to which: (i) the information or material is that which could not be brought to the attention of the other party according to the procedure set in motion after the weighing-up exercise provided for in paragraph 5; (ii) the General Court considers it essential to take account of that information or material in order to rule in the case; (iii) the derogation from the adversarial principle must be confined to what is strictly necessary; (iv) when assessing the confidential material, the General Court is to take account of the fact that the other main party has not been fully able to exercise his rights of defence.

In that context, it is to be observed that the European Court of Human Rights has held that there may be restrictions of the right to a fully adversarial procedure where strictly necessary in the light of a strong countervailing public interest, such as national security, the need to keep secret certain police methods of investigation or the protection of the fundamental rights of another person (see, to that effect, A. and Others v. the United Kingdom *[GC], no. 3455/05, ECHR 2009 and the case-*

law cited). That case-law, albeit applicable to criminal proceedings, provides guidance which the Courts of the Union may take as a basis in the conduct of proceedings before them.

Paragraph 8 also contains a rule derogating from the general principle that a procedural document included in the file in a case is to form part of the records kept by the Registry of the General Court. The sensitivity of the information or material referred to by the present article justifies that information or material being returned to the main party who produced it, once the decision closing the proceedings before the General Court has been adopted.

Lastly, this procedural regime would be incomplete if it were not accompanied by an appropriate security provision to ensure that the information or material is protected during the various stages of the preparatory inquiries before the General Court. Paragraph 9 therefore contains a provision empowering the General Court to lay down rules enabling a general security scheme to be put in place to protect information pertaining to the security of the Union or of its Member States or to the conduct of their international relations. The decision in question, like the legislation in force adopted by the institutions of the European Union (in particular, Council Decision of 23 September 2013 on the security rules for protecting EU classified information (OJ 2013 L 274, p. 1)), would define the basic principles and the minimum security rules for protecting such information and would apply to the General Court, the Registry and the institution's shared services which provide assistance to the General Court. In order to make the provisions adopted by the General Court public, it is provided that the decision is to be published in the Official Journal of the European Union.

Chapter 8
ORAL PART OF THE PROCEDURE

This chapter corresponds to Chapter 2 of Title II of the Rules of Procedure in force, but differs in two respects.

First, this chapter contains a provision relating to the date of the hearing, which is currently covered in the articles concerning the written procedure. At the same time, Article 55 of the Rules of Procedure in force has been moved to Section 5 'Conduct of the proceedings and procedures for dealing with cases' in Chapter 1 of the present title.

Secondly, three new provisions have been added to the present chapter, dealing respectively with the conditions for holding a hearing, the absence of the parties from a hearing and the recording of hearings.

Article 106
Oral part of the procedure

1. The procedure before the General Court shall include, in the oral part, a hearing arranged either of the General Court's own motion or at the request of a main party.

2. Any request for a hearing made by a main party must state the reasons for which that party wishes to be heard. It must be submitted within three weeks after service on the parties of notification of the close of the written part of the procedure. That time-limit may be extended by the President.

3. If there is no request as referred to in paragraph 2, the General Court may, if it considers that it has sufficient information available to it from the material in the file, decide to rule on the action without an oral part of the procedure. In that case, it may nevertheless later decide to open the oral part of the procedure.

Concerned as it is to adapt its organisation and working methods to meeting the ongoing challenges of changes in its caseload and the increasing numbers of new cases, the General Court wishes to be able to rule on direct actions without a hearing, as the Rules of Procedure already enable it to do in intellectual property actions and appeals.

A brief historical reminder may be helpful in this respect. Having identified a rise in the number of intellectual property cases and an increase in the average duration of proceedings, the General Court proposed an amendment of its Rules of Procedure in order to be able to dispose of cases in that area of litigation more rapidly. It also sought the simplification of the procedural regime applicable by the addition of a provision under which it would no longer automatically organise a hearing in every intellectual property case but only if it considered it necessary or on a reasoned application by a party to the proceedings. Article 135a, as proposed by the General Court, was approved without amendment by the Council. It entered into force on 1 September 2008.

That article was in turn based on the text of Article 146 of the Rules of Procedure, which enables the General Court to rule without an oral procedure on appeals brought against decisions of the Civil Service Tribunal.

The provision which it is proposed to add therefore seeks to extend that rule to the category of direct actions, for the benefit of the parties and of the General Court.

In the first place, it is no longer rare for the parties to inform the General Court that they do not consider it necessary to present oral argument. Notwithstanding the fact that such wishes may have been expressed, and an intention not to take part may even have been announced, the General Court is obliged to summon the parties and to organise a hearing in order to comply with the requirements of the Rules of Procedure. That situation is incompatible with the requirements of the proper administration of justice and procedural economy. It should therefore be changed to enable the General Court to rule without an oral procedure in accordance with the wishes of the parties. As an indication, it should be observed that 44% of intellectual property cases were disposed of by judgment without a hearing in 2012 (as against 17% in 2009).

In the second place, not holding a hearing cannot but help to reduce the length of proceedings. The statistics are clear in that regard. In intellectual property cases, where the General Court ruled by judgment with a hearing, the average duration of proceedings was 26.4 months in 2012, but fell to 18.4 months if no hearing was held.

In the third place, not holding a hearing is likely to enable the General Court and its registry to optimise the use of the resources available, using the savings achieved in order to accomplish other tasks. Taking into account the current budgetary restrictions and the institution's obligation to surrender posts, that element is particularly important, as the overall workload is rising constantly. It must be pointed out in that regard that 322 cases were pleaded before the various formations of the General Court in 2012, that is an increase in the order of 12.6% over 2011, even though the General Court now regularly rules without an oral part of the procedure in intellectual property cases.

Taking into account the parameters outlined above, the General Court proposes to be able to dispense with organising a hearing if it does not consider a hearing necessary, unless one of the main parties submits a request stating the reasons for which it wishes to be heard.

The wording of the proposed text is substantially identical to that of Articles 135a and 146 of the Rules of Procedure in force. The occasion of this reform is however being taken as an opportunity to make the provision easier to read, to add weight to the general rule that the oral part of the procedure is to include a hearing organised of the General Court's own motion or on the initiative of a main party (paragraph 1) and to distinguish that rule from the provisions relating to its implementation by a main party or the General Court.

The main parties are thus invited to inform the General Court, within three weeks of being served with notification of the close of the written part of the procedure, of the reasons for which they consider it necessary that a hearing be held in a particular case. If a reasoned request is made to the General Court, it must organise a hearing.

If no request for a hearing has been submitted, it is for the General Court to decide whether it should rule without an oral part of the procedure. The second sentence in paragraph 3 nevertheless gives the General Court the option of opening the oral part of the procedure if it considers it necessary, even though a decision to give a ruling without an oral part has already been taken.

Lastly, attention is drawn to the fact that the time-limit of three weeks for submission of a reasoned request for a hearing to be held also applies, by virtue of references to the provisions of the present title, to actions governed by Title IV of this draft, that is to say, to actions brought against decisions of the Boards of Appeal of OHIM and CPVO.

Article 107
Date of the hearing

1. If the General Court decides to open the oral part of the procedure, the President shall fix the date of the hearing.

2. The President may, in exceptional circumstances, of his own motion or at the reasoned request of a main party, adjourn the hearing to another date.

This provision is new. It partly reproduces the text of Article 53 of the existing Rules of Procedure but changes its scope, accentuating the respective powers of the General Court and of the President, the former deciding to open the oral part of the procedure and the latter fixing the date of the hearing.

The purpose of paragraph 2 is to serve as a reminder that the setting of a hearing date is a judicial decision, and that therefore the decision to adjourn a hearing to another date may be taken by the President only in exceptional circumstances.

Article 108
Absence of the parties from the hearing

1. Where a party informs the General Court that he will not be present at the hearing or where the General Court finds at the hearing that a party is absent without excuse, the hearing shall proceed in the absence of the party concerned.

2. Where the main parties indicate to the General Court that they will not be present at the hearing, the President shall decide whether the oral part of the procedure may be closed.

This new provision provides the General Court with a legal basis for acting upon the absence of a party or of the main parties from the hearing.

Paragraph 1 lays down the consequences if a party is absent from the hearing.

Paragraph 2 allows the General Court to close the oral part of the procedure without a hearing having taken place if the main parties have decided not to attend.

Article 109
Cases heard in camera

1. After hearing the parties, the General Court may, in accordance with Article 31 of the Statute, decide to hear a case *in camera*.

2. The request by a party for a case to be heard *in camera* must include reasons and specify whether it concerns all or part of the hearing.

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

Under Article 31 of the Statute, applicable to the General Court by virtue of Article 53 thereof, the hearing in court is to be public, unless the General Court, of its own motion or on application by the parties, decides otherwise for serious reasons.

The Rules of Procedure in force already contain an article (Article 57) relating to cases heard in camera*. This is reproduced unamended in paragraph 3 of Article 109 of the present draft.*

The General Court nevertheless considers it necessary to provide for the parties to be heard before it decides whether to hear a case in camera*, whether envisaged as being of the General Court's own motion or requested by one of the parties. In the latter case, the requesting party is expected to state reasons for its request and to specify the extent of it, as, moreover, provided by Article 63(3) of the Rules of Court of the European Court of Human Rights. That is the purpose of paragraphs 1 and 2.*

Article 110
Conduct of the hearing

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

2. A party may address the General Court only through his representative.

3. The members of the formation of the Court and the Advocate General may in the course of the hearing put questions to the representatives of the parties.

This article essentially reproduces in paragraphs 1, 2 and 3 the content of Articles 56, 59 and 58 respectively of the Rules of Procedure in force, although the simplification of the text of paragraph 3 is based on Article 80 of the Rules of Procedure of the Court of Justice.

Article 111
Close of the oral part of the procedure

Where an Advocate General has not been designated in a case, the President shall declare the oral part of the procedure closed at the end of the hearing.

Subject to a terminological adjustment, this article reproduces the text of Article 60 of the Rules of Procedure in force.

Article 112

Delivery of the Opinion of the Advocate General

1. Where an Advocate General has been designated in a case and delivers his Opinion in writing, he shall lodge it at the Registry, which shall communicate it to the parties.

2. The President shall declare the oral part of the procedure closed after the delivery, orally or in writing, of the Opinion of the Advocate General.

Subject to editorial adjustments, based on Article 82(2) of the Rules of Procedure of the Court of Justice in the case of paragraph 2, this article reproduces the text of Article 61 of the Rules of Procedure in force.

Article 113

Reopening of the oral part of the procedure

1. The General Court shall order the reopening of the oral part of the procedure when the conditions set out in Article 23(3) or Article 24(3) are satisfied.

2. The General Court may order the reopening of the oral part of the procedure:

   (a) if it considers that it lacks sufficient information;

   (b) where the case must be decided on the basis of an argument which has not been debated between the parties;

   (c) where requested by a main party who is relying on facts which are of such a nature as to be a decisive factor for the decision of the General Court but which it was unable to put forward before the oral part of the procedure was closed.

The purpose of this article is to lay down the circumstances in which the General Court may order the reopening of the oral procedure, a situation which clearly differs from that in which the General Court has initially decided to rule without an oral part, then, reversing its original decision, has decided to open the oral part of the procedure in order to hear the parties' submissions in a hearing. That last scenario is covered in Article 106(3) of the present draft.

Article 62 of the Rules of Procedure in force merely provides for the possibility of the oral procedure being reopened. The present article of the draft is more precise in that it provides for the situations that must (paragraph 1) or may (paragraph 2) lead to the oral part of the procedure being reopened. The first category covers situations in which the quorum of the various formations of the Court (Grand Chamber, Chambers sitting with five or with three Judges) is no longer attained after the hearing has taken place, whereas the second covers cases in which the General Court considers that it lacks sufficient information, an argument that is essential to the outcome of the proceedings has not been debated or a new fact that is of such a nature as to be a decisive factor for the decision of the General Court is invoked by a main party.

Article 114
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. They shall constitute an official record.

2. The minutes shall be served on the parties.

This article corresponds to Article 63 of the existing Rules of Procedure, which it reproduces largely without change in paragraph 1, but amends in the parties' favour in paragraph 2 by providing that the minutes of hearings are to be served on the parties as a matter of course.

Under the current judicial practice of the General Court, minutes are served on the parties only when statements of the parties or decisions of the General Court are formally recorded in them.

Article 115
Recording of the hearing

The President of the General Court may, on a duly substantiated request, authorise a party who has participated in the written part or the oral part of the proceedings to listen, on the General Court's premises, to the sound recording of the hearing in the language used by the speakers during that hearing.

In the interests of consistency between the rules of procedure of the Court of Justice and of the General Court, the latter has largely adopted the text of Article 85 of the Rules of Procedure of the Court of Justice, but adjusted the wording in three respects. First, the reference to 'an interested person referred to in Article 23 of the Statute' is irrelevant as regards the General Court. Next, the name of the court has clearly been changed. Lastly, Article 115 of the draft specifies the authority competent to authorise a party to listen to the recording of the hearing as being the President of the General Court, whether the case in which the request is submitted is ongoing or has been closed. That exclusive power of the President of the General Court is intended to promote consistency in decision-making.

Chapter 9
JUDGMENTS AND ORDERS

Article 116
Date of delivery of a judgment

The parties shall be informed of the date of delivery of a judgment.

This article reproduces, in essence, the notion expressed in Article 82(1) of the existing Rules of Procedure, but is expressed in more nuanced terms. Since there is no obligation to be present at the sitting at which a judgment is delivered, it seems more accurate for the parties to be referred to as being informed, rather than as being given notice to attend to hear the judgment.

This provision is based on Article 86 of the Rules of Procedure of the Court of Justice.

Article 117
Content of a judgment

A judgment shall contain:

(a) a statement that it is the judgment of the General Court;

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

(c) the date of delivery;

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

(e) the name of the Advocate General, if designated;

(f) the name of the Registrar;

(g) a description of the parties;

(h) the names of their representatives;

(i) a statement of the forms of order sought by the parties;

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

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

(l) a summary of the facts;

(m) the grounds for the decision;

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

This article corresponds in essence to Article 81 of the existing Rules of Procedure. The amendments, based on Article 87 of the Rules of Procedure of the Court of Justice, are designed to include the formation of the Court in the judgment (point (b)) and to take account of the optional nature of the oral part of the procedure (point (j)).

Article 118
Delivery and service of the judgment

1. The judgment shall be delivered in open court.

2. The original of the judgment, signed by the President, by the Judges who took part in the deliberations and by the Registrar, shall be sealed and deposited at the Registry. A copy of the judgment shall be served on each of the parties.

This article corresponds, in essence, to Article 82(1) and (2) of the existing Rules of Procedure.

The changes are based on Article 88 of the Rules of Procedure of the Court of Justice.

Article 119
Content of an order

Any order from which an appeal may lie under Article 56 or Article 57 of the Statute shall contain:

(a) a statement that it is the order of the General Court, the President or the Judge hearing applications for interim measures, as the case may be;

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

(c) the date of its adoption;

(d) an indication as to the legal basis of the order;

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

(f) the name of the Advocate General, if designated;

(g) the name of the Registrar;

(h) a description of the parties;

(i) the names of their representatives;

(j) a statement of the forms of order sought by the parties;

(k) a statement, where appropriate, that the Advocate General has been heard;

(l) a summary of the facts;

(m) the grounds for the decision;

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

Taking into account the number and growing importance of orders in the practice of the General Court, the draft adds an article to the existing Rules of Procedure that deals specifically with orders. Modelled on Article 117 of the draft, Article 119 sets out the information which it is imperative that any order from which an appeal may lie to the Court of Justice must include.

This article is based on Article 89 of the Rules of Procedure of the Court of Justice but differs in that it refers only to orders from which an appeal may lie. That detail is significant, as orders which cannot be appealed and which are made by the General Court or by a President of a Chamber are in a simplified format and therefore do not include all the information listed in the article above.

Article 120
Signature and service of the order

The original of every order, signed by the President and by the Registrar, shall be sealed and deposited at the Registry. A copy of the order shall be served on each of the parties and, if necessary, on the Court of Justice or on the Civil Service Tribunal.

Article 120 mirrors Article 118(2) of the present draft, relating to judgments, and contains the details required in relation to signature and service of orders.

The changes are based on Article 90 of the Rules of Procedure of the Court of Justice.

Article 121

Binding nature of judgments and orders

1. Subject to the provisions of Article 60 of the Statute, a judgment shall be binding from the date of its delivery.

2. Subject to the provisions of Article 60 of the Statute, an order shall be binding from the date of its service.

Like Article 91 of the Rules of Procedure of the Court of Justice, Article 121 defines, in a single article, the moment from which a judgment or order is to be binding. While paragraph 1 largely reproduces the wording of Article 83 of the existing Rules of Procedure, paragraph 2 is new. It follows on from the insertion of specific provisions relating to orders of the General Court and explains that they are to be binding from the date of service, which may vary according to the addressee concerned. It is stated that the moment from which an order is to be binding is 'subject to the provisions of Article 60 of the Statute', as it cannot be ruled out that the General Court may annul a regulation by means of an order based on Article 132 of the present draft.

Article 122

Publication in the *Official Journal of the European Union*

A notice containing the date and the operative part of the judgment or order of the General Court which closes the proceedings shall be published in the *Official Journal of the European Union*, save in the case of decisions adopted before the application has been served on the defendant.

Following the example of Article 92 of the Rules of Procedure of the Court of Justice, the General Court proposes to incorporate in its Rules of Procedure a provision for notice to be published in the Official Journal of the European Union *of cases that are closed, referring both to the date of the judgment or order concerned and to its operative part.*

Article 18 of the Instructions to the Registrar of the General Court is thus elevated to an article of the Rules of Procedure, with details of what the notice to be published is to contain.

Chapter 10
JUDGMENTS BY DEFAULT

Article 123
Judgments by default

1. Where the General Court finds that a defendant on whom an application initiating proceedings has been duly served has failed to respond to the application in the proper form or within the time-limit prescribed in Article 81, without prejudice to the application of the provisions of the second paragraph of Article 45 of the Statute, the applicant may apply to the General Court for judgment by default.

2. A defendant in default shall not intervene in the default procedure and, with the exception of the decision which closes the proceedings, no procedural document shall be served on him.

3. The General Court shall give judgment in favour of the applicant in the judgment by default, unless it is clear that the General Court has no jurisdiction to hear and determine the action or that the action is manifestly inadmissible or manifestly lacking any foundation in law.

4. A judgment by default shall be enforceable. The General Court may, however, grant a stay of execution until it has given its decision on any application under Article 166 to set aside the judgment, or it may make execution subject to the provision of security of an amount and nature to be fixed in the light of the circumstances. This security shall be released if no such application is made or if the application fails.

The present article deals only with judgments delivered at the end of a default procedure. It is therefore to be distinguished from Article 122 of the existing Rules of Procedure which governs judgments by default and applications to set them aside. Proceedings concerning the latter are, however, governed by separate articles in the draft, paragraphs 4 to 6 of Article 122 of the existing Rules having been moved and their content reproduced under Article 166 (in Chapter 17 on applications relating to judgments and orders).

Paragraph 1 reproduces in essence the text of the first subparagraph of Article 122(1) of the Rules of Procedure in force, but clarifies it in two respects. First, the active role of the General Court in the conduct of the proceedings is highlighted by the fact that it is the General Court which establishes that the defendant has not responded to the application in the proper form or within the time-limits prescribed. Secondly, the wording makes it clear that the default procedure will not in any event be triggered if the defendant has proved that the fact that his defence was lodged after the legal time-limit had expired was attributable to unforeseeable circumstances or force majeure.

Paragraphs 2 and 3 are designed to ensure that all the appropriate conclusions are drawn from the default procedure.

Paragraph 2 provides for the defaulting party to play no part in the default procedure, the absence of any adversarial element being an actual feature of a procedure in which one party does not take part.

Paragraph 3 specifies the extent of the General Court's review, it being obliged to grant the form of order sought by the applicant unless the action is manifestly inadmissible or manifestly lacking any foundation in law.

Paragraph 4 reproduces the text of Article 122(3) of the Rules in force, subject to a change attributable to the new numbering.

Since the General Court is concerned to bring default proceedings to a conclusion within the shortest time possible, the new Article 123 does not provide for the possibility of opening the oral procedure at the applicant's request, nor does it envisage the possibility of adopting measures of organisation of procedure or of ordering measures of inquiry.

In statistical terms, it must be observed that the General Court has delivered 21 judgments by default since 1990, of which 13 have been delivered since 2007. Of those 13 judgments by default, 11 were delivered following actions which the Commission brought against legal persons on the basis of an arbitration clause and in which it sought repayment of sums of money. It follows from this that, in 85% of cases, the proceedings that led to judgments by default being delivered between 2007 and 2012 had a contractual origin. That situation is specific to the General Court.

Chapter 11
AMICABLE SETTLEMENT AND DISCONTINUANCE

Article 124
Amicable settlement

1. If, before the General Court has given its decision, the main parties reach a settlement of their dispute and inform the General Court of the abandonment of their claims, the President shall order the case to be removed from the register and shall give a decision as to costs in accordance with Articles 136 and 138, having regard to any proposals made by the parties on the matter.

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

Subject to the renumbering of the articles referred to and the clarification that only the main parties can reach a settlement of the dispute between them, this article essentially reproduces the text of Article 98 of the Rules of Procedure in force.

Article 125
Discontinuance

If the applicant informs the General Court in writing or at the hearing that he wishes to discontinue the proceedings, the President shall order the case to be removed from the register and shall give a decision as to costs in accordance with Articles 136 and 138.

This article reproduces the text of Article 99 of the existing Rules of Procedure, subject to the renumbering of the articles referred to, but extends the scope of the provision by stating that the applicant may discontinue the action not only in writing but also orally during the hearing. In the latter case, formal note thereof will of course be taken in the minutes of the hearing referred to in Article 114(1) of the draft.

Chapter 12
ACTIONS AND ISSUES DETERMINED BY ORDER

Article 126
Action manifestly bound to fail

Where it is clear that the General Court has no jurisdiction to hear and determine an action or where the action is manifestly inadmissible or manifestly lacking any foundation in law, the General Court may, on a proposal from the Judge-Rapporteur, at any time decide to give a decision by reasoned order without taking further steps in the proceedings.

This article reproduces in essence the text of Article 111 of the existing Rules of Procedure. It goes on to note that the General Court may, in the interests of procedural economy, decide a case directly if it is clear that the General Court has no jurisdiction to hear and determine it or the action brought before it is manifestly inadmissible or manifestly lacking any foundation in law. The editorial amendments made to the current text are based on the text of Article 53(2) of the Rules of Procedure of the Court of Justice.

It should be noted that the words 'on a proposal from the Judge-Rapporteur' also appear, in the interests of consistency, in Articles 127, 128, 129, 131 and 132 of the present chapter, relating respectively to cases referred to another court, cases in which jurisdiction is declined, cases in which there is an absolute bar to proceeding, cases which do not proceed to judgment and actions which are manifestly well founded.

Article 127
Referral of a case to the Court of Justice or to the Civil Service Tribunal

Decisions referring an action in the circumstances specified in the second paragraph of Article 54 of the Statute and in Article 8(2) of Annex I to the Statute shall be made by the General Court by reasoned order on a proposal from the Judge-Rapporteur.

The Statute lays down the circumstances in which a case is brought before a court which does not have jurisdiction to rule in the case. It distinguishes the situations in which the lodging of the action is due to a clerical error (first paragraph of Article 54 of the Statute and Article 8(1) of Annex I to the Statute) from those in which the action has actually been lodged with one of the courts but jurisdiction to hear and determine it lies with one of the others. Article 127 of the draft governs the latter case by providing, by reference to the second paragraph of Article 54 of the Statute and Article 8(2) of Annex I to the Statute, that the General Court may, by reasoned order, declare that it has no jurisdiction and refer the action to the Court of Justice or to the Civil Service Tribunal, as the case may be.

This Article 127 supplements Article 112 of the existing Rules of Procedure by mentioning the referral of cases to the Civil Service Tribunal.

The words 'on a proposal from the Judge-Rapporteur' have been added in the interests of consistency with Articles 126, 128, 129, 131 and 132 of the present chapter.

Article 128
Declining of jurisdiction

Decisions declining jurisdiction in the circumstances specified in the third paragraph of Article 54 of the Statute shall be made by the General Court by reasoned order on a proposal from the Judge-Rapporteur.

Declining jurisdiction is a measure that falls within the ambit of the proper administration of justice which the General Court may adopt in connection with a case over which it has jurisdiction in order to refer that case to the Court of Justice if it considers that the Court of Justice is better placed to rule on it because it is very closely connected to another case that is already pending before the Court of Justice.

In the interests of consistency with the other provisions of the present chapter (Articles 126, 127, 129, 131 and 132), it is specified that such decisions are taken 'on a proposal from the Judge-Rapporteur'. It is also proposed to provide for the order declining jurisdiction to be a reasoned order.

This provision corresponds, in essence, to Article 80 of the Rules of Procedure in force.

Article 129
Absolute bar to proceeding with a case

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

Unlike Article 113 of the existing Rules of Procedure, this article governs only cases in which there is an absolute bar to proceeding with an action, as cases which, of the General Court's own motion, do not proceed to judgment are dealt with in a specific article in this draft (see Article 131).

Although based on the terms of Article 113 of the existing Rules of Procedure and on the wording of Article 150 of the Rules of Procedure of the Court of Justice, the present article supplements the current text by adding, in the interests of consistency of the provisions contained in the present chapter, the point that the decision is to be taken by reasoned order on a proposal from the Judge-Rapporteur. It adds a further detail in providing for the General Court to seek the views of the main parties before giving its ruling.

Article 130

Preliminary objections and issues

1. A defendant applying to the General Court for a decision on inadmissibility or lack of competence without going to the substance of the case shall submit the application by a separate document within the time-limit referred to in Article 81.

2. A party applying to the General Court for a declaration that the action has become devoid of purpose and that there is no longer any need to adjudicate on it or for a decision on another preliminary issue shall submit the application by a separate document.

3. The applications referred to in paragraphs 1 and 2 must state the pleas of law and arguments relied on and the form of order sought; any supporting material must be annexed to the applications.

4. As soon as the application referred to in paragraph 1 has been submitted, the President shall prescribe a time-limit within which the applicant in the action may submit in writing his pleas in law and the form of order which he seeks.

5. As soon as the application referred to in paragraph 2 has been submitted, the President shall prescribe a time-limit within which the other parties may submit in writing their observations on that application.

6. The General Court may decide to open the oral part of the procedure in respect of the applications referred to in paragraphs 1 and 2. Article 106 shall not apply.

7. The General Court shall decide on the application as soon as possible or, where special circumstances so justify, reserve its decision until it rules on the substance of the case. It shall refer the case to the Court of Justice or to the Civil Service Tribunal if the case falls within their jurisdiction.

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

This article amends Article 114 of the Rules of Procedure in force, clarifying the scope and terms of that provision.

In the first place, the text makes clear that a plea of inadmissibility or of lack of competence lodged by the defendant must be submitted within the same time-limit as that laid down for lodging the defence. The lodging of an objection of that nature at a much later stage is incompatible with the notion of not going to the substance of the case. That temporal restriction, which, moreover, does not prevent a party from raising at any stage of the case a plea as to an absolute bar to proceeding, is required in the interests of the proper administration of justice, since the lodging of a preliminary objection determines the further progress of the proceedings.

In the second place, the article makes a distinction between a plea of inadmissibility or of lack of competence, on the one hand, and an application for a declaration that there is no need to adjudicate on an action or a decision on any other preliminary issue, on the other. In all those situations, the application must be submitted by a separate document. However, only the former must be lodged within a time-limit; the latter may be lodged at any stage of the proceedings.

In the third place, this article fills a gap in the Rules in force in so far as they do not expressly govern cases in which applications are made for a declaration that there is no need to adjudicate, but merely refer to 'preliminary issues'. In the practice of the courts, applications for a declaration that there is no need to adjudicate are treated as preliminary issues. Since preliminary issues are not limited, however, to applications fora declaration that there is no need to adjudicate (preliminary issues may include requests for documents annexed to a pleading or for certain passages in a pleading deemed to be offensive or defamatory to be removed from the case-file), the General Court proposes to clarify the position by distinguishing between an application for a declaration that there is no need to adjudicate and any other preliminary issue.

In the fourth place, the identity of the parties to be heard differs depending on whether the application lodged by a separate document contains a preliminary objection or an application for a declaration that there is no need to adjudicate or an application for a decision on a preliminary issue.

In the fifth place, the proposed amendment in paragraph 6 is intended to provide the General Court with an appropriate rule regarding the organisation of a hearing on an objection, an application for a declaration that there is no need to adjudicate or any other preliminary issue.

In the sixth place, based as it is on the text of Article 151(5) of the Rules of Procedure of the Court of Justice, the present article specifies that the General Court is to decide on the application 'as soon as possible' or, 'where special circumstances so justify', reserve its decision until it rules on the substance of the case. Those elements are intended to underline the fact that the capacity of a preliminary issue to block the further progress of the proceedings calls for the General Court to respond as quickly as possible, and that the decision to reserve a decision on an application until ruling on the substance of the case is necessarily the product of an appropriate consideration of the circumstances. While it cannot be ruled out altogether that an action may be dismissed as inadmissible after it has been decided to reserve the decision on the plea of inadmissibility or of lack of competence until the General Court's ruling on the substance of the case, it should be pointed out that such cases are rare. Thus, in the cases completed in the period from 2008 to 2012: 321 objections of inadmissibility or of lack of competence were submitted (in 302 cases); 185 objections were upheld by means of an order (in 179 cases); 53 objections (in 49 cases) were closed following a declaration that there was no need to adjudicate or discontinuance; a decision on 83 objections was reserved until the ruling on the substance of the case (in 74 cases). The General Court dismissed the action as inadmissible by judgment, after reserving its decision on the objection until its ruling on the substance of the case, in only 10 cases.

Article 131

Cases that, of the General Court's own motion, do not proceed to judgment

1. If the General Court declares that the 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, on a proposal from the Judge-Rapporteur and after hearing the parties, decide to rule by reasoned order.

2. If the applicant ceases to reply to the General Court's requests, the General Court may, on a proposal from the Judge-Rapporteur and after hearing the parties, declare of its own motion, by reasoned order, that there is no longer any need to adjudicate.

This article governs the circumstances in which the General Court declares of its own motion that there is no need to adjudicate. This provision is therefore a useful adjunct to the draft, Article 130(2) of which concerns cases in which an application is made for a declaration that there is no need to adjudicate.

It partly reproduces, in paragraph 1, the text of Article 113 of the existing Rules of Procedure.

Paragraph 2, on the other hand, is new and is intended to enshrine the case-law of the General Court in which it has been found that where an applicant is not formally represented or fails to respond to requests from the General Court, the action has become devoid of purpose (see the orders of the General Court of 23 March 2004 in Case T-216/99 Ter Huurne's Handelsmaatschappij *v* Commission*, not published in the ECR; of 20 June 2008 in Case T-299/06* Leclercq *v* Commission*, not published in the ECR; of 2 September 2010 in Case T-123/08* Spitzer *v* OHIM — Homeland Housewares (Magic Butler)*, not published in the ECR; of 3 October 2011 in Case T-128/09* Meridiana and Meridiana fly *v* Commission*, not published in the ECR; of 12 December 2011 in Case T-365/07* Traxdata France *v* OHIM — Ritrax (TRAXDATA, TEAM TRAXDATA)*, not published in the ECR; of 16 May 2012 in Case T-444/09* La City *v* OHIM — Bücheler and Ewert (citydogs)*, not published in the ECR; and of 12 September 2013 in Case T-580/12* Yaqub *v* OHIM — Turkey (ATATURK)*, not published in the ECR).*

Article 132
Actions that are manifestly well founded

Where the Court of Justice or the General Court has already ruled on one or more questions of law identical to those raised by the pleas in law of the action and the General Court finds that the facts have been established, it may, after the written part of the procedure has been closed, on a proposal from the Judge-Rapporteur and after hearing the parties, decide by reasoned order in which reference is made to the relevant case-law to declare the action manifestly well founded.

This new article is intended to enable the General Court to determine quickly a dispute in which the questions of law are identical to those already determined by the Court of Justice or the General Court and in which the facts have been established. If the General Court considers that the action is manifestly well founded, it may, in the interests of procedural economy, decide to rule by reasoned order in which reference is made to the relevant case-law.

In addition to the fact that the questions of law are identical to those already determined and that the facts have been established, the article provides that the General Court is to rule by reasoned order in such cases. Such a decision can be taken only after the written part of the procedure has been closed and after the parties have been heard.

Chapter 13
COSTS

This chapter, composed of nine articles, corresponds to what is currently Chapter 6 of Title II 'Procedure'. In order to reflect the content of that chapter more closely, the wording of this chapter covers costs of proceedings in addition to costs.

Since the General Court no longer has jurisdiction to hear and determine civil service actions at first instance, the provision in Article 88 of the Rules of Procedure in force has been deleted for lack of purpose.

The amendments to the Rules in force are almost exclusively attributable to the desire for consistency with the corresponding articles of the Rules of Procedure of the Court of Justice contained in Chapter 6 of Title IV concerning direct actions.

Article 133
Decision as to costs

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

This article essentially reproduces the terms of Article 87(1) of the Rules of Procedure in force.

Article 134
General rules as to allocation of costs

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

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

3. Where each party succeeds on some and fails on other heads, the parties shall bear their own costs. However, if it appears justified in the circumstances of the case, the General Court may order that one party, in addition to bearing his own costs, pay a proportion of the costs of the other party.

This article, which corresponds to Article 87(2) of the existing Rules of Procedure and covers the situation governed by the first subparagraph of Article 87(3) of those Rules, reproduces, subject to the name of the court, the terms of Article 138 of the Rules of Procedure of the Court of Justice.

Article 135

Equity and unreasonable or vexatious costs

1. If equity so requires, the General Court may decide that an unsuccessful party is to pay only a proportion of the costs of the other party in addition to bearing his own, or even that he is not to be ordered to pay any.

2. The General Court may order a party, even if successful, 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 opposite party incur costs which the General Court holds to be unreasonable or vexatious.

This article is derived both from the text of Article 87(2) of the Rules of Procedure of the Civil Service Tribunal as regards paragraph 1, and from the text of Article 87(3) of the Rules of Procedure of the General Court in force, Article 88 of the Rules of Procedure of the Civil Service Tribunal and Article 139 of the Rules of Procedure of the Court of Justice, in relation to paragraph 2.

The reference to equity in paragraph 1 seeks to make up for the deletion of 'circumstances [which] are exceptional' which, under the existing provision (first subparagraph of Article 87(3)), enabled the General Court to derogate from the general rule that the unsuccessful party is to pay the costs if they have been applied for in the successful party's pleadings.

Article 136

Costs in the event of discontinuance or withdrawal

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

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

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

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

This article largely reproduces the text of Article 87(5) of the existing Rules of Procedure. The article is identical to Article 141 of the Rules of Procedure of the Court of Justice.

Article 137

Costs where a case does not proceed to judgment

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

This article reproduces the text of Article 87(6) of the existing Rules of Procedure. There is an equivalent provision in Article 142 of the Rules of Procedure of the Court of Justice.

Article 138

Costs of interveners

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

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

3. The General Court may order an intervener other than those referred to in paragraphs 1 and 2 to bear his own costs.

This article reproduces, in essence, the text of Article 87(4) of the existing Rules of Procedure. [Terminological explanation not relevant to the English version].

Article 139

Costs of proceedings

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

(a) where a party has caused the General Court to incur avoidable costs, in particular where the action is manifestly an abuse of process, the General Court may order that party to refund them;

(b) where copying or translation work is carried out at the request of a party, the cost shall, in so far as the Registrar considers it excessive, be paid for by that party on the Registry's scale of charges referred to in Article 37;

(c) in the event of any repeated failure to comply with the requirements of these Rules or of the practice rules referred to in Article 224, requiring regularisation to be sought, the costs involved in the requisite processing thereof by the General Court shall, at the request of the Registrar, be paid for by the party concerned on the Registry's scale of charges referred to in Article 37.

Unlike all the other articles in this chapter, except for Article 141, Article 139 is the only provision that does not concern the parties' costs. As the heading indicates, this article concerns the costs of proceedings. The purpose of this provision is therefore to provide for the circumstances in which, by way of exception to the principle that judicial proceedings before the General Court are free of charge, there are reasons for asking the parties to pay certain costs.

The cases at (a) and (b) will be familiar, since they already feature in Article 90 of the Rules of Procedure in force. The provision at (a), however, has an additional clause containing a reference to situations in which the General Court has incurred avoidable costs, specifically where an action is manifestly an abuse of process. The inclusion of that reference is directly based on the terms of Article 94 of the Rules of Procedure of the Civil Service Tribunal.

The text set out at point (c) is new. The time that the General Court and its Registry spend on preparing certain cases for hearing is time that is not spent on processing or examining other cases. To take only the example of applications initiating proceedings: of the 617 applications lodged in 2012, the Registry had to arrange for 237 to be put in order. Moreover, it would be wrong to take the view that the failure to comply with formal requirements has no impact on the General Court, its Registry and the departments of the institution. By way of illustration, the lodging of very substantial documents which a party will not put in order even though a number of decisions have been taken to obtain an abridged version represents a burden, first of all, on the Registry when processing the material, on the jurisdiction called upon to take decisions and, depending on the language of the case, on the institution's translation service. In the light of those points, the General Court considers it appropriate to lay down in the Rules of Procedure a legal basis for it to be able to call on a party to pay some of the costs which the General Court has incurred as a result of that party's lack of cooperation, as characterised by the repeated nature of the infringements.

Article 140
Recoverable costs

Without prejudice to Article 139, the following shall be regarded as recoverable costs:

(a) sums payable to witnesses and experts under Article 100;

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

Article 140 reproduces the terms of the corresponding article of the Rules of Procedure in force, that is Article 91, subject to an adjustment linked to the renumbering of the articles in the draft. The corresponding text of the Rules of Procedure of the Court of Justice is Article 144.

Article 141

Procedure for payment

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

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

Subject to terminological amendments, the present article essentially reproduces the terms of Article 93 of the existing Rules of Procedure. The proposed amendments are based on Article 146 of the Rules of Procedure of the Court of Justice.

Chapter 14
INTERVENTION

Chapter 14 of the Title relating to direct actions governs intervention, as does Chapter 3 of the title relating to special forms of procedure in the existing Rules.

Historically, the rules relating to intervention have been amended several times. However, the most significant legislative change in the rules relating to intervention came about in 2000 when the Council approved the adjustment of the rules that was proposed by the General Court to ensure that interventions did not unduly delay proceedings. Since 1 February 2001, when those amendments of the rules relating to intervention entered into force, the extent of the rights accorded to interveners has varied depending on whether their application to intervene was submitted within the time-limit of six weeks of the publication in the Official Journal *of notice of a new action, extended on account of distance by a period of 10 days, or whether it was submitted after the expiry of that time-limit but before the decision of the General Court to open the oral part of the procedure. While a person who lodges his application to intervene within the six-week time-limit has the right to receive all the material on the file, without prejudice to confidential material, and to submit a statement in intervention, a person who lodges it afterwards can submit his observations only at the hearing, on the basis of the report for the hearing communicated to him. It follows that in the latter case, the intervener, described as a 'secondary intervener', can exercise his rights only at the hearing on the basis of the information contained in the report for the hearing.*

The number of applications to intervene is variable but it is high and was exceptionally high in 2011 (190 applications in 2012; 378 in 2011; 220 in 2010; 159 in 2009). The high number of applications to intervene has obvious repercussions on the conduct of the written procedure.

First, such applications are determined by order, after the main parties have submitted their observations and perhaps sought confidential treatment in respect of certain elements of the file. The effects of applications for confidential treatment are considerable as far as the General Court is concerned, and merely mentioning those applications does not convey the sheer variety of situations encountered or the major difficulties they represent in terms of their handling by the General Court and its registry, particularly when communicating material to the parties. In fact, an application for confidential treatment made by a main party vis-à-vis an intervener is a simple case by comparison with other situations such as those, for example, in which applications for confidential treatment are made by each of the main parties vis-à-vis the same intervener or a number of interveners. In other instances, in addition to the confidentiality sought by one or all of the main parties, applications are made for confidential treatment of material submitted by an intervener or interveners vis-à-vis one or more other interveners. Article 116(2) of the Rules of Procedure in force provides that the President may omit from the procedural documents served on the parties which are sent to the intervener secret or confidential documents 'on application by one of the parties', an expression which is understood to mean the main parties and the parties granted leave to intervene.

The number of applications for confidential treatment submitted in conjunction with applications to intervene is also high (107 applications in 2012, 131 in 2011, 76 in 2010, 91 in 2009). Those statistics reveal nothing of the number or nature of the pieces of information to which each application for confidential treatment relates, which can be numerous even within a single application. And it clearly does not take account of the difficulty of dealing with confidential and non-confidential versions of procedural documents.

Secondly, an intervener whose application is allowed under Article 116(2) of the existing Rules of Procedure is invited to lodge a statement in intervention and may challenge the confidential treatment provisionally approved, in the latter case requiring the President of the Chamber to assess the confidential nature of each piece of information and to give a decision by way of an order. It must be added that the main parties may be invited to submit their observations on the statement in intervention and that, as regards an intervention from a Member State, the application and the statement it lodges are drawn up in the language of that State (the statement therefore has to be translated by the departments of the Court of Justice into the language of the case for communication to the other parties).

The applications to intervene submitted during the last four years can be broken down as follows:

- *submitted by individuals: 74 in 2012, 199 in 2011, 92 in 2010 and 73 in 2009;*
- *submitted by Member States: 72 in 2012, 46 in 2011, 89 in 2010, 65 in 2009;*
- *submitted by institutions: 44 in 2012, 133 in 2011, 39 in 2010, 21 in 2009.*

In 2012, 94% of interventions were allowed pursuant to Article 116(2) of the Rules of Procedure, the other 6% having been secondary interventions.

In the light of all these points and of the General Court's proposal to make the hearing optional, it is considered appropriate to amend the current intervention regime.

The first significant change proposed is to remove the category of the secondary intervener.

This proposal is consistent with the general scheme of the reform of the procedural rules.

On the one hand, the proposal that the General Court should be able to rule without an oral part of the procedure and the proposal under which the right to submit a reasoned request for a hearing is to be reserved to the main parties may result in a situation in which a secondary intervener is deprived of any meaningful participation in the proceedings.

On the other hand, under its internal reforms, the General Court has made it general practice for the report for the hearing to be in summary form. As a result, a secondary intervener can, as now, only exercise his rights on the basis of limited documentation.

The single regime proposed in the present draft is therefore that contained in Article 116(2) of the Rules of Procedure. As a result, according to the draft, any third party who wishes to intervene in proceedings pending before the General Court is required to submit his application to intervene within one month (extended on account of distance by 10 days) of the publication in the Official Journal of the European Union *of notice of that new case. When it receives that application, the General Court serves it on the main parties and invites them to send in any observations on it and, in particular, on the need to omit certain secret or confidential material from the case-file. Only after the time for lodging such observations has expired and after it has been decided to allow the intervention does the intervener receive copies of the procedural documents and can then draw up his statement in intervention.*

The second significant change is dictated by the need to contribute to a reduction in the overall duration of proceedings by shortening the written part of the procedure. With that in mind, the General Court proposes to amend the legal time-limit for lodging statements in intervention and to reduce that time-limit, which currently stands at six weeks, to one month, albeit still from the

publication in the Official Journal *of notice of the action and still extended on account of distance by 10 days. Notwithstanding the efforts of the Registry and the institution's translation service, the notice can be published, on average, only 65 days after the application initiating proceedings has been formally lodged. If those periods of 65 days and 6 weeks extended on account of distance by 10 days are added together, an application to intervene is generally submitted in the period between the time when the defence is lodged and the time of lodging of the reply (without prejudice to any extensions of time-limits and provided that a second exchange of pleadings is arranged).Yet the lodging of the application to intervene means that the observations of the main parties have to be sought, the application has to be determined and a time-limit set for the statement in intervention to be lodged and then for the main parties' observations on that statement to be lodged. It follows from this that if leave to intervene is granted, the written part of the procedure can only be closed several weeks after the lodging of the rejoinder. It may not even be possible to close it until much later if the intervener challenges the confidential nature of certain information in the file and a Judge is required to decide issues of confidentiality.*

It is in pursuit of that same objective that the draft simplifies the form of the decision allowing interventions by States and institutions if no application for confidential treatment is made, and provides in other cases and in the event of confidentiality being disputed that the President is to give a decision by order 'as soon as possible'.

The third change that deserves mention in these introductory remarks is designed to make clear that the confidential treatment of information can be requested only by a main party vis-à-vis an intervener.

Article 142
Object and effects of the intervention

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

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

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

This new article reproduces, subject to the reference to the court concerned, paragraphs 1 to 3 of Article 129 of the Rules of Procedure of the Court of Justice.

Two important details have been added.

Article 142 draws attention, first of all, to the fact that the intervener should not be confused with the main party. Since an application to intervene is, necessarily, an adjunct to an existing dispute, it is limited to supporting one of the parties to that dispute, and the form of order sought by that party. The procedural rights of interveners are more limited than those conferred on the main parties. In order to be aware of the extent of the rights of interveners, the General Court has endeavoured in the present draft to specify whether the provisions relate only to the main parties or to the main

parties and interveners. That effort to provide clarification explains why the definitions in Article 1(2)(c) and (d) of the draft have been included.

Secondly, Article 142 gives due effect to the ancillary nature of an intervention by stating that an intervention will become devoid of purpose if the main proceedings come to an end, for example as a result of a party's discontinuance or withdrawal from the proceedings or an agreement between the applicant and defendant.

Paragraph 3 of Article 142 sets out a rule already contained in Article 116(3) of the existing Rules of Procedure, namely that the intervener must accept the case as he finds it at the time of his intervention.

Article 143
Application to intervene

1. An application to intervene must be submitted within one month of the publication of the notice referred to in Article 79.

2. The application to intervene shall contain:

   (a) a description of the case;

   (b) a description of the main parties;

   (c) the name and address of the applicant for leave to intervene;

   (d) particulars of the status and address of the representative of the applicant for leave to intervene;

   (e) the form of order sought in support of which the applicant for leave to intervene is applying for leave to intervene;

   (f) a statement of the circumstances establishing the right to intervene, where the application is submitted pursuant to the second or third paragraph of Article 40 of the Statute.

3. The applicant for leave to intervene shall be represented in accordance with Article 19 of the Statute.

4. Article 77, Article 78(3) to (5) and Article 139 shall apply to the application to intervene.

Subject to the adjustments made necessary by the renumbering of the articles referred to, Article 143 reproduces, in essence, the terms of Article 115 of the Rules of Procedure in force.

The wording of paragraph 1 has, however, been amended in the interests of consistency with Article 130 of the Rules of Procedure of the Court of Justice, save as regards the time-limit which, for the reasons set out in the introduction to this chapter, has been reduced from six weeks to one month.

The adjustments to paragraphs 2 and 3 are intended to make clear that those provisions relate to the applicant for leave, a status that is distinct from that of intervener.

Lastly, paragraph 4 draws attention to the formal requirements with which an application to intervene must comply and, by referring to Article 139 of the present draft, evokes the costs incurred in the event of repeated non-compliance with the requirements of the present draft or of the practice rules which the General Court will adopt on the basis of Article 224.

Article 144
Decision on applications to intervene

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

2. The President shall give the main parties an opportunity to submit their written or oral observations on the application to intervene and to apply, if necessary, for certain secret or confidential information in the file in the case not to be communicated to an intervener.

3. Where the defendant lodges a plea of inadmissibility or of lack of competence, as provided in Article 130(1), a decision on the application to intervene shall not be given until after the plea has been rejected or the decision on the plea reserved.

4. Where the application is submitted pursuant to the first paragraph of Article 40 of the Statute and the main parties have not identified information in the file in the case that is secret or confidential and which they claim would be prejudicial to them if communicated to the intervener, the intervention shall be allowed by decision of the President.

5. In any other case the President shall decide on the application to intervene as soon as possible, by order, and, where applicable, on the communication to the intervener of information which it is claimed is secret or confidential.

6. If the application to intervene is refused, the order referred to in paragraph 5 must state the reasons on which it is based and include a decision as to the costs relating to the application to intervene, including the costs of the applicant for leave to intervene, pursuant to Articles 134 and 135.

7. If the application to intervene is granted, the intervener shall receive a copy of every procedural document served on the main parties, save, where applicable, for the secret or confidential information excluded from such communication pursuant to paragraph 5.

8. In the event that the application to intervene is withdrawn, the President shall order that the applicant for leave to intervene be removed from the case and shall give a decision as to costs, including the costs of the applicant for leave to intervene, pursuant to Article 136.

9. In the event that the intervention is withdrawn, the President shall order that the intervener be removed from the case and shall give a decision as to costs pursuant to Articles 136 and 138.

10. If the proceedings in the main case are concluded before the application to intervene has been decided, the applicant for leave to intervene and the main parties shall each bear their own costs relating to the application to intervene. A copy of the order closing the proceedings shall be transmitted to the applicant for leave to intervene.

To enable disputes to be disposed of as soon as possible, the present article relating to the decision on the application to intervene supplements, clarifies and specifies several aspects of the current arrangements. The General Court has therefore virtually rewritten Article 116 of the existing Rules of Procedure.

In the first place, the proposed text specifies certain aspects of the procedure followed by the General Court when an application to intervene is lodged. In paragraphs 1 and 2, the text provides for the application to intervene to be served on the main parties and for them to be given an opportunity to submit their observations and to apply for confidential treatment of certain elements of the file vis-à-vis the intervener.

In the second place, taking as its basis the case-law of the Court of Justice (orders in Case C-341/00 P Conseil national des professions de l'automobile and Others *v* Commission *[2001] ECR I-5263, paragraph 37, and in Case C-406/01* Germany *v* Parliament and Council *[2002] ECR I-4561, paragraph 24), the General Court considers it appropriate not to rule on an application to intervene for so long as it has not ruled on a plea of inadmissibility or of lack of competence raised on the basis of Article 130 of the present draft. That change must be understood in conjunction with Article 130(7), which provides that the General Court is to decide as soon as possible on a plea of inadmissibility or of lack of competence.*

In the third place, the article confirms that secret or confidential material may be excluded from material communicated to an intervener, but makes it clear that an application for confidential treatment can only be made by a main party vis-à-vis an intervener. In referring to the main parties, paragraphs 2 and 4 therefore make it clear that an intervener cannot apply for documents produced by him to be treated as confidential vis-à-vis another intervener.

In the fourth place, as paragraph 4 provides, the form of the decision granting a Member State or institution leave to intervene is simplified, provided that confidential treatment of certain information has not been sought. In such situations, the order is dispensed with in favour of a simple decision that is included in the file. Failing that, and in any other case, the decision is to continue to be made in the form of an order but it is specified that it must be made as soon as possible, since the General Court wishes to be able to close the written part of the procedure as quickly as possible.

In the fifth place, this article lays down rules relating to costs if the application is refused (paragraph 6), if the application to intervene is withdrawn (paragraph 8), if the intervention is withdrawn (paragraph 9), and if the case is disposed of before the application to intervene has been determined (paragraph 10). These provisions fill the gaps in the existing Rules of Procedure, in which the articles relating to costs cover the main parties and interveners but not applicants for leave to intervene.

Article 145
Submission of statements

1. The intervener may submit a statement in intervention within the time-limit prescribed by the President.

2. The statement in intervention shall contain:

(a) 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 main parties;

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

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

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

This article reproduces in essence the terms of Article 116(4) and (5) of the existing Rules of Procedure. It maintains in particular the principle that the President prescribes the time-limit for submission of the statement in intervention, so as to give him a certain degree of flexibility in the conduct of the proceedings.

The text of paragraph 2 is based on that of Article 132(2) of the Rules of Procedure of the Court of Justice in that it states that the form of order sought may only be in support of the form of order sought by one of the main parties, and envisages the possibility of producing evidence, as well as offering evidence where appropriate.

As regards paragraph 3, it is suggested that, in order to observe the adversarial principle and avoid the main parties having to request a hearing in order to be able to state their views on the statement(s) in intervention, the observations of the main parties should be sought as a matter of course.

Chapter 15
LEGAL AID

[Terminological explanation not relevant to the English version.]

This chapter, comprising five articles, largely follows the pattern of Chapter 7 in Title II of the Rules in force. The changes to the substance of the provisions are minor, except for that seeking to extend eligibility for legal aid to legal persons.

In the interests of consistency between the documents governing procedure, the order in which the articles are presented is based on that of the Rules of Procedure of the Court of Justice.

Lastly, with regard to statistical matters, it is observed that 50 applications for legal aid were lodged with the General Court in 2012 (60 in 2011) and that, in budgetary terms, the appropriations allocated to the General Court for 2013 are EUR 15 000.

Article 146
General

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

2. Legal aid shall be refused if it is clear that the General Court has no jurisdiction to hear and determine the action in respect of which the application for legal aid is made or if that action appears to be manifestly inadmissible or manifestly lacking any foundation in law.

This article reproduces in essence the text of Article 94 of the Rules of Procedure in force, subject to an amendment in connection with the wording of Article 47 of the Charter of Fundamental Rights of the European Union. [Terminological explanation not relevant to the English version.] The amendment consists of the deletion of the word 'natural' which appears in Article 94(2) of the existing Rules of Procedure, with the sole aim of extending entitlement to legal aid to legal persons, since Article 47 of the Charter refers to 'everyone'. The change dictated by the change in the legal frame of reference has therefore caused the General Court to revisit a rule which it had removed in 2005 by amending its Rules of Procedure.

Lastly it is pointed out that the wording of paragraph 2 is aligned with that of Article 126 of the present draft in that it provides that the General Court is to refuse legal aid, inter alia, where the action in respect of which the application is made appears to be 'manifestly lacking any foundation in law'.

Article 147
Application for legal aid

1. An application for legal aid may be made before the action has been brought or while it is pending.

2. The application for legal aid must be made using a form which is published in the *Official Journal of the European Union* and available on the Internet site of the Court of Justice of the European Union. Without prejudice to Article 74, the form must be signed by the applicant for legal aid or, if he is represented, by his lawyer. An application for legal aid submitted without the application form will not be taken into consideration.

3. 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 a competent national authority attesting to his financial situation.

4. If the application for legal aid 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.

5. Where applicable, the application for legal aid shall be accompanied by the documents referred to in Article 51(2) and (3) and Article 78(3). In that case Article 51(4) and Article 78(5) shall apply.

6. If the applicant for legal aid is represented by a lawyer when the application for legal aid is lodged, Article 77 shall apply.

7. The introduction of an application for legal aid shall, for the person who made it, suspend the time-limit prescribed for the bringing of an action until the date of service of the order making a decision on that application or, in the cases referred to in Article 148(6), of the order designating the lawyer instructed to represent the applicant.

This article corresponds to Article 95 of the Rules of Procedure in force, but modifies the content thereof in the following three respects.

In the first place, it states in paragraph 1 that an application for legal aid may be made while the action is pending, whereas the text currently indicates in general terms that it may be made 'after the action has been brought'.

In the second place, paragraph 2 provides that the use of the official legal aid application form is mandatory, and that if it is not used the application will not be taken into consideration. It should be borne in mind that the General Court already has a form the use of which is mandatory, but that, as the law stands, an application submitted without the form is still taken into consideration by the Registry, in that it invites the applicant to complete the form and to return it within a specified time-limit.

In the third place, the extension of entitlement to legal aid to legal persons and the possibility of the application being submitted by a lawyer with a view to issuing judicial proceedings means that certain formal requirements have to be observed. That is the purpose of paragraphs 5 and 6.

Paragraph 7 corresponds, in essence, to Article 96(4) of the existing Rules of Procedure.

Article 148

Decision on the application for legal aid

1. Before giving his decision on an application for legal aid, the President shall prescribe a time-limit within which the other main party may submit his written observations unless it is already apparent from the information produced that the conditions laid down in Article 146(1) have not been satisfied or that those laid down in Article 146(2) have been satisfied.

2. The decision on the application for legal aid shall be taken by the President by way of an order.

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

4. Any order granting legal aid may designate a lawyer to represent the person concerned if that lawyer has been proposed by the applicant in the application for legal aid and has agreed to represent the applicant before the General Court.

5. If the person concerned has not indicated his choice of lawyer in the application for legal aid or following an order granting legal aid 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 the Rules supplementing the Rules of Procedure of the Court of Justice. If the person concerned is not resident in the Union, the Registrar shall send a copy of the order granting legal aid and a copy of the application to the competent authority of the State in which the Court of Justice of the European Union has its seat.

6. Without prejudice to paragraph 4, the lawyer instructed to represent the applicant shall be designated by way of an order, having regard to the suggestions made by the person concerned or to the suggestions made by the authority referred to in paragraph 5, as the case may be.

7. An order granting legal aid may specify the 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 149(1), having regard to his financial situation.

8. No appeal shall lie from orders made under this Article.

9. Without prejudice to Article 147(6), service on the applicant for legal aid and on the other parties shall be effected as provided for in Article 80(1).

This article is based on Article 96(1) to (3) of the existing Rules of Procedure so far as concerns the need to obtain the written observations of the other main party (paragraph 1), the form which the President's decision on such an application must take (the President always having the option of referring the matter to the General Court, as provided for by Article 19 of the present draft) (paragraph 2) and the requirement to state the reasons for that decision (paragraph 3). On the other hand, unlike the existing text, the power to prescribe the time-limit provided for in paragraph 1 lies with the President.

Paragraphs 4 to 7 of Article 148 of the present draft clarify the provisions of Article 96(3) of the existing Rules of Procedure and give legislative force to the General Court's practice in relation to the designation of a lawyer.

Paragraph 8 reproduces Article 96(6) of the existing Rules of Procedure without amendment.

Lastly, paragraph 9 governs the method of service of documents, which may vary depending on whether or not the applicant for legal aid is represented by a lawyer when the application is lodged.

Article 149
Advances and responsibility for costs

1. Where legal aid is granted, the cashier of the General Court shall be responsible, where applicable within the limits fixed, for costs involved in the assistance and representation of the applicant before the General Court. At the request of the lawyer designated in accordance with Article 148, the President may decide that an amount by way of advance should be paid to that 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 General Court by way of a reasoned order from which no appeal shall lie.

3. Where, in the decision closing the proceedings, the General Court 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 General Court any sums advanced by way of aid.

4. The Registrar shall take steps to obtain the recovery of the sums referred to in paragraph 3 from the party ordered to pay them.

5. Where the recipient of the legal aid is unsuccessful, the General Court 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 General Court by way of legal aid.

In paragraphs 1 to 3 and 5, the present article is essentially reproducing the terms of Article 97(1) to (4) of the existing Rules of Procedure, subject to an editorial change in the first sentence of paragraph 1. As a result of that change, the first sentence of paragraph 1 corresponds largely to the second subparagraph of Article 94(1) of the existing Rules of Procedure and aligns the wording of the provision more closely with that of Article 188(1) of the Rules of Procedure of the Court of Justice.

Paragraph 4 corresponds, in essence, to Article 188(3) of the Rules of Procedure of the Court of Justice.

Article 150
Withdrawal of legal aid

1. If the circumstances which led to the grant of legal aid alter during the proceedings, the President may, of his own motion or on request, withdraw that legal aid, having heard the person concerned.

2. An order withdrawing legal aid shall contain a statement of reasons and no appeal shall lie from it.

This article essentially reproduces the terms of Article 96(5) of the existing Rules of Procedure, relating to the possibility of withdrawing the legal aid granted if the circumstances that justified that decision should alter. It should be borne in mind that the issue may be referred to the General Court under Article 19 of the present draft.

Chapter 16
URGENT PROCEDURES

This chapter deals with urgent procedures. These include the expedited procedure, the purpose of which is to obtain a swift judicial decision on the substance of the dispute. They also include procedures for interim measures, the purpose of which is provisionally to protect a party's interests before a ruling is delivered on the substance of the case. What these procedures have in common, therefore, is the search for a swift outcome, but one that is final in the first case, and provisional in the second.

To make them easier to read, rules which currently appear in separate titles (Article 76a in Title II and Articles 104 to 110 in Title III of the Rules of Procedure in force) have been grouped together.

26 requests for an expedited procedure were lodged in 2012 (43 in 2011, 24 in 2010 and 22 in 2009), and 21 applications for interim measures (44 in 2011, 41 in 2010 and 29 in 2009).

Section 1. Expedited procedure

Article 151
Decision relating to the expedited procedure

1. The General Court may, at the request of the applicant or the defendant, after hearing the other main party, decide, having regard to the particular urgency and the circumstances of the case, to adjudicate under an expedited procedure.

2. On a proposal from the Judge-Rapporteur, the General Court may, in exceptional circumstances, of its own motion and after hearing the main parties, decide to adjudicate under an expedited procedure.

3. The decision of the General Court to adjudicate under an expedited procedure may prescribe conditions as to the volume and presentation of the pleadings of the main parties; the subsequent conduct of the proceedings or as to the pleas in law and arguments on which the General Court will be called upon to decide.

4. If one of the main parties does not comply with any one of the conditions referred to in paragraph 3, the decision to adjudicate under an expedited procedure may be revoked. The proceedings shall then continue in accordance with the ordinary procedure.

Article 151 corresponds, in essence, to Article 76a of the existing Rules of Procedure.

Specifically, paragraph 1 corresponds to the first subparagraph of Article 76a(1) in force, subject to a point of detail concerning the party to be heard on the request.

Paragraphs 3 and 4 correspond respectively to the first and second subparagraphs of Article 76a(4), subject also to further clarification regarding the identity of the parties concerned.

On the other hand, unlike Article 76a of the existing Rules, Article 151(2) also provides for the General Court to be able, of its own motion, in exceptional circumstances, to decide that a case should be determined pursuant to an expedited procedure. That rule is based on Article 133(3) of the Rules of Procedure of the Court of Justice.

Article 152
Request for an expedited procedure

1. A request for an expedited procedure shall be made by a separate document lodged at the same time as the application initiating the proceedings or the defence, and shall contain a statement of reasons specifying the particular urgency of the case and any other relevant circumstances.

2. The request for an expedited procedure may state that certain pleas in law or arguments or certain passages of the application initiating the proceedings or the defence are raised only in the event that the case is not decided under an expedited procedure, in particular by enclosing with the request an abridged version of the application initiating the proceedings and a schedule of annexes and only the annexes which are to be taken into consideration if the case is decided under an expedited procedure.

This article reproduces, in essence, the second subparagraph of Article 76a(1) of the Rules of Procedure in force. The fact that the request must contain a statement of reasons is added to the Rules of Procedure in the interests of clarity. It currently appears at point 70 of the Practice Directions to parties.

Paragraph 2 provides that the abridged version must be accompanied by a schedule of annexes and — this point having been added in the interests of clarity — the annexes.

Article 153
Priority treatment

By way of derogation from Article 67(1), cases on which the General Court has decided to adjudicate under an expedited procedure shall be given priority.

This provision reproduces the text of the third subparagraph of Article 76a(1), subject to the change in the number of the article referred to.

Article 154
Written part of the procedure

1. By way of derogation from Article 81(1), where the applicant has requested that the case be decided under an expedited procedure, the period prescribed for the lodging of the defence shall be one month. That period may be extended pursuant to Article 81(3).

2. If the General Court decides not to allow a request for an expedited procedure, the defendant shall be granted an additional period of one month in order to lodge or, as the case may be, supplement the defence.

3. Under the expedited procedure, the pleadings referred to in Articles 83(1) and 145(1) and (3) may be lodged only if the General Court, by way of measures of organisation of procedure adopted in accordance with Articles 88 to 90, so allows.

4. Under the expedited procedure, the President shall take account, when setting the time-limits provided for by these Rules, of the particular urgency in adjudicating on the action.

The present article reproduces, in essence, paragraph 2 of Article 76a, subject to terminological changes and renumbering of the articles to which reference is made. The lodging of a reply and rejoinder and statements in intervention is allowed only by way of measures of organisation of procedure, as now.

Paragraph 4 is new. Its inclusion is intended to emphasise the need for a rapid resolution of the dispute and shows the General Court's desire, when it has approved the expedited treatment of a case, to be able to prescribe procedural time-limits that vary according to the degree of urgency but that are always shorter than those prescribed in an ordinary procedure.

Article 155
Oral part of the procedure

1. Where the General Court has approved an expedited procedure, it shall decide to open the oral part of the procedure as soon as possible after the presentation of the preliminary report by the Judge-Rapporteur. The General Court may nevertheless decide to rule without an oral part of the procedure where the main parties decide not to participate in a hearing and the General Court considers that it has sufficient information available to it from the material in the file in the case.

2. Without prejudice to Articles 84 and 85, the main parties may supplement their arguments and offer further evidence during the oral part of the procedure, provided that the delay in submission is justified.

By way of derogation from the general rule in Article 106 of the present draft, according to which a hearing is to be organised if a reasoned request is submitted by a main party or if the General Court considers it necessary, the present article provides that the General Court is always to decide to open the oral part of the procedure, unless the main parties decide not to participate in a hearing and the General Court does not consider it essential to hear the parties.

That rule is dictated by the need to adjudicate swiftly. Allowing the three-week period that commences from the service of notice of closure of the written procedure to run is at odds with the stated objective of speed. Furthermore, under the expedited procedure, the emphasis is kept firmly on the oral part of the procedure, in so far as the written procedure is, in principle, limited to one exchange of pleadings and interveners may not lodge a statement in intervention unless the General Court decides otherwise by way of a measure of organisation of procedure. It is therefore desirable that the General Court should be able to arrange a hearing shortly after the limited written stage has been closed, or even very shortly afterwards if justified by the circumstances of the case. None the less, as it is conceivable that the parties may notify the General Court that they do not intend to participate in a hearing, it will then be for the General Court to decide on the need for oral argument.

Section 2. Suspension of operation or enforcement and other interim measures

Article 156
Application for suspension or other interim measures

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

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

3. An application of a kind referred to in paragraphs 1 and 2 shall state the subject-matter of the proceedings, the circumstances giving rise to urgency and the pleas of fact and law establishing a *prima facie* case for the interim measure applied for. It shall contain all the evidence and offers of evidence available to justify the grant of interim measures.

4. The application shall be made by a separate document and in accordance with the provisions of Articles 76 to 78.

This article reproduces, in essence, the text of Article 104 of the Rules of Procedure in force which it nevertheless supplements in two respects.

First, it states that an application for an interim measure other than suspension of operation of the contested measure may be made only by a main party (see paragraph 2).

Secondly, it codifies the case-law of the President of the General Court (order of 23 January 2009 in Case T-352/08 R Pannon Hőerőmű *v* Commission*, not published in the ECR), in accordance with which the application for interim measures must contain all the evidence and offers of evidence available to justify the grant of the measure sought.*

Otherwise, the article simply states that applications for interim measures must specify the subject-matter of the proceedings, the circumstances giving rise to urgency and the pleas of fact and law

establishing a prima facie *case for the interim measure sought and, moreover, must be made by a separate document and satisfy the formal requirements laid down in Articles 76 to 78 of the draft.*

Article 157
Procedure

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

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

3. The President of the General Court shall prescribe, where appropriate, measures of organisation of procedure and measures of inquiry.

4. In the event that the President of the General Court is prevented from acting, Articles 11 and 12 shall apply.

The procedure to be followed in examining a case in which interim measures are sought is not altered as against the procedure laid down by Article 105 of the existing Rules of Procedure. It is simply made clear in paragraph 3 of the present article that the President of the General Court may adopt measures of organisation of procedure and measures of inquiry and, in paragraph 4, that if the President of the General Court is prevented from acting, the Vice-President of the General Court is to take his place and, if both the President and Vice-President of the General Court are simultaneously prevented from acting, one of the Presidents of Chambers or one of the other Judges, according to the order laid down in Article 8, is to take their place.

Article 158
Decision on the application

1. The decision on the application shall take the form of a reasoned order. The order shall be served on the parties forthwith.

2. The execution of the order may be made conditional on the lodging by the applicant of security, of an amount and nature to be fixed in the light of the circumstances.

3. Unless the order fixes the date on which the interim measure is to lapse, the measure shall lapse upon delivery of the final judgment.

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

5. In the order closing the proceedings for interim relief, costs shall be reserved until the decision of the General Court on the substance of the case. However, if it appears justified in the light of the circumstances of the case, a decision as to the costs relating to the proceedings for interim relief shall be given in the order, pursuant to Articles 134 to 138.

Paragraphs 1 to 4 of Article 158 essentially reproduce the four paragraphs of Article 107 of the Rules of Procedure in force.

Paragraph 5, on the other hand, contains a new rule in relation to costs. The principle that the order closing the interim procedure is to reserve the costs until the decision closing the proceedings on the substance of the case is confirmed, which, moreover, is consistent with Article 133 of the present draft. It follows, on the one hand, that the costs are to be reserved in the interim order and, on the other, that it is for the Judge ruling on the substance of the case to rule on all the costs relating to the entire proceedings.

However, there may be special circumstances justifying a decision as to costs being given in the order determining the application for interim measures. That is necessarily the case if no action on the substance has been brought. But it is also the case where the case in which an interim measure is sought has been removed from the register even before the application for interim measures and notice of its discontinuance have been served on the defendant (order of the President of the General Court of 15 July 2008 in Case T-254/00 R Hotel Cipriani *v* Commission*, not published in the ECR), where the applicant discontinues his interlocutory action even before the main action has been served on the defendant (order of the President of the General Court of 17 November 2006 in Case T-283/06 R* Dairo Air Services *v* Commission*, not published in the ECR) or where the Judge before whom the main proceedings have been brought is not in a position to rule on the costs relating to the ancillary procedure either because the proceedings for interim relief had not been closed at the time of his ruling (in that case, it is the Judge hearing the application for interim measures who must give a ruling on costs in the order declaring that there is no longer any need to adjudicate on the application for interim measures: orders of the President of the General Court of 15 January 2004 in Case T-393/03 R* Valenergol *v* Council*, not published in the ECR, and of 30 March 2007 in Case T-366/00 R* Scott *v* Commission*, not published in the ECR), or because the application for interim relief was introduced at a time when the main proceedings were already being deliberated upon (order of the President of the General Court of 24 March 2004 in Case T-246/01 R* GrafTech International *v* Commission*, not published in the ECR).*

Article 159
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.

Article 108 of the Rules of Procedure in force has been reproduced without amendment.

Article 160
New application

Refusal of an application for an interim measure shall not bar the main party who made it from making a further application on the basis of new facts.

Article 109 of the Rules of Procedure in force has in essence been reproduced, albeit amended to clarify that only the main party whose application for an interim measure has been refused may make a further application on the basis of new facts.

Article 161

Applications pursuant to Articles 280 TFEU, 299 TFEU and 164 TEAEC

1. The provisions of this Section shall apply to applications to suspend the enforcement of a decision of the General Court or of any measure adopted by the Council, the European Commission or the European Central Bank, submitted pursuant to Articles 280 TFEU, 299 TFEU or 164 TEAEC.

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

The present article reproduces the terms of Article 110 of the existing Rules of Procedure, but clarifies it by expressly mentioning the three institutions referred to in Article 299 TFEU.

These amendments are based on Article 165 of the Rules of Procedure of the Court of Justice.

Chapter 17
APPLICATIONS RELATING TO JUDGMENTS AND ORDERS

This chapter brings together all the applications that may be made after a case has been closed by the General Court. These applications may be made to seek the rectification, interpretation or revision of a decision of the General Court, or to have a failure of the General Court to adjudicate remedied, a judgment by default set aside, or third-party proceedings initiated in respect of a decision of the General Court. Also covered are applications for the General Court to determine disputes concerning the costs to be recovered.

The articles in the present chapter are as similar as possible in terms of their structure, so that the text as a whole is easier to read.

Article 162
Assignment of the application

1. The applications referred to in this Chapter shall be assigned to the formation of the Court which delivered the decision to which the application relates.

2. If the quorum referred to in Articles 23 and 24 can no longer be attained, the application shall be assigned to another formation of the Court sitting with the same number of Judges. If the decision was delivered by a Judge ruling as a single Judge who is prevented from acting, the application shall be assigned to another Judge.

Since such applications generally follow on directly from an existing decision, it seems appropriate, in the interests of procedural economy, to provide in a single article for them to be assigned to the same formation of the Court as that which adopted the decision in question (see, in that regard, Articles 124, 127 and 129(2) of the Rules of Procedure in force). It should also be observed that, unlike the existing articles, the present article refers to the formation which delivered the decision and not the Chamber, in order to make clear that it is the composition of the Chamber that is being referred to.

Owing to the time-limits within which applications covered by this chapter may be made, it seemed appropriate to lay down the procedure to be followed if the quorum of the formation of the Court can no longer be attained. The text of paragraph 2 corresponds in part to that of Article 153 of the Rules of Procedure of the Court of Justice, subject to adjustments relating to the functioning of the General Court.

Article 163
Stay of proceedings

Where an appeal before the Court of Justice and one of the applications referred to in this Chapter, with the exception of the applications referred to in Articles 164 and 165, concern the same decision of the General Court, the President, after hearing the parties, may decide to stay the proceedings until the Court of Justice has delivered its ruling on the appeal.

It seems appropriate for this provision, which appears in the text of the provisions of the Rules of Procedure in force relating to certain procedures (third-party proceedings (Article 123(4)), revision (Article 128), interpretation (Article 129(4)), to be raised to the level of a general provision applicable to all the procedures covered by this chapter, save for those concerning rectification and a failure to adjudicate. That approach avoids repetition.

The provision is part of a general proposal to transfer certain powers from the General Court to the Presidents of Chambers.

Article 164
Rectification of judgments and orders

1. Without prejudice to the provisions relating to the interpretation of judgments and orders, the General Court may, of its own motion or on application by a party, rectify clerical mistakes, errors in calculation and obvious inaccuracies.

2. The application for rectification shall be made within two weeks after delivery of the judgment or service of the order.

3. Where the rectification concerns the operative part or one of the grounds constituting the necessary support for the operative part, the parties may submit written observations within the time-limit prescribed by the President.

4. The General Court shall give its decision by way of an order.

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

The present article reproduces, in essence, the terms of Article 84 of the existing Rules of Procedure, subject to the added detail that rectification can relate not only to a judgment of the General Court but also to one of its orders, and additional clarification regarding the form of the General Court's decision. Furthermore, the procedure prior to rectification itself is simplified. In so far as applications for rectification often relate to the details of a decision, such as the omission of the name of a party's representative, or an incorrect figure or date, it does seem excessive to consult the parties automatically before proceeding with rectification. For that reason, the draft provides that the parties are not to be invited to submit observations on an error or inaccuracy that has been identified unless the application for rectification concerns the operative part or one of the grounds constituting the necessary support for it.

This proposal is based on the text of Article 154 of the Rules of Procedure of the Court of Justice.

One application for rectification was made in 2012 (two in 2011 and two in 2010).

Article 165
Failure to adjudicate

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

2. The application shall be made within one month after delivery of the judgment or service of the order.

3. The application shall be served on the other parties, who may submit written observations within the time-limit prescribed by the President.

4. After giving the parties an opportunity to submit their observations, the General Court shall decide, by way of an order, both on the admissibility and on the substance of the application.

This article corresponds, in essence, to Article 85 of the existing Rules of Procedure, subject to certain additional details. In particular, [terminological explanation not relevant to the English version] the text of paragraph 2 covers cases in which the decision in question is an order, paragraph 3 provides that the parties are to be invited to submit their observations on the application and paragraph 4 specifies the form that the General Court's decision is to take.

No applications for a declaration of a failure to adjudicate were made to the General Court in the period from 2002 to 2012.

Article 166
Application to set aside a judgment by default

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

2. The application to set aside the judgment must be made by the defendant in default within one month from the date of service of the judgment given by default. It must be submitted in the form prescribed by Articles 76 to 78.

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

4. The proceedings shall be conducted in accordance with the provisions of Title III or, where applicable, Title IV.

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

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

Subject to the reference to the relevant article of the Statute and the necessary adjustments arising from the renumbering of articles in the draft, the present article essentially reproduces the terms of Article 122(4) to (6) of the existing Rules of Procedure. Three aspects merit particular attention, however.

In the first place, the article contains a reference to Article 41 of the Statute, which lays down the time-limit of one month within which an application may be made to set aside a judgment by default.

In the second place, paragraph 2 specifies that the application may be made only by the defendant in default.

In the third place, the text of paragraph 4 supplements the existing text by referring to the provisions applicable, respectively, to direct actions and to actions brought in the field of intellectual property.

Five applications to set aside judgments by default were made to the General Court in the period from 2002 to 2012.

Article 167
Third-party proceedings

1. The provisions of Articles 76 to 78 shall apply to an application initiating third-party proceedings made pursuant to Article 42 of the Statute. In addition such an application shall:

   (a) specify the judgment or order contested;

   (b) state how the contested judgment or order 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 case before the General Court.

2. The application initiating third-party proceedings must be submitted within two months of the publication referred to in Article 122.

3. The General Court may, on application by the third party, order a stay of execution of the contested judgment or order. The provisions of Articles 156 to 161 shall apply.

4. The application shall be served on the parties, who may submit written observations within the time-limit prescribed by the President.

5. After giving the parties an opportunity to submit their observations, the General Court shall decide on the application.

6. The contested judgment or order shall be varied on the points on which the submissions of the third party are upheld.

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

Like the preceding article, Article 167 of the draft, relating to third-party proceedings, reproduces in essence the corresponding article of the existing Rules of Procedure (in this instance,

Article 123), subject to a reference to the relevant article of the Statute and terminological adjustments or the necessary adjustments arising from the renumbering of articles in the draft.

The new wording also takes account of the possibility of an application initiating third-party proceedings being made in respect of an order, as provided for in Article 157 of the Rules of Procedure of the Court of Justice.

Lastly, the article lays down the time-limit — maintained at two months — within which third-party proceedings must be initiated and provides for the parties to be consulted. It does not however prescribe the form that the General Court's decision is to take, the term 'decision' chosen in paragraph 7 enabling the General Court to opt for a judgment or order depending on whether third-party proceedings have been initiated in respect of a judgment or order, respectively.

In terms of statistics, two applications initiating third-party proceedings have been lodged with the General Court in the last decade.

Article 168
Interpretation of judgments and orders

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

2. An application for interpretation must be submitted within two years after the date of delivery of the judgment or service of the order.

3. An application for interpretation shall be submitted in the form prescribed by Articles 76 to 78. In addition it shall specify:

   (a) the judgment or order in question;

   (b) the passages of which interpretation is sought.

4. The application for interpretation shall be served on the other parties, who may submit written observations within the time-limit prescribed by the President.

5. After giving the parties an opportunity to submit their observations, the General Court shall decide on the application.

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

Article 168 reproduces, in essence, the terms of Article 129 of the existing Rules of Procedure, but supplements it with a reference to the relevant article of the Statute. Like Article 158 of the Rules of Procedure of the Court of Justice, this article provides that the application for interpretation may relate to a judgment or an order.

In order to prevent its decisions being open to challenge indefinitely, the General Court considers it desirable, in the interests of legal certainty, to place the same time-limit on the possibility for a party or an institution of the Union to make an application for interpretation as that laid down in Article 158(2) of the Rules of Procedure of the Court of Justice. Consequently, paragraph 2 of the present article provides that an application for interpretation must be made within two years after the date of delivery of the judgment or service of the order.

Lastly, the article provides for the parties to be consulted but does not prescribe the form that the General Court's decision is to take, the term 'decision' chosen in paragraph 6 enabling the General Court to opt for a judgment or order depending on whether the application for interpretation has been made in relation to a judgment or order respectively.

In the period from 2002 to 2012, three applications for interpretation were submitted to the General Court.

Article 169
Revision

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

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

3. Articles 76 to 78 shall apply to an application for revision. In addition the application shall:

   (a) specify the judgment or order contested;

   (b) indicate the points on which the judgment or order is contested;

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

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

4. The application for revision shall be served on the other parties, who may submit written observations within the time-limit prescribed by the President.

5. After giving the parties an opportunity to submit their observations, the General Court shall, without prejudice to its decision on the substance, give its decision on the admissibility of the application by way of an order.

6. If the General Court declares the application admissible, it shall give its decision on the substance of the case, in accordance with the provisions of these Rules.

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

Article 169 reproduces, in essence, the terms of Articles 125 to 127 of the existing Rules of Procedure, but supplements them with a reference to the relevant provisions of Article 44 of the Statute and, in particular, by recalling the circumstances which may give rise to an application for revision and the time-limit — unchanged — within which such an application may be made.

The amendments to the existing text are based on Article 159 of the Rules of Procedure of the Court of Justice.

Lastly, the article provides for the parties to be consulted but does not prescribe the form that the General Court's decision is to take, the term 'decision' chosen in paragraph 7 enabling the General Court to opt for a judgment or order depending on whether the application for revision has been made in respect of a judgment or order, respectively.

In the period from 2002 to 2012, eight applications for revision were lodged with the General Court.

Article 170
Dispute concerning the costs to be recovered

1. If there is a dispute concerning the costs to be recovered, the party concerned may apply to the General Court to determine the dispute. The application shall be submitted in the form prescribed in Articles 76 to 78.

2. The application shall be served on the party concerned by the application, who may submit written observations within the time-limit prescribed by the President.

3. After giving the party concerned by the application an opportunity to submit his observations, the General Court shall give its decision by way of an order from which no appeal shall lie.

4. The parties may, for the purposes of enforcement, request an authenticated copy of the order.

This article reproduces, in essence, the text of Article 92 of the Rules of Procedure in force. It provides for the parties to be consulted and lays down the form which the General Court's decision is to take.

The number of applications for taxation of costs exceeds that of the other applications covered by this chapter. In the period from 2002 to 2012, 191 applications were made to the General Court.

TITLE IV
PROCEEDINGS RELATING TO INTELLECTUAL PROPERTY RIGHTS

Proceedings relating to intellectual property rights (trade marks and designs and plant variety rights) have particular features that justify their being distinguished from direct actions brought in any other area. The intellectual property cases brought before the General Court constitute, within the General Court, a massive body of litigation in a specific area of law.

The number of intellectual property cases brought before the General Court and the number of cases disposed of have increased considerably in the last 10 years. The number of new cases rose from 83 in 2002 to 238 in 2012. The number of cases disposed of has also increased, from 29 in 2002 to 210 in 2012. In relative terms, intellectual property cases represented, in 2002, 20.2% of cases brought, 8.7% of cases disposed of and 12% of pending cases. According to the figures for 2012, they represented 38.6% of cases brought and 30.5% of cases disposed of, and the proportion of pending cases in that type of action is 31.4% (as at 31 December 2012). The very high number of new intellectual property cases is directly linked to the numbers of applications for registration and of decisions issued by the Boards of Appeal of OHIM, and is not diminishing (the number of applications for registration of Community trade marks rose from 47 158 in 2002 to 107 925 in 2012, and OHIM does not anticipate any reduction in applications for registration, as its 2011/2015 strategic plan shows). Since the number of disputes before the Boards of Appeal is not unrelated to the number of applications for registration, everything points to such proceedings remaining highly significant in the years to come. Since 2009, the number of new intellectual property cases brought each year has exceeded 200.

Intellectual property proceedings before the General Court are defined, specific and homogeneous.

The proceedings are clearly delimited in that they concern actions for annulment of decisions of the Boards of Appeal of OHIM and of CPVO (applying the definitions in Article 1 of the present draft, the term 'Office' is used to designate OHIM or CPVO, unless one of the two offices is expressly referred to).

*The proceedings are also specific, in so far as they comprise only two categories of case. In cases involving OHIM, the first category comprises '*ex parte*' cases, that is actions for annulment of OHIM decisions refusing registration of a sign as a Community trade mark because the sign does not satisfy the conditions laid down by Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1). The second category is that of '*inter partes*' cases, that is actions for annulment of OHIM decisions taken in the context of a dispute between two persons (natural or legal): (i) a person seeking registration of a mark and the person opposing it because he is the proprietor of an earlier mark that is identical or similar, or (ii) a person who is the proprietor of a Community trade mark and the person who is seeking a declaration of invalidity of that mark on the basis of one of the grounds of invalidity provided for by the regulation, or its revocation. In such cases, the General Court, seised of an action for annulment of the decision of the Board of Appeal of OHIM, has before it two private parties (the applicant and the other party to the proceedings before the Board of Appeal) and the defendant (OHIM). As explained in relation to Title II concerning languages, the '*inter partes*' cases are subject to special procedural rules requiring, in respect of each file, the language of the case applicable to be determined prior to the written procedure, on account of the involvement of the other party to the proceedings before the Board of Appeal.*

Lastly, such proceedings are homogeneous. 'Inter partes*' cases have relatively consistently represented more than three quarters of the cases brought (82% in 2012), and, for the main part, those cases concern decisions taken on the basis of Article 8(1)(b) of Regulation No 207/2009 (opposition procedure). In addition, it is clear that third parties (natural or legal persons, Member States and institutions) have no interest in intervening in that type of dispute, as, statistically, applications to intervene have been made on the basis of the general provisions of the Rules of Procedure on only two occasions.*

Taking those factors into account, it is logical that the procedure governing these cases should be dealt with in an entirely separate title in the present draft, immediately after the title concerning direct actions. The present title reproduces, and refines, the provisions of the existing Rules of Procedure, which are already relatively detailed. But it also includes a number of significant innovations in comparison with the existing text, in addition to those relating to the language regime contained in Title II of the present draft.

The characteristics of intellectual property proceedings and the ceaseless increase in the number of new cases have led the General Court to propose changes to certain rules to enable proceedings to be conducted more efficiently, and to endeavour to dispose of these cases within time-limits in keeping with commercial reality. It is clear that sometimes very significant economic interests are at stake in these proceedings, and that the prompt determination of disputes saves businesses' resources and helps to ensure that commercial strategies often of a global scale are not left in limbo.

In the light of those objectives the draft simplifies, clarifies and curtails the procedure.

In the first place, the General Court changes — with a view to making them clearer — the conditions under which the other party to the proceedings before the Board of Appeal of the Office acquires the status of intervener before the General Court. The reform of the Rules of Procedure that came into force on 1 September 2009 has been beneficial. That benefit can be further enhanced if the other party to the proceedings before the Board of Appeal acquires the status of intervener at a much earlier stage of the proceedings. Where the General Court contacts that party when the language of the case is being determined, the lodging of that party's observations can have a decisive influence on the further steps to be taken in the proceedings, particularly if the language of the case is changed as a result of his objection. It is therefore appropriate that he be accorded the status of intervener on the lodging of any procedural document and that he be treated as an intervener for the rest of the proceedings, provided, however, that he replies to the application by submitting his response. If he fails to do so, he loses his status as a party to the proceedings.

In the second place, the draft provides that a cross-claim must be lodged by a separate document. That obligation is designed to clarify the current position by making a formal distinction between the response and the cross-claim, and to make it easier — both in the parties' interest and that of the General Court — to understand the subsequent stages of the proceedings by avoiding any confusion between the second round of pleadings and the pleadings lodged in response to the cross-claim.

In the third place — again to encourage diligent case-handling — the draft lays down an obligation to submit any application for replacement of a party by a separate document.

In the fourth place, the written procedure is curtailed, since the second optional round of pleadings provided for by the Rules in force is removed. The possibility of requesting a hearing is maintained

by reference to the provisions of Title II, and the parties' right to be heard is therefore fully preserved.

Lastly, as indicated in the preceding paragraph, the present draft maintains the arrangements which came into force on 1 September 2008 determining the conditions under which a ruling may be given without an oral part of the procedure. It will be noted that, in most cases, the parties themselves do not request a hearing. By way of indication, in 2012, 44% of intellectual property cases were thus disposed of by way of a judgment without a hearing (54% in 2011, 48% in 2010 and 17% in 2009). Whether or not a hearing is held has an impact on the average duration of the proceedings in intellectual property cases disposed of by judgment, since this fluctuates around 26 months where the General Court adjudicates after hearing the parties' submissions, as against 18 months if no hearing has been arranged. The arrangements in force preserve the parties' rights and give the General Court the flexibility it needs in conducting proceedings. They must therefore be maintained.

Article 171
Scope

The provisions of this Title shall apply to actions brought against decisions of the Boards of Appeal of the Office, as referred to in Article 1, and concerning the application of the rules relating to an intellectual property regime.

This article reproduces in essence Article 130(1) of the existing Rules of Procedure, but simplifies the content by referring to the definition of the Office in Article 1 and by removing the reference to the provisions of the Rules applying 'subject to the special provisions of this Title'. As in the case of the system adopted under the new Rules of Procedure of the Court of Justice in relation to the appeal procedure, a provision referring to the other provisions of the applicable Rules appears at the end of this title.

In addition, a detail has been added to indicate at the outset that the administrative procedure must have been exhausted before an action can be initiated before the General Court. That part of the sentence essentially reproduces the content of Article 130(2) of the Rules of Procedure in force.

Chapter 1
THE PARTIES TO THE PROCEEDINGS

Article 172
Defendant

The application shall be made against the Office to which the Board of Appeal which adopted the contested decision belongs, as defendant.

This article is new, although its content already appears in Article 133(2) of the Rules of Procedure in force. In the interests of clarity, the article specifies the Office's status as defendant at the very beginning of the chapter.

Article 173
Status before the General Court of the other parties to the proceedings before the Board of Appeal

1. A party to the proceedings before the Board of Appeal other than the applicant may participate, as intervener, in the proceedings before the General Court by responding to the application in the manner and within the time-limit prescribed.

2. Before the expiry of the time-limit prescribed for the lodging of a response, a party to the proceedings before the Board of Appeal other than the applicant shall become a party to the proceedings before the General Court, as intervener, on lodging a procedural document. He shall lose the status of intervener before the General Court if he fails to respond to the application in the manner and within the time-limit prescribed. In that case, the intervener shall bear his own costs in relation to the procedural documents lodged by him.

3. The intervener referred to in paragraphs 1 and 2 shall have the same procedural rights as the main parties. He may support the form of order sought by a main party and may apply for a form of order and put forward pleas in law independently of those applied for and put forward by the main parties.

4. A party to the proceedings before the Board of Appeal other than the applicant, who becomes a party before the General Court in accordance with paragraphs 1 and 2, shall be represented in accordance with the provisions of Article 19 of the Statute.

5. Article 77 and Article 78(3) to (5) shall apply to the procedural document referred to in paragraph 2.

6. By way of derogation from Article 123, the default procedure shall not apply where an intervener, as referred to in paragraphs 1 and 2, has responded to the application in the manner and within the time-limit prescribed.

Under the current regime, the other party to the proceedings before the Board of Appeal of the Office acquires the status of intervener when he lodges a response. That rule is a product of the reform of the Rules of Procedure that came into force in 2009 (OJ 2009 L 184, p. 10).

Originally, the legislature considered that that other party to the proceedings before the Board of Appeal had to be accorded the status in law of a party to the proceedings before the General Court. Since that party could not be treated in the same way as a defendant, the legislature accorded him rights and procedural options substantially similar to those conferred on a defendant: the right to submit a response, to raise pleas in law of his own and even to seek annulment or alteration of the contested decision on points differing from those invoked by the applicant. In addition, the legislature also provided that if the defendant failed to respond to the application in the manner and within the time-limit prescribed, the default procedure would not apply where an intervener had lodged his response.

In 2009, the General Court decided to review the status of intervener ex lege *conferred on the other party to the proceedings before the Board of Appeal so as to enable Article 135a of the Rules of Procedure (a provision under which the General Court could rule without an oral part of the procedure) to by fully effective. According to Article 134(1) of the Rules of Procedure in force, the status of intervener is acquired only when the other party to the proceedings before the Board of Appeal submits a response to the application in the manner and within the period prescribed. The lodging of that pleading, or of a plea of inadmissibility, has therefore become a prerequisite for acquiring the status of intervener.*

The regime in force does not, however, determine the status of that 'other party' before the expiry of the time-limit for lodging a response, a legal lacuna which should be closed in order to provide a solution to the problems that are regularly encountered when that other party to the proceedings before the Board of Appeal, who has not yet acquired the status of party to the proceedings, submits observations on the language of the case or on a discontinuance or lodges an application for a declaration that there is no need to adjudicate. Further, the existing provisions do not entirely satisfactorily determine the question of the role during judicial proceedings of the other party to the proceedings before the Board of Appeal prior to the expiry of the time-limit for lodging a response, particularly as regards the possibility of applying for costs occasioned by instructing a lawyer and submitting observations on the language of the case against an applicant who discontinues a case (see, in that regard, order of the General Court of 11 August 2010 in Case T-49/10 Footwear *v* OHIM — Reno Schuhcentrum (swiss cross FOOTWEAR)*, by which the General Court ordered the applicant to pay the costs of the other party to the proceedings before the Board of Appeal, despite having found that that other party 'did not formally have the status of intervener' (paragraph 7)). Another example encountered in practice is that of a request for a stay of proceedings submitted by the applicant before the time-limit for lodging the response has expired. If the other party to the proceedings before the Board of Appeal has been successful before the Office and is the party that (first) filed the application for registration of the trade mark, the validity of his mark will be in doubt for so long as the case before the General Court has not been disposed of. It would be difficult, therefore, to justify not hearing that party in respect of a stay of the proceedings before the General Court when the consequences for his commercial activity might be very significant.*

In the light of what actually happens in these situations, which the legislation does not address, it is proposed to alter the regime adopted in 2009 and to confer on the other party to the proceedings before the Board of Appeal the status of intervener at an earlier stage of the litigation. It is also proposed that that status be acquired by the lodging of any procedural document, provided, however, that that other party to the proceedings before the Board of Appeal is properly represented for that purpose. Observations on a stay, on discontinuance or on an application for a

declaration that there is no need to adjudicate will therefore be submitted by that party as an intervener before the General Court. As a corollary of that development, the question of costs incurred by that intervener, which arises in the event of removal of a case from the register, or of a declaration that there is no need to adjudicate, before the response is lodged, is also clarified.

Draft Article 173 imposes a condition, however, to which that party's retention of the status of intervener before the General Court is subject. He must lodge a response in order to limit the difficulties, in terms of the proper conduct of proceedings, represented by the involvement of a party who enjoys the same procedural rights as those of the defendant but who takes no part in the exchange of arguments. In short, it is proposed that the provisional status of intervener acquired by the lodging of any document at the beginning of the procedure become definitive when the response is lodged.

Since that other party to the proceedings before the Board of Appeal of the Office is not obliged to lodge observations before the expiry of the time-limit for lodging a response, it is always open to him to become an intervener before the General Court by simply lodging a response.

Article 174
Replacement of a party

Where a party to proceedings before the Board of Appeal of the Office transfers the intellectual property right affected by the proceedings, the successor to that right may apply to replace the original party in the proceedings before the General Court.

The replacement of a party by a successor in title in the course of proceedings is a procedure which has been affirmed exclusively in judge-made law. Since the case-law is well established (by way of example, decisions on replacement have been made by order in Case T-310/04 Ferrero Deutschland *v* OHIM — Cornu (FERRO)*, and in Case T-369/10* You-Q *v* OHIM — Apple Corps (BEATLE)*), it is proposed that that possibility be enshrined in the Rules of Procedure by the insertion of a new article the wording of which is based on the first order for replacement made by the General Court on 5 March 2004 in Case T-94/02* Boss *v* OHIM — Delta Biomichania Pagatou (BOSS) *[2004] ECR II-813).*

Article 175

Application for replacement of a party

1. An application for replacement shall be made by a separate document.

2. The application shall contain:

   (a) a description of the case;

   (b) a description of the parties to the case and of the party whom the applicant for replacement proposes to replace;

   (c) the name and address of the applicant for replacement;

   (d) particulars of the status and address of the representative of the applicant for replacement;

   (e) a statement of the circumstances justifying replacement.

3. The applicant for replacement shall be represented in accordance with the provisions of Article 19 of the Statute.

4. Article 77, Article 78(3) to (5) and Article 139 shall apply to the application for replacement.

In the interests of clarity, the present article sets out the formal requirements for lodging an application for replacement, which must be submitted by a separate document (paragraph 1) by an applicant who is represented in accordance with the provisions of Article 19 of the Statute (paragraph 3) and which must comply with certain formal requirements laid down in Title III of the draft, as well as the content of that application.

It should be pointed out that no time-limit is prescribed for submission of an application for replacement. The transfer of the intellectual property right affected by the proceedings can occur at any stage of the procedure and the new proprietor retains his interest in replacement until the decision closing the proceedings, if only for the purpose of being entitled to appeal that decision before the Court of Justice. Further, replacement does not delay the proceedings, in so far as the new party is bound by the procedural documents produced by his predecessor, as Article 176(5) of the present draft provides.

Article 176

Decision on the application for replacement of a party

1. The application for replacement shall be served on the parties.

2. The President shall give the parties an opportunity to submit their written or oral observations on the application for replacement.

3. The President shall decide on the application for replacement by way of a reasoned order.

4. If the application for replacement is refused, the order shall include a decision as to the costs relating to that application, including the costs of the applicant for replacement, pursuant to the provisions of Articles 134 and 135.

5. If the application for replacement is granted, the successor to the party who is replaced must accept the case as he finds it at the time of that replacement. He shall be bound by the procedural documents lodged by the party whom he replaces.

Article 176 upholds judicial practice by setting out the elements considered essential by the General Court, in relation to the relevant procedure, the power of the President to give a decision, the form of the decision (reasoned order) and the consequences of replacement so far as the successor in title to the original party is concerned.

Chapter 2
THE APPLICATION AND RESPONSES

Article 177
Application

1. An application shall contain:

   (a) the name and address of the applicant;

   (b) particulars of the status and address of the applicant's representative;

   (c) the name of the Office against which the action is brought;

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

   (e) the form of order sought by the applicant.

2. Where the applicant was not the only party to the proceedings before the Board of Appeal of the Office, the application shall also contain the names of all the parties to those proceedings and the addresses which they had given for the purposes of notifications.

3. The contested decision of the Board of Appeal shall be appended to the application. The date on which the applicant was notified of that decision must be indicated.

4. An application made by a legal person governed by private law shall be accompanied by recent proof of that person's existence in law (extract from the register of companies, firms or associations or any other official document).

5. The application shall be accompanied by the documents referred to in Article 51(2) and (3).

6. Article 77 shall apply.

7. If an application does not comply with paragraphs 2 to 5, the Registrar shall prescribe a reasonable time-limit within which the applicant is to put the application in order. If the applicant fails to put the application in order within the time-limit prescribed, the General Court shall decide whether the non-compliance with that procedural requirement renders the application formally inadmissible.

In the interests of easier reading and internal consistency, the present draft includes a provision describing the content of the application in each of the titles relating to direct actions, intellectual property cases and appeals. That technique, which has been adopted in order to make the Rules easier to understand, means that, where at all possible, there is no need to resort to a general reference to the relevant provisions of Title III.

Article 177 reproduces in essence the text of Article 132 of the Rules of Procedure in force while supplementing it as necessary, in particular by adding in paragraph 6 a cross-reference to

Article 77 of the draft, and, in paragraph 7, wording based on Article 44(6) of the existing Rules of Procedure.

Article 178
Service of the application

1. The Registrar shall inform the defendant and all the parties to the proceedings before the Board of Appeal of the lodging of the application as provided for in Article 80(1). He shall arrange for service of the application after determining the language of the case in accordance with Article 45(4) and, where appropriate, for service of the translation of the application into the language of the case.

2. The application shall be served on the defendant in the form of a certified copy sent by registered post with a form for acknowledgement of receipt or by personal delivery of the copy against a receipt. Where the defendant has previously agreed to applications being served on him by the method referred to in Article 57(4) or by telefax, service of the application may be effected accordingly.

3. Service of the application on a party to the proceedings before the Board of Appeal shall be effected by the method to which that party agreed when lodging the procedural document referred to in Article 173(2), and, if no such document was lodged, by registered post with a form for acknowledgement of receipt at the address given by the party concerned for the purposes of the notifications to be effected in the course of the proceedings before the Board of Appeal.

4. In cases where Article 177(7) applies, service shall be effected as soon as the application has been put in order or the General Court has declared it admissible notwithstanding the failure to observe the requirements set out in that Article.

5. Once the application has been served, the defendant shall forward to the General Court the file relating to the proceedings before the Board of Appeal.

This article corresponds in essence to Article 133 of the existing Rules of Procedure. The text has, however, been adapted to take account of the new provisions relating to methods of service and, in the interests of consistency, has been largely aligned with the corresponding article in Title III (Article 80).

Thus, a reference to the method of service of the application has been added to paragraphs 1 and 2. As regards paragraph 2, where the defendant has agreed to receive procedural documents by fax or by e-Curia, as it is OHIM's practice to do, the chosen method of transmission is used by the General Court.

Paragraph 3 reproduces the text of the second subparagraph of Article 133(2) of the existing Rules, with the addition of a reference to the method of service to which the other party to the proceedings before the Board of Appeal of the Office may have agreed when lodging a procedural document at an early stage of the judicial proceedings, such as observations on the language of the case.

Paragraph 4 is a new provision which has been added for the purpose of consistency with the text in Article 80(2) of the present draft.

Article 179
Parties authorised to lodge a response

The defendant and the parties to the proceedings before the Board of Appeal other than the applicant shall submit their responses to the application within a time-limit of two months from the service of the application. That time-limit may, in exceptional circumstances, be extended by the President at the reasoned request of the party concerned.

This article reproduces in essence the text of Article 135(1) of the existing Rules.

On account of the principle of formal parallelism, the last sentence replicates the wording of Article 81(3) of the present draft.

By contrast, this article does not reproduce Article 135(2) of the existing Rules in relation to the second round of pleadings. The General Court considers that a second exchange of pleadings is not required in cases which have already been examined by several administrative bodies and, accordingly, a single exchange of written submissions is sufficient to ensure an effective defence. In any event, the possibility that a party might put forward a line of argument that would justify the observations of the other party or parties being obtained in accordance with the adversarial principle does not raise difficulties, as the General Court can always adopt measures of organisation of procedure and, moreover, organise a hearing to obtain the parties' observations, either on the initiative of a party or of its own motion.

The removal of the possibility of lodging a reply and rejoinder, which currently requires a reasoned application to be made on which the President of the Chamber must adjudicate, is a measure that is designed to simplify the conduct of the written part of the procedure and to reduce the length of time that that part of the procedure takes.

Article 180
Response

1. A response shall contain:

   (a) the name and address of the party lodging it;

   (b) particulars of the status and address of the party's representative;

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

   (d) the form of order sought by the party lodging it.

2. Article 177(4) to (7) shall apply to the response.

In the interests of improved legibility and internal consistency of the draft Rules, the content of the response is set out in this article.

Article 181

Close of the written part of the procedure

Without prejudice to the provisions of Chapter 3, the written part of the procedure shall be closed after the submission of the response of the defendant and, where applicable, of the intervener within the meaning of Article 173.

This new article is proposed in order to clarify the point in time at which the written part of the procedure is closed. That stage is important since, in accordance with Article 106(2), applicable to intellectual property proceedings by virtue of Article 191, the three-week time-limit for submitting a reasoned request for a hearing runs from the time when the parties are served with notification of the closing of the written part of the procedure.

Chapter 3
CROSS-CLAIMS

This new chapter contains rules to facilitate the identification and handling of any cross-claim that may be brought by the other party to the proceedings before the Board of Appeal of the Office. This approach is based on the provisions of the Rules of Procedure of the Court of Justice relating to appeals, which are, moreover, set out in Title VI of the present draft. The formal distinction between responses and cross-claims is crucial, as different procedural arrangements apply.

Article 182
Cross-claim

1. The parties to the proceedings before the Board of Appeal other than the applicant may submit a cross-claim within the same time-limit as that prescribed for the submission of a response.

2. A cross-claim must be submitted by a document separate from the response.

In paragraph 1, this article reproduces in essence the text of the first subparagraph of Article 134(3) of the Rules of Procedure in force.

However, as is apparent from paragraph 2, the article in question contains an innovation in making a distinction between the response and the cross-claim. To facilitate the handling of the cross-claim, it must be submitted by a separate document.

Article 183
Content of the cross-claim

A cross-claim shall contain:

(a) the name and address of the party lodging it;

(b) particulars of the status and address of the party's representative;

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

(d) the form of order sought.

As in the case of appeals in Article 203 of the present draft, the content of this pleading is set out.

Article 184
Form of order sought, pleas in law and arguments contained in the cross-claim

1. The cross-claim shall seek an order annulling or altering the decision of the Board of Appeal on a point not raised in the application.

2. The pleas in law and arguments relied on shall identify precisely the points in the grounds of the decision being challenged that are contested.

The present article clarifies the text of the first subparagraph of Article 134(3) of the existing Rules of Procedure. First, it points out that a cross-claim must necessarily seek annulment or alteration of the decision of the Board of Appeal and, secondly, emphasises the need to identify precisely the points in the Board of Appeal's decision that are contested.

Article 185
Response to the cross-claim

Where a cross-claim is lodged, the other parties may submit a pleading confined to responding to the form of order sought, the pleas in law and arguments relied on in the cross-claim, within two months of its being served on them. That time-limit may, in exceptional circumstances, be extended by the President at the reasoned request of the party concerned.

The wording of this provision, which is based on Article 205 of the present draft, clarifies Article 135(3) of the existing Rules of Procedure.

The proposed amendment to the last sentence is intended to bring the text into line with Article 179 of the present draft.

Article 186
Close of the written part of the procedure

When a cross-claim has been lodged, the written part of the procedure shall be closed after the submission of the last response to that cross-claim.

This new article is proposed in order to clarify the point in time at which the written part of the procedure is closed. Since it is the counterpart of Article 181 concerning the closing of the written part of the procedure when no cross-claim is lodged, reference is made to the additional explanatory notes set out below that provision.

Article 187

Relationship between the main action and the cross-claim

A cross-claim shall be deemed to be devoid of purpose:

(a) if the applicant discontinues the main action;

(b) if the main action is declared manifestly inadmissible.

The principle of this provision is contained in the second subparagraph of Article 134(3) of the Rules of Procedure of the General Court in force. The wording of this provision is based on Article 210 of the present draft.

Chapter 4
OTHER ASPECTS OF THE PROCEDURE

Article 188
Subject-matter of the proceedings before the General Court

The pleadings lodged by the parties in proceedings before the General Court may not change the subject-matter of the proceedings before the Board of Appeal.

This provision corresponds, in essence, to Article 135(4) of the Rules of Procedure in force.

Article 189
Length of written pleadings

1. The General Court shall set, in accordance with Article 224, the maximum length of written pleadings lodged pursuant to this Title.

2. Authorisation to exceed the maximum number of pages may be given by the President only in cases involving particularly complex legal or factual issues.

Since this provision replicates the wording of Article 75 of the present draft, which relates only to direct actions, reference is made to the explanatory notes set out below that article.

Article 190
Provisions relating to costs

1. Where an action against a decision of a Board of Appeal is successful, the General Court may order the defendant to bear only its own costs.

2. Costs necessarily incurred by the parties for the purposes of the proceedings before the Board of Appeal shall be regarded as recoverable costs.

This provision corresponds, in essence, to Article 136 of the Rules of Procedure in force, but no longer provides in paragraph 2 for the costs incurred for the purposes of the production of translations of pleadings into the language of the case to be regarded as recoverable costs. That amendment usefully supplements the proposal to amend the language regime in respect of intellectual property cases. In that regard, reference is made to Article 45(4) of the present draft, and to the explanatory notes below that provision.

Article 191
Other provisions applicable

Subject to the special provisions of this Title, the provisions of Title III shall apply to the proceedings referred to in this Title.

The provision facilitates reference to the general provisions of the Rules of Procedure where the specific provisions for handling intellectual property cases do not apply. This approach was preferred to that which would have required a separate full set of rules, because that would have necessitated repetition of most of the provisions in Title III.

TITLE V
APPEALS AGAINST DECISIONS OF THE CIVIL SERVICE TRIBUNAL

As regards the third — and final — significant category of cases brought before the General Court, namely appeals against decisions of the Civil Service Tribunal, the draft, for the most part, reproduces and enlarges on the provisions of Title V of the existing Rules of Procedure of the General Court (Articles 136a to 149), both in the interests of aligning them with the provisions of the Statute concerning the requirements of substance and of form laid down for appeals, and in order to clarify the true nature of that type of action and, in particular, the connection between an appeal and a cross-appeal. The proposed amendments are largely identical to those in Title V of the Rules of Procedure of the Court of Justice which came into force on 1 November 2012.

As regards the amendments made by the present draft to the system currently in place, it must be pointed out first of all, and above all, that the requirements relating to the submission of an appeal are more stringent. The draft states, both in relation to appeals and cross-appeals, that the form of order sought in the appeal must be to have set aside, in whole or in part, the decision of the Civil Service Tribunal as set out in the operative part of that decision. This clarification is designed to prevent appeals from being brought with the sole purpose of challenging a particular aspect of the Civil Service Tribunal's reasoning. If a party has been successful before the Civil Service Tribunal, he is not therefore permitted to bring an appeal against its decision, without prejudice, however, to the possibility for a party to challenge, in a cross-appeal, the Civil Service Tribunal's express or implied decision on the admissibility of the action brought before it.

Like the Court of Justice, the General Court states in Article 198 of the draft that a response may be lodged — within two months of service of the appeal, a time-limit which cannot be extended — by any party to the relevant case before the Civil Service Tribunal having an interest in the appeal being allowed or dismissed.

Wishing, lastly, not to prolong the procedure in appeals unnecessarily, and taking into account the particular nature of this type of case, the General Court reinforces in the draft the conditions that must be satisfied for an appeal and a response to be supplemented by a reply and a rejoinder. Lodgment of such pleadings is predicated on a reasoned application to lodge a reply having been submitted by the appellant within seven days of service of the response and, moreover, on the President of the Chamber, after consulting the Judge-Rapporteur, considering such a reply to be necessary. This would be the case, in particular, in order to allow the appellant to present his views on a plea of inadmissibility or on new matters raised in the response. As also provided for in Article 175(2) of the Rules of Procedure of the Court of Justice, the draft states, however, that where the President grants such an application, he may request the parties to limit the number of pages and the subject-matter of the reply and the rejoinder.

In addition to these points of clarification, the draft confirms that it is possible for a party to the proceedings before the Civil Service Tribunal to lodge a cross-appeal against the decision appealed against. Both in the interests of clarity and to facilitate the General Court's handling of that cross-appeal, the General Court makes it clear that a cross-appeal must be brought by a document separate from the response. The draft also takes account of the intrinsic nature of a 'cross-appeal' by providing that it becomes devoid of purpose if the appellant discontinues his appeal or if the appeal is declared manifestly inadmissible.

The rules for the oral part of the procedure have also been adjusted. The time-limit for requesting a hearing after service of notification of the closing of the written part of the procedure has been

reduced from one month (Article 146 of the Rules of Procedure in force) to three weeks. In addition, the General Court is not obliged to arrange a hearing if it considers that it has sufficient information available to it from the material in the file, even if a request for a hearing has been lodged.

The draft also allows for the possibility that the General Court may declare an appeal manifestly well founded by way of an order in which reference is made to the relevant case-law of the Court of Justice or of the General Court. This option is identical to that provided for by Article 182 of the Rules of Procedure of the Court of Justice.

Lastly, by the addition of a new article, the present Title settles an issue — currently left open — which, under Article 10(3) of Annex I to the Statute, is left to the rules of procedure.

As regards form, Title V comprises 10 chapters.

Article 192
Scope

The provisions of this Title shall apply to appeals against decisions of the Civil Service Tribunal as referred to in Articles 9 and 10 of Annex I to the Statute.

Chapter 1
THE APPEAL

Article 193
Lodging of the appeal

1. An appeal shall be brought by lodging an application at the Registry of the General Court or at the Registry of the Civil Service Tribunal.

2. The Registry of the Civil Service Tribunal shall immediately transmit to the Registry of the General Court the file in the case at first instance and, where necessary, the appeal.

Article 193 reproduces in essence the terms of Article 137 of the existing Rules of Procedure. It corresponds to Article 167 of the Rules of Procedure of the Court of Justice.

Article 194
Content of the appeal

1. An appeal shall contain:

   (a) the name and address of the appellant;

   (b) particulars of the status and address of the appellant's representative;

   (c) a reference to the decision of the Civil Service Tribunal appealed against;

   (d) the names of the other parties to the relevant case before the Civil Service Tribunal;

   (e) the pleas in law and legal arguments relied on, and a summary of those pleas in law;

   (f) the form of order sought by the appellant.

2. The appeal shall state the date on which the decision appealed against was served on the appellant.

3. An appeal brought by a legal person governed by private law shall be accompanied by recent proof of that person's existence in law (extract from the register of companies, firms or associations or any other official document).

4. The appeal shall be accompanied by the documents referred to in Article 51(2) and (3).

5. Article 77 shall apply.

6. If an appeal does not comply with paragraphs 2 to 4, the Registrar shall prescribe a reasonable time-limit within which the appellant is to put the appeal in order. If the appellant fails to put the appeal in order within the time-limit prescribed, the General Court shall decide whether the non-compliance with that procedural requirement renders the appeal formally inadmissible.

The present article reproduces, in essence, the terms of Article 138 of the existing Rules of Procedure, subject to adjustments linked to the renumbering of articles in the draft, and the addition in paragraph 1 of the present article of formal requirements concerning the reference to the decision to which the appeal relates, the status and address of the appellant's representative and the fact that the appeal must also contain a summary of the pleas in law relied on. That last requirement is designed specifically to enable the text of the notice relating to that new case to be drawn up quickly for publication in the Official Journal of the European Union*. The requirements in paragraph 2 have been simplified in comparison with the existing text; it is no longer necessary for the decision appealed against to be attached to the appeal.*

Lastly, to make the text easier to read, paragraph 6, which is based on Article 168(4) of the Rules of Procedure of the Court of Justice, essentially reproduces the content of Article 44(6) of the Rules of Procedure of the General Court in force.

Article 195

Form of order sought, pleas in law and arguments contained in the appeal

1. An appeal shall seek to have set aside, in whole or in part, the decision of the Civil Service Tribunal as set out in the operative part of that decision.

2. The pleas in law and legal arguments relied on shall identify precisely those points in the grounds of the decision of the Civil Service Tribunal that are contested.

The present article reproduces, in essence, the terms of Article 139(1)(a) of the existing Rules of Procedure, which it nevertheless supplements in two respects.

The draft draws attention, first of all, to the fact that the appellant is required, by his appeal, necessarily to seek the setting aside of the decision of the Civil Service Tribunal as set out in the operative part of that decision, which precludes the introduction of an appeal by a party who has been successful at first instance but who is dissatisfied with a particular aspect of the Civil Service Tribunal's reasoning.

Secondly, account is taken of the requirement, extensively developed in the case-law, that the appellant must, in his appeal, identify precisely those points in the judgment or order under appeal which are contested. The appellant cannot, therefore, merely challenge that decision in general terms, without stating the error or errors of law made by the Civil Service Tribunal.

The wording corresponds to that of Article 169 of the Rules of Procedure of the Court of Justice.

Article 196

Form of order sought in the event that the appeal is allowed

1. An appeal shall seek, in the event that it is declared well founded, the same form of order, in whole or in part, as that sought at first instance and shall not seek a different form of order. The subject-matter of the proceedings before the Civil Service Tribunal may not be changed in the appeal.

2. Where the appellant requests that the case be referred back to the Civil Service Tribunal in the event of the decision appealed against being set aside, he shall set out the reasons why the state of the proceedings does not permit a decision by the General Court.

Article 196 reproduces, in essence, the terms of Article 139(1)(b) and (2) of the existing Rules of Procedure. It carefully circumscribes the object and ultimate purpose of the appeal, which necessarily arises in the context of an existing case and cannot, in any circumstances, result in the subject-matter of the proceedings before the Civil Service Tribunal being expanded.

In the interests of procedural economy, the article also invites the appellant, in the event that the appeal is declared well founded, to state the reasons why the state of the proceedings does not permit a decision and why the dispute must, consequently, be referred back to the Civil Service Tribunal in accordance with Article 13(1) of Annex I to the Statute.

The wording corresponds to that of Article 170 of the Rules of Procedure of the Court of Justice.

Chapter 2
THE RESPONSE, THE REPLY AND THE REJOINDER

Article 197
Service of the appeal

1. The appeal shall be served on the other parties to the relevant case before the Civil Service Tribunal. Article 80(1) shall apply.

2. Where Article 194(6) applies, service shall be effected as soon as the appeal has been put in order or the General Court has declared it admissible notwithstanding the failure to observe the formal requirements laid down by that Article.

This article reproduces, in essence, the terms of Article 140 of the existing Rules of Procedure, subject to adjustments necessitated by the reorganisation of articles in the draft. The second sentence in paragraph 1 refers to Article 80(1) which, as a general provision of the Rules of Procedure relating to service of the application, takes into account the new rules on service.

Article 198
Parties authorised to lodge a response

Any party to the relevant case before the Civil Service Tribunal having an interest in the appeal being allowed or dismissed may submit a response within two months after service on him of the appeal. The time-limit for submitting a response shall not be extended.

The present article corresponds, in essence, to Article 141(1) of the existing Rules of Procedure. Its wording is identical to that of Article 172 of the Rules of Procedure of the Court of Justice.

Article 199
Content of the response

1. A response shall contain:

   (a) the name and address of the party submitting it;

   (b) particulars of the status and address of that party's representative;

   (c) the date on which the appeal was served on him;

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

   (e) the form of order sought.

2. Article 194(3) to (6) shall apply to responses.

Article 199 reproduces, in essence, the terms of Article 141(2) of the existing Rules of Procedure, subject, on the one hand, to the addition of a reference to the status and address of the party's representative in paragraph 1(b), a requirement of service which corresponds to that laid down in respect of direct actions, and, on the other, to adjustments resulting from the renumbering of articles in the draft.

Article 200
Form of order sought in the response

A response shall seek to have the appeal allowed or dismissed, in whole or in part.

Article 200 corresponds, in essence, to Article 142(1)(a) of the existing Rules of Procedure, which it reproduces only in part, however, owing to the distinction made in the present draft between the response and the cross-appeal, the object of which is distinct from that of the response and which must be made by a separate document. This provision is identical to Article 174 of the Rules of Procedure of the Court of Justice.

Article 201
Reply and rejoinder

1. The appeal and the response may be supplemented by a reply and a rejoinder only where the President, on a reasoned application submitted by the appellant within seven days of service of the response, considers it necessary, in particular to enable the appellant to present his views on a plea of inadmissibility or on new matters relied on in the response.

2. The President shall fix the date by which the reply is to be produced and, upon service of that pleading, the date by which the rejoinder is to be produced. He may limit the number of pages and the subject-matter of those pleadings.

Article 201 reproduces, in essence, the terms of Article 143(1) of the existing Rules of Procedure. As previously stated, the draft reinforces the conditions that must be satisfied for an appeal and a response to be supplemented by a reply and a rejoinder. Lodgment of such pleadings is predicated, inter alia, on a reasoned application to lodge a reply having been submitted by the appellant and, if the President grants the application, he may request that party to limit the number of pages and the subject-matter of his pleading. This provision is based on Article 175 of the Rules of Procedure of the Court of Justice. The only distinction in paragraph 1 is on a point of procedure relating to the existence of an express provision in the Rules of Procedure of the General Court under which the Judge-Rapporteur is always to be heard before a decision is taken by the President (see Article 19 of the present draft).

The second sentence in paragraph 2 supplements the provision in Article 212 of the present draft relating to the length of written pleadings in that, unlike the limits laid down for pleadings generally, the limit on the number of pages follows from the limitation of the subject-matter.

Chapter 3
THE CROSS-APPEAL

This chapter contains three articles in essence identical to Articles 176 to 178 of the Rules of Procedure of the Court of Justice.

Article 202
Cross-appeal

1. The parties referred to in Article 198 may submit a cross-appeal within the same time-limit as that prescribed for the submission of a response.

2. A cross-appeal must be introduced by a document separate from the response.

As previously stated, one of the innovations of the present title is the distinction drawn between the response and the cross-appeal. A party to the proceedings before the Civil Service Tribunal on whom an appeal is served thus retains the right, already laid down in Article 142(1) of the existing Rules of Procedure, to challenge the decision of the Civil Service Tribunal under appeal himself. However, in order to facilitate subsequent case-management, that challenge must be made by way of a separate document from that in which the party concerned responds to the pleas in law of the appeal. Brought by a separate document, a cross-appeal must be brought within the same two-month time-limit as the response, a time-limit which cannot be extended.

Article 203
Content of the cross-appeal

A cross-appeal shall contain:

(a) the name and address of the party bringing the cross-appeal;

(b) particulars of the status and address of that party's representative;

(c) the date on which the appeal was served on him;

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

(e) the form of order sought.

Article 203 is a new article. It specifies the content of the cross-appeal, drawing in that regard on the text of Articles 194 and 199, relating to the content of the appeal and the response. The additional reference to the particulars of the status and address of the party's representative at point (b) matches the requirement laid down for the service of documents, also laid down in respect of direct actions.

Article 204

Form of order sought, pleas in law and arguments contained in the cross-appeal

1. A cross-appeal shall seek to have set aside, in whole or in part, the decision of the Civil Service Tribunal.

2. It may also seek to have set aside an express or implied decision relating to the admissibility of the action before the Civil Service Tribunal.

3. The pleas in law and legal arguments relied on shall identify precisely those points in the grounds of the decision of the Civil Service Tribunal which are contested. The pleas in law and arguments must be separate from those relied on in the response.

Like Article 195 of the draft, relating to the form of order sought, pleas in law and arguments contained in the appeal, the present article states that the cross-appeal is necessarily required to seek to have set aside, in whole or in part, the decision of the Civil Service Tribunal. However, this article reserves the possibility for a party, by his cross-appeal, to challenge an express or implied decision of the Civil Service Tribunal relating to the admissibility of the action before it.

As for the remainder, the article confirms, in paragraph 3, the need to identify precisely those points in the judgment or order under appeal which are contested. According to well established case-law, it is essential that this requirement be observed if an appeal is to be admissible.

Chapter 4
PLEADINGS CONSEQUENT ON THE CROSS-APPEAL

This new chapter consists of two articles which are in essence identical to Articles 179 and 180 of the Rules of Procedure of the Court of Justice.

Article 205
Response to the cross-appeal

Where a cross-appeal is brought, the appellant or any other party to the relevant case before the Civil Service Tribunal having an interest in the cross-appeal being allowed or dismissed may submit a response, which must be limited to the pleas in law relied on in that cross-appeal, within two months after its being served on him. That time-limit shall not be extended.

Article 205 corresponds, mutatis mutandis*, to Article 198 of the draft, relating to the parties authorised to lodge a response. It confirms that, like any other party to the proceedings before the Civil Service Tribunal having an interest in the cross-appeal being allowed or dismissed, the appellant may lodge a response to the cross-appeal within the ordinary time-limit of two months from service of that cross-appeal.*

Article 206
Reply and rejoinder following a cross-appeal

1. The cross-appeal and the response thereto may be supplemented by a reply and a rejoinder only where the President, on a reasoned application submitted by the party who brought the cross-appeal within seven days of service of the response to the cross-appeal, considers it necessary, in particular to enable that party to present his views on a plea of inadmissibility or on new matters relied on in the response to the cross-appeal.

2. The President shall fix the date by which that reply is to be produced and, upon service of that pleading, the date by which the rejoinder is to be produced. He may limit the number of pages and the subject-matter of those pleadings.

This article corresponds, mutatis mutandis*, to Article 201 of the draft. It specifies, in the same terms, the circumstances in which a cross-appeal and the response thereto can, if appropriate, be supplemented by a reply and a rejoinder. This provision is based on Article 180 of the Rules of Procedure of the Court of Justice. The only distinction in paragraph 1 is on a point of procedure relating to the existence of an express provision in the Rules of Procedure of the General Court under which the Judge-Rapporteur is always to be heard before a decision is taken by the President (see Article 19 of the present draft).*

The second sentence in paragraph 2 supplements the provision in Article 212 of the present draft relating to the length of written pleadings in that, unlike the limits laid down for pleadings generally, the limit on the number of pages follows from the limitation of the subject-matter.

Chapter 5
THE ORAL PART OF THE PROCEDURE

Article 207
Oral part of the procedure

1. The parties to the appeal proceedings may request an opportunity to state their case in a hearing. Any such request must be reasoned and be submitted within three weeks after service on the parties of notification of the close of the written part of the procedure. That time-limit may be extended by the President.

2. On a proposal from the Judge-Rapporteur, the General Court may, if it considers that it has sufficient information available to it from the material in the file, decide to rule on the appeal without an oral part of the procedure. It may nevertheless later decide to open the oral part of the procedure.

There are two adjustments to the regime in respect of the oral part of the procedure, in comparison with Article 146 of the existing Rules of Procedure.

First, the time-limit for requesting a hearing after service of notification of the close of the written part of the procedure has been reduced from one month to three weeks in the interests of procedural consistency, that being the time-limit prescribed in Article 106 for direct actions.

Secondly, given the specific nature of the review carried out by the appellate court, the General Court is not obliged to arrange a hearing if it considers that it has sufficient information available to it from the material in the file, even if a request for a hearing has been lodged. This regime, which applies to the oral part of the procedure, differs therefore from the general regime laid down in Article 106 in respect of direct actions and applicable, pursuant to Article 191, to proceedings covered by Title IV, as permitted by the wording of the second sentence of Article 12(2) of Annex I to the Statute, according to which the General Court, having heard the parties, may dispense with the oral procedure '[i]n accordance with conditions laid down in the rules of procedure'.

Chapter 6
APPEALS DETERMINED BY ORDER

This new chapter consists of two articles in essence identical to Articles 181 and 182 of the Rules of Procedure of the Court of Justice.

Article 208
Manifestly inadmissible or manifestly unfounded appeal or cross-appeal

Where the appeal or cross-appeal is, in whole or in part, manifestly inadmissible or manifestly unfounded, the General Court may at any time, acting on a proposal from the Judge-Rapporteur, decide by reasoned order to dismiss that appeal or cross-appeal in whole or in part.

Subject to the distinction to be drawn from now on between the appeal and the cross-appeal, the present article reproduces, in essence, the terms of Article 145 of the existing Rules of Procedure. The removal of the reference to the Advocate General is accounted for by the reference to Article 208 in Article 31(3) of this draft.

Article 209
Manifestly well-founded appeal or cross-appeal

Where the Court of Justice or the General Court has already ruled on one or more questions of law identical to those raised by the pleas in law of the appeal or cross-appeal, and the General Court considers the appeal or cross-appeal to be manifestly well founded, it may, acting on a proposal from the Judge-Rapporteur and after hearing the parties, decide by reasoned order in which reference is made to the relevant case-law to declare the appeal or cross-appeal manifestly well founded.

As stated at the beginning of the present title, the rule contained in this article is new. Based on the rule contained in Article 182 of the Rules of Procedure of the Court of Justice, which has the same heading, it is designed to allow the General Court to provide a prompt solution to legal problems raised by the parties. Where the Court of Justice or the General Court has already ruled on one or more issues identical to those raised by the pleas in law of the appeal or cross-appeal and the General Court considers the appeal or cross-appeal to be manifestly well founded, it may therefore, in the interests of procedural economy, decide to give its decision by a reasoned order in which reference is made to the relevant case-law.

Chapter 7
EFFECT ON A CROSS-APPEAL OF THE REMOVAL OF THE APPEAL FROM THE REGISTER

Article 210
Effect on a cross-appeal of the discontinuance or manifest inadmissibility of the appeal

A cross-appeal shall be deemed to be devoid of purpose:

(a) if the appellant discontinues his appeal;

(b) if the appeal is declared manifestly inadmissible for non-compliance with the time-limit for lodging an appeal;

(c) if the appeal is declared manifestly inadmissible on the sole ground that it is not directed against a final decision of the Civil Service Tribunal or against a decision disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of jurisdiction or inadmissibility within the meaning of the first paragraph of Article 9 of Annex I to the Statute.

The present article reflects the 'subordinate' nature of cross-appeals. Since cross-appeals are brought only where an appeal has been brought by another party, removal of the appeal from the register or the inadmissibility of the appeal will also result in the cross-appeal becoming devoid of purpose. Save for the name of the first instance jurisdiction and the reference to the relevant provision of the Statute, this provision is identical to Article 183 of the Rules of Procedure of the Court of Justice.

Chapter 8
COSTS IN APPEALS

Article 211
Provisions relating to costs in appeals

1. Subject to the following provisions, Articles 133 to 141 shall apply, *mutatis mutandis*, to the procedure before the General Court on appeal from a decision of the Civil Service Tribunal.

2. Where the appeal is unfounded or where the appeal is well founded and the General Court itself gives final judgment in the case, the General Court shall make a decision as to costs.

3. In appeals brought by institutions, the institutions shall bear their own costs, without prejudice to Article 135(2).

4. By way of derogation from Article 134(1) and (2), the General Court may, in appeals brought by officials or other servants of an institution, decide to apportion the costs between the parties where equity so requires.

5. Where he has not brought the appeal, an intervener at first instance may not be ordered to pay costs in the appeal proceedings unless he participated in the written or oral part of the proceedings before the General Court. Where an intervener at first instance takes part in the proceedings, the General Court may decide that he shall bear his own costs.

The present article supplements Article 148 of the Rules of Procedure in force by making a general reference in paragraph 1 to the provisions of the present draft relating to the allocation and amount of costs in direct actions.

In paragraph 3, it maintains the general rule — albeit making its terms more explicit — whereby the institutions are to bear the costs which they incur when they bring an appeal against a decision of the Civil Service Tribunal, subject to those cases in which a party, even if successful, may be ordered to pay some or all of the costs if this appears justified by that party's conduct, especially if he has made the opposite party incur costs which the General Court holds to be unreasonable or vexatious (see Article 135(2) of the present draft).

Paragraph 5 of the present article is added for the purposes of clarifying the rules applicable to the costs to be borne by interveners at first instance. Under this paragraph, interveners at first instance can be ordered to pay costs only if they have brought the appeal themselves or participated in the written or oral part of the procedure before the General Court.

Chapter 9
OTHER PROVISIONS APPLICABLE TO APPEALS

Article 212
Length of written pleadings

1. The General Court shall set, in accordance with Article 224, the maximum length of written pleadings lodged pursuant to this Title.

2. Authorisation to exceed the maximum number of pages may be given by the President only in cases involving particularly complex issues.

Since this provision reproduces the wording of Article 75 of the present draft, which relates only to direct actions, reference is made to the explanatory notes below that article. However, in order to take account of the particular nature of the review carried out by the appellate court, which is inherently different from that carried out by the court adjudicating on the substance, the words 'legal or factual' do not appear in paragraph 2.

Article 213
Other provisions applicable to appeals

1. Articles 51 to 58, 60 to 74, 79, 84, 87, 89, 90, 107 to 122, 124, 125, 129, 131, 142 to 162, 164, 165 and 167 to 170 shall apply to the procedure before the General Court on appeal from a decision of the Civil Service Tribunal.

2. Decisions given pursuant to Article 256(2) TFEU shall be communicated to the Court of Justice and to the Civil Service Tribunal.

The present article reproduces the terms of Article 144 of the existing Rules of Procedure, while adding to it substantially and making adjustments as a result of the renumbering of articles in the draft.

It is based on Article 190 of the Rules of Procedure of the Court of Justice, but differs from that provision in referring expressly to the relevant articles of Title III relating to direct actions, since the present draft does not include a title containing common procedural provisions. Legal aid is referred to by means of that reference provision, as, unlike in the Rules of Procedure of the Court of Justice, that topic is covered in a specific chapter of Title III (see Articles 146 to 150 of the present draft).

Chapter 10
APPEALS AGAINST DECISIONS DISMISSING AN APPLICATION TO INTERVENE AND AGAINST DECISIONS ON INTERIM MEASURES

Article 214
Appeals against decisions dismissing an application to intervene and against decisions on interim measures

By way of derogation from the provisions of this Title, the President of the General Court shall adjudicate upon the appeals referred to in Article 10(1) and (2) of Annex I to the Statute in accordance with the procedure laid down in Article 157(1) and (3) and Article 158(1).

This new article is inserted to settle an issue which, under Article 10(3) of Annex I to the Statute, is left to the rules of procedure, unlike Article 57 of the Statute which provides, by means of a reference to Article 39 of the Statute, that the rules relating to proceedings for interim measures are to apply. The procedure applicable to these 'urgent' appeals is not currently governed by any provision. This, therefore, fills a legal vacuum.

TITLE VI
PROCEDURES AFTER A CASE IS REFERRED BACK TO THE GENERAL COURT

In the interests of making the draft easier to read, the present title contains the rules — currently divided between two chapters of Title III concerning special forms of procedure — that relate to procedures after a case is referred back to the General Court by the Court of Justice, either where the Court of Justice sets aside a judgment or order of the General Court on appeal and refers the case back to the General Court, or where the Court of Justice has reviewed a decision given by the General Court in an appeal and refers the case back to it for judgment.

Chapter 1
DECISIONS OF THE GENERAL COURT GIVEN AFTER ITS DECISION HAS BEEN SET ASIDE AND THE CASE REFERRED BACK TO IT

As it is conceivable that a case could be determined by the General Court by order after its decision has been set aside and the case referred back to it by the Court of Justice, the wording of the title incorporates the generic term 'decisions'.

Article 215
Setting aside and referral back by the Court of Justice

Where the Court of Justice sets aside a judgment or an order of the General Court and refers the case back to that Court, the latter shall be seised of the case by the decision so referring it.

This article reproduces the text of Article 117 of the existing Rules of Procedure. However, since Article 182 of the Rules of Procedure of the Court of Justice provides that the Court of Justice may declare an appeal or cross-appeal manifestly well founded by way of an order, it is necessary to replace the words 'judgment so referring it' with 'decision so referring it'. The wording is, moreover, consistent with that used in the second paragraph of Article 61 of the Statute.

Article 216
Assignment of the case

1. Where the Court of Justice sets aside a judgment or an order of a Chamber, the President of the General Court may assign the case to another Chamber sitting with the same number of Judges.

2. Where the Court of Justice sets aside a judgment delivered or an order made by the Grand Chamber of the General Court, the case shall be assigned to that Chamber.

3. Where the Court of Justice sets aside a judgment delivered or an order made by a single Judge, the President of the General Court shall assign the case to a Chamber sitting with three Judges of which that Judge is not a member.

This article reproduces, in essence, the text of Article 118 of the Rules of Procedure in force, subject to terminological adjustments and removal of the reference to the General Court sitting in plenary session, as that formation of the Court no longer exists in this draft.

Article 217
Conduct of the proceedings

1. Where the decision later set aside by the Court of Justice was made after the written procedure before the General Court on the substance of the case had been closed, the parties to the proceedings before the General Court may lodge their written observations on the conclusions to be drawn from the decision of the Court of Justice for the outcome of the proceedings within two months of the service on them of the decision of the Court of Justice. This time-limit may not be extended.

2. Where the decision later set aside by the Court of Justice was made when the written procedure before the General Court on the substance of the case had not yet been closed, it shall be resumed at the stage which it had reached.

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

Like Article 119 of the Rules of Procedure in force, the present article makes distinctions in the procedure to be followed after a decision has been set aside and the case referred back by the Court of Justice according to whether or not the proceedings before the General Court had been completed when the judgment or order against which an appeal is subsequently lodged was delivered or made. However, it alters the regime in force in order to reduce the duration of proceedings. It is proposed to apply the rule on submission of written pleadings that applies in cases of review and referral back which is quicker and more straightforward, since it provides for pleadings to be lodged simultaneously. The duration of the proceedings can thus be reduced, in theory, from four months (if an intervener is a party to the proceedings) to two.

The opportunity has been taken also to clarify the text in force by clarifying that the written procedure referred to in paragraphs 1 and 2 is the written procedure on the substance of the case. That point has been included to avoid confusion between the written procedure on the substance of the case and the written procedure on a preliminary issue. A written procedure that was closed only in respect of a preliminary issue at the time of an appeal against the General Court's decision — for example, where an appeal is brought against an order allowing a plea of inadmissibility — is not a written procedure that is closed with respect to the substance of the case.

Lastly, this provision gives the President the power to allow supplementary statements of written observations to be lodged where appropriate. Replacing the term 'General Court' with 'President' is part of a general proposal to transfer certain powers from the General Court to the Presidents of Chambers.

Article 218
Rules applicable to the procedure

The procedure shall be conducted in accordance with the provisions of Title III or, where applicable, Title IV.

This article corresponds to Article 120 of the Rules of Procedure in force, without prejudice to the change made to the reference provisions applicable, respectively, to direct actions and to actions brought in the field of intellectual property.

Article 219
Costs

The General Court shall decide on the costs relating to the proceedings instituted before it and to the proceedings on the appeal before the Court of Justice.

This article reproduces the text of Article 121 of the Rules of Procedure in force.

Chapter 2
DECISIONS OF THE GENERAL COURT GIVEN AFTER ITS DECISION HAS BEEN REVIEWED AND THE CASE REFERRED BACK TO IT

As it is conceivable that a case could be determined by the General Court by order, after its decision has been reviewed and the case referred back to it by the Court of Justice, the wording of the title incorporates the generic term 'decisions'.

Article 220
Review and referral back by the Court of Justice

Where the Court of Justice reviews a judgment or an order of the General Court and refers the case back to that Court, the latter shall be seised of the case by the judgment so referring it.

This article reproduces the text of Article 121a of the Rules of Procedure in force.

Article 221
Assignment of the case

1. Where the Court of Justice refers back to the General Court a case that was originally heard by a Chamber, the President of the General Court may assign the case to another Chamber sitting with the same number of Judges.

2. Where the Court of Justice refers back to the General Court a case that was originally heard by the Grand Chamber of the General Court, the case shall be assigned to that Chamber.

This article reproduces, in essence, the text of Article 121b of the Rules of Procedure in force, subject to terminological adjustments and removal of the reference to the General Court sitting in plenary session, as that formation of the Court no longer exists in this draft.

Article 222
Conduct of the proceedings

1. Within one month of the service of the judgment of the Court of Justice, the parties to the proceedings before the General Court may lodge their written observations on the conclusions to be drawn from that judgment for the outcome of the proceedings. This time-limit may not be extended.

2. The General Court may, by way of measures of organisation of procedure, invite the parties to the proceedings before it to lodge written submissions and may decide to hear the parties' submissions in a hearing.

This article reproduces the text of Article 121c of the Rules of Procedure in force, subject to a minor change to clarify the fact that the observations of the parties to the proceedings before the General Court must be in writing.

Article 223
Costs

The General Court shall decide on the costs relating to the proceedings instituted before it following the review of its decision by the Court of Justice.

This article reproduces Article 121d of the Rules of Procedure in force.

FINAL PROVISIONS

Article 224
Implementing rules

The General Court shall, by a separate act, adopt practice rules for the implementation of these Rules.

In the interests of consistency of procedural provisions, this article essentially reproduces the wording of Article 208 of the Rules of Procedure of the Court of Justice.

Article 225
Videoconferencing

The General Court may, by decision, determine the criteria for its use of videoconferencing.

A videoconference is a set of interactive telecommunication technologies which allow two or more locations to interact via two-way video and audio transmissions simultaneously (definition in the booklet drawn up by the General Secretariat of the Council: 'Videoconferencing as a part of European e-Justice'). It is perceived as an efficient tool that can facilitate and speed up judicial proceedings and reduce the costs involved.

While the technique of videoconferencing may perhaps be a new concept in the context of European justice, it already exists and is already widely used at national level, and could be used as an integral part of proceedings before the General Court.

It should be noted that Member States and the European Commission are currently examining the feasibility of the use of videoconferencing in cross-border cases. The Member States have, in particular, decided to collaborate in connection with the European e-Justice action plan approved by the Council in November 2008 (OJ 2009 C 75, p. 1) to promote the use of videoconferencing and to exchange experience and best practice. That work forms part of the existing legal framework and complies with the procedural safeguards put in place at Member State and European Union level.

European Union legislation currently offers many opportunities for organising cross-border videoconferencing, including for the examination of witnesses, experts or victims, in accordance with legal instruments such as the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (OJ 2000 C 197, p. 1), Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ 2001 L 174, p. 1), Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (OJ 2004 L 261, p. 15), Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (OJ 2007 L 199, p. 1), Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (OJ 2001 L 82, p. 1) and Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (OJ 2008 L 136, p. 3).

Since videoconferencing is a means of simplifying and promoting communication between those involved in judicial proceedings, the General Court considers it necessary to make provision in its

rules of procedure for a legal basis that would enable it to adopt a decision defining the legal and technical criteria and the practical procedures for the use of videoconferencing. It must be made clear that the use of videoconferencing should not in any circumstances affect the exercise of the rights conferred on the parties or the quality of simultaneous interpretation, and that it should in all circumstances allow the members of the formation of the Court to conduct the oral proceedings in the same way as in a courtroom.

Article 226
Enforcement

Penalties imposed and other measures ordered under these Rules shall be enforced in accordance with Articles 280 TFEU, 299 TFEU and 164 TEAEC.

This article reproduces the text of Article 69(4) of the existing Rules of Procedure of the General Court. Its scope is nevertheless extended to cover all cases in which it is necessary to recover sums payable to the cashier of the General Court.

Article 227
Repeal

These Rules replace the Rules of Procedure of the General Court of 2 May 1991, as last amended on 19 June 2013.

Since the present draft amends the text of the existing Rules of Procedure in their entirety, it is logical that it should be substituted for the existing Rules when it is finally adopted.

Article 228
Publication and entry into force of these Rules

1. These Rules, which are authentic in the languages referred to in Article 44, shall be published in the *Official Journal of the European Union*.

2. These Rules shall enter into force on the first day of the third month following their publication.

3. The provisions of Article 45(4), Article 86, Article 139(c), Article 143(1) and Article 181 shall apply only to actions brought before the General Court after the entry into force of these Rules.

4. The provisions of Articles 106 and 207 shall apply only to cases in which the written part of the procedure has not yet been closed on the date on which these Rules enter into force.

5. The provisions of Article 115(1), Article 116(6), Article 131 and Article 135(2) of the Rules of Procedure of the General Court of 2 May 1991, as last amended on 19 June 2013, shall continue to apply to actions brought before the General Court before the entry into force of these Rules.

6. The provisions of Articles 135a and 146 of the Rules of Procedure of the General Court of 2 May 1991, as last amended on 19 June 2013, shall continue to apply to actions pending before

the General Court in which the written part of the procedure was closed before the entry into force of these Rules.

Since the present draft contains many important changes and innovations as compared to the existing Rules of Procedure, the General Court proposes to set the date of its entry into force as the first day of the third month following its publication in the Official Journal*, so as to encourage adequate preparation. In addition, it is proposed that certain provisions apply only to cases brought after the entry into force of the present draft (Article 45(4), Article 86, Article 139(c), Article 143(1) and Article 181) or to cases in which the written part of the procedure has not yet been closed on the date on which the present draft enters into force (Articles 106 and 207). Lastly, in the interests of legal certainty, it is expressly provided that the provisions relating to requests for a hearing in intellectual property cases (Article 135a) and in appeals (Article 146) continue to apply if the written part of the procedure was closed before the new Rules of Procedure entered into force.*

Done at Luxembourg, …

E. Coulon M. Jaeger

Registrar *President*

Correlation table: draft Rules of Procedure and amended Rules of Procedure of 2 May 1991

Draft Rules of Procedure			1991 Rules
Introductory provisions			
	Article 1 (Definitions)		
		Art. 1(1)	Art. 1, first para.
		Art. 1(2)	Art. 1, second para.
	Article 2 (Purport of these Rules)		-
Title I: Organisation of the General Court			
Chapter 1: Members of the General Court			
	Article 3 (Duties of Judge and Advocate General)		
		Art. 3(1)	Art. 2(1), first subpara.
		Art. 3(2)	Art. 2(1), second subpara.
		Art. 3(3)	Art. 2(2), first subpara.
		Art. 3(4)	Art. 2(2), second subpara.
	Article 4 (Commencement of the term of office of Judges)		Art. 3
	Article 5 (Taking of the oath)		Art. 4(1)
	Article 6 (Solemn undertaking)		Art. 4(2)
	Article 7 (Depriving a Judge of his office)		
		Art. 7(1)	Art. 5, first para.
		Art. 7(2)	Art. 5, second para.
		Art. 7(3)	Art. 5, third para.
		Art. 7(4)	Art. 5, fourth para.
	Article 8 (Order of seniority)		
		Art. 8(1)	Art. 6, first para.
		Art. 8(2)	Art. 6, second para.
		Art. 8(3)	Art. 6, third para.
Chapter 2: Presidency of the General Court			
	Article 9 (Election of the President and of the Vice-President of the General Court)		
		Art. 9(1)	Art. 7(1)
		Art. 9(2)	Art. 7(2)
		Art. 9(3)	Art. 7(3)
		Art. 9(4)	-
		Art. 9(5)	-
	Article 10 (Responsibilities of the President of the General Court)		
		Art. 10(1)	-
		Art. 10(2)	Art. 8, first para.
		Art. 10(3)	-
		Art. 10(4)	Art. 8, second para.
		Art. 10(5)	Art. 8, third para.
		Art. 10(6)	-
	Article 11 (Responsibilities of the Vice-President of the General Court)		
		Art. 11(1)	-
		Art. 11(2)	-
		Art. 11(3)	-
		Art. 11(4)	-
	Article 12 (Where the President and Vice-President of the Court are prevented from acting)		Art. 9, first para.
Chapter 3: Chambers and formations of the Court			
Section 1. Constitution of the Chambers and composition of the formations of the Court			
	Article 13 (Constitution of Chambers)		
		Art. 13(1)	Art. 10(1)
		Art. 13(2)	-
		Art. 13(3)	Art. 10(2)
	Article 14 (Competent formation of the Court)		
		Art. 14(1)	Art. 11(1), first subpara.
		Art. 14(2)	Art. 11(1), second subpara.
		Art. 14(3)	Art. 11(1), third subpara.
	Article 15 (Composition of the Grand Chamber)		
		Art. 15(1)	-
		Art. 15(2)	-

	Article 16 (Withdrawal and excusing of a Judge)		
		Art. 16(1)	-
		Art. 16(2)	-
		Art. 16(3)	-
	Article 17 (Where a member of the formation of the Court is prevented from acting)		
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