

Wägenbaur

**Court of Justice
of the EU**

– Statute and Rules of Procedure –

C.H. Beck · Hart · Nomos

Wägenbaur
Court of Justice of the EU – Commentary on Statute and Rules of Procedure

Court of Justice of the European Union

Commentary on Statue and Rules of Procedure

by

Bertrand Wägenbaur

C. H. Beck · Hart · Nomos

Published by

Verlag C. H. Beck oHG, Wilhelmstraße 9, 80801 München, Germany,
eMail: bestellung@beck.de

Co-published by

Hart Publishing, 16C Worcester Place, Oxford, OXI 2JW, United Kingdom,
online at: www.hartpub.co.uk

and

Nomos Verlagsgesellschaft mbH & Co. KG, Waldseestraße 3–5, 76530 Baden-Baden,
Germany, eMail: nomos@nomos.de

Published in North America (US and Canada) by Hart Publishing, c/o International
Specialized Book Services, 930 NE 58th Avenue, Suite 300, Portland, OR 97213-3786,
USA, eMail: orders@isbs.com

ISBN 978-3-406-60325-9 (Beck)
ISBN 978-1-84113-995-1 (Hart Publishing)
ISBN 978-3-8329-7272-1 (Nomos)

© 2013 Verlag C. H. Beck oHG
Wilhelmstr. 9, 80801 München

Printed in Germany by
fgb · freiburger graphische betriebe GmbH & Co. KG
Bebelstraße 11, 79108 Freiburg

Typeset by
Reemers Publishing Services GmbH, Krefeld

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or
transmitted, in any form or by any means, without the prior permission of Verlag C. H. Beck, or as
expressly permitted by law under the terms agreed with the appropriate reprographic rights organisation.

Enquiries concerning reproduction which may not be covered by the above should be addressed to
C. H. Beck at the address above.

Preface

*“The League of Nations is nearing a decisive test. If it fails, world war will inevitably repeat itself even more terribly than before ... Should this League of Nations fail, a future generation will one day be forced to create another one. But (that generation) will only arrive at that point through a sea of blood and tears even worse than the one which we just crossed”.*¹ It is with this gloomy prophecy that Prof. Dr. Heinrich Rauchberg, former Rector of the German University of Prague, closed a book he published in 1932². He did not live to see the subsequent global catastrophe he had predicted. Nevertheless, the concept he proposed- that of a group of States learning from history by signing a new Treaty in order to maintain peace and understanding amongst formerly warring nations- would soon materialize. This new attempt at peaceful European Union began in 1952 with the Treaty on Coal and Steel, which was soon followed by further Treaties and steps towards ever increasing European integration. This decades-long process has resulted in a union of 27 Member States as well as the longest period of sustained peace and economic development in European history.

Ironically, this era of unprecedented stability and unity induces us to take peace in this part of the world for granted. We should therefore allow this era to make us all the more aware of what we *really* owe to European integration, which the award of the Nobel peace prize to the EU so rightly acknowledges. Thus, our challenge is to never allow criticism arising from day-to-day EU issues and also more fundamental questions, no matter its merit, to make us lose sight of the priceless value of this historically unique process.

Achieving a community of peace, common values, and economic development is of course not only a matter of attitude or mindset, but also a matter of appropriate instruments of integration. These tools can be found in the series of Treaties which since 1952 have served as the practical means to implement the goal of European unity. Dispute resolution as embodied by the Court of Justice of the European Union is undoubtedly one of the most important of these. The Court of Justice of the European Union is thus much more than a supranational judicial instance: it serves the unity of EU law and is a major player in a vital peacekeeping mission. This Court must guarantee that a broad variety of parties, ranging from Member States and EU institutions to natural and moral persons, each of whom has their own, sometimes very antagonistic, interests, can solve conflicts peacefully through common judicial instruments rather than through force. This requires an elaborate judicial system with a variety of legal remedies governed by specialized procedural rules.

This book seeks to illuminate the procedural rules governing the three judicial instances of the EU by providing commentary on every article of the Statute of the

¹ French original text: *“La Société des Nations approche d’une épreuve décisive. Si elle échoue, la Guerre Mondiale se répétera fatalement, plus terrible encore. ... Cette Société des Nations échouée, une génération future sera un jour forcée d’en créer une autre. Mais elle n’y parviendra qu’à travers une mer de sang et de larmes plus terrible encore que celle que nous venons de traverser.”.*

² In *“Les Obligations Juridiques des Membres de la Société des Nations pour le Maintien de la Paix”*, pages 118–119, Sirey, Paris, 1932.

European Court of Justice as well as the Rules of Procedure of its three constituent instances. It combines an academic approach with practical advice from experience in EU litigation while also providing critical views and proposals for improvement where appropriate.

The intention of this book is to enable quick access to a given subject or detail of EU procedural law. Inspired by an earlier German version, the present volume has been completely rewritten and restructured. It also seeks to respond to questions which those less familiar with the continental legal system might have. It is therefore intended to facilitate comprehension and practical application of EU judicial procedure whilst not losing sight of these rules' historic context. For if no one really knows where we are going to, we should at least remember where we come from.

Brussels, autumn 2012

Bertrand Wägenbaur LL.M.

Contents – Summary

Preface	V
List of Abbreviations and Acronyms	XXI
Table of Cases	XXIII

STATUTE OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

INTRODUCTION	1
INTERPRETATION	10
Article 1 [Legal framework]	10

TITLE I. JUDGES AND ADVOCATES GENERAL

Article 2 [Oath]	10
Article 3 [Immunity]	13
Article 4 [Exclusion of other occupation]	16
Article 5 [Term in office]	19
Article 6 [Deprivation of office]	21
Article 7 [New appointments]	25
Article 8 [Advocates-General]	25

TITLE II. ORGANISATION OF THE COURT OF JUSTICE

Article 9 [Replacing of Judges]	25
Article 9a [Vice-President]	26
Article 10 [Oath of the Registrar]	26
Article 11 [Replacement of the Registrar]	27
Article 12 [Administrative support]	27
Article 13 [Assistant Rapporteurs]	28
Article 14 [Requirements of residence]	29
Article 15 [Judicial vacations]	30
Article 16 [Chambers]	31
Article 17 [Ability to deliberate]	35
Article 18 [Conflict of interest, bias]	36

TITLE III. PROCEDURE

Article 19 [Representing the parties at Court]	45
Article 20 [Written and oral procedure]	55
Article 21 [Contents of a written application]	61
Article 22 [EAEC-Treaty]	64
Article 23 [Referral for preliminary rulings]	64
Article 23a [Expedited and urgent procedures]	84
Article 24 [Measures of organisation and inquiry]	88
Article 25 [Expert opinions]	92
Article 26 [Hearing of witnesses]	93
Article 27 [Defaulting witnesses]	93

Contents – Summary

Article 28 [Oath] 93

Article 29 [Letter rogatory] 94

Article 30 [Violation of an oath] 94

Article 31 [Public hearing] 94

Article 32 [Hearing experts, witnesses and parties] 96

Article 33 [Minutes of the hearing] 97

Article 34 [Case list] 97

Article 35 [Secrecy of deliberations] 98

Article 36 [Statement of reasons] 99

Article 37 [Handing down of judgments] 102

Article 38 [Costs] 102

Article 39 [Interim proceedings and suspending enforcement] 104

Article 40 [Intervention] 106

Article 41 [Judgment by default] 118

Article 42 [Third party proceedings] 120

Article 43 [Judgment of interpretation] 121

Article 44 [Application for revision] 123

Article 45 [Periods of grace, unforeseeable circumstances and *force majeure*] 127

Article 46 [Time bar in case of non-contractual liability] 137

TITLE IV. GENERAL COURT

Article 47 [Applicable rules] 141

Article 48 [Number of judges] 141

Article 49 [Advocate General] 142

Article 50 [Chambers, full Court, single Judge and Grand Chamber] 143

Article 51 [Jurisdictions] 144

Article 52 [Staff of the GC] 146

Article 53 [Provisions applicable to the GC] 147

Article 54 [Referring an action and staying proceedings] 148

Article 55 [Notification of decisions] 152

Article 56 [Appeal] 153

Article 57 [Abbreviated appeal] 160

Article 58 [Appeal limited to points of law] 162

Article 59 [Appeals procedure] 173

Article 60 [No suspensory effect] 174

Article 61 [Appeal well founded] 175

Article 62 [Review by the ECJ] 177

Article 62a [Urgency procedure] 179

Article 62b [No suspensory effect] 180

TITLE IVA. SPECIALISED COURTS

Article 62c [Specialised courts] 182

TITLE V. FINAL PROVISIONS

Article 63 [Rules of Procedure] 184

Article 64 [Language of the procedure] 185

Annex 1. THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL 186

Article 1 [Scope of jurisdiction] 186

Article 2 [Number of Judges and term in office] 186

Article 3 [Appointment of Judges] 187

Article 4 [President and Chambers] 189

Article 5 [Applicable provisions of the Statute] 191

Article 6 [Administrative support] 191

Contents – Summary

Article 7 [Applicable rules of the Statute]	192
Article 8 [Transmitting cases, suspension]	195
Article 9 [Appeal]	196
Article 10 [Expedited proceedings]	198
Article 11 [Appeals limited to points of law]	198
Article 12 [No suspensory effect]	200
Article 13 [Annulment and Referring Back]	200

RULES OF PROCEDURE OF THE COURT OF JUSTICE (RP 2012)

INTRODUCTORY PROVISIONS

INTRODUCTION	201
INTERPRETATION	207
Article 1 Definitions	207
Article 2 Purport of these Rules	208

TITLE I. ORGANISATION OF THE COURT

CHAPTER 1. JUDGES AND ADVOCATES GENERAL	208
Article 3 Commencement of the term of office of Judges and Advocates General	208
Article 4 Taking of the oath	209
Article 5 Solemn undertaking	210
Article 6 Depriving a Judge or Advocate General of his office	211
Article 7 Order of seniority	211
CHAPTER 2. PRESIDENCY OF THE COURT, CONSTITUTION OF THE CHAMBERS AND DESIGNATION OF THE FIRST ADVOCATE GENERAL	212
Article 8 Election of the President and of the Vice-President of the Court	212
Article 9 Responsibilities of the President of the Court	213
Article 10 Responsibilities of the Vice-President of the Court	213
Article 11 Constitution of Chambers	214
Article 12 Election of Presidents of Chambers	216
Article 13	216
Article 14 Designation of the First Advocate General	216
CHAPTER 3. ASSIGNMENT OF CASES TO JUDGE-RAPPORTEURS AND ADVOCATES GENERAL	217
Article 15 Designation of the Judge-Rapporteur	217
Article 16 Designation of the Advocate General	218
CHAPTER 4. ASSISTANT RAPPORTEURS	219
Article 17 Assistant Rapporteurs	219
CHAPTER 5. REGISTRY	220
Article 18 Appointment of the Registrar	220
Article 19 Deputy Registrar	222
Article 20 Responsibilities of the Registrar	222
Article 21 Keeping of the register	225
Article 22 Consultation of the register and of judgments and orders	226
CHAPTER 6. THE WORKING OF THE COURT	227
Article 23 Location of the sittings of the Court	227
Article 24 Calendar of the Court's judicial business	227
Article 25 General meeting	229
Article 26 Drawing-up of minutes	229

Contents – Summary

CHAPTER 7. FORMATIONS OF THE COURT	229
SECTION 1. COMPOSITION OF THE FORMATIONS OF THE COURT	229
Article 27 Composition of the Grand Chamber	229
Article 28 Composition of the Chambers of five and of three Judges	231
Article 29 Composition of Chambers where cases are related or referred back	232
Article 30 Where a President of a Chamber is prevented from acting	232
Article 31 Where a member of the formation of the Court is prevented from acting	232
SECTION 2. DELIBERATIONS	233
Article 32 Procedures concerning deliberations	233
Article 33 Number of Judges taking part in the deliberations	236
Article 34 Quorum of the Grand Chamber	236
Article 35 Quorum of the Chambers of five and of three Judges	236
CHAPTER 8. LANGUAGES	237
Article 36 Language of a case	237
Article 37 Determination of the language of a case	239
Article 38 Use of the language of the case	242
Article 39 Responsibility of the Registrar concerning language arrangements	245
Article 40 Languages of the publications of the Court	245
Article 41 Authentic texts	246
Article 42 Language service of the Court	246
 TITLE II. COMMON PROCEDURAL PROVISIONS	
 CHAPTER 1. RIGHTS AND OBLIGATIONS OF AGENTS, ADVISERS AND LAW- YERS	247
Article 43 Privileges, immunities and facilities	247
Article 44 Status of the parties' representatives	250
Article 45 Waiver of immunity	251
Article 46 Exclusion from the proceedings	252
Article 47 University teachers and parties to the main proceedings	255
CHAPTER 2. SERVICE	256
Article 48 Methods of service	256
CHAPTER 3. TIME-LIMITS	258
Article 49 Calculation of time-limits	258
Article 50 Proceedings against a measure adopted by an institution	261
Article 51 Extension on account of distance	262
Article 52 Setting and extension of time-limits	263
CHAPTER 4. DIFFERENT PROCEDURES FOR DEALING WITH CASES	263
Article 53 Procedures for dealing with cases	263
Article 54 Joinder	269
Article 55 Stay of proceedings	271
Article 56 Deferment of the determination of a case	274
CHAPTER 5. WRITTEN PART OF THE PROCEDURE	274
Article 57 Lodging of procedural documents	274
Article 58 Length of procedural documents	280
CHAPTER 6. THE PRELIMINARY REPORT AND ASSIGNMENT OF CASES TO FORMATIONS OF THE COURT	281
Article 59 Preliminary report	281
Article 60 Assignment of cases to formations of the Court	282

Contents – Summary

CHAPTER 7. MEASURES OF ORGANISATION OF PROCEDURE AND MEASURES OF INQUIRY	284
SECTION 1. MEASURES OF ORGANISATION OF PROCEDURE	284
Article 61 Measures of organisation prescribed by the Court	284
Article 62 Measures of organisation prescribed by the Judge-Rapporteur or the Advocate General	285
SECTION 2. MEASURES OF INQUIRY	286
Article 63 Decision on measures of inquiry	286
Article 64 Determination of measures of inquiry	286
Article 65 Participation in measures of inquiry	288
Article 66 Oral testimony	289
Article 67 Examination of witnesses	290
Article 68 Witnesses' oath	291
Article 69 Pecuniary penalties	291
Article 70 Expert's report	291
Article 71 Expert's oath	293
Article 72 Objection to a witness or expert	293
Article 73 Witnesses' and experts' costs	295
Article 74 Minutes of inquiry hearings	296
Article 75 Opening of the oral part of the procedure after the inquiry	296
CHAPTER 8. ORAL PART OF THE PROCEDURE	297
Article 76 Hearing	298
Article 77 Joint hearing	299
Article 78 Conduct of oral proceedings	299
Article 79 Cases heard in camera	302
Article 80 Questions	302
Article 81 Close of the hearing	305
Article 82 Delivery of the Opinion of the Advocate General	305
Article 83 Opening or reopening of the oral part of the procedure	307
Article 84 Minutes of hearings	310
Article 85 Recording of the hearing	311
CHAPTER 9. JUDGMENTS AND ORDERS	311
Article 86 Date of delivery of a judgment	311
Article 87 Content of a judgment	312
Article 88 Delivery and service of the judgment	313
Article 89 Content of an order	314
Article 90 Signature and service of the order	315
Article 91 Binding nature of judgments and orders	315
Article 92 Publication in the Official Journal of the European Union	315

TITLE III. REFERENCES FOR A PRELIMINARY RULING

CHAPTER 1. GENERAL PROVISIONS	316
Article 93 Scope	321
Article 94 Content of the request for a preliminary ruling	326
Article 95 Anonymity	332
Article 96 Participation in preliminary ruling proceedings	333
Article 97 Parties to the main proceedings	334
Article 98 Translation and service of the request for a preliminary ruling	336
Article 99 Reply by reasoned order	338
Article 100 Circumstances in which the Court remains seised	339
Article 101 Request for clarification	340
Article 102 Costs of the preliminary ruling proceedings	342
Article 103 Rectification of judgments and orders	342
Article 104 Interpretation of preliminary rulings	344

Contents – Summary

CHAPTER 2. EXPEDITED PRELIMINARY RULING PROCEDURE	345
Article 105 Expedited procedure	345
Article 106 Transmission of procedural documents	350
CHAPTER 3. URGENT PRELIMINARY RULING PROCEDURE	350
Article 107 Scope of the urgent preliminary ruling procedure	350
Article 108 Decision as to urgency	355
Article 109 Written part of the urgent procedure	356
Article 110 Service and information following the close of the written part of the procedure	358
Article 111 Omission of the written part of the procedure	358
Article 112 Decision on the substance	358
Article 113 Formation of the Court	358
Article 114 Transmission of procedural documents	359
CHAPTER 4. LEGAL AID	359
Article 115 Application for legal aid	360
Article 116 Decision on the application for legal aid	362
Article 117 Sums to be advanced as legal aid	362
Article 118 Withdrawal of legal aid	362

TITLE IV. DIRECT ACTIONS

CHAPTER 1. REPRESENTATION OF THE PARTIES	363
Article 119 Obligation to be represented	363
CHAPTER 2. WRITTEN PART OF THE PROCEDURE	367
Article 120 Content of the application	367
Article 121 Information relating to service	374
Article 122 Annexes to the application	375
Article 123 Service of the application	376
Article 124 Content of the defence	376
Article 125 Transmission of documents	379
Article 126 Reply and rejoinder	379
CHAPTER 3. PLEAS IN LAW AND EVIDENCE	381
Article 127 New pleas in law	381
Article 128 Evidence produced or offered	384
CHAPTER 4. INTERVENTION	385
Article 129 Object and effects of the intervention	387
Article 130 Application to intervene	388
Article 131 Decision on applications to intervene	390
Article 132 Submission of statements	392
CHAPTER 5. EXPEDITED PROCEDURE	394
Article 133 Decision relating to the expedited procedure	396
Article 134 Written part of the procedure	398
Article 135 Oral part of the procedure	399
Article 136 Decision on the substance	400
CHAPTER 6. COSTS	400
Article 137 Decision as to costs	401
Article 138 General rules as to allocation of costs	401
Article 139 Unreasonable or vexatious costs	402
Article 140 Costs of interveners	404
Article 141 Costs in the event of discontinuance or withdrawal	404
Article 142 Costs where a case does not proceed to judgment	406
Article 143 Costs of proceedings	406
Article 144 Recoverable costs	407
Article 145 Dispute concerning the costs to be recovered	411
Article 146 Procedure for payment	417

Contents – Summary

CHAPTER 7. AMICABLE SETTLEMENT, DISCONTINUANCE, CASES THAT DO NOT PROCEED TO JUDGMENT AND PRELIMINARY ISSUES	418
Article 147 Amicable settlement	418
Article 148 Discontinuance	419
Article 149 Cases that do not proceed to judgment	420
Article 150 Absolute bar to proceeding with a case	420
Article 151 Preliminary objections and issues	421
CHAPTER 8. JUDGMENTS BY DEFAULT	424
Article 152 Judgments by default	424
CHAPTER 9. REQUESTS AND APPLICATIONS RELATING TO JUDGMENTS AND ORDERS	427
Article 153 Competent formation of the Court	427
Article 154 Rectification	427
Article 155 Failure to adjudicate	430
Article 156 Application to set aside	431
Article 157 Third-party proceedings	433
Article 158 Interpretation	435
Article 159 Revision	438
CHAPTER 10. SUSPENSION OF OPERATION OR ENFORCEMENT AND OTHER INTERIM MEASURES	442
Article 160 Application for suspension or for interim measures	442
Article 161 Decision on the application	451
Article 162 Order for suspension of operation or for interim measures	451
Article 163 Change in circumstances	453
Article 164 New application	453
Article 165 Applications pursuant to Articles 280 TFEU and 299 TFEU and Article 164 TEAEC	454
Article 166 Application pursuant to Article 81 TEAEC	454
 TITLE V. APPEALS AGAINST DECISIONS OF THE GENERAL COURT	
CHAPTER 1. FORM AND CONTENT OF THE APPEAL, AND FORM OF ORDER SOUGHT	455
Article 167 Lodging of the appeal	458
Article 168 Content of the appeal	459
Article 169 Form of order sought, pleas in law and arguments of the appeal	464
Article 170 Form of order sought in the event that the appeal is allowed	465
CHAPTER 2. RESPONSES, REPLIES AND REJOINDERS	467
Article 171 Service of the appeal	467
Article 172 Parties authorised to lodge a response	468
Article 173 Content of the response	469
Article 174 Form of order sought in the response	469
Article 175 Reply and rejoinder	469
CHAPTER 3. FORM AND CONTENT OF THE CROSS-APPEAL, AND FORM OF ORDER SOUGHT	472
Article 176 Cross-appeal	472
Article 177 Content of the cross-appeal	473
Article 178 Form of order sought, pleas in law and arguments of the cross-appeal	473
CHAPTER 4. PLEADINGS CONSEQUENT ON THE CROSS-APPEAL	474
Article 179 Response to the cross-appeal	474
Article 180 Reply and rejoinder on a cross-appeal	474
CHAPTER 5. APPEALS DETERMINED BY ORDER	475
Article 181 Manifestly inadmissible or manifestly unfounded appeal or cross-appeal	475
Article 182 Manifestly well-founded appeal or cross-appeal	477

Contents – Summary

CHAPTER 6. EFFECT ON A CROSS-APPEAL OF THE REMOVAL OF THE APPEAL FROM THE REGISTER	477
Article 183 Effect on a cross-appeal of the discontinuance or manifest inadmissibility of the appeal	477
CHAPTER 7. COSTS AND LEGAL AID IN APPEALS	478
Article 184 Costs in appeals	478
Article 185 Legal aid	479
Article 186 Prior application for legal aid	481
Article 187 Decision on the application for legal aid	481
Article 188 Sums to be advanced as legal aid	482
Article 189 Withdrawal of legal aid	482
CHAPTER 8. OTHER PROVISIONS APPLICABLE TO APPEALS	483
Article 190 Other provisions applicable to appeals	483
TITLE VI. REVIEW OF DECISIONS OF THE GENERAL COURT	
Article 191 Reviewing Chamber	485
Article 192 Information and communication of decisions which may be reviewed	485
Article 193 Review of decisions given on appeal	486
Article 194 Review of preliminary rulings	488
Article 195 Judgment on the substance of the case after a decision to review	489
TITLE VII. OPINIONS	
Article 196 Written part of the procedure	490
Article 197 Designation of the Judge-Rapporteur and of the Advocate General	491
Article 198 Hearing	492
Article 199 Time-limit for delivering the Opinion	492
Article 200 Delivery of the Opinion	492
TITLE VIII. PARTICULAR FORMS OF PROCEDURE	
Article 201 Appeals against decisions of the arbitration committee	492
Article 202 Procedure under Article 103 TEAEC	493
Article 203 Procedures under Articles 104 TEAEC and 105 TEAEC	494
Article 204 Procedure provided for by Article 111(3) of the EEA Agreement	494
Article 205 Settlement of the disputes referred to in Article 35 TEU in the version in force before the entry into force of the Treaty of Lisbon	496
Article 206 Requests under Article 269 TFEU	497
FINAL PROVISIONS	
Article 207 Supplementary rules	498
Article 208 Implementing rules	498
Article 209 Repeal	499
Article 210 Publication and entry into force of these Rules	499

**RULES OF PROCEDURE OF THE GENERAL COURT OF THE
EUROPEAN UNION (RP GC)**

INTRODUCTION	501
INTERPRETATION	509
Article 1 [Terminology]	509

TITLE I. ORGANISATION OF THE GENERAL COURT

CHAPTER 1. PRESIDENT AND MEMBERS OF THE GENERAL COURT	509
Article 2 [Judges and Advocates-General]	510
Article 3 [Term in office]	511
Article 4 [Taking the oath]	511
Article 5 [Revocation]	512
Article 6 [Order of seniority]	514
Article 7 [Election of the President]	515
Article 8 [Powers of the President]	515
Article 9 [Substitute of the President]	516
CHAPTER 2. CONSTITUTION OF THE CHAMBERS AND DESIGNATION OF JUDGE-RAPPORTEURS AND ADVOCATES GENERAL	516
Article 10 [Chambers]	516
Article 11 [Competence of the Chambers]	517
Article 12 [Criteria of allocation]	518
Article 13 [Assignment, Judge-Rapporteur]	519
Article 14 [Plenary session, Grand Chamber and Chambers]	521
Article 15 [Electing the President of the Chamber]	525
Article 16 [Powers of the President of a Chamber]	526
Article 17 [Advocate General assisting plenary session]	527
Article 18 [Advocate General assisting a Chamber]	528
Article 19 [Designating an Advocate General]	529
CHAPTER 3. REGISTRY	529
SECTION 1. THE REGISTRAR	529
Article 20 [Appointment of the Registrar]	529
Article 21 [Assistant Registrars]	530
Article 22 [Substitute]	531
Article 23 [Instructions to the Registrar]	531
Article 24 [Register]	533
Article 25 [Further tasks of the Registrar]	535
Article 26 [Archives and publications]	536
Article 27 [Attending the sittings]	536
SECTION 2. Other Departments	536
Article 28 [Administrative support]	536
Article 29 [Oath]	537
Article 30 [General administration]	537
CHAPTER 4. THE WORKING OF THE GENERAL COURT	537
Article 31 [Dates of the sittings]	538
Article 32 [Deliberations]	538
Article 33 [Modalities of deliberations]	541
Article 34 [Judicial vacations]	543
CHAPTER 5. LANGUAGES	545
Article 35 [Language of the case]	545

Contents – Summary

Article 36 [Translations]	553
Article 37 [Authentic linguistic versions]	556

CHAPTER 6. RIGHTS AND OBLIGATIONS OF AGENTS, ADVISERS AND LAW- YERS

Article 38 [Immunities, privileges and facilities]	556
Article 39 [Proof of status]	561
Article 40 [Waiving immunities, privileges and facilities]	561
Article 41 [Exclusion of the proceedings]	562
Article 42 [University teachers]	568

TITLE II. PROCEDURE

CHAPTER 1. WRITTEN PROCEDURE

Article 43 [General rules for pleadings]	573
Article 44 [Contents of an application]	584
Article 45 [Serving the application]	607
Article 46 [Contents of the statement of defence]	607
Article 47 [Reply and rejoinder]	615
Article 48 [Further evidence; no new pleas in law]	621
Article 49 [Measures of organization or of inquiry]	629
Article 50 [Joining cases]	630
Article 51 [Referring a case to a different formation]	634
Article 52 [Preliminary report]	637
Article 53 [Opening the oral procedure]	639
Article 54 [Opening of the oral procedure in certain cases]	641

CHAPTER 2. ORAL PROCEDURE

Article 55 [Sequence of oral hearings]	645
Article 56 [Directing the proceedings]	647
Article 57 [Hearing in camera]	648
Article 58 [Questions]	649
Article 59 [Restricted rights of the parties]	658
Article 60 [End of the oral procedure]	658
Article 61 [Opinion of the Advocate General]	658
Article 62 [Reopening order]	659
Article 63 [Minutes]	662

CHAPTER 3. MEASURES OF ORGANISATION OF PROCEDURE AND MEASURES OF INQUIRY

SECTION 1. MEASURES OF ORGANIZATION OF PROCEDURE	664
Article 64 [Measures of organization]	665

SECTION 2. MEASURES OF INQUIRY

Article 65 [Catalogue of measures]	677
Article 66 [Order]	680
Article 67 [Applying the order]	681

SECTION 3. The Summoning and Examination of Witnesses and Experts

Article 68 [Witnesses]	682
Article 69 [Obligation to attend]	685
Article 70 [Expert's report]	686
Article 71 [Oath]	689
Article 72 [Perjury]	689
Article 73 [Objecting to a witness or expert]	690
Article 74 [Travel and subsistence expenses]	690
Article 75 [Letters rogatory]	690
Article 76 [Minutes]	691

Contents – Summary

CHAPTER 3a. EXPEDITED PROCEDURES	691
Article 76a [Conditions]	691
CHAPTER 4. STAY OF PROCEEDINGS AND DECLINING OF JURISDICTION BY THE GENERAL COURT	701
Article 77 [Staying the proceedings]	701
Article 78 [Decision to stay]	704
Article 79 [Duration of the stay]	704
Article 80 [Decision declining jurisdiction]	705
CHAPTER 5. JUDGMENTS	706
Article 81 [Judgments]	706
Article 82 [Delivery of the judgments]	709
Article 83 [Binding judgment]	710
Article 84 [Rectifying judgments]	711
Article 85 [Supplementing the part on costs]	715
Article 86 [Publication of the case-law]	716
CHAPTER 6. COSTS	716
Article 87 [Allocation of costs]	717
Article 88 [Staff cases]	728
Article 89 [Costs of enforcement of a judgment]	730
Article 90 [Judicial costs]	731
Article 91 [Recoverable costs]	734
Article 92 [Taxation]	755
Article 93 [Currency]	766
CHAPTER 7. LEGAL AID	766
Article 94 [Procedural and substantive conditions]	767
Article 95 [Relevant documents]	773
Article 96 [Specific procedure]	776
Article 97 [Modalities of payment]	779
CHAPTER 8. DISCONTINUANCE	780
Article 98 [Amicable settlement]	780
Article 99 [Discontinuing the proceedings]	781
CHAPTER 9. SERVICE	783
Article 100 [Modalities of service]	783
CHAPTER 10. TIME-LIMITS	785
Article 101 [Periods of time]	788
Article 102 [Publication in the OJ]	791
Article 103 [Extension of time-limits]	796

TITLE III. SPECIAL FORMS OF PROCEDURE

CHAPTER 1. SUSPENSION OF OPERATION OR ENFORCEMENT AND OTHER INTERIM MEASURES	797
Article 104 [Substantive criteria]	798
Article 105 [Observations of the other party]	815
Article 106 [Competent Judge]	819
Article 107 [Order of the President]	819
Article 108 [Change in circumstances]	822
Article 109 [New facts]	823
Article 110 [Suspension of enforcement of judgments or decisions]	824
CHAPTER 2. PRELIMINARY ISSUES	825
Article 111 [Manifestly inadmissible or unfounded]	825
Article 112 [Referring an action to the Court of Justice]	830
Article 113 [Absolute bar to proceedings, devoid of purpose]	831

Contents – Summary

Article 114 [Preliminary pleas not going to the substance]	834
CHAPTER 3. INTERVENTION	842
Article 115 [Admission as intervener]	843
Article 116 [Subsequent procedure]	848
CHAPTER 4. JUDGMENTS OF THE GENERAL COURT DELIVERED AFTER ITS DECISION HAS BEEN SET ASIDE AND THE CASE REFERRED BACK TO IT	857
Article 117 [Referral back to GC]	857
Article 118 [Formation of Judges]	857
Article 119 [Procedure after referral to the GC]	859
Article 120 [Applicable provisions]	859
Article 121 [Costs]	860
CHAPTER 4a. DECISIONS OF THE GENERAL COURT GIVEN AFTER ITS DECISION HAS BEEN REVIEWED AND THE CASE REFERRED BACK TO IT	860
Article 121a	861
Article 121b	861
Article 121c	861
Article 121d	862
CHAPTER 5. JUDGMENTS BY DEFAULT AND APPLICATIONS TO SET THEM ASIDE	862
Article 122 [Conditions]	862
CHAPTER 6. EXCEPTIONAL REVIEW PROCEDURES	867
SECTION 1. THIRD-PARTY PROCEEDINGS	867
Article 123 [Third-party proceedings]	867
Article 124 [Chamber hearing third-party proceedings]	870
SECTION 2. REVISION	870
Article 125 [Time-limits]	870
Article 126 [Contents of the application]	872
Article 127 [Competent formation]	873
Article 128 [Appeal and application for revision]	875
SECTION 3. INTERPRETATION OF JUDGMENTS	875
Article 129 [Contents of the application]	875
 TITLE IV. PROCEEDINGS RELATING TO INTELLECTUAL PROPERTY RIGHTS	
Article 130 [Procedural rules]	879
Article 131 [Language of the proceedings]	880
Article 132 [Additional indications in the application]	883
Article 133 [Service of the application]	884
Article 134 [Intervention]	885
Article 135 [Statement of defence, reply and rejoinder]	888
Article 135a [Ruling without oral procedure]	891
Article 136 [Costs]	891
 TITLE V. APPEALS AGAINST DECISIONS OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL	
Article 136a [Language of the proceedings]	894
Article 137 [Notice of appeal]	895
Article 138 a [Notice of appeal]	895
Article 139 [Petita]	896

Contents – Summary

Article 140 [Serving the notice of appeal] 897

Article 141 [Response] 897

Article 142 [Petita] 898

Article 143 [Reply and rejoinder] 898

Article 144 [Applicable provisions] 899

Article 145 [Appeal manifestly inadmissible or unfounded] 899

Article 146 [Oral procedure] 900

Article 147 [Preliminary report] 901

Article 148 [Costs] 901

Article 149 [Intervention] 902

FINAL PROVISIONS

Article 150 [Practice directions to parties] 902

Article 151 [Coming into force] 903

Index 905

LIST OF ABBREVIATIONS AND ACRONYMS

AJ.....	assistance judiciaire
Art./s	article/s
BENELUX.....	Belgium, the Netherlands and Luxembourg
BRAGO	<i>Bundesgebührenordnung für Rechtsanwälte</i> (German Lawyers' Fees Order)
CEO.....	Chief Executive Officer
CFI (now GC)..	Court of First Instance
CJEU	Court of Justice of the European Union
CSM	Superior Council of Magistracy
CST.....	Civil Service Tribunal
DEP	Dépens (costs)
EAEC.....	European Atomic Energy Community
EC.....	European Community
ECHR.....	European Convention on Human Rights; European Court of Human Rights
ECJ	European Court of Justice; Court of Justice
ECR.....	European Court Report
EDPS.....	European Data Protection Supervisor
EEA	European Economic Area
EEC	European Economic Community
EEIG.....	European Economic Interest Groups
EFTA.....	European Free Trade Association
e.g.	for instance
et seq.....	et sequentia
etc.	et cetera
EU.....	European Union
EUCFR	EU Charter on Fundamental Rights
GC	General Court
IDOC.....	Investigation and Disciplinary Office of the Commission
ILO	International Labour Organisation
IP	Intellectual Property
lit.....	litera
MEP	Member of the European Parliament
NASA.....	National Aeronautics and Space Administration
NOK.....	Norwegian Crown
OHIM	Office of Harmonization of the Interior Market
OJEU.....	Official Journal of the European Union
OLAF.....	European Anti-fraud Office
Oppo	Opposition; opposing
P	pourvoi
p./pp.....	page/s
para./s.	paragraph/s
R.....	référé
REV	révision
RP	Rules of Procedure
RP CST.....	Rules of Procedure of the Civil Service Tribunal

List of Abbreviations and Acronyms

RP ECJ.....	Rules of Procedure of the European Court of Justice
RP GC.....	Rules of Procedure of the General Court
SC	Staff cases
Statute ECJ.....	Statute of the Court of Justice of the European Union
T.....	Tribunal
TEAEC	Treaty establishing the European Atomic Energy Community
TEU.....	Treaty on the European Union
TFEU	European Treaty on the Functioning of the European Union
TO	tierce opposition
UK.....	United Kingdom
UNCPR	The United Nations International Covenant on Civil and Political Rights
US.....	United States
WTO.....	World Trade Organization
WWF	World Wild Life Fund

Table of Cases

Court of Justice (ECJ)

Case Number	Parties	ECR*	Reference
C-5/55	<i>Assider v High Authority</i>	[1955] ECR 263	Stat 43, 7
C-6/64	<i>Costa/ENEL</i>	[1964] ECR 1307	Stat 23, 14, 51, 69
C-25/65	<i>Simet and Feram v High Authority</i>	[1967] ECR 42	Stat 45, 17
C-24/66	<i>Gesellschaft für Getreidehandel</i>	[1975] ECR 1599	Stat 43, 1
C-13/67	<i>Becher</i>	[1968] ECR 289	Stat 43, 3
C-4/68	<i>Schwarzwaldmilch v Einfuhr- und Vorratsstelle</i>	[1968] ECR 377	Stat 45, 16
C-12/68	<i>X v Commission de contrôle</i>	[1969] ECR 109	Stat 41, 6
C-13/68	<i>Salgoil</i>	[1968] ECR 632	Stat 19, 10
C-19/68	<i>di Cicco</i>	[1968] ECR 689	Stat 23, 51
C-12/69	<i>Wonnerth v Commission</i>	[1969] ECR 577	Stat 40, 2; 42, 4
C-40/70	<i>Sirena v Eda</i>	[1979] ECR 3169	Stat 23, 15; 43, 3
C-12/71	<i>Henck</i>	[1971] ECR 743	Stat Intro 25
C-82/71	<i>S.A.I.L.</i>	[1972] ECR 119	Stat 23, 23
C-5/72	<i>Grassi v Amministrazione delle finanze dello Stato</i>	[1974] ECR 443	Stat, 23, 16
C-60/72	<i>Campogrande v Commission</i>	[1973] ECR 489	Stat Intro 25
C-62/72	<i>Bollmann</i>	[1973] ECR 269	Stat 23, 51
C-12/73	<i>Muras v Hauptzollamt Hamburg Jonas</i>	[1973] ECR 963	Stat 23, 6
C-115/73	<i>Serio v Commission</i>	[1974] ECR 671	Stat 44, 8
C-162/73	<i>Birra Dreher v Amministrazione delle finanze dello Stato</i>	[1974] ECR 201	Stat 23, 20
C-173/73	<i>Union Syndicale A. O. v Council</i>	[1974] ECR 917	Stat 40, 29
C-36/75	<i>Elz v Commission</i>	[1977] ECR 1617	Stat 44, 7
C-35/76	<i>Simmenthal Spa v Ministero delle finanze,</i>	[1976] ECR 1871	Stat 23, 14
C-85/76	<i>Hoffmann-Laroche v Commission</i>	[1979] ECR 461	RP GC 46, 31

* Italics indicate cases not yet published in the ECR.

Cases ECJ

Court of Justice of the European Union

Case Number	Parties	ECR*	Reference
C-107/76	<i>Hoffmann-Laroche v Centrafarm</i>	[1977] ECR 957	Stat 23, 44
C-126/76	<i>Dietz v Commission</i>	[1976] ECR 2132	RP GC 91, 29
C-24/77	<i>Getreidehandel v Commission</i>	[1973] ECR 1599	RP GC 129, 3
C-116/78	<i>Bellintani v Commission</i>	[1980] ECR 23	Stat 44, 1
C-138/79	<i>Roquette v Council</i>	[1980] ECR 333	Stat 40, 3
C-139/79	<i>Maizena v Council</i>	[1980] ECR 3393	Stat 40, 3
C-155/79	<i>AM & S v Commission</i>	[1982] ECR 1575	Stat 19, 25
C-197/80 et seq.	<i>Ludwigshafener Walzmühle v Council and Commission</i>	[1981] ECR 1041	Stat 40, 15
C-244/80	<i>Foglia v Novello</i>	[1981] ECR 3045	Stat 23, 4
C-256/80 et seq.	<i>Birra Wührer</i>	[1982] ECR 85	Stat 46, 1
C-5/81	<i>Birra Wührer</i>	[1982] ECR 85	Stat 46, 1
C-9/81	<i>Court of Auditors v Williams</i>	[1983] ECR 2859	Stat 40, 6
C-283/81	<i>Cilfit</i>	[1982] ECR 3415	Stat 23, 45
C-35-36/82	<i>Morson and Jhanjan</i>	[1982] ECR 3723	Stat 23, 44
C-91/82; 200/82	<i>Chris International Foods v Commission</i>	[1983] ECR 417	Stat 40, 13
C-284/82	<i>Busseni v Commission</i>	[1984] ECR 557	Stat 45, 27
C-63/83	<i>Regina v Kent Kirk</i>	[1984] ECR 02689	Stat Intro 14
C-131/83	<i>Vaupel v Court of Auditors</i>	*	RP GC, 25, 1
C-209/83	<i>Ferriera Valsabbia v Commission</i>	[1984] ECR 3089	Stat 45, 18
C-224/83	<i>Ferriera Vittoria v Commission</i>	[1984] ECR 2349	Stat 45, 27
C-294/83	<i>Les Verts</i>	[1986] ECR 1339	Stat 23, 69
C-42/84	<i>Remia A. O. v Commission</i>	[1985] ECR 2545	RP GC 104, 55
C-50/84	<i>Bensider A. O. v Commission</i>	[1984] 3991	RP GC 44, 81
C-101/84	<i>Commission v Italy</i>	[1986] ECR 2629	Stat 45, 14
C-142/84	<i>BAT and Reynolds v Commission</i>	[1986] ECR 1899	
C-169/84	<i>CdF Chimie AZF v Commission</i>	[1990] ECR I-3083	RP ECJ 70, 5
C-222/84	<i>Marguerite Johnson v Chief Constable of the Royal Ulster Constabulary</i>	[1986] ECR 01651	Stat Intro 13
C-15/85	<i>Consorzio Cooperative d'Abruzzo v Commission</i>	[1987] ECR 1005	Stat 46, 1
C-42/85	<i>Cockerill v Commission</i>	[1987] ECR, 3749	Stat 45, 27
C-69/85	<i>Wünsche v Germany</i>	[1986] ECR 947	Stat 23, 15, 49, 50; 41, 1; 62a, 4
C-89/85 et seq.	<i>Ahlström and others v. Commission</i>	[1993] ECR I-1307	RP ECJ 70, 3; 154, 6
C-146/85	<i>Maindiaux A. O. v ECOSOC</i>	[1988] ECR 2003	RP GC 129, 3
C-152/85	<i>Misset v Council</i>	[1987] ECR 223	RP GC 101, 2, 4

* Italics indicate cases not yet published in the ECR.

Case Number	Parties	ECR [*]	Reference
C-257/85	<i>Dufay v Parliament</i>	[1987] ECR-01561	Stat Intro 14
C-276/85	<i>Cladakis v Commission</i>	[1987] ECR 00495	Stat 45, 25
C-314/85	<i>Foto-Frost</i>	[1987] ECR 4199	Stat 23, 69
C-351/85; 360/85	<i>Fabrique de fer de Charleroi v. Commission</i>	[2000] ECR I-3639	RP ECJ 127, 5
C-358/85	<i>France v Parliament</i>	[1986] ECR 2149	Stat 40, 4
C-403/85	<i>Ferrandi v Commission</i>	[1991] ECR I-1215	RP ECJ 159, 6
C-12/86	<i>Demirel v Stadt Schwäbisch Gmünd</i>	[1987] ECR 3719	Stat 23, 11
C-14/86	<i>Pretore di Salò</i>	[1987] ECR 2545	Stat 23, 49
C-80/86	<i>Kolpinghuis</i>	[1987] ECR 3969	Stat 23, 14
C-97/86 et seq.	<i>Asteris v Commission</i>	[1988] ECR 2181	Stat 43, 6
C-147/86	<i>Fédération professionnelle de deuxième degré-POIFXG v Greece and Commission</i>	[1989] ECR 4103	RP ECJ 157, 3
C-20/88	<i>Roquette frères v Commission</i>	[1989] ECR 1553	Stat 46, 3
C-143/88	<i>Süderdithmarschen v Hauptzollamt Izehoe</i>	[1991] ECR 415	Stat 23, 23
C-152/88	<i>Sofrimport v Commission</i>	[1992] ECR I-153	RP ECJ 87, 1
C-229/88	<i>Cargill and others v Commission</i>	[1990] ECR I-1303	RP ECJ 120, 4; 138, 2
C-286/88	<i>Falcolia v Comune di Pavia</i>	[1990] ECR I-191	Stat 45, 16
C-297/88	<i>Dzodzi v Etat belge</i>	[1990] ECR I-3763	RP ECJ 93, 12
C-330/88	<i>Grifoni v EAEC</i>	[1991] ECR I-1045	RP ECJ 120, 19
C-69/89	<i>Nakajima v Council</i>	[1991] ECR I-2069	RP ECJ 140, 2
C-100-101/89	<i>Procacci</i>	[1990] ECR I-4647	Stat 23, 30
C-104/89	<i>Mulder and others v Council and Commission</i>	[2000] ECR I-203	RP ECJ 120, 26; 144, 9, 11, 17
C-146/89	<i>Commission v United Kingdom</i>	[1992] ECR I-3533	RP ECJ 138, 4
C-197/89	<i>Dzodzi</i>	[1990] ECR I-3763	RP ECJ 93, 12
C-206/89	<i>S v Commission</i>	[1989] ECR 2841	RP ECJ 160, 8
C-213/89	<i>The Queen v Secretary of State for Transport, ex parte Factortame</i>	[1990] ECR I-2433	RP ECJ 92, 10
C-314/89	<i>Rauh</i>	[1991] ECR I-01647	Stat 23, 6, 10
C-348/89	<i>Mecanarte-Metalurgica v Alfandego do Porto</i>	[1991] ECR I-3277	Stat 23, 43; RP ECJ 92, 11; 93, 9
C-355/89	<i>Barr and Montrose Holdings</i>	[1991] ECR I-3497	Stat 23, 30
C-368/89	<i>Crispoltoni</i>	[1991] ECR I-3715	RP ECJ 93, 10
C-371/89	<i>Emrich v Commission</i>	[1990] ECR I-1555	RP ECJ 53, 10
C-6/90; 9/90	<i>Francovich and others</i>	[1991] ECR I-5357	Stat 23, 69
C-37/90	<i>Mulder and others v. Council and Commission</i>	[2000] ECR I-203	RP ECJ 120, 26
C-51/90; 59/90	<i>Comos Tank A. O. v Commission</i>	[1990] ECR I-2167	RP ECJ 160, 23
C-66/90	<i>PTT v Commission</i>	[1991] ECR I-2723	Stat 54, 3

^{*} Italics indicate cases not yet published in the ECR.

Cases ECJ

Court of Justice of the European Union

Case Number	Parties	ECR*	Reference
C-72/90	<i>Asia Motor France v Commission</i>	[1990] ECR I-2181	Stat 54, 4; RP ECJ 53, 10
C-115/90	<i>Turner v Commission</i>	[1991] ECR I-1423	RP ECJ 181, 3
C-126/90	<i>Bocos Viciano v Commission</i>	[1991] ECR I-781	RP ECJ 166, 6
C-132/90	<i>Schwedler v Commission</i>	[1991] ECR I-5745	Stat 58, 7
C-159/90	<i>Society for the Protection of Unborn Children Ireland</i>	[1991] ECR I-4685	RP ECJ 93, 8, 9
C-174/90	<i>Lopes v Court of Justice</i>	[1996] ECR I-6401	Stat 19, 15
C-185/90	<i>Gill v Commission</i>	[1992] ECR I-993	Stat 44, 3, 9; RP ECJ 53, 5; RP GC 127, 2
C-195/90	<i>Commission v Germany</i>	[1990] ECR I-3351	RP ECJ 162, 3
C-242/90	<i>Commission v Albani and others</i>	[1993], ECR I-3839	Stat 58, 31
C-255/90	<i>Burban v Parliament</i>	[1992] ECR I-2253	RP ECJ 141, 3
C-283/90	<i>Vidrányi v Commission</i>	[1991] ECR I-4339	Stat 36, 1; RP ECJ 166, 14; 170, 2
C-285/90	<i>Tsitouras and others v Greece</i>	[1991] ECR I-787	RP ECJ 53, 7
C-294/90	<i>British Aerospace v Commission</i>	[1994] ECR I-5423	RP ECJ 144, 5, 8, 18
C-295/90	<i>Council v Parliament</i>	[1992] ECR I-5299	RP ECJ 159, 14
C-313/90	<i>CIRFS and Others v Commission</i>	[1993] ECR I-1125	Stat 40, 40, 42; RP ECJ 132, 4; 150
C-320-322/90	<i>Telemarsicabruzzo</i>	[1993] ECR I-393	RP ECJ 94, 2, 3
C-346/90	<i>F. v Commission</i>	[1992] ECR I-2691	RP ECJ 181, 3
C-30/91	<i>Lestelle v Commission</i>	[1992] ECR I-3755	Stat 58, 7; 61, 2; RP ECJ 141, 3; 166, 9
C-59/91	<i>France v Commission</i>	[1991] ECR I-526	Stat 45, 21
C-68/91	<i>Moritz v Commission</i>	[1992] ECR I-6849	Stat 58, 7
C-130/91	<i>ISAE/VP and Interdata v Commission</i>	[1996] ECR I-65	Stat 44, 7; RP ECJ 159, 14; RP GC 127, 2
C-155/91	<i>Commission v Council</i>	[1993] ECR I-939	RP ECJ 132, 3
C-188/91	<i>Deutsche Shell AG</i>	[1993] ECR I-363	Stat 23, 13
C-189/91	<i>Jippes and others</i>	[2001] ECR I-5689	RP ECJ 105, 9
C-195/91	<i>Bayer v Commission</i>	[1994] ECR I-5619	Stat 45, 16, 27, 30
C-213/91	<i>Abertal A. O. v Commission</i>	[1991] ECR I-5109	RP GC 104, 25
C-232-233/91	<i>Petridi and others v Commission</i>	[1991] ECR I-5351	RP ECJ 53, 9
C-241-242/91	<i>RTE and ITP v Commission</i>	[1995] ECR I-743	RP ECJ 140, 2
C-244/91	<i>Pincherle v Commission</i>	[1993] ECR I-6965	Stat 40, 31
C-249/91	<i>Commission v France</i>	[1994] ECR I-787	RP ECJ 141, 2
C-267-268/91	<i>Keck and Mithouart</i>	[1993] ECR I-6097	RP ECJ 81; 83, 8, 11
C-272/91	<i>Commission v Italy</i>	[1992] ECR I-3929	RP ECJ 163, 3
C-277/91; 318/91	<i>Ligur Carn</i>	[1993] ECR I-6621	Stat 23, 25, 48
C-294/91	<i>Sebastiani v Parliament</i>	[1992] ECR I-4998	Stat 58, 22; RP ECJ 181, 3
C-322/91	<i>TAO v AFI v Commission</i>	[1992] ECR I-6373	RP ECJ 120, 21

* Italics indicate cases not yet published in the ECR.

Case Number	Parties	ECR*	Reference
C-326/91	<i>De Compte v Parlement</i>	[1994] ECR I-2091	Stat 58, 20; RP ECJ 166, 10
C-6/92	<i>Federmineria A. O. v Commission</i>	[1993] ECR I-06357	Stat 40, 24
C-10/92	<i>Balocchi v Ministero delle finanze dello Stato</i>	[1993] ECR I-5105	Stat 23, 14, 20; RP ECJ 93, 7
C-24/92	<i>Corbiau</i>	[1993] ECR I-1300	Stat 23, 19, 36
C-29/92	<i>Asia Motor France v Commission</i>	[1992] ECR I-3935	RP ECJ 53, 9
C-36/92	<i>SEP v Commission</i>	[1994] ECR I-1911	RP ECJ 184, 3
C-37/92	<i>Vanacker and Lesage</i>	[1993] ECR I-4947	Stat 23, 14
C-40/92	<i>Commission v United Kingdom</i>	[1992] ECR I-3389	RP ECJ 160, 17
C-44/92	<i>TAO and others v Commission</i>	[1992] ECR I-6387	RP ECJ 53, 9
C-51/92	<i>Hercules Chemicals v Commission</i>	[1999] ECR I-4250	Stat 58, 31; RP GC 50, 14; 83, 1
C-53/92	<i>Hilti v Commission</i>	[1993] ECR I-669	Stat 58, 6, 8, 17
C-83/92	<i>Pierrel and others</i>	[1993] ECR I-6410	RP ECJ 94, 5
C-123/92	<i>Lezzi Pietro v Commission</i>	[1993] ECR I-809	RP ECJ 149, 1
C-136/92	<i>Commission v Brazzelli Lualdi A. O.</i>	[1994] ECR I-1981	RP ECJ 172, 3; 181, 3
C-157/92	<i>Banchero</i>	[1993] ECR I-1085	RP ECJ 53, 12; 94, 7
C-168/92	<i>Konstantinidis v Commission</i>	[1993] ECR I-1215	Stat 19, 19
C-199/92	<i>Hüls v Commission</i>	[1999] ECR I-4287	Stat 58, 22, 31; RP ECJ 170, 4; RP GC 62, 7, 8; 64, 43; 66, 3; 68, 4
C-200/92	<i>ICI v Commission</i>	[1999] ECR I-4399	RP ECJ 168, 7
C-222/92	<i>SFEI A. O. v Commission</i>	[1994] ECR I-5431	RP ECJ 144, 9
C-244/92	<i>Kupka-Floridi v WSA</i>	[1993] ECR I-2041	RP ECJ 181, 2
C-278-280/92	<i>Spain v Commission</i>	[1994] ECR I-4103	Stat 40, 38
C-292/92	<i>Hünermund and Others</i>	[1993] ECR I-6787	Stat 23, 6
C-320/92	<i>Finsider v Commission</i>	[1994] ECR I-5697	Stat 58, 31
C-332-333/92; 335/92	<i>Eurico Italia and others v Ente Nazionale Risi</i>	[1994] ECR I-711	RP ECJ 93, 9; 94, 12
C-354/92	<i>Eppe v Commission</i>	[1993] ECR I-7054	RP ECJ 166, 12
C-364/92	<i>SAT Fluggesellschaft</i>	[1994] ECR I-43	Stat 23, 45; RP ECJ 93, 16
C-379/92	<i>Peralta</i>	[1994] ECR I-3453	Stat 23, 11; RP ECJ 92, 5
C-386/92	<i>Monin</i>	[1993] ECR I-2049	RP ECJ 94, 7
C-393/92	<i>Almelo</i>	[1994] ECR I-1477	Stat 23, 31
C-399/92; 409/92; 425/92	<i>Hemig and others</i>	[1994] ECR I-5727	RP ECJ 94, 2
C-412/92	<i>Parliament v Meskens</i>	[1994] ECR I-3757	Stat 58, 8; RP GC 129, 1
C-424/92	<i>Ladbroke Racing v Commission</i>	[1993] ECR I-2214	Stat 54, 5

* Italics indicate cases not yet published in the ECR.

Cases ECJ

Court of Justice of the European Union

Case Number	Parties	ECR*	Reference
C-5/93	<i>DSM v Commission</i>	[1999] ECR I-4695	Stat 56, 5; RP ECJ 166, 6; RP GC 127, 2, 6
C-30/93	<i>AC-ATEL Electronics</i>	[1994] ECR I-2305	RP ECJ 94, 5
C-34/93; 50/93; 79/93	<i>Hemig and others</i>	[1994] ECR I-5727	RP ECJ 94, 2
C-39/93	<i>SFEI A. O. v Commission</i>	[1994] ECR I-2701	Stat 58, 7
C-46/93; 48/93	<i>Brasserie du pêcheur et Factortame and others</i>	[1996] ECR I-1029	RP ECJ 36, 8
C-73/93	<i>Viho v Commission</i>	[1996] ECR I-5457	RP ECJ 166, 9
C-76/93	<i>Scaramuzza v Commission</i>	[1994] ECR I-5173	RP ECJ 170, 7
C-133/93	<i>Crispoltoni and others</i>	[1994] ECR I-4863	RP ECJ 94, 4
C-280/93	<i>Germany v Council</i>	[1993] ECR I-3667	RP ECJ 160, 20
C-298/93	<i>Klinke v Commission</i>	[1994] ECR I-3009	Stat 58, 7; RP ECJ 166, 7
C-300/93	<i>Crispoltoni and others</i>	[1994] ECR I-4863	RP ECJ 94, 4
C-310/93	<i>BPB Industries and others v Commission</i>	[1995] ECR I-865	Stat 58, 25, 31; RP ECJ 140, 2; 166, 11
C-316/93	<i>Vaneetveld</i>	[1994] ECR I-763	RP ECJ 94, 9
C-329/93	<i>Germany and others v. Commission</i>	[1996] ECR I-5151	RP ECJ 54, 5
C-33893	<i>De Hoe v Commission</i>	[1994] ECR I-819	RP ECJ 166, 15; 181, 5; RP GC 44, 42
C-362/93	<i>Crispoltoni and others</i>	[1994] ECR I-4863	RP ECJ 94, 4
C-378/93	<i>La Pyramide</i>	[1994] ECR I-3999	RP ECJ 94, 8
C-396/93	<i>Henrichs v Commission</i>	[1995] ECR I-2611	Stat 58, 22
C-415/93	<i>Union royale belge des sociétés de football association and others v Bosman and others</i>	[1995] ECR I-4921	RP ECJ 93, 13
C-428/93	<i>Monin Automobiles</i>	[1994] ECR I-1707	RP ECJ 93, 13
C-7/94	<i>GAAL</i>	[1995] ECR I-1031	RP ECJ 28
C-58/94	<i>Netherlands v Council</i>	[1996] ECR I-2169	RP ECJ 132, 5
C-68/94	<i>France, SCPA and EMC v Commission</i>	[1998] ECR I-1375	RP ECJ 140, 2
C-87/94	<i>Commission v Belgium</i>	[1994] ECR I-1395	RP ECJ 160, 19
C-95/94	<i>Commission v Spain</i>	[1995] ECR I-1967	RP ECJ 141, 2
C-105/94	<i>Celestini v Saar-Sektkellerei Faber</i>	[1997] ECR I-2971	RP ECJ 93, 16
C-106/94	<i>Colin and Dupré</i>	[1995] ECR I-4759	RP ECJ 54, 6
C-111/94; 139/94	<i>Job Centre</i>	[1993] ECR I-3361	Stat 23, 34
C-120/94	<i>Commission v Greece</i>	[1994] ECR I-3037; [1996] ECR I-1513	RP ECJ 141, 2; 160, 3
C-134/94	<i>Esso Espanola</i>	[1995] ECR I-4223	RP ECJ 101, 2
C-150/94	<i>United Kingdom v Council</i>	[1998] ECR I-7235	Stat 40, 38
C-167/94	<i>Grau Gomis and others</i>	[1995] ECR I-1023	RP ECJ 94, 7
C-199-200/94	<i>Inpesca v Commission</i>	[1998] ECR I-831	Stat 44, 1; RP ECJ 159, 9

* Italics indicate cases not yet published in the ECR.

Case Number	Parties	ECR*	Reference
C-253/94	<i>Roujansky v Council</i>	[1995] ECR I-7	Stat 58, 30; RP ECJ 166, 10
C-266/94	<i>Commission v Spain</i>	[1995] ECR I-1975	RP ECJ 53, 11
C-11/95	<i>Commission v Belgium</i>	[1996] ECR I-4115	RP ECJ 37, 6
C-12/95	<i>Tramasa and others v Commission</i>	[1995] ECR I-467	RP ECJ 175, 9
C-17/95	<i>Commission v France</i>	[1995] ECR I-4895	RP ECJ 141, 2
C-19/95	<i>San Marco v Commission</i>	[1996] ECR I-4435	RP ECJ 170, 4
C-27/95	<i>Woodspring district Council/Bakers of Nailsea</i>	[1997] ECR I-1847	Stat 23, 11; RP ECJ 94, 13
C-30/95	<i>France, SCPA and EMC v Commission</i>	[1998] ECR I-1375	RP ECJ 140, 2
C-51/95	<i>Unifruit Hellas v Commission</i>	[1997] ECR I-727	RP ECJ 166,15
C-58/95 et seq.	<i>Gallotti</i>	[1996] ECR I- 4345	RP ECJ 94, 9
C-62-063/95	<i>Germany and others v. Commission</i>	[1996] ECR I-5151	RP ECJ 54, 5
C-74/95	<i>Criminal proceedings against X</i>	[1996] ECR I-6609	Stat 23, 40
C-91/95	<i>Tremblay A. O. v Commission</i>	[1996] ECR I-5547	RP ECJ 168, 2
C-97/95	<i>Pascoal & Filhos</i>	[1997] ECR I-420	Stat 45, 15
C-129/95	<i>Criminal proceedings against X</i>	[1996] ECR I-6609	Stat 23, 40
C-134/95	<i>USSL no. 47 di Biella v INAIL</i>	[1997] ECR I-195	RP ECJ 93, 13; 94, 12
C-143/95	<i>Commission v Socurte</i>	[1997] ECR I-1	RP ECJ 181, 3; RP GC 102, 18
C-149/95	<i>Commission v Atlantic Container Line A. O.</i>	[1995] ECR I-2168	Stat 58, 22; RP ECJ 166, 6; RP GC 104, 5
C-168/95	<i>Arcaro</i>	[1996] ECR I-4705	RP ECJ 94, 16
C-173/95	<i>Hogan v Court</i>	[1995] ECR I-4905	RP ECJ 175, 8
C-178/95	<i>Wiljo/Belgische Staat</i>	[1997] ECR I-585	Stat 23, 58; RP ECJ 94, 15
C-181/95	<i>Biogen/Smithkline Beecham Biologicals</i>	[1996] ECR I-717	Stat 40, 7; RP ECJ 92, 2; Intro pre 129, 4
C-185/95	<i>Baustahlgewebe v Commission</i>	[1998] ECR I-8417	Stat 36, 4; 58, 25, 31; RP ECJ 168, 7; RP GC 55, 3; 64, 46; 83, 3, 6
C-219/95	<i>Ferriere Nord v Commission</i>	[1997] ECR I-4411	Stat 58, 25; RP ECJ 190, 2
C-245/95	<i>Commission v NTN Corporation and Koyo Seiko</i>	[1996] ECR I-559; [1999] ECR I-00001	Stat 40, 21, 31; RP ECJ 158, 7; 166, 3; 190, 5; RP GC 44, 72; 129, 3, 4
C-246/95	<i>Coen</i>	[1997] ECR I-403	RP ECJ 83, 10
C-248-249/95	<i>SAM Schifffahrt and others v Federal Republic of Germany</i>	[1997] ECR I-4475	RP ECJ 94, 13
C-257/95	<i>Bresle</i>	[1996] ECR I-233	RP ECJ 94, 7
C-293/95	<i>Odigitria v Council</i>	[1996] ECR I-6129	Stat 58, 8
C-299/95	<i>Kremzow v Austria</i>	[1997] ECR I-2629	RP ECJ 93, 13
C-307/95	<i>Max Mara</i>	[1995] ECR I-5083	RP ECJ 94, 1

* Italics indicate cases not yet published in the ECR.

Cases ECJ

Court of Justice of the European Union

Case Number	Parties	ECR*	Reference
C-317/95	<i>Canadane Chees Trading and Kouri</i>	[1997] ECR I-4681	RP ECJ 94, 21; 100, 3
C-326/95	<i>Banco de Fomento e Exterior</i>	[1996] ECR I-1386	RP ECJ 94, 6
C-337/95	<i>Parfums Christian Dior</i>	[1997] ECR I-6013	Stat 23, 30
C-352/95	<i>Phyteron International/Bourdon</i>	[1997] ECR I-1729	RP ECJ 94, 5, 15
C-359/95	<i>Commission A. O. v Ladbroke</i>	[1997] ECR I-6265	Stat 56, 19
C-379/95	<i>Commission A. O. v Ladbroke</i>	[1997] ECR I-6265	Stat 56, 19
C-390/95	<i>Antillean Rice Mills and others v Commission</i>	[1999] ECR I-769	RP ECJ 172, 1
C-2/96	<i>Sunino and Data</i>	[1996] ECR I-1543	RP ECJ 94, 7
C-23/96	<i>Commission v France</i>	[1997] ECR I-1221	RP ECJ 141, 2
C-30/96	<i>Abello and others v Commission</i>	[1998] ECR I-372	RP ECJ 181, 2
C-46/96	<i>Germany v Commission</i>	[1997] ECR I-1189	RP ECJ 149, 1
C-48/96	<i>Windpark Groothusen v Commission</i>	[1998] ECR I-2873	RP GC 102, 16, 17
C-50/96	<i>Deutsche Telecom</i>	[2000] ECR I-743	Stat 20, 21; RP ECJ 82, 4; 83, 4
C-54/96	<i>Dorsch Consult</i>	[1997] ECR I-4961	Stat 23, 18, 20, 26, 29, 35
C-69/96	<i>Garofalo and others</i>	[1997] ECR I-5603	Stat 23, 24
C-70-79/96	<i>Garofalo and others</i>	[1997] ECR I-5603	Stat 23, 24
C-101/96	<i>Italia Testa</i>	[1996] ECR I-3081	RP ECJ 94, 7
C-116/96	<i>Reisebüro Binder</i>	[1998] ECR I-1889	Stat 23, 15; 44, 1; RP ECJ 159, 3, 13
C-140/96	<i>Dimitriadis v Court of Auditors</i>	[1997] ECR I-5635	RP ECJ 181, 3
C-150/96	<i>Galtieri v Parliament</i>	[1997] ECR I-1229	RP ECJ 166, 7
C-156/96	<i>Williams v Rechnungshof</i>	[1997] ECR I-239	RP ECJ 166, 15
C-174/96	<i>Lopes v ECJ</i>	[1996] ECR I-6401	RP ECJ 57, 5
C-180/96	<i>United Kingdom v Commission</i>	[1996] ECR I-3903	RP ECJ 160, 3, 12, 20, 26
C-188/96	<i>Commission v P</i>	[1997] ECR I-6575	Stat 58, 7
C-191/96	<i>Modesti</i>	[1996] ECR I-3937	RP ECJ 94, 7
C-196/96	<i>Lahlou</i>	[1996] ECR I-3945	RP ECJ 94, 7
C-206/96	<i>Commission v Luxemburg</i>	[1998] ECR I-3401	RP ECJ 150
C-210/96	<i>Gut Springenheide</i>	[1998] ECR I-4657	Stat 36, 7
C-218-222/96	<i>Commission v. Belgium</i>	[1996] ECR I-6817	RP ECJ 54, 2
C-234-235/96	<i>Deutsche Telecom</i>	[2000] ECR I-799	Stat 20, 21
C-239-240/96	<i>United Kingdom v Commission</i>	[1996] ECR I-4475	RP ECJ 160, 7, 21
C-259/96	<i>Council v De Nil and Impens</i>	[1998] ECR I-2915	Stat 61, 3
C-266/96	<i>Corsica Ferries France v Gruppo Antichi Ormeggiatori del porto di Genova A. O.</i>	[1998] ECR I-3949	RP ECJ 93, 7
C-268/96	<i>SCK and FNK v Commission</i>	[1996] ECR I-4973	RP ECJ 166, 7
C-291/96	<i>Grado and Bashir</i>	[1997] ECR I-5531	RP ECJ 93, 12
C-309/96	<i>Annibaldi v Sindaco del Comune di Guidonia and Presidente Regione Lazio</i>	[1997] ECR I-7493	RP ECJ 93, 13

* Italics indicate cases not yet published in the ECR.

Table of Cases

Cases ECJ

Case Number	Parties	ECR [*]	Reference
C-337/96	<i>Commission v Industrial Refuse and Coal energy</i>	[1998] ECR I-7943	RP ECJ 152, 3
C-354/96	<i>Commission v Italy</i>	[1997] ECR I-6007	RP ECJ 141, 2
C-386/96	<i>Dreyfus v Commission</i>	[1998] ECR I-2309	RP ECJ 166, 9
C-395-396/96	<i>Compagnie Maritime Belge Transports</i>	[2000] ECR I-1365	RP GC 81, 9
C-404/96	<i>Glencore v Commission</i>	[1998] ECR I-2435	Stat 61, 4
C-409/96	<i>Commission v Sveriges Betodlares Centralförening</i>	[1999] ECR I-4939	Stat 19, 5; RP ECJ 144, 12; RP GC 91, 20
C-412/96	<i>Kainuun Liikenne and Pohjolan Liikenne</i>	[1998] ECR I-5141	Stat 23, 60; RP ECJ 94, 15
C-416/96	<i>Eddline El-Yassine</i>	[1999] ECR I-1209	Stat 23, 27
C-9/97	<i>Jokela and Pitkäranta</i>	[1998] ECR I-6267	Stat 23, 27
C-66/97	<i>Banco de Fomento e Exterior</i>	[1997] ECR I-3757	RP ECJ 94, 6
C-73/97	<i>France v Comafrika A. O.</i>	[1999] ECR I-185	Stat 56, 21; RP ECJ 184, 4
C-95/97	<i>Région wallone v Commission</i>	[1997] ECR I-1787	RE ECJ 53, 8
C-103/97	<i>Köllensperger and Atzwanger</i>	[1999] ECR I-551	Stat 23, 29
C-104/97	<i>Atlanta v Commission</i>	[1999] ECR I-6983	RP ECJ 127, 6; 175, 8
C-110/97	<i>The Netherlands v Council</i>	[1997] ECR I-1795	RP ECJ 160, 4, 5
C-118/97	<i>Jokela and Pitkäranta</i>	[1998] ECR I-6267	Stat 23, 27
C-119/97	<i>Ufex v Commission</i>	[1999] ECR I-1341	Stat 58, 31; RP GC 64, 46
C-134/97	<i>Victoria Film</i>	[1998] ECR I-7023	Stat 23, 23, 28
C-151/97; 157/97	<i>National Power and PowerGen</i>	[1997] ECR I-3491	RP ECJ 130, 7
C-161/97	<i>Kernkraftwerke-Lippe-Ems v Commission</i>	[1999] ECR I-2057	Stat 20, 14; RP GC 52, 5; 58, 5
C-172/97	<i>SIVU</i>	[2001] ECR I-6699	RP ECJ 76, 2
C-179/97	<i>Nederlandse Antillen v Council and Commission</i>	*	RP GC 50, 4
C-180/97	<i>Regione Toscana v Commission</i>	[1997] ECR I-5245	RE ECJ 53, 8
C-221/97	<i>Schröder et. al. v Commission</i>	[1998] ECR I-08255	Stat Intro 14
C-256/97	<i>DM Transport</i>	[1999] ECR I-3913	RP ECJ 93, 15
C-265/97	<i>VBA v Florimex AO</i>	[2000] ECR I-2095	Stat 58, 8; RP ECJ 82, 5
C-266/97	<i>VBA v VGB and others and Commission</i>	[2000] ECR I-2135	Stat 58, 8; RP ECJ 82, 5
C-270-271/97	<i>Deutsche Post AG v Sievers and Schrage</i>	[2000] ECR I-929	Stat 20, 21; RP ECJ 83, 4
C-274/97	<i>Commission v. Coal products</i>	[2000] ECR I-3175	RP ECJ 127, 3
C-316/97	<i>Parliament v Gaspari</i>	[1998] ECR I-7597	Stat 58, 35; 61, 4
C-327/97	<i>Apostolidis and others v Commission</i>	[1999] ECR I-6709	RP ECJ 184, 3
C-355/97	<i>Beck and Bergedorf</i>	[1999] ECR I-4977	RP ECJ 93, 11
C-361/97	<i>Nour/Burgenländische Gebietskrankenkasse</i>	[1998] ECR I-3101	Stat 23, 11

* Italics indicate cases not yet published in the ECR.

Cases ECJ

Court of Justice of the European Union

Case Number	Parties	ECR*	Reference
C-436/97	<i>Deutsche Bahn v Commission</i>	[1999] ECR I-2387	RP ECJ 181, 3
C-1/98	<i>British Steel v Commission</i>	[2000] ECR I-10353	RP ECJ 170, 4
C-2/98	<i>De Compte v Parliament</i>	[1999] ECR I-1787	Stat 44, 6; RP GC 127, 2, 3
C-9/98	<i>Agostini v Ligue francophone de judo et disciplines associées and Ligue belge de judo</i>	[1998] ECR I-4261	RP ECJ 94, 7
C-17/98	<i>Emesa Sugar</i>	[2000] ECR I-665	Stat 20, 21; RP ECJ 82, 5
C-28-29/98	<i>Charreire</i>	[1999] ECR I-01963	RP ECJ 93, 1
C-36/98	<i>Spain v Council</i>	[2001] ECR I-779	RP GC 37
C-40/98	<i>Commission v TVR</i>	[2001] ECR I-307	RP ECJ 138, 1
C-43/98	<i>Camar v Commission and Council</i>	[1998] ECR I-1815	RP GC 104, 23
C-64/98	<i>Petrides v Commission</i>	[2010] ECR I-65	Stat 44, 10
C-110-147/98	<i>Gabalfrisa and others</i>	[2000] ECR I-1577	Stat 23, 27
C-151/98	<i>Pharos v Commission</i>	[1998] ECR I-5441	Stat 40, 27
C-155/98	<i>Alexopoulou v Commission</i>	[1999] ECR I-4069	RP GC 111, 14
C-159/98	<i>Government of the Dutch Antilles v Council</i>	[1998] ECR I-4147	RP GC 104, 49
C-164/98	<i>DIR International Film Srl v Commission</i>	[2000] ECR I-00447	Stat 58, 11
C-192/98	<i>ANAS</i>	[1999] ECR I-8583	Stat 23, 34
C-195/98	<i>Österreichischer Gewerkschaftsbund</i>	[2000] ECR I-10497	Stat 23, 28
C-200/98	<i>X AB and Y AB</i>	[1999] ECR I-8261	Stat 23, 28
C-248/98	<i>KNP BT v Commission</i>	[2000] ECR I-9641	Stat 58, 25
C-257/98	<i>Lucaccioni v Commission</i>	[1999] ECR I-5251	RP ECJ 166, 14, 15
C-291/98	<i>Sario v Commission</i>	[2000] ECR I-1213	RP ECJ 175, 8
C-295/98	<i>Italy v. Commission</i>	[2000] ECR I-111	RP ECJ 53, 4, 9
C-299/98	<i>Imperial 2 and Unifrigo Gadus v. Commission</i>	[1999] ECR I-8683	RP ECJ 127, 3; 166, 14
C-376/98	<i>Germany v Parliament and Council</i>	[2000] ECR I-2247; I-8419	Stat 36, 9; RP ECJ 131, 6; 166, 14; RP GC 42, 15
C-377/98	<i>The Netherlands v Parliament and Council</i>	[2000] ECR I-6229	RP ECJ 160, 15, 18
C-379/98	<i>PreussenElektra</i>	[2001] ECR I-2099	Stat 23, 51
C-393/98	<i>Gomes Valente</i>	[2001] ECR I-1327	Stat 23, 43
C-402/98	<i>ATB A. O.</i>	[2000] ECR I-5501	RP ECJ 92, 1; 93, 10
C-407/98	<i>Abrahamsson and Andresó</i>	[2000] ECR I-5539	Stat 23, 27
C-422/98	<i>Colonia Versicherung and others</i>	[1999] ECR I-1279	RP ECJ 94, 7
C-437/98	<i>Infrisa v Commission</i>	[1999] ECR I-7145	RP GC 14, 4; 111, 17
C-447/98	<i>Molkerei Großbraunshain and Bene Nahrungsmittel v Commission</i>	[2000] ECR I-9097	Stat 40, 11
C-458/98	<i>Industrie des poudres sphériques v Council</i>	[2000] ECR I-8147	RP ECJ 169, 4

* Italics indicate cases not yet published in the ECR.

Case Number	Parties	ECR*	Reference
C-462/98	<i>Mediocurso v Commission</i>	[2000] ECR I-7183	Stat 58, 31; RP ECJ 168, 7
C-7/99	<i>Campoli v Commission</i>	[1999] ECR I-2679	RP ECJ 181, 2
C-13/99	<i>Team srl v Commission</i>	[2000] ECR I-4686	Stat 58, 7
C-41/99	<i>Sadam Zucherifici and others v Council</i>	[2001] ECR I-4250	RP ECJ 166, 9
C-65/99	<i>Willeme v Commission</i>	[1999] ECR I-1857	RP GC 105, 9
C-67/99	<i>Commission v Ireland</i>	[2001] ECR I-5757	RP ECJ 120, 20
C-107/99	<i>Italy v Commission</i>	[2001] ECR I-1091	RP ECJ 132, 4
C-111/99	<i>Lech Stahlwerke v Commission</i>	[2001] ECR I-727	RP ECJ 166, 3
C-118/99	<i>France v Commission</i>	[2002] ECR I-747	Stat 40, 43
C-143/99	<i>Adria-Wien Pipeline und Wietersdorfer & Peggauer Zementwerke</i>	[2001] ECR I-8365	Stat 23, 14
C-178/99	<i>Salzmann</i>	[2001] ECR I-4421	Stat 23, 34
C-194/99	<i>Thyssen Stahl v Commission</i>	[2003] ECR I-10821	RP GC 83, 3
C-195/99	<i>Krupp Hoesch v Commission</i>	[2001] ECR I-10937	RP GC 83, 3
C-197/99	<i>Belgium v Commission</i>	[2003] ECR I-8461	Stat 58, 11; RP GC 81, 9
C-199/99	<i>Corus v Commission</i>	[2001] ECR I-11177	RP GC 83, 3
C-233/99	<i>Haugsted Hansen</i>	[2002] ECR I-3107	RP ECJ 94, 21; 100, 2
C-238/99 et seq.	<i>Limburgse Maatschappij and others v Commission</i>	[2002] ECR I-8375	RP ECJ 169, 4; RP GC 64, 36
C-248/99	<i>France v Monsanto and Commission</i>	[2002] ECR I-46	Stat 58, 9
C-249/99	<i>Pescados Congelados Jogamar v Commission</i>	[1999] ECR I-8333	RP ECJ 181, 5
C-274/99	<i>Connolly v Commission</i>	[2001] ECR I-1611	Stat 36, 4; RP GC 81, 9
C-277/99	<i>Commission v Oder-Plan Architektur A. O.</i>	[2001] ECR I-7355	Stat 41, 1
C-280-282/99	<i>Moccia Irme A. O. v Commission</i>	[2001] ECR I-4717	RP GC 50, 10
C-299/99	<i>Philips</i>	[2002] ECR I-5475	RP ECJ 83, 4
C-302/99; 308/99	<i>Commission and France v TF1</i>	[2001] ECR I-5603	Stat 56, 5; RP ECJ 166, 9
C-321/99	<i>ARAP A. O. v Commission</i>	[2002] ECR I-4287	RP ECJ 190, 2
C-335/99	<i>HFB A. O. v Commission</i>	[1999] ECR I-8705	RP GC 104, 35
C-349/99	<i>Commission v ADT Project</i>	[1999] ECR I-6467	Stat 56, 8; RP ECJ 181, 4
C-383/99	<i>Procter & Gamble v OHIM</i>	[2001] ECR I-6251	RP ECJ 166, 5
C-472/99	<i>Clean Car Autoservice v Commission</i>	[2001] ECR I-9687	RP ECJ 102; 144, 7
C-480/99	<i>Gerry Plant and Others v Commission</i>	[2002] ECR I-265	Stat 58, 23, 31; RP GC 50, 18
C-514/99	<i>France v Commission</i>	[2000] ECR I-4707	RP ECJ 53, 9
C-516/99	<i>Schmid</i>	[2002] ECR I-4573	Stat 23, 36
C-17/00	<i>De Coste</i>	[2001] ECR I-9445	Stat 23, 32

* Italics indicate cases not yet published in the ECR.

Cases ECJ

Court of Justice of the European Union

Case Number	Parties	ECR*	Reference
C-23/00	<i>Council v Boehringer</i>	[2002] ECR I-1873	Stat 40, 43; RP ECJ 166, 5
C-39/00	<i>SGA v Commission</i>	[2000] ECR I-11201	RP GC 64, 39
C-41/00	<i>Interporc v Commission</i>	[2003] ECR I-2125	RP ECJ 166, 9
C-50/00	<i>Unión de Pequeños Agricultores v Council</i>	[2002] ECR I-6677	Stat 23, 69
C-57/00; 61/00	<i>Freistaat Sachsen v Commission</i>	[2003] ECR I-9975	RP GC 68, 5
C-76/00	<i>Petro tub SA et al v Council</i>	[2003] ECR I-00079	Stat 23, 7; RP ECJ 166, 13
C-86/00	<i>HSB-Wohnbau</i>	[2001] ECR I-5353	Stat 23, 34
C-92/00	<i>HI</i>	[2002] ECR I-5553	Stat 23, 29
C-99/00	<i>Lyckeskog</i>	[2002] ECR I-4839	Stat 23, 44
C-116/00	<i>Laguillaumie</i>	[2000] ECR I-04979	RP ECJ 93, 1; 94, 2
C-171/00	<i>Libéros v Commission</i>	[2002] ECR I-451	RP GC 14, 13
C-178/00	<i>Italy v. Commission</i>	[2003] ECR I-303	RP ECJ 120, 14
C-182/00	<i>Lutz</i>	[2002] ECR I-547	Stat 23, 34
C-204/00 et seq.	<i>Aalborg Portland and others v Commission</i>	[2004] ECR I-123	Stat 58, 8; RP ECJ 166, 8
C-274/00	<i>Simon v Commission</i>	[2002] ECR I-5999	RP ECJ 181, 3
C-278/00	<i>Greece v Commission</i>	[2000] ECR I-8787	RP ECJ 160, 15
C-304/00	<i>Strawson and Gagg & Sons</i>	[2002] ECR I-10737	RP ECJ 94, 17
C-318/00	<i>Bacardi-Martini and Cellier des Dauphins</i>	[2003] ECR I-905	RP ECJ 94, 7
C-338/00	<i>Volkswagen v Commission</i>	[2003] ECR I-9189	Stat 58, 25
C-341/00	<i>Conseil national des professions de l'automobile a.o v Commission</i>	[2001] ECR I-5263	Stat 40, 18; RP GC 11, 1; 116, 5
C-421/00	<i>Sterbenz and Haug</i>	[2003] ECR I-1065	RP ECJ 94, 4
C-426/00	<i>Sterbenz and Haug</i>	[2003] ECR I-1065	RP ECJ 94, 4
C-445/00	<i>Austria v Council</i>	[2002] *	RP GC Prelims pre 42, 14
C-446/00	<i>Cubero Vermurie v Commission</i>	[2001] ECR I-10315	Stat 58, 7
C-447/00	<i>Holto</i>	[2002] ECR I-735	Stat 23, 34
C-459/00	<i>Commission v Trenker</i>	[2001] ECR I-2823	Stat 58, 12, 18
C-466/00	<i>Kaba</i>	[2003] ECR I-2219	Stat 23, 49; RP ECJ 93, 10
C-471/00	<i>Commission v Cambridge Healthcare Supplies</i>	[2001] ECR I-2865	Stat 58, 12
C-474/00	<i>Commission v Bruno Farmaceutici and others</i>	[2001] ECR I-2909	Stat 58, 12
C-475/00	<i>Commission v Hänseler</i>	[2001] ECR I-2953	Stat 58, 12
C-476/00	<i>Commission v Schuck</i>	[2001] ECR I-2995	Stat 58, 12
C-477/00	<i>Commission v Roussel und Roussel Diamant</i>	[2001] ECR I -3037	Stat 58, 12
C-478/00	<i>Commission v Roussel und Roussel Iberica</i>	[2001] ECR I-3079	Stat 58, 12
C-479/00	<i>Commission v Gerot</i>	[2001] ECR I-3121	Stat 58, 12

* Italics indicate cases not yet published in the ECR.

Case Number	Parties	ECR*	Reference
C-501/00	<i>Spain v Commission</i>	[2004] ECR I-6717	RP ECJ 154, 4
C-7/01	<i>FEG v Commission</i>	[2001] ECR I-2559	RP GC 104, 37
C-16/01	<i>Sterbenz and Haug</i>	[2003] ECR I-1065	RP ECJ 94, 4
C-57/01	<i>Makedoniko Metro and Michaniki</i>	[2003] ECR I-1091	RP ECJ 94, 16
C-103/01	<i>Commission v Germany</i>	[2003] ECR I-05369	Stat 23, 6
C-136/01	<i>Autosalone Ispra die Fratelli Rossi v Commission</i>	[2002] ECR I-6565	Stat 46, 10
C-172/01; 175-176/01; 180/01	<i>International Power and others v NA-LOO</i>	[2003] ECR I-11421	Stat 58, 11
C-184/01	<i>Hirschfeldt v European Environmental Agency</i>	[2002] ECR I-10189	Stat 61, 2
C-186/01	<i>Dory</i>	[2001] ECR I-7823	Stat 23, 4, 15; RP ECJ 92, 2
C-189/01	<i>Jippes</i>	[2001] ECR I-5689	Stat 23a, 10
C-191/01	<i>OHIM v Wrigley</i>	[2003] ECR I-12447	Stat 58, 27
C-217/01	<i>Hendrickx v Cedefop</i>	[2003] ECR I-3701	RP GC 44, 66
C-265/01	<i>Pansard and others</i>	[2002] ECR I-683	RP ECJ 94, 19
C-277/01	<i>Parliament v Samper</i>	[2003] ECR I-03019	Stat 58, 14
C-296/01	<i>Commission v France</i>	[2003] ECR I-13909	RP ECJ 120, 23
C-297/01	<i>Sicilcassa and others</i>	[2003] ECR I-7849	RP ECJ 93, 15
C-300/01	<i>Salzman</i>	[2003] ECR I-4899	Stat 23, 12
C-326/01	<i>Telefon and Buch v OHIM</i>	[2004] ECR I-01371	Stat 58, 28
C-329/01	<i>Pfizer Animal Health v Council</i>	[1999] ECR I-8343	Stat 40, 30
C-359/01	<i>British Sugar v Commission</i>	[2004] ECR I-4933	Stat 58, 25
C-404/01	<i>Commission v Euroalliages</i>	[2001] ECR I-10367	RP GC 104, 32, 45
C-406/01	<i>Germany v Parliament and Council</i>	[2002] ECR I-4561	Stat 45, 7, 25
C-439/01	<i>Cipra and Kvasnicka</i>	[2003] ECR I-745	Stat 23, 11; RP ECJ 94, 17
C-440/01	<i>Commission v Artedogan</i>	[2002] ECR I-1489	RP GC 108, 1, 5, 7
C-440/01	<i>Artedogan v Commission</i>	[2002] ECR I-1489	Stat 39, 6
C-445/01	<i>Simoncello and Boerio</i>	[2003] ECR I-1807	RP ECJ 94, 10
C-456-457/01	<i>Henkel KGaA v OHMI</i>	[2004] ECR I-05089	Stat 58, 28
C-462/01	<i>Hammarsten</i>	[2003] ECR I-781	RP ECJ 94, 17
C-473-474/01	<i>Proctor and Gamble v OHIM</i>	[2004] ECR I-05173	Stat 58, 28
C-481/01	<i>NDC Health and IMS Health v Commission</i>	[2002] ECR I-3401	RP GC 104, 23; 166, 6
C-502/01	<i>Gaumain-Cerri</i>	[2004] ECR I-6483	RP ECJ 103, 1; 154, 1; 154, 6
C-24/02	<i>Marseille Fret</i>	[2002] ECR I-3383	Stat 23, 35
C-31/02	<i>Gaumain-Cerri</i>	[2004] ECR I-6483	RP ECJ 103, 1; 154, 1; 154, 6
C-32/02	<i>Commission v Italy</i>	[2003] ECR I-12063	RP ECJ 57, 20; 152, 3
C-57/02	<i>Acerinox v Commission</i>	[2005] ECR I-6689	Stat 58, 18

* Italics indicate cases not yet published in the ECR.

Cases ECJ

Court of Justice of the European Union

Case Number	Parties	ECR*	Reference
C-69/02	<i>Reichling</i>	[2002] ECR I-3393	Stat 23, 35
C-71/02	<i>Karner</i>	[2004] ECR I-3025	RP ECJ 93, 16
C-136/02	<i>Commission v Brazelli Lualdi</i>	[1994] ECR I-1981	Stat 56, 14, 17; 58, 8
C-140/02	<i>Anastasiou and others</i>	[2003] ECR I-10635	RP ECJ 83, 10
C-141/02	<i>Commission v Max.Mobil</i>	[2005] ECR I-1283	Stat 56, 7
C-186/02	<i>Ramondín and Ramondín Capsulas v Commission</i>	[2003] ECR I-2415	Stat 40, 24
C-189/02; 202/02; 205-208/02	<i>Dansk Rorindustri and others v. Commission</i>	[2005] ECR I-5425	RP ECJ 120, 20; RP GC 48, 17; 68, 3
C-225/02	<i>García Blanco</i>	[2005] ECR I-523	RP ECJ 93, 6, 13
C-233/02	<i>France v Commission</i>	[2004] ECR I-2759	Stat 40, 43
C-234/02	<i>Mediator v Lamberts</i>	[2004] ECR I-2803	RP ECJ 166, 8
C-235/02	<i>Saetti and Frediani</i>	[2004] ECR I-1005	Stat 23, 28
C-244/02	<i>Kauppatalo Hansel</i>	[2003] ECR I-12139	RP ECJ 94, 19
C-245/02	<i>Anheuser Bush</i>	[2004] ECR I-10989	Stat 23, 11
C-263/02	<i>Jégo-Quéré v Commission</i>	[2004] ECR I-3425	Stat 23, 69; RP ECJ 166, 19; RP GC 111, 14
C-301/02	<i>Tralli v EZB</i>	[2005] ECR I-4071	Stat 58, 23, 35
C-304/02	<i>Commission v France</i>	[2005] ECR I-6263	RP ECJ 83, 4
C-323/02	<i>Commission v Hydrowatt</i>	[2003] ECR I-9071	RP ECJ 152, 4, 7
C-329/02	<i>SAT 1 v OHMI</i>	[2004] ECR I-08317	Stat 58, 7, 27
C-360/02	<i>Ripa di Meana v Parliament</i>	[2004] ECR I-10339	RP GC Prelims pre 63, 1; 114, 29
C-377/02	<i>Van Parys</i>	[2005] ECR I-1465	Stat 23, 12
C-385/02	<i>Commission v Italy</i>	[2004] ECR I-08121	Stat 45, 25
C-447/02	<i>KWS Saat v HABM</i>	[2004] ECR I-10107	Stat 58, 24
C-471/02	<i>Gómez-Reino v Commission</i>	[2003] ECR I-3207	RP GC 107, 4
C-17/03	<i>VEMV and others</i>	[2005] ECR I-4983	RP ECJ 93, 13
C-29-30/03	<i>Commission v ITEC</i>	[2003] ECR I-12205	RP ECJ 152, 4
C-39/03	<i>Commission v Artogodan and others</i>	[2003] ECR I-07885; I-4485	RP ECJ Intro pre 133 1, 7; 133, 4; 166, 13
C-53/03	<i>Syfait and others</i>	[2005] ECR I-4609	Stat 23, 37; 23, 38
C-71/03	<i>Comitato "Venezia vuole vivere" A. O. v Commission</i>	[2011] *	Stat 58, 8
C-87/03; 100/03	<i>Spain v. Council</i>	[2006] ECR I-2915	RP ECJ 54, 2
C-105/03	<i>Pupino</i>	[2005] ECR I-5285	Stat 23, 28
C-123/03	<i>Commission v Greencore</i>	[2004] ECR I-11647	Stat 58, 7
C-134/03	<i>Viacom Outdoor</i>	[2005] ECR I-1167	RP ECJ 94, 10
C-145/03	<i>Keller</i>	[2005] ECR I-2529	RP ECJ 94, 2
C-165/03	<i>Längst</i>	[2005] ECR I-5637	Stat 23, 10, 28; RP ECJ 93, 13
C-176/03	<i>Commission v Council</i>	[2004] *	Stat 40, 4
C-187/03	<i>Drouvis v Commission</i>	[2004] *	RP ECJ 166, 9

* Italics indicate cases not yet published in the ECR.

Case Number	Parties	ECR*	Reference
C-199/03	<i>Ireland v Commission</i>	[2005] ECR I-8027	RP ECJ 120, 14
C-207/03; 252/03	<i>Novartis and others</i>	[2005] ECR I-3209	RP ECJ 54, 4
C-226/03	<i>José Martí Peix v Commission</i>	[2004] ECR I-11421	Stat 61, 2
C-240/03	<i>Comunità Montana della Valnerina v Commission</i>	[2006] ECR I-731	RP ECJ 166, 14
C-254/03	<i>Eduardo Vieira v Commission</i>	[2005] ECR I -237	RP ECJ 166, 9
C-320/03	<i>Commission v Austria</i>	[2003] ECR I-11665	RP ECJ 160, 22
C-325/03	<i>Zuazaga Meabe/OHIM</i>	[2005] ECR I-403	Stat 45, 19
C-352/03	<i>Del Vaglio v Commission</i>	[2004] *	Stat 58, 24
C-365/03	<i>Industrias Químicas del Vallés v Commission</i>	[2003] ECR I-12389	RP GC 104, 60
C-376/03	<i>Zaans Veem</i>	[2005] ECR I-5821	RP ECJ 154, 10
C-396/03	<i>Killinger v Germany and others</i>	[2005] ECR I-4967	Stat 61, 2; RP GC 11, 2
C-438-439/03; 509/03	<i>Cannito</i>	[2004] ECR I-1605	RP ECJ 94, 7
C-442/03; 471/03	<i>P&O European Ferries (Vizcaya) v Commission</i>	[2006] ECR I-4845	Stat 43, 6; 56, 12; 58, 9, 11
C-451/03	<i>Servizi Ausiliari Dottori Commercialisti</i>	[2006] ECR I-2941	RP ECJ 93, 16
C-461/03	<i>Gaston Schul Douane Expéditeur</i>	[2006] ECR I-10513	Stat 23, 45; RP ECJ 94, 13
C-475/03	<i>Banca popolare di Cremona</i>	[2005] ECR I-9373	RP ECJ 83, 7
C-499/03	<i>Biegi Nahrungsmittel u. Commonfood v Commission</i>	[2005] ECR I-1751	Stat 58, 8; RP ECJ 166, 8
C-508/03	<i>Commission v United Kingdom</i>	[2006] ECR I-3969	RP ECJ 53, 15
C-547/03	<i>AIT v Commission</i>	[2006] ECR I-845	RP GC 11, 1
C-551/03	<i>General Motors Nederland and others</i>	[2006] ECR I-3173	Stat 58, 8; RP ECJ 181, 3
C-2/04	<i>Cannito</i>	[2004] ECR I-1605	RP ECJ 94, 7
C-7/04	<i>Commission v Akzo and Akrcos</i>	[2004] ECR I-8739	RP ECJ 160, 12; RP GC Prelims pre 104, 2;
C-27/04	<i>Commission v Council</i>	[2004] ECR I-6649	RP ECJ Intro pre 131, 6; 133, 4
C-95/04	<i>British Airways v Commission</i>	[2007] ECR I-02331	Stat 58, 20
C-96/04	<i>Standesamt Stadt Niebüll,</i>	[2006] ECR I-03561	Stat 23, 34
C-125/04	<i>Denuit and Cordenier</i>	[2005] ECR I-923	Stat 23, 39
C-154/04	<i>Alliance of Natural Health and others</i>	[2005] ECR I- 6451	RP ECJ 105, 12
C-167/04	<i>JCB Service v Commission</i>	[2006] ECR I-8935	RP ECJ 166, 9
C-190/04	<i>French and others v Council and Commission</i>	[2005] *	Stat 58, 22
C-195/04	<i>Commission v Finland</i>	[2007] ECR I-03351	RP ECJ 120, 24
C-222/04	<i>Cassa di Risparmio di Firenze A. O.</i>	[2006] ECR I-289	RP ECJ 92, 12, 13
C-227/04	<i>Lindorfer v. Council</i>	[2007] ECR I-06767	RP ECJ 60, 5; 83, 8, 11
C-259/04	<i>Emanuel</i>	[2006] ECR I-3089	Stat 23, 18

* Italics indicate cases not yet published in the ECR.

Cases ECJ

Court of Justice of the European Union

Case Number	Parties	ECR*	Reference
C-273/04	<i>Poland v. Council</i>	[2006] ECR I-08925	RP ECJ 64, 1, 7
C-281/04	<i>Leighton and others v Council and Commission</i>	[2005] *	Stat 58, 25
C-286/04	<i>Eurocermex v OHIM</i>	[2005] ECR I-5797	Stat 58, 8; RP ECJ 169, 3
C-293/04	<i>Beemsterboer Coldstore Services v Inspecteur der Belastingdienst</i>	[2006] ECR I-2263	Stat Intro 26
C-300/04	<i>Eman</i>	[2006] ECR I-8055	RP ECJ 105, 3
C-302/04	<i>Ynos</i>	[2006] ECR I-371	RP ECJ 93, 13
C-317/04	<i>Parliament v Council</i>	[2005] ECR I-2457	RP ECJ Intro pre 129 1; 133, 5
C-318/04	<i>Parliament v Commission</i>	[2005] ECR I-2467	Stat 40, 5
C-328/04	<i>Vajnai</i>	[2005] ECR I- 08577	RP ECJ 93, 1, 13
C-341/04	<i>Eurofood</i>	[2004] ECR I-3813	RP ECJ 133, 5
C-344/04	<i>International Air Transport Association A. O.</i>	[2006] ECR I-403	RP ECJ 105, 11, 13
C-403/04	<i>Sumitomo Metal Industries A. O. v Commission</i>	[2007] ECR I-729	RP GC 83, 7
C-411/04	<i>Salzgitter Mannesmann GmbH v Commission</i>	[2007] ECR I-959	Stat Intro 14
C-417/04	<i>Regione Siciliana v Commission</i>	[2006] ECR I-3881	RP GC 113, 5
C-466/04	<i>Acereda Herrera</i>	[2006] ECR I-05341	RP ECJ 93, 13
C-500/04	<i>Proxxon</i>	[2006] ECR I-1545	Stat 23, 14
C-521/04	<i>Tillack v Commission</i>	[2005] ECR I-3103	RP GC 104, 19
C-24/05	<i>Storck v OHIM</i>	[2006] ECR I-5677	RP GC Prelims pre 130, 2
C-39/05; 52/05	<i>Turco v. Council</i>	[2009] ECR I-4723	RP GC 42, 12
C-110/05	<i>Commission v Italy</i>	[2007] *	RP ECJ 60, 5
C-196/05	<i>Sachsenmilch</i>	[2006] ECR I-05161	Stat 19, 23; 23, 14
C-229/05	<i>PKK and KVK v Council</i>	[2008] ECR I-00439	Stat 58, 8, 15
C-234/05	<i>BVBA De Backer</i>	[2005] *	RP ECJ 93, 1
C-246/05	<i>Häupl v Lidl</i>	[2007] ECR I-04673	Stat 19, 28
C-306/05	<i>SGAE</i>	[2006] ECR I-11519	RP ECJ 82, 5
C-331/05	<i>Internationaler Hilfsfond v Commission</i>	[2007] ECR I-5475	RP GC 91, 78
C-376-377/05	<i>Brünsteiner</i>	[2006] ECR I-11383	RP ECJ 94, 13
C-380/05	<i>Centro Europa 7</i>	[2008] ECR I-349	Stat 23, 6
C-432/05	<i>Unibet (London) and Unibet (International) Ltd v Justitiekanslern</i>	[2007] ECR I-2271	Stat Intro 14
C-115/06	<i>Radke</i>	[2006] ECR I-00000	RP ECJ 105, 11
C-168/06	<i>Ceramika Paradyz</i>	[2007] ECR I-00029	RP ECJ 94, 12
C-208-209/06	<i>Medion and Canon</i>	[2007] ECR I-07963	RP ECJ 54, 2
C-221/06	<i>Stadtgemeinde Frohnleiten v Gemeindebetriebe Frohnleiten</i>	[2007] ECR I-9643	RP GC 42, 13

* Italics indicate cases not yet published in the ECR.

Case Number	Parties	ECR [*]	Reference
C-269/06	<i>Commission v Translation Centre of the EU</i>	[2007] *	Stat 54, 3
C-323/06	<i>Commission v Kallianos</i>	[2012] *	RP GC 91, 29
C-341-342/06	<i>Chronopost</i>	[2008] ECR I-04777	Stat 18, 16, 18
C-12/07	<i>Autostrada dei Fiori and AISCAT</i>	[2007] ECR I-00162	RP ECJ 105, 11
C-107/07	<i>Weber v Commission</i>	[2007] ECR I-177	Stat 18, 19
C-109/07	<i>Pilato</i>	[2008] ECR I-3503	Stat 23, 21, 37
C-155/07	<i>Parliament v Council</i>	[2007] *	Stat 40, 4
C-158/07	<i>Förster</i>	[2008] ECR I-08507	Stat 45, 26
C-163/07	<i>Diy-Mar Insaat Sanayi v Ticaret and Akar v Commission</i>	[2007] ECR I-10125	RP ECJ Intro pre 49
C-171-172/07	<i>Apothekerkammer des Saarlandes A. O.</i>	[2009] ECR I-04171	Stat 18, 16
C-191/07	<i>Sellier v Commission</i>	[2007] ECR I-00113	Stat 45, 23
C-193/07	<i>Commission v Poland</i>	[2007] *	RP ECJ 133, 5
C-202/07	<i>France Télécom v Commission</i>	[2009] ECR I-2369	RP GC 81, 8
C-288/07	<i>The Commissioners of Her Majesty's Revenue & Customs</i>	[2008] ECR I-7203	Stat 19, 23
C-308/07	<i>Koldo Gorostiaga Atxalandabaso</i>	[2009] ECR I-01059	Stat 2, 1, 5; 18, 10, 11
C-385/07	<i>Der Grüne Punkt – Duales System Deutschland v Commission</i>	[2009] *	RP GC 83, 5
C-385/07	<i>Der Grüne Punkt</i>	[2009] ECR I-6155	Stat 47, 1
C-514/07; 528/07; 532/07	<i>Sweden v Commission</i>	[2010] ECR I-8533	RP GC 22, 1; Prelims pre 42, 15, 16
C-66/08	<i>Kozłowski</i>	[2008] ECR I-06041	Stat 23a, 10
C-83/08	<i>Glückauf Brauerei GmbH v Hauptzollamt Erfurt</i>	[2009] ECR I-2857	Stat 19, 23
C-118/08	<i>Transportes Urbanos y Servicios Generales</i>	[2010] ECR I-0000	Stat 23, 8
C-127/08	<i>Metock and others</i>	[2008] ECR I-06241	Stat 23a, 10
C-137/08	<i>VB Pénzügyi Lízing</i>	[2010] ECR I-10847	Stat 23, 22
C-175-176/08; 178-179/08	<i>Salahadin Abdulla and Others</i>	[2010] ECR I-1493	Stat 23, 8
C-195/08	<i>Rinau</i>	[2008] ECR I-05271	Stat 23a, 14
C-296/08	<i>Santesteban Goicoechea</i>	[2008] ECR I-06307	Stat 23a, 14
C-388/08	<i>Leymann and Pustovarov</i>	[2008] ECR I-08993	Stat 23a, 14
C-399/08	<i>Commission v Deutsche Post</i>	[2010] *	Stat Annex 1, 11, 2
C-408/08	<i>Lancome v OHIM</i>	[2010] ECR I-01347	Stat 58, 28
C-425/08	<i>Enviro Tech</i>	[2009] ECR I-10035	Stat 2, 4
C-497/08	<i>Amiraike Berlin</i>	[2010] *	Stat 23, 34
C-48/09	<i>Lego Juris v OHIM</i>	[2010] *	Stat 58, 27
C-51/09	<i>Barbara Becker v Harman International Industries</i>	[2010] ECR I-05805	Stat 58, 27
C-59/09	<i>Hasbro</i>	[2009] *	Stat 56, 9

* Italics indicate cases not yet published in the ECR.

Cases ECJ

Court of Justice of the European Union

Case Number	Parties	ECR*	Reference
C-67/09	<i>Nuova Agricast and Cofra v Commission</i>	[2010] *	Stat Intro 14
C-73/09	<i>Comitato "Venezia vuole vivere" et al v Commission</i>	[2011] *	Stat 58, 8
C-76/09	<i>Comitato "Venezia vuole vivere" A. O. v Commission</i>	[2011] *	Stat 58, 8
C-90/09	<i>General Química and Others v Commission</i>	[2011] *	RP GC 81, 9
C-112/09	<i>SGAE v Commission</i>	[2010] ECR I-351	Stat 45, 30, 31; RP GC 23, 7
C-118/09	<i>Koller</i>	[2010] *	Stat 23, 32
C-138/09	<i>Todaro Nunziatina</i>	[2010] ECR I-04561	Stat 23, 14
C-140/09	<i>Fallimento Traghetti del Mediterraneo</i>	[2010] *	Stat 23, 9
C-165-167/09	<i>Stichting Natuur en Milieu</i>	[2011] *	Stat 23, 14
C-196/09	<i>Miles and Others</i>	[2011] *	Stat 23, 41
C-197/09	<i>M v EMEA</i>	[2009] ECR I-12033	Stat 62, 2; 62a, 1; RP GC 121a
C-201/09; 216/09	<i>ArcelorMittel Luxembourg SA et al. v Commission</i>	[2011] *	Stat Intro 14
C-229/09	<i>Hogan Lovells International</i>	[2010] *	Stat 20, 21
C-242/09	<i>Albron Catering v FNV</i>	[2010] *	Stat 19, 23
C-344/09	<i>Bengtsson</i>	[2011] *	Stat 23, 34
C-357/09	<i>Kadzoev</i>	[2009] ECR I-11189	Stat 23a, 14
C-385/09	<i>Nidera Handelscompagnie</i>	[2010] *	Stat 23, 32
C-402/09	<i>Ioan Tatu</i>	[2011] *	Stat 19, 10
C-403/09	<i>Detiček</i>	[2009] ECR I-12193	Stat 23a, 14
C-408/09	<i>Municipio de Barcelos</i>	[2010] *	Stat 23, 17
C-457/09	<i>Claude Chartry v State of Belgium</i>	[2011] *	Stat Intro 7
C-491/09	<i>Evropaiki Dynamiki v ECB</i>	[2011] ECR I-0000	RP GC 114, 9
C-493/09	<i>Commission v Portugal</i>	[2010] *	Stat 40, 35
C-506/09	<i>Portugal v Transnautica</i>	[2010] *	Stat 54, 8
C-517/09	<i>RTL Belgium</i>	[2010] *	Stat 23, 36
C-546/09	<i>Aurubis Bulgaria</i>	[2011] *	Stat Intro 14
C-550/09	<i>E and F</i>	[2010] ECR I-06209	Stat 23a, 10
C-661/09	<i>Molter v Germany</i>	[2010] *	RP GC 90, 5
C-40/10	<i>Commission v Council</i>	[2010] *	Stat 30, 32, 33; 40, 4, 5
C-73/10	<i>Internationale Fruchthandels-Gesellschaft Weichert v Commission</i>	[2010] ECR I-11535	Stat Intro 13; 45, 33; RP GC Intro pre 100, 1
C-74-75/10	<i>European Renewable Energies Federation ASBL v Commission</i>	[2010] *	Stat 19, 15
C-124/10	<i>Commission v France</i>	[2010] *	Stat 40, 35
C-142/10	<i>Pérez Guerra v BNP Paribas and Spain</i>	[2010] *	RP GC 90, 5
C-143/10	<i>Tomasz Uznanski v Poland</i>	[2010] *	Stat Intro 5

* Italics indicate cases not yet published in the ECR.

Case Number	Parties	ECR*	Reference
C-266/10	<i>Seacid v Parliament and Council</i>	[2010] ECR I-133	RP GC 111, 19, 20
C-404/10	<i>Commission v Odile Jacobs</i>	[2012] *	RP GC Prelims pre 42, 13
C-426/10	<i>Bell & Ross v OHIM</i>	[2010] *	Stat 45, 33, 35; RP GC 44, 89
C-525/10	<i>Noko Ngele v Commission</i>	[2011] *	Stat 56, 12
C-588/10	<i>Minister Finansów v Kraft Foods Polska</i>	[2012] *	Stat 19, 10
C-239/11	<i>Siemens v Commission</i>	[2012] *	Stat 40, 34, 35
C-265/11	<i>Campailla v Commission</i>	[2011] *	Stat 19, 13, 16
C-272/11	<i>Noko Ngele v Commission</i>	[2011] *	Stat 18, 19
C-411/11	<i>Altner v Commission</i>	[2011] *	Stat 18, 13

General Court (GC)

Case Number	Parties	ECR*	Reference
T-1-6/89	<i>Rhone-Poulenc A. O. v Commission</i>	[1990] ECR II-637	RP GC 50, 21
T-4/89	<i>BASF v Commission</i>	[1992] ECR II-1591	RP GC 125, 5
T-8/89	<i>DSM v Commission</i>	[1992] ECR II-2399	RP GC 127, 2, 4
T-9/89	<i>Hüls v Commission</i>	[1992] ECR II-499	RP GC 50, 13, 21; 53, 4; 56, 3
T-14/89	<i>Montecatini v Commission</i>	[1992] ECR II-2409	RP GC 125, 2
T-16/89	<i>Herkenrath A. O. v Commission</i>	[1992] ECR II-275	RP GC 122, 4
T-17/89; 21/89; 25/89	<i>Brazelli A. O. v Commission</i>	[1992] ECR II-293	RP GC 51, 7
T-18/89; 24/89	<i>Tagaras v ECJ</i>	[1992] ECR II-153	RP GC 91, 34, 54
T-26/89	<i>de Compte v Parliament</i>	[1997] ECR I-305; II-8476	RP GC 125, 2, 5; 126, 3; 127, 2
T-30/89	<i>Hilti v Commission</i>	[1990] ECR II-163	RP GC 116, 11, 18
T-32/89; 39/89	<i>Manopoulos v ECJ</i>	[1990] ECR II-281	RP GC 70, 6
T-33/89; 74/89	<i>Blackman v Parliament</i>	[1993] ECR II-249	RP GC 44, 31, 35; 65, 2; 68, 6; 70, 6; 74; 91,4; 92, 10, 12
T-36/89	<i>Nijman v Commission</i>	[1991] ECR II-699	RP GC 44, 71; 70, 1, 4, 7, 9
T-37/89	<i>Hanning v Parliament</i>	[1990] ECR II-463	RP GC 48, 19
T-42/89	<i>Yorck von Wartenburg v Parliament</i>	[1990] ECR II-31	RP GC 46, 33; 122, 9
T-43/89	<i>Gill v Commission</i>	[1993] ECR II-303	RP GC 120, 1; 121
T-50/89	<i>Sparr v Commission</i>	[1990] ECR II-539	RP GC 44, 59; 85, 4
T-51/89	<i>Tetra Pak v Commission</i>	[1990] ECR II-309	RP GC 14, 6
T-64/89	<i>Automec v Commission</i>	[1990] ECR II-367	RP GC 44, 33, 37, 68; 86, 5; 113, 4

* Italics indicate cases not yet published in the ECR.

Cases GC

Court of Justice of the European Union

Case Number	Parties	ECR*	Reference
T-68/89; 77-78/89	<i>SIV A. O. v Commission</i>	[1992] ECR II-1403	RP GC 56, 3; 86, 5
T-78/89	<i>PPG Industries Glass v Commission</i>	[1993] ECR II-573	RP GC 91, 44, 60, 73; 92, 19, 26
T-80/89 et seq.	<i>BASF A. O. v Commission</i>	[1995] ECR II-729	RP GC 48, 11, 25; 50, 13; 64, 14, 21, 31; 102, 10
T-106/89	<i>Norsk Hydro v Commission</i>	[1994] ECR II-419	RP GC 127, 4
T-120/89	<i>Stahlwerke Peine Salzgitter v Commission</i>	[1996] ECR II-1547	RP GC 91, 35, 38, 47; 92, 22, 24
T-121/89	<i>X v Commission</i>	[1992] ECR II-2195	RP GC 57, 2
T-125/89	<i>Filtrona Española v Commission</i>	[1990] ECR II-393	RP GC 86, 1; 101, 1, 2
T-134/89	<i>Hettrich A. O. v Commission</i>	[1990] ECR II-565	RP GC 44, 59, 65
T-139/89	<i>Virgili-Schettini v Parliament</i>	[1990] ECR II-535	RP GC 44, 84
T-169/89	<i>Frederiksen v Parliament</i>	[1991] ECR II-1403	RP GC 70, 1, 3, 4, 9
T-1/90	<i>Pérez-Mingueaz Casariego v Commission</i>	[1991] ECR II-143	RP GC Intro VIII, 26; 35, 23, 25; 44, 57; Prelims pre 115, 5
T-11/90	<i>H.S. v Council</i>	[1992] ECR II-1869	RP GC 114, 10, 31
T-12/90	<i>Bayer v Commission</i>	[1991] ECR II-219	RP GC 54, 15; 114, 30
T-13/90	<i>X v Commission</i>	[1992] ECR II-2195	RP GC 57, 2
T-24/00	<i>Automec v Commission</i>	[1992] ECR II-2223	RP GC 14, 6; 51, 5
T-16/90	<i>Panagiopoulou v Parliament</i>	[1992] ECR II-89	RP GC 48, 11, 32
T-19/90	<i>Von Hoessle v Court of Auditors</i>	[1991] ECR II-615	RP GC 44, 53; 113, 4
T-21/90	<i>Generlich v Commission</i>	[1991] ECR II-1323	RP GC 44, 29; 48, 11; 64, 23
T-23/90	<i>Peugeot v Commission</i>	[1991] ECR II-653; II-2059	RP GC Prelims pre 87, 1; 91, 35, 57
T-26/90	<i>Finsider v Commission</i>	[1992] ECR II-1789	RP GC 32, 7
T-46/90	<i>Devillez A. O. v Parliament</i>	[1993] ECR II-699	RP GC 77, 10
T-51/90	<i>Moretti v Commission</i>	[1992] ECR II-487	RP GC 58, 33
T-11/91	<i>Schloh v Council</i>	[1992] ECR II-203	RP GC 58, 30
T-13/91	<i>Harrison v Commission</i>	[1991] ECR II-179	RP GC 94, 10
T-15/91	<i>Bollendorf v Parliament</i>	[1992] ECR II-1679	RP GC 113, 4, 5
T-16/91	<i>Rendo A. O. v Commission</i>	[1992] ECR II-2417	RP GC 44, 31; 48, 20, 21
T-19/91	<i>Société d'hygiène dermatologique de Vichy v Commission</i>	*	RP GC 95, 4
T-22/91	<i>Raiola-Denti A. O. v Council</i>	[1993] ECR II-817	RP GC 129, 5
T-24/91	<i>Gomez Gonzales A.O v Council</i>	[1992] ECR II-1907	RP GC 62, 3
T-25/91	<i>Arto Hijos v Council</i>	[1992] ECR II-1907	RP GC 62, 3
T-26/91	<i>Kupka-Floridi v ECOSOC</i>	[1992] ECR II-1615	RP GC 64, 24; 68, 1

* Italics indicate cases not yet published in the ECR.

Case Number	Parties	ECR [*]	Reference
T-32/91	<i>Solvay v Commission</i>	[1995] ECR II-1823	RP GC 48, 25, 26; 65, 6; 86, 4
T-33/91	<i>Williams v Court of Auditors</i>	[1992] ECR II-2499	RP GC 58, 32; 62, 3
T-35/91	<i>Zubizarreto A.O v Albani</i>	[1992] ECR II-1599	RP GC 24, 5
T-36/91	<i>ICI v Commission</i>	[1995] ECR II-1847	RP GC 47, 18
T-37/91	<i>ICI v Commission</i>	[1995] ECR II-1901	RP GC 44, 41; 47, 18
T-39/91	<i>Herrmann v CEDEFOP</i>	[1992] ECR II-233	RP GC 111, 13
T-43/91	<i>Hoyer v Commission</i>	[1994] ECR II-297	RP GC 58, 32
T-43-44/91; 51-52/91	<i>Hoyer-Smets v Commission</i>	[1994] ECR II-319 [1995] ECR I-151	RP GC 58, 32; 91, 35, 53; 92, 28
T-48/91	<i>Minic v Court of Auditors</i>	[1991] ECR II-479	RP GC 111, 13
T-53/91	<i>Mergen v Commission</i>	[1992] ECR II-2041	RP GC 48, 12, 29; 68, 7
T-54/91	<i>Almeida Antunes v Parliament</i>	[1992] ECR II-1739	RP GC 47, 10. 64, 24
T-63/91	<i>White v Commission</i>	*	RP GC 77, 4
T-69/91	<i>Peroulakis v Commission</i>	[1993] ECR II-185	RP GC 58, 32
T-71/91	<i>Cordoano v ECOSOC</i>	[1991] *	RP GC 64, 33
T-73/91	<i>Gavilan v Parliament</i>	[1992] ECR II-1555	RP GC 86, 32
T-77/91	<i>Hochbaum v Commission</i>	[1991] ECR II-1285	RP GC 110
T-78/91	<i>Moat v Commission</i>	[1991] ECR II-1387	RP GC 112
T-81/91	<i>Feltz v Parliament</i>	[1992] ECR II-1827	RP GC 86, 43, 47
T-84/91	<i>Dépens Meskens v Parliament</i>	[1993] ECR II-757	RP GC 91, 9, 51
T-89/91	<i>“X” v Commission</i>	[1993] ECR II-1235	RP GC 50, 13; 86, 46
T-1/92	<i>Tallarico v Parliament</i>	[1993] ECR II-107	RP GC 62, 3
T-6/92; 52/92	<i>Reinarz v Commission</i>	[1993] ECR II-1047	RP GC 60; 64, 24; 102, 9
T-7/92	<i>Asia Motor A. O. v Commission</i>	[1993] ECR II-669	RP GC 86, 5
T-9/92	<i>Peugeot v Commission</i>	[1995] ECR II-2059	RP GC 91, 35, 57
T-13/92	<i>Moat v Commission</i>	[1993] ECR II-287	RP GC 86, 5
T-19/92	<i>Leclerc v Commission</i>	[1996] ECR II-1851	RP GC 114, 13; 116, 26
T-21/92; 89/92	<i>“X” v Commission</i>	[1993] ECR II-1235	RP GC 50, 13; 86, 46
T-22/92	<i>Weissenfels v Parliament</i>	[1993] ECR II-1095	RP GC 47, 18; 48, 11, 12
T-24/92	<i>Langnese-Iglo and Schöller-Lebensmittel v Commission</i>	[1992] ECR II-1839	RP GC 107, 7
T-28/92	<i>Langnese-Schöller und Schöller Lebensmittel v Commission</i>	*	RP GC 116, 14
T-29/92	<i>SPO A. O. v Commission</i>	[1995] ECR II-289	RP GC 58, 26, 64, 26
T-34/92	<i>Fiatagri and New Holland Ford v Commission</i>	[1994] ECR II-905	RP GC 42, 6; 64, 31; 68, 8

* Italics indicate cases not yet published in the ECR.

Cases GC

Court of Justice of the European Union

Case Number	Parties	ECR*	Reference
T-47/92	<i>Lenz v Commission</i>	[1992] ECR II-2523	RP GC 14, 6; 18, 3; 43, 19; 44, 78; 46, 5; 47, 21; 48, 5, 6; 101, 6; 114, 19, 21
T-52/92	<i>Reinarz v Commission</i>	[1993] ECR II-1047	RP GC 60; 64, 24; 102, 9
T-54/92	<i>Schneider v Commission</i>	[1994] ECR II-887	RP GC 64, 35
T-55/92	<i>Kniff v Court of Auditors</i>	[1993] ECR II-823	RP GC 122, 5
T-56/92	<i>Koelman v Commission</i>	[1993] ECR II-1267	RP GC 44, 47, 64
T-57/92; 75/92	<i>Yorck von Wartenburg v Parliament</i>	*	RP GC 50, 3
T-60/92	<i>Noonan v Commission</i>	[1993] ECR II-911	RP GC 114, 30
T-65/92,	<i>Arauxo-Dumay v Commission</i>	[1993] ECR II-597	RP GC 58, 9
T-66/92	<i>Herlitz v Commission</i>	[1994] ECR II-531	RP GC 48, 6
T-69/92	<i>Seghers v Council</i>	[1993] ECR II-651	RP GC 58, 9
T-70-71/92	<i>Florimex and VGB v Commission</i>	[1991] ECR II-693	RP GC 102, 9
T-72/92	<i>Benzler v Commission</i>	[1993] ECR II-347	RP GC 44, 31, 63
T-74/92	<i>Ladbroke Racing v Commission</i>	[1993] ECR II-535	RP GC 35, 12, 18, 23, 31; 36, 1, 2, 3, 4; 44, 54; 47, 17; 116, 5
T-77/92	<i>Parker Pen v Commission</i>	[1994] ECR II-549	RP GC 48, 28; 91, 79
T-79/92	<i>Ditterich v Commission</i>	[1994] ECR II-907	RP GC 64, 20
T-84/92	<i>Nielsen and Moller v ECOSOC</i>	[1993] ECR II-949	RP GC 48, 6
T-85/92	<i>De Hoe v Commission</i>	[1993] ECR II-523	RP GC 43, 19; 44, 28, 45, 47
T-91/92	<i>Daemen v Commission</i>	[1993] ECR II-1491	RP GC 54, 14
T-92/92	<i>Loic Lallemand-Zeller v Commission</i>	[1993] ECR II-31	RP GC 95, 6; 96, 1, 4, 5
T-101/92	<i>Stagakis v Parliament</i>	[1993] ECR II-63	RP GC 43, 14, 23; 44, 75, 91; 95, 6
T-102/92	<i>VIHO v Commission</i>	[1995] ECR II-17	RP GC 44, 31
T-106/92	<i>Frederiksen v Commission</i>	[1995] ECR II-99	RP GC 58, 25; 68, 1, 6
T-107/92	<i>White v Commission</i>	[1994] ECR II-143.	RP GC 58, 32
T-2/93	<i>Air France v Commission</i>	[1995] ECR II-533; [1996] ECR II-235	RP GC 91, 34, 55, 57; 92, 18, 19
T-3/93	<i>Air France v Commission</i>	[1994] ECR II-121	RP GC 35, 23
T-8/93	<i>Huet v Court of Auditors</i>	[1994] ECR II-103	RP GC 62, 8
T-10/93	<i>A v Commission</i>	[1994] ECR II-179	RP GC 57, 2; 64, 35; 116, 22
T-12/93	<i>Comité central d'entreprise de la société Vittel A. O. v Commission</i>	[1993] ECR II-449	RP GC 107, 2
T-15/93	<i>Vienne v Parliament</i>	[1993] ECR II-1327	RP GC 64, 23
T-17/93	<i>Matra Hachette v Commission</i>	[1994] ECR II-595	RP GC 35, 24
T-39/93; 553/93	<i>Baltsavias v Commission</i>	[1995] ECR II-695	RP GC 48, 13
T-46/93	<i>Michael-Chiou v Commission</i>	[1994] ECR II-929	RP GC 64, 35
T-87/93	<i>Kruidvat v Commission</i>	[1993] ECR II-1363	RP GC 116, 4, 5

* Italics indicate cases not yet published in the ECR.

Case Number	Parties	ECR [*]	Reference
T-124/93	<i>Werner v Commission</i>	[1995] ECR II-91	RP GC 86, 1, 31, 34, 35, 40; 91, 31
T-158/93 et seq.	<i>Brandt A. O. v Commission</i>	[1994] ECR II-1133	RP GC 86, 41
T-281/93 et seq.	<i>Walsh A. O. v Council and Commission</i>	[1994] ECR II-657	RP GC 86, 37
T-343/93 et seq.	<i>McCullough A. O. v Council and Commission</i>	[1994] ECR II-667	RP GC 99, 2
T-429/93	<i>Héritiers d'Edmond Ropars v Commission</i>	[2000] ECR II-2439	RP GC 14, 16
T-432-434/93	<i>Socurte A. O. v Commission</i>	[1995] ECR II-503	RP GC 44, 54; 102, 18
T-447/93	<i>AITEC v Commission</i>	[1996] ECR II-1631	RP GC 91, 47
T-448/93	<i>British Cement Association v Commission</i>	[1998] *	RP GC 91, 53
T-452-453/93	<i>Pevasa and Inpesca v Commission</i>	[1994] ECR II-229	RP GC 102, 8, 13
T-459/93	<i>Siemens v Commission</i>	[1995] ECR II-1675	RP GC 48, 20; 116, 27
T-460/93	<i>Tête A. O. v EIB</i>	[1995] ECR II-229	RP GC 91, 51; 92, 32
T-465/93	<i>Consorzio gruppo di azione locale "Murgia Messapica" v Commission</i>	[1994] ECR II-3007	RP GC 102, 16
T-468/93	<i>Frinil v Commission</i>	[1994] ECR II-33	RP GC 44, 1; 102, 18
T-471/93	<i>Tiercé Ladbroke v Commission</i>	[1995] ECR II-2537	RP GC 86, 25
T-479/93; 559/93	<i>Bernardi v Commission</i>	[1991] ECR II-1115	RP GC 14, 6
T-485/93	<i>Société Louis Dreyfus v Commission</i>	[2000] ECR II-3659	RP GC 77, 8, 102, 18
T-492/93	<i>Nutral v Commission</i>	[1993] ECR II-1024	RP GC 50, 6; 114, 29; 106, 2
T-497/93	<i>Hogan v Commission</i>	[1995] ECR II-703	RP GC 14, 7; 18, 3; 44, 52
T-506/93	<i>Moat v Commission</i>	[1995] ECR II-147	RP GC 64, 6, 37
T-508/93	<i>Mancini v Commission</i>	[1994] ECR II-761	RP GC 48, 25
T-515/93	<i>B v Commission</i>	[1994] ECR II-379	RP GC 44, 31
T-524/93	<i>Hennessy v Council and Commission</i>	[1995] ECR II-61	RP GC 86, 36
T-525/93	<i>Griffin and Nash v Council and Commission</i>	[1995] ECR II-71	RP GC 86, 36
T-527/93	<i>O v Commission</i>	[1995] ECR II-29	RP GC 114
T-533/93	<i>Bouma v Council and Commission</i>	[2001] ECR II-203, 211	RP GC 44, 15; 51, 7; 77, 6
T-535/93	<i>F v Council</i>	[1995] ECR II-147	RP GC 48, 11; 64, 37
T-538/93	<i>Houlihan v Council and Commission</i>	[1995] ECR II-81	RP GC 86, 36
T-539/93	<i>Hogan v Parliament</i>	*	RP GC 111, 13
T-541/93	<i>Coughlin v Council and Commission</i>	[1994] ECR II-1235	RP GC 86, 36
T-543/93	<i>Gestevisión Telecinco v Commission</i>	[1993] ECR II-1409	RP GC 104, 29
T-547/93	<i>Lopes v ECJ</i>	[1996] ECR II-185	RP GC 44, 93; 48, 10, 31; 50, 16
T-549/93	<i>D v Commission</i>	[1995] ECR II-43, 47	RP GC 57, 2
T-551/93	<i>Industrias Pesqueras Compas SA v Commission</i>	[1996] ECR II-247	RP GC 44, 81

* Italics indicate cases not yet published in the ECR.

Cases GC

Court of Justice of the European Union

Case Number	Parties	ECR*	Reference
T-553/93	<i>Baltsavias v Commission</i>	[1995] ECR II-695	RP GC 48, 13
T-554/93	<i>Saint and Murray v Council and Commission</i>	[1997] ECR II-563	RP GC 44, 26
T-556/93	<i>Saby v Commission</i>	[1995] ECR I-117; [1995] ECR II-375	RP GC 48, 12
T-562/93	<i>Obst v Commission</i>	[1995] ECR I 247; [1997] ECR II-737	RP GC 48, 2, 11
T-573/93	<i>Montoya v Commission</i>	[1997] ECR I-271; [1997] ECR II-761	RP GC 129, 5
T-575/93	<i>Koelman v Commission</i>	[1996] ECR II-1	RP GC 44, 29, 64
T-589/93	<i>Ryan-Sheridan v Stiftung zur Verbesserung der Lebens- und Arbeitsbedingungen</i>	[1994] ECR II-257; [1996] ECR II-77	RP GC 58, 29
T-7/94	<i>Adriaenssens A. O. v Commission</i>	[1997] ECR I-1; [1997] ECR II-1	RP GC 86, 25
T-20/94	<i>Hartmann v Council and Commission</i>	[1997] ECR II-595	RP GC 44, 26, 29
T-40/94	<i>V v Commission</i>	[1998] ECR II-1753	RP GC 119
T-60/94	<i>Pierrat v ECJ</i>	[1995] ECR I-23; [1995] ECR II-77	RP GC 64, 4, 20, 25
T-66/94	<i>Auditel v Commission</i>	[1995] ECR II-239	RP GC 35, 23
T-70/94	<i>Comafrika and Dole Fresh Fruit Europe v Commission</i>	[1996] ECR II-1741	RP GC 51, 7; 64, 20; 114, 15
T-85/94	<i>Branco v Commission</i>	[1995] ECR II-17; [1998] ECR II-2667	RP GC 50, 6; 91, 70; 122, 2, 11
T-88/94	<i>Société commerciale des potasses et de l'azote v Commission</i>	[1994] ECR II-263; II-401	RP GC 104, 36; 107, 2
T-97/94	<i>Coussios v Commission</i>	[1998] ECR II-1879	RP GC 77, 10
T-99/94	<i>Asocarne v Commission</i>	[1994] ECR II-871	RP GC 111, 14
T-100/94	<i>Michailidis A. O. v Commission</i>	[1998] ECR II-3115	RP GC 64, 20
T-115/94	<i>Opel Austria v Council</i>	[1998] ECR II-2739	RP GC 91, 53
T-134/94 et seq.	<i>NMH Stahlwerke and Others v Commission</i>	[1997] ECR II-2293	RP GC 50, 13; 51, 5; 64, 48; 65, 8
T-140/94	<i>Enrique Gutiérrez de Quijano y Llorens v Parliament</i>	[1996] ECR II-689	RP GC 104, 65
T-141/94	<i>Thyssen Stahl v Commission</i>	[1999] ECR II-347	RP GC 56, 3
T-146/94	<i>Williams v Court of Auditors</i>	[1994] ECR II-571	RP GC 105, 14
T-158/94	<i>Brunagel v Parliament</i>	[1996] ECR II-1131	RP GC 86, 25
T-159-160/94	<i>Ajinomoto and Nutrasweet v Council</i>	[1997] ECR II-2461	RP GC 64, 19
T-161/94	<i>Sinochem Heilongjiang v Council</i>	[1996] ECR II-695	RP GC 44, 81, 83
T-163/94; 165/94	<i>NTN Corporation and Koyo Seiko v Council</i>	*	RP GC 92, 20
T-167/94	<i>Nölle v Commission</i>	[1995] ECR II-2589	RP GC 44, 37; 91, 25, 61
T-169/94	<i>PIA HIFI v Commission</i>	[1995] ECR II-1735	RP GC 44, 59
T-170/94	<i>Shanghai Bicycle v Council</i>	[1997] ECR II-1383	RP GC 44, 81, 83
T-171/94	<i>Descom Scales v Council</i>	[1995] ECR II-2413	RP GC 48, 2

* Italics indicate cases not yet published in the ECR.

Case Number	Parties	ECR [*]	Reference
T-177/94	<i>Altmann A. O. v Commission</i>	[1994] ECR II-1245; [1998] ECR I-299	RP GC 91, 8, 47, 49, 53; 92, 22; 111, 10
T-180/94	<i>M v Commission</i>	[1994] ECR II-663	RP GC 44, 1; 44, 37
T-185/94	<i>Geotronics v Commission</i>	[1994] ECR II-519	RP GC 104, 33
T-220/94	<i>Deutsche Bahn v Commission</i>	[1997] ECR II-1689	RP GC 48, 22
T-231-232/94	<i>Transacciones Maritimas v Commission</i>	[1994] ECR II-885	RP GC 104, 35; 107, 6
T-233/94	<i>Industrias Pesqueras Compos SA v Commission</i>	[1996] ECR II-247	RP GC 44, 81
T-234/94	<i>British Steel v Commission</i>	[2005] ECR II-835	RP GC 113, 3
T-235/94	<i>Galtieri v Parliament</i>	[1996] ECR II-129	RP GC 54, 14, 15, 62, 10
T-239/94	<i>EISA v Commission</i>	[1997] ECR II-1839	RP GC 116, 26
T-260/94	<i>Air Inter v Commission</i>	[1997] ECR II-997	RP GC 86, 18
T-266/94	<i>Skibsvaerftsforeningen A.O v Commission</i>	[1996] ECR II-1399	RP GC 35, 24; 70, 5
T-271/94	<i>Branco v Commission</i>	[1998] ECR II-3761	RP GC 91, 51, 54, 64, 65, 69, 70; 92, 10
T-276/94	<i>Buick v Commission</i>	[1995] ECR II-667	RP GC 64, 6
T-280/94	<i>Lopes v Court of Justice</i>	[1996] ECR II-239	RP GC 47, 20; 114, 19
T-290/94	<i>Kayserberg v Commission</i>	[1995] ECR II-2247; [1997] ECR II-2137; [1998] ECR II-4105	RP GC 35, 19; 91, 38, 57, 58; 116, 26
T-303/94	<i>De Jong v Council and Commission</i>	[2010] *	RP GC 94, 9
T-305/94 et seq.	<i>Limburgse Vinyl Maatschappij A. O. v Commission</i>	[1999] ECR II-930, 931	RP GC 32, 2; 46, 12; 64, 5; 86, 9
T-308/94	<i>Cascades v Commission</i>	[1995] ECR II-265	RP GC 104, 41; 109, 3
T-330/94	<i>Salt Union v Commission</i>	[1995] ECR II-2881	RP GC 35, 20
T-331/94	<i>IPK-München v Commission</i>	[2006] ECR II-51	RP GC 91, 45, 64; 92, 3; 119
T-336/94	<i>Efisol v Commission</i>	[1996] ECR II-1343	RP GC 86, 24
T-337/94	<i>Enzo-Gutzeit v Commission</i>	[2000] ECR II-479	RP GC 91, 55; 92, 3
T-352/94	<i>Mo och Domsjö v Commission</i>	[1998] ECR II-19889	RP GC 44, 25
T-368/94	<i>Blanchard v Commission</i>	[1996] ECR II-1	RP GC 86, 30
T-371/94; 394/94	<i>British Airways A. O. and British Mid-lands v Commission</i>	[1998] ECR II-2405	RP GC 35, 24; 116, 26
T-373/94	<i>Werners v Council and Commission</i>	[2006] ECR II-4631	RP GC 64, 34
T-374 et seq.	<i>European Night Services A. O. v Commission</i>	[1998] ECR II-3141	RP GC 102, 8
T-387/94	<i>Asia Motor France A. O. v Commission</i>	[1996] ECR II-961	RP GC 113, 4
T-392/94	<i>Phelan v Council</i>	[1996] ECR II-295	RP GC 86, 47
T-395/94	<i>Atlantic Container A. O. v Commission</i>	[1995] ECR II-2893	RP GC 104, 8, 9
T-398/94	<i>Kahn Scheepvaart v Commission</i>	[1996] ECR II-477	RP GC 14, 6; 48, 15

* Italics indicate cases not yet published in the ECR.

Cases GC

Court of Justice of the European Union

Case Number	Parties	ECR*	Reference
T-2/95	<i>Industrie des poudres sphériques v Council</i>	[1995] ECR II-533; [2000] ECR II-463	RP GC 91, 57, 71
T-5/95	<i>Amicale des résidents du square d'Auvergne v Commission</i>	[1995] ECR II-255	RP GC 92, 20; 104, 16
T-6/95	<i>Cantine dei colli Berici v Commission</i>	[1995] ECR II-647	RP GC 104, 7, 13, 19, 35
T-8-9/95	<i>Pelle A. O. v Commission</i>	[2007] ECR II-4117	RP GC 64, 8
T-10/95	<i>Akli Chehab v Commission</i>	[2001] ECR II-721	RP GC 48, 28
T-11/95	<i>BP Chemicals v Commission</i>	[1996] ECR II-599	RP GS 35, 5, 20, 24, 30
T-25/95 et seq.	<i>Cimenteries A. O. v Commission</i>	[2000] ECR II-491	RP GC 53, 4
T-38/95	<i>Groupe Origny v Commission</i>	[2002] ECR II-217	RP GC 91, 17, 44; 92, 3
T-73/95	<i>Oliveira v Commission</i>	[1997] ECR II-381	RP GC 86, 24
T-79-80/95	<i>SNCF and British Railways v Commission</i>	[1995] ECR II-1433	RP GC 104, 39
T-81/95	<i>Interhotel v Commission</i>	[1997] ECR II-81	RP GC 86, 24
T-90/95	<i>Gill v Commission</i>	[1991] ECR II-1231	RP GC 70, 1
T-97/95	<i>Sinochem v Council</i>	[1999] ECR II-743; [2000] ECR II-1715	RP GC 91, 56, 76, 77
T-104/95	<i>Tsimenta Chalkidos v Commission</i>	[1995] ECR II-2235	RP GC 104, 28, 57; 108, 4; 109, 3
T-110/95	<i>IECC v Commission</i>	[1998] ECR II-3605	RP GC 62, 8
T-119/95	<i>Hauer v Council and Commission</i>	[1998] ECR II-2713	RP GC 113, 5
T-121/95	<i>EFMA v Council</i>	[1997] ECR II-87	RP GC 35, 18, 24
T-129/95	<i>Neue Maxhütte Stahlwerke and Lech-Stahlwerke v Commission</i>	*	RP GC 50, 5
T-133/95; 294/95	<i>IECC v Commission</i>	[1998] ECR II-3645	RP GC 62, 9; 116, 24
T-140/95	<i>Ryanair v Commission</i>	[1998] ECR II-3327	RP GC 102, 15; 116, 216
T-145/95	<i>Proderec v Commission</i>	[1997] ECR II-823	RP GC 113, 7
T-146/95	<i>Bernardi v Parliament</i>	[1996] ECR II-769	RP GC 44, 64; 104, 65
T-147/95	<i>Pavan v Parliament</i>	[1996] ECR II-861	RP GC 64, 23
T-153/95	<i>Kaps v ECJ</i>	[1996] ECR II-663	RP GC 48, 27
T-155/95	<i>LPN and GEOTA v Commission</i>	[1998] ECR II-2751	RP GC 102, 17
T-169/95	<i>Quijano v Commission</i>	[1997] ECR II-273	RP GC 33, 5; 57, 3
T-174/95	<i>Svenska Journalistförbundet v Council</i>	[1998] ECR II-2289	RP GC 86, 22; 116, 7
T-175/95	<i>BASF v Commission</i>	[1999] ECR II-158	RP GC 62, 12; 64, 44
T-187/95	<i>R v Commission</i>	[1997] ECR II-729	RP GC 64, 5, 25
T-188/95	<i>Waterleiding Maatschappij "Noord-West Brabant" v Commission</i>	[1998] ECR II-3713	RP GC 102, 16
T-189/95	<i>SGA v Commission</i>	[1999] ECR II-3587	RP GC 50, 6; 63, 6
T-190/95	<i>Européenne Automobile v Commission</i>	[1999] ECR II-367	RP GC 44, 31
T-194/95	<i>Area Cova A. O. v Council</i>	[1996] ECR II-343; II-591	RP GC 43, 9; 64, 44; 115, 17

* Italics indicate cases not yet published in the ECR.

Case Number	Parties	ECR*	Reference
T-195/95	<i>Guérin Automobiles v Commission</i>	[1997] ECR II-679	RP GC 32, 2; 44, 38
T-196/95	<i>FFSA A. O. v Commission</i>	[1997] ECR II-233	RP GC 48, 19, 29
T-207/95	<i>De los Angeles Ibarra Gil v Commission</i>	[1997] ECR II-31	RP GC 48, 11
T-208/95	<i>Miwon v Commission</i>	[1996] ECR II-635	RP GC 86, 48
T-210/95	<i>EFMA v Council</i>	[1999] ECR II-3291	RP GC 53, 7
T-216/95	<i>Moles Gracia Ortúzar v Commission</i>	[1997] ECR I-403; [1997] ECR II-1083	RP GC 48, 20
T-224/95	<i>Tremblay A. O. v Commission</i>	[1997] ECR II-2215	RP GC 44, 31
T-228/95	<i>Lehrfreund v Council and Commission</i>	[1996] ECR II-111	RP GC 104, 11
T-232/95	<i>Cecom v Council</i>	[1998] ECR II-2679	RP GS 32, 2
T-234/95	<i>Dradenauer Stahlgesellschaft v Commission</i>	[2000] ECR II-2603	RP GC 70, 5
T-2/96; 97/96	<i>Neue Maxhütte Stahlwerke and Lech-Stahlwerke v Commission</i>	*	RP GC 50, 5
T-7/96	<i>Perillo v Commission</i>	[1997] ECR II-1061	RP GC 86, 24
T-13/96	<i>Team v Commission</i> [1998]	[1998] ECR II-4073	RP GC 44, 37
T-14/96	<i>BAI v Commission</i>	[1999] ECR II-139	RP GC 102, 15
T-18/96	<i>SCI and FNK v Commission</i>	[1996] ECR II-407	RP GC 104, 15
T-19/96	<i>Carvel and Guardian Newspaper v Council</i>	[1996] ECR II-1519	RP GC 86, 34, 36; 99, 5
T-20/96	<i>Pascall v Commission</i>	[1997] ECR II-977	RP GC 33, 5
T-22/96	<i>Langdon v Commission</i>	[1996] ECR II-10	RP GC 44, 66
T-23/96	<i>De Persio v Commission</i>	[1998] ECR II-1413	RP GC 44, 41
T-24/96	<i>“U” v Cedefop</i>	[1997] ECR II-749	RP GC 88, 4
T-25/96	<i>Arbeitsgemeinschaft Deutscher Luftfahrt-Unternehmen and Hapag-Lloyd Fluggesellschaft v Commission</i>	[1997] ECR II-363	RP GC 86, 46
T-30/96	<i>Gomes de Sá Pereira v Council</i>	[1996] ECR II-785	RP GC 94, 10
T-39/96; 123/96	<i>SGA v Commission</i>	[1999] ECR II-3587	RP GC 50, 6; 63, 6
T-40/96; 55/96	<i>de Kerros and Kohn-Bergé v Commission</i>	[1997] ECR II-135	RP GC 50, 5, 16
T-41/96	<i>Antillean Rice Mills v Council</i>	[1997] ECR II-447	RP GC 104, 57
T-45/96	<i>Européenne Automobile v Commission</i>	[1999] ECR II-367	RP GC 44, 31
T-49/96	<i>Colombo Lunghi v Commission</i>	[1997] ECR I- 29; [1997] ECR II-83	RP GC 44, 37
T-50/96	<i>Sogecable v Commission</i>	[1996] ECR II-797	RP GC 104, 8, 10
T-53/96	<i>Syndicat des producteurs de viande bovine v Commission</i>	[1996] ECR II-1579	RP GC 44, 37
T-64/96	<i>DeJorio v Council</i>	[1997] ECR II-127	RP GC 44, 59; 111, 14
T-65/96	<i>Kish Glass v Commission</i>	[2001] ECR II-3261	RP GC 91, 9, 33, 49, 56, 60, 69
T-66/96; 221/96	<i>Mellett v ECR</i>	[1998] ECR II-1305	RP GC 58, 32
T-69/96	<i>Hamburger Hafen- und Lagerhaus A.O v Commission</i>	[2001] ECR II-1037	RP GC 48, 22
T-71/96	<i>Berlingieri Vinzek v Commission</i>	[1997] ECR II-921	RP GC 58, 25

* Italics indicate cases not yet published in the ECR.

Cases GC

Court of Justice of the European Union

Case Number	Parties	ECR*	Reference
T-75/96	<i>Söktas v Commission</i>	[1996] ECR II-859	RP GC 104, 20
T-76/96	<i>National Farmer's Union v Commission</i>	[1996] ECR II-815	RP GC 77, 7; 104, 14, 59
T-79/96	<i>Camar and Tico v Commission and Council</i>	[2000] ECR II-2193; [2006] *	RP GC 81, 1; 91, 75, 81; 92, 15
T-84/96	<i>Cipeke v Commission</i>	[1996] ECR II-1313; [1997] ECR II-2081	RP GC 44, 47; 104, 36
T-85/96	<i>Clarke v Cedefop</i>	[1997] ECR II-755	RP GC 88, 4
T-86/96	<i>Arbeitsgemeinschaft Deutscher Luftfahrt-Unternehmen and Hapag Lloyd Fluggesellschaft v Commission</i>	[1998] ECR II-641	RP GC 104, 24
T-87/96	<i>Assicurazioni Generali A. O. v Commission</i>	[1999] ECR II-203	RP GC 13, 5
T-89/96	<i>British Steel v Commission</i>	[1997] ECR II-835; [1999] ECR II-2089	RP GC 102, 14; 116, 14, 20
T-90/96	<i>Peugeot v Commission</i>	[1997] ECR II-663	RP GC 48, 28
T-91/96	<i>Council v Hankart</i>	[1998] ECR I- 597; [1998] ECR II-1809	RP GC 127, 2
T-93/96	<i>Presle v Cedefop</i>	[1997] ECR II-1111	RP GC 88, 4
T-94/96	<i>Hagleitner v Commission</i>	[1998] ECR II-1467	RP GC 68, 1, 8
T-100/96	<i>Vicente-Nunez v Commission</i>	[1998] ECR I- 591; [1998] ECR II-1779	RP GC 44, 67
T-102/96	<i>Gencor v Commission</i>	[1997] ECR II-879	RC GC 116, 18
T-105/96	<i>Pharos v Commission</i>	[1998] ECR II-285	RP GC 113, 7
T-107/96	<i>Pantochim v Commission</i>	[1996] ECR II-1361	RP GC 104, 10
T-112/96; 115/96	<i>Séché v Commission</i>	*	RP GC 50, 4
T-121/96; 151/96	<i>Mutual Aid Administration Services v Commission</i>	[1997] ECR II-1357	RP GC 44, 29
T-125/96; 152/96	<i>Boehringer v Council and Commission</i>	[1999] ECR II-3427	RP GC 116, 27
T-132/96; 143/96	<i>Freistaat Sachsen A. O. v Commission</i>	[1999] ECR II-3663	RP GC 86, 28
T-137/96	<i>Valio Oy v Commission</i>	[1996] ECR II-1327	RP GC 104, 20
T-148/96; 174/96	<i>Brogneri v Commission</i>	[1999] ECR II-329	RP GC 91, 64; 91, 65
T-149/96	<i>Coldiretti A. O. v Council and Commission</i>	[1998] ECR II-3841	RP GC 44, 37
T-154/96	<i>Chvatal A. O. v Court of Justice</i>	[1998] ECR I- 527, [1998] ECR II-1579	RP GC 44, 91; 50, 14; 116, 27
T-157/96	<i>Affatato v Commission</i>	[1997] ECR I-33; [1998] ECR II-97; [1998] ECR I-41	RP GC 44, 35, 37; 94, 9; 95, 3; 113, 4
T-168/96	<i>Patronis v Council</i>	[1997] ECR II-833	RP GC 62, 3
T-176/96	<i>Volger v Parliament</i>	[1998] ECR II-1	RP GC 99, 2
T-185/96; 189-190/96	<i>Riviera Auto Service v Commission</i>	[1999] ECR II-93	RP GC 44, 56
T-191/96	<i>CAS Succhi Di Frutta v Commission</i>	[1998] ECR II-573; [1999] ECR II-211	RP GC 50, 10; 116, 4
T-202/96; 204/96	<i>Von Löwis and Alvarez-Cotera v Commission</i>	[1998] ECR II-2829	RP GC 44, 87
T-219/96	<i>Y v Parliament</i>	*	RP GC 95, 6

* Italics indicate cases not yet published in the ECR.

Case Number	Parties	ECR [*]	Reference
T-221/96	<i>Mellett v ECR</i>	[1998] ECR II-1305	RP GC 58, 32
T-6/97	<i>Comafrika and Dole Fresh Fruit Europe v Commission</i>	[1997] ECR II-291	RP GC 104, 7, 58
T-10-11/97	<i>Unifrigo Gadus and CPL Imperial 2 v Commission</i>	[1998] ECR II-2231	RP GC 44, 51
T-13/97	<i>Chvatal A. O. v Commission</i>	[1998] ECR II-1633	RP GC 50, 14
T-26/97	<i>Antillean Rice v Commission</i>	[1997] ECR II-1347	RP GC 86, 49
T-28/97	<i>Hubert v Commission</i>	[1997] ECR II-1255	RP GC 44, 29
T-39/97	<i>T. Port v Commission</i>	[1997] ECR II-2125	RP GC 113, 8; 122, 2, 5
T-41/97	<i>Antillean Rice Mills v Council and Commission</i>	*	RP GC 80, 2
T-44/97	<i>Ghignone A. O. v Council</i>	[2000] ECR I-00223; [2000] ECR II-01023	RP GC 42, 14
T-46/97	<i>SIC v Commission</i>	[2000] ECR II-2125	RP GC 86, 29
T-48/97	<i>Frederiksen v Parliament</i>	[1999] ECR II-867	RP GC 56, 4
T-49/97	<i>TAT European Airlines v Commission</i>	[2000] ECR II-51	RP GC 77, 10
T-72/97	<i>Proderec v Commission</i>	[1998] ECR II-2847	RP GC 102, 18
T-80/97	<i>Starway v Council</i>	[2002] ECR II-1	RP GC 91, 8, 44
T-83/97	<i>Sateba v Commission</i>	[1997] ECR II-1523	RP GC 11, 1, 111, 14
T-85/97	<i>Horeca-Wallonie v Commission</i>	[1997] ECR II-2113	RP GC 101, 6; 102, 19
T-99/97	<i>Stols v Council</i>	[2001] ECR II-1061	RP GC 77, 5
T-106/97	<i>CAS Succhi di Frutta v Commission</i>	[1999] ECR II-318	RP GC 50, 10
T-110/97	<i>Kneissl Dachstein v Commission</i>	[1999] ECR II-2881	RP GC 86, 28; GC 102, 15
T-112/97	<i>Monsanto v Commission</i>	[1999] ECR II-1277	RP GC 81, 9
T-123/97	<i>Salomon v Commission</i>	[1999] ECR II-2925	RP GC 102, 15
T-140/97	<i>Hautem v EIB</i>	[1999] ECR I-171; [1999] ECR II-897	RP GC 46, 20
T-141/97	<i>Yasse v EIB</i>	[1999] ECR I-177; [1999] ECR II-929	RP GC 46, 20; 48, 25
T-147/97	<i>Champion Stationery Mfg A. O. v Council</i>	[1998] ECR II-4137	RP GC 86, 15
T-156/97	<i>Berge v Commission</i>	[1997] ECR II-2097	RP GC 99, 4
T-163/97; 179/97	<i>Nederlandische Antillen v Council and Commission</i>	*	RP GC 50, 4
T-175/97	<i>Bareyt v Commission</i>	[2000] ECR II-1053	RP GC 44, 13; Prelims pre 64, 3; 64, 7; 65, 1
T-183/97	<i>Micheli A. O. v Commission</i>	[1997] ECR II-1473	RP GC 104, 47
T-184/97	<i>BP Chemicals v Commission</i>	[2000] ECR II-3145	RP GC 86, 29; 116, 26
T-186/97 et seq.	<i>Kaufring A. G. A. O. v Commission</i>	[2001] ECR II-105	RP GC 64, 25
T-204/97; 270/97	<i>EPAC v Commission</i>	[2000] ECR II-2267	RP GC 50, 14; 86, 49
T-213/97	<i>Eurocoton A. O. v Council</i>	[1997] ECR II-1609	RP GC 104, 13

^{*} Italics indicate cases not yet published in the ECR.

Cases GC

Court of Justice of the European Union

Case Number	Parties	ECR*	Reference
T-219/97	<i>Brems v Council</i>	[1997] ECR II-1085	RP GC 44, 61
T-247/97	<i>Lonuzzo-Murgante v Parliament</i>	[1998] ECR II-317	RP GC 114, 29
T-256/97	<i>BEUC v Commission</i>	[2000] ECR II-101	RP GC 114, 19
T-257/97	<i>Herold v Commission</i>	[1999] ECR I-49; [1999] ECR II-251	RP GC 44, 31
T-260/97	<i>Camar and Tico v Commission and Council</i>	[2000] ECR II-2193; [2006] *	RP GC 81, 1; 91, 75, 81; 92, 15
T-262/97	<i>Goldstein v Commission</i>	[1998] ECR II-2175	RP GC 44, 35, 37
T-275/97	<i>Guérin Automobiles v Commission</i>	[1998] ECR II-253	RP GC 48, 19; Pre-lims pre 100, 7
T-277/97	<i>Ismeri Europa v Court of Auditors</i>	[1999] ECR II-1825	RP GC 44, 35
T-288/97	<i>Regione Autonoma Friuli-Venezia Giulia v Commission</i>	[2001] ECR II-1169	RP GC 114, 30
T-296/97	<i>Alitalia v Commission</i>	[2000] ECR II-3871	RP GC 102, 15
T-298/97 et seq.	<i>Alzetta A. O. v Commission</i>	[2000] ECR II-2319	RP GC 50, 12; 104, 65
T-300/97	<i>Latino v Commission</i>	[1999] ECR II-1263; [2004] ECR II-125	RP GC 44, 26; 91, 55
T-301/97	<i>Feral v Committee of the Regions</i>	[1998] ECR I-145; [1998] ECR II-471	RP GC 111, 13
T-367/97	<i>British Coal v Commission</i>	[1997] ECR II-2103	RP GC 64, 42; 65, 8
T-598/97	<i>BSC Footwear Supplies v Council</i>	[2005] *	RP GC 92, 17
T-610/97	<i>Carlsen A. O. v Council</i>	[1998] ECR II-485	RP GC 42, 14
T-611/97; 619/97; 627/97	<i>Transfluvia v Council and Commission</i>	[2000] ECR II-2405	RP GC 77, 4
T-1/98; 3/98; 6/98; 23/98	<i>Alzetta A. O. v Commission</i>	[2000] ECR II-2319	RP GC 50, 12; 104, 65
T-7/98; 208/98	<i>De Nicola v EIB</i>	[2004] ECR II-973	RP GC 91, 9, 64, 71, 74
T-32/98; 41/98	<i>Nederlandse Antillen v Commission</i>	[2000] ECR II-201	RP GC 116, 4
T-33-34/98	<i>Petrotub and Republica v Council</i>	[1999] ECR II-3837	RP GC 116, 22
T-37/98	<i>FTA v Council</i>	[2000] ECR II-373	RP GC 43, 3, 9
T-42/98	<i>Sabbatucci v Parliament</i>	[1998] ECR II-1353	RP GC 99, 4
T-44/98	<i>Emesa Sugar v Commission</i>	[1999] ECR II-1427; [2001] ECR II-3577	RP GC 77, 4; 104, 35
T-45/98; 47/98	<i>Krupp Thyssen Stainless v Commission</i>	[2001] ECR II-3757	RP GC 64, 46
T-46/98; 151/98	<i>CCRE v Commission</i>	[2000] ECR II-167	RP GC 48, 28
T-61/98	<i>Dreyfuss A. O. v Commission</i>	[2000] ECR II-3659	RP GC 102, 18
T-65/98	<i>Van den Bergh Foods v Commission</i>	[1998] ECR II-2641	RP GC 104, 38
T-77/98	<i>Eppe v Commission</i>	[1998] ECR II-1347	RP GC 92, 12
T-81/98	<i>Boyes v Commission</i>	[1999] ECR II-3501	RP GC 86, 44
T-95/98	<i>Gogos v Commission</i>	[2001] ECR II-571; [2001] ECR I-123	RP GC 91, 31, 64, 65
T-102/98	<i>Papadeas v CoR</i>	[1999] ECR II-1091	RP GC 64, 35
T-103 et seq.	<i>Kristensen A. O. v Council</i>	[1999] ECR II-1111	RP GC 64, 23

* Italics indicate cases not yet published in the ECR.

Case Number	Parties	ECR [*]	Reference
T-110/98	<i>RBJ Mining v Commission</i>	[1999] ECR II-2585; [2000] ECR II-2971	RP GC 55, 7; 86, 28
T-117/98	<i>Camar and Tico v Commission and Council</i>	[2000] ECR II-2193	RP GC 81, 1
T-129/98	<i>Sabbioni v Commission</i>	[1999] ECR I-223; [1999] ECR II-1139	RP GC 44, 30
T-132/98	<i>Groupe Perry and Isibiris v Commission</i>	[2009] *	RP GC 91, 53
T-138/98	<i>ACAV A. O. v Council</i>	[2000] ECR II-341	RP GC 65, 10
T-139/98	<i>AAMS v Commission</i>	[2001] ECR II-3413	RP GC 116, 24
T-145/98	<i>ADT Projekt v Commission</i>	[1999] ECR II-2627; [2000] ECR II-387; [2004] ECR II-387	RP GC 43, 21; 44, 28; 65, 6; Prelims pre 100, 7
T-148/98; 162/98	<i>Evans A. O. v Commission</i>	[1999] ECR II-2837	RP GC 86, 6
T-178/98	<i>Fresh Marine v Commission</i>	[2004] ECR II-3127	RP GC 91, 45, 47, 60; 92, 3
T-180/98	<i>Cotrim v CEDEFOP</i>	[1999] ECR II-1077	RP GC 14, 16
T-182/98	<i>UPS Europe v Commission</i>	[1999] ECR II-2857	RP GC 114, 12
T-186/98	<i>Inpesca v Commission</i>	[2001] ECR II-557	RP GC 114, 28
T-191/98; 212-214/98	<i>Atlantic Container Line A. O. v Commission</i>	[2003] ECR II-3275	RP GC 44, 4, 30, 50; 86, 13; 105, 5
T-208/98	<i>De Nicola v EIB</i>	[2004] ECR II-973	RP GC 91, 9, 64, 71, 74
T-2/99	<i>T. Port v Council</i>	[2001] ECR II-2093	RP GC 44, 67; 48, 16, 29
T-3/99	<i>Banatrading v Council</i>	[2001] ECR II-2123	RP GC 48, 11
T-9/99	<i>HFB A. O. v Commission</i>	[1999] ECR II-2429; [2002] ECR II-1487	RP GC 64, 48; 65, 8; 68, 3; 104, 22
T-11/99	<i>Van Parys A. O. v Commission</i>	[1999] ECR II-1355	RP GC 116, 7
T-13/99	<i>Pfizer Animal Health v Council</i>	[1999] ECR II-1961	RP GC 104, 36, 59
T-19/99	<i>DKV v OHIM</i>	[2001] ECR II-1	RP GC 130, 1
T-25/99	<i>Roberts v Commission</i>	*	RP GC 95, 6
T-26/99	<i>Trabisco v Commission</i>	[2001] ECR II-633	RP GC 13, 5
T-33/99	<i>Méndez-Pinedo v ECB</i>	[2000] ECR II-273	RP GC Prelims pre 100, 7
T-35/99	<i>Ascasibar Zubizarreta A. O. v Albani and Commission</i>	[1992] ECR II-1599	RP GC 123, 1
T-36/99	<i>Lenzing v Commission</i>	[2004] ECR II-3597	RP GC 44, 66; 48, 28
T-53/99	<i>Progoulis v Commission</i>	[1999] ECR II-1249	RP GC 14, 16
T-55/99	<i>CETM v Commission</i>	[2000] ECR II-3207	RP GC 54, 13
T-57/99	<i>Nardone v Commission</i>	[2008] *	RP GC 94, 9
T-58/99	<i>Mukand A. O. v Council</i>	[2001] ECR II-2521	RP GC 64, 36
T-62/99	<i>Sodima v Commission</i>	[2001] ECR II-655	RP GC 50, 2
T-64/99	<i>UK Coal v Commission</i>	[2001] ECR II-2549	RP GC 55, 8; 91, 46, 59; 92, 30
T-68/99	<i>Toditec v Commission</i>	[2001] ECR II-1443	RP GC 14, 16

* Italics indicate cases not yet published in the ECR.

Cases GC

Court of Justice of the European Union

Case Number	Parties	ECR*	Reference
T-71/99; 73/99	<i>Meyer v Commission</i>	[1999] ECR II-1727	RP GC 44, 31; 104, 65
T-78/99	<i>Elder v Commission</i>	[2000] ECR II-3717	RP GC 91, 80; 92, 20
T- 79/99	<i>Euro-Lex v OHIM</i>	[1999] ECR II-3555	RP GC Intro VIII, 25; 111, 13
T-97/99; 99/99	<i>Chamier A. O. v Parliament</i>	[2001] ECR II-1	RP GC 64, 14
T-103/99	<i>Assoziation delle Cantini Sociale Venete v Ombudsman and Parliament</i>	[2000] ECR II-4165	RP GC 44, 68
T-104/99	<i>AS Bolderaja v Council</i>	[2000] ECR II-451	RP GC 23, 7; Prelims pre 100, 3, 9
T-109/99	<i>De Nicola v EIB</i>	[2004] ECR II-973	RP GC 91, 9, 64, 71, 74
T-111/99	<i>Samper v Parliament</i>	[1999] ECR II-609	RP GC 105, 12
T-120/99	<i>Kik v OHIM</i>	[2001] ECR II-2235	RP GC 51, 7; 131,
T-121/99	<i>Irving v Commission</i>	*	RP GC 95, 7
T-135/99	<i>Taurus-Film v OHIM</i>	[2001] ECR II-379	RP GC 99, 2
T-138/99	<i>Verheyden v Commission</i>	[2000] ECR II-1001	RP GC 64, 20
T-139/99	<i>AICS v Parliament</i>	[2000] ECR II-2849	RP GC 48, 11, 25
T-141-142/99; 150-151/99	<i>Vela and Tecnagrind v Commission</i>	[2002] ECR II-4547	RP GC 53, 7
T-144/99	<i>Institut des mandataires agrees v Commission</i>	[2000] ECR II-2041	RP GC 105, 7
T-167/99	<i>Guilietti v Commission</i>	[1999] ECR I-139; [1999] ECR II-751	RP GC 104, 23
T-170/99	<i>Alpharma v Council</i>	[1999] ECR II-2027	RP GC 104, 59
T-171/99	<i>Corus v Commission</i>	[2001] ECR II-2967	RP GC 44, 28
T-178/99	<i>Elder v Commission</i>	[1999] ECR II-3509	RP GC 86, 46
T-201/99	<i>Royal Olympic Cruises A.O v Council</i>	[2000] ECR II-4005	RP GC 44, 17
T-204/99	<i>Mattila v Council and Commission</i>	[2001] ECR II-2265	RP GC 48, 20
T-210/99	<i>Gankema v Commission</i>	[2004] ECR II-781	RP GC 113, 7; 114, 27
T-222/99; 327/99; 329/99	<i>Martinez A. O. v Parliament</i>	[1999] ECR II-3397; [2001] ECR II-2835	RP GC 51, 7; 64, 20; 104, 44; 114, 15;
T-228/99; 233/99	<i>Westdeutsche Landesbank Girozentrale and Land Nordrhein-Westfalen v Commission</i>	[2003] ECR II-435; [2006] *	RP GC 64, 50; 91, 40; 92, 3
T-231/99	<i>Joynson v Commission</i>	[2002] ECR II-2085	RP GC 44, 25, 46
T-237/99	<i>BP Nederland A. O. v Commission</i>	[2000] ECR II-3849	RP GC 104, 28, 49
T-238/99	<i>Service Station Veger v Commission</i>	[2006] ECR II-27	RP GC 44, 31
T-246/99	<i>Tirrenia di Navigazione and Others v Commission</i>	[2011] *	RP GC 91, 57
T-254/99	<i>Limburgse Vinyl Maatschappij A. O. v Commission</i>	[2002] ECR I-8375	RP GC 64, 36
T-257/99	<i>Francisco Alvarez Sagrario v Commission</i>	*	RP GC 96, 2
T-326/99	<i>Fern Olivieri v Commission</i>	[2000] ECR II-1985	RP GC 104, 53; 105, 8

* Italics indicate cases not yet published in the ECR.

Case Number	Parties	ECR [*]	Reference
T-333/99	<i>X v ECB</i>	[2001] ECR II-921	RP GC 44, 48
T-342/99	<i>Airtours v Commission</i>	[2004] ECR II-1785	RP GC 91, 36, 45, 48, 60, 67, 70, 71, 74; 92, 3, 28
T-357-358/99	<i>Telefon & Buch Verlag v OHIM</i>	[2001] ECR II-1705	RP GC 130, 1
T-359/99	<i>DKV v OHIM</i>	[2001] ECR II-1645	RP GC 86, 10
T-361/99	<i>Meyer v Commission and EIB</i>	[2000] ECR II-2031	RP GC 44, 31
T-5-6/00	<i>Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied v Commission</i>	[2000] ECR II-4121; [2003] ECR II-5761	RP GC 116, 5, 24
T-11/00	<i>Hautem v EIB</i>	[2000] ECR I-71; [2000] ECR II-301	RP GC 104, 1, 12; 129, 7
T-17/00	<i>Rothley A. O. v Parliament</i>	[2000] ECR II-2085	RP GCV 17, 3; 64, 35; 104, 44; 105, 14
T-20/00	<i>Camacho-Fernandez v Commission</i>	[2000] ECR II-1149; [2003] ECR II-405	RP GC 122, 4, 11, 12, 18
T-24/00	<i>Sunrider v OHIM</i>	[2001] ECR II-449	RP GC 48, 5; 130, 1
T-25/00	<i>Lagardère and Canal+ v Commission</i>	*	RP GC 92, 3
T-28/00	<i>Asia Motors France A. O. v Commission</i>	[1992] ECR II-2285	RP GC 14, 6; 44, 37; 47, 17; 48, 11, 28; 51, 5
T-35/00	<i>Goldstein v Commission</i>	[2000] ECR II-2919	RP GC 86, 17, 22
T-36/00	<i>Elder v Commission</i>	[2001] ECR II-607	RP GC 65, 8; 67, 1
T-44/00	<i>Mannesmannröhren-Werke v Commission</i>	[2004] ECR II-2223	RP GC 44, 70; 48, 19
T-51/00	<i>Costacurta v Commission</i>	[2000] ECR II-425	RP GC 44, 61
T-52/00	<i>COE Clerici Logistics v Commission</i>	[2002] ECR II-2555	RP GC 115, 13, 15; 116, 29; 151
T-54/00; T-73/00	<i>Federación de Cofradias de Pescadores de Guipúcoa v Council</i>	[2001] ECR II-2691	RP GC 44, 13
T-60/00; T-69/00	<i>Fiamm and Fiamm Technologies v Council and Commission</i>	[2005] ECR II-5393	RP GC 51, 6
T-61/00	<i>APOL v Commission</i>	[2006]*	RP GC 92, 3
T-73/00	<i>Federación de Cofradias de Pescadores de Guipúcoa v Council</i>	[2001] ECR II-2691	RP GC 44, 13
T-74/00 et seq.	<i>Artedogan v Commission</i>	[2001] ECR II-2367; [2002] ECR II-4945	RP GC 59; 92, 3; 105, 17
T-111/00	<i>BAT International (Investments) v Commission</i>	[2001] ECR II-2997	RP GC 48, 28; 65, 8
T-112/00; 122/00	<i>Iberotam A. O. v Commission</i>	[2001] ECR II-97	RP GC 50, 15
T-126/00	<i>Confindustria v Commission</i>	[2001] ECR II-85	RP GC Prelims 101-103, 2; 101, 1, 2, 6, 7; 102, 5
T-141/00	<i>Trenker v Commission</i>	[2000] ECR II-3313	RP GC 104, 38
T-146/00	<i>Ruf v OHIM</i>	[2001] ECR II-1797	RP GC 68, 7
T-149/00	<i>Innova v Commission</i>	[2000] ECR II-2941	RP GC 104, 18
T-161/00	<i>Tsarnavas v Commission</i>	[2001] ECR II-721	RP GC 48, 28

* Italics indicate cases not yet published in the ECR.

Cases GC

Court of Justice of the European Union

Case Number	Parties	ECR*	Reference
T-163/00	<i>Carotti v Court of Auditors</i>	[2000] ECR I-133; [2000] ECR II-607	RP GC 104, 29
T-169/00	<i>Esedra v Commission</i>	[2000] ECR II-2951	RP GC 104, 30, 38, 46; 105, 8, 14
T-171/00	<i>Spruyt v Commission</i>	[2002] ECR I- 225; [2000] ECR II-1127	RP GC 91, 17
T-172/00	<i>Pierard v Commission</i>	[2001] ECR II-429	RP GC 64, 4
T-173/00	<i>KWS Saat v OHIM</i>	[2002] ECR II-3843	RP GC 135, 7
T-178/00; 341/00	<i>Pflugradt v ECB</i>	[2002] ECR II-1039	RP GC 44, 58, 67
T-179/00	<i>Menarini v Commission</i>	[2002] ECR II-2879	RP GC 60
T-180/00	<i>Antipesca v Commission</i>	[2002] ECR II-3985	RP GC 44, 86
T-190/00	<i>Regione Siciliana v Commission</i>	[2003] ECR II-5015	RP GC 102, 15
T-197/00	<i>Onidi v Commission</i>	[2002] ECR I-69; [2002] ECR II-325	RP GC 64, 6
T-201/00; 384/00	<i>Ajour A. O. v Commission</i>	[2002] ECR II-885	RP GC 86, 44
T-209/00	<i>Lamberts v European Ombudsman and Parliament</i>	[2001] ECR II-765	RP GC 86, 15
T-226-227/00	<i>Nan Ya Plastics v Council</i>	[2003] ECR II-685	RP GC 91, 49, 52; 92, 3, 22, 25
T-228 et seq.	<i>Gruppo ormeggiatori del porto di Venezia v Commission</i>	[2005] ECR II-787	RP GC 113, 4
T-236/00	<i>Stauner v Parliament and Commission</i>	[2001] ECR II-15; [2001] ECR II-2943	RP GC 104, 70; 108, 5; 109, 6
T-241/00	<i>La Canne v Commission</i>	[2001] ECR II-37	RP GC 104, 29
T-251/00	<i>Lagardère v Commission</i>	[2004] ECR II-4217	RP GC 91, 16, 38, 40, 53
T-254/09; 270/00; 277/00	<i>Hotel Cipriani v Commission</i>	[2009] *	RP GC 84, 6
T-302/00	<i>Goldstein v Commission</i>	[2001] ECR II-1127	RP GC 41, 13, 14, 22; 104, 7; 107, 8
T-310/00	<i>MCI v Commission</i>	[2004] ECR II-3253	RP GC 64, 4
T-310/00	<i>Verizon v Commission</i>	[2008] *	RP GC 92, 3, 24
T-311/00	<i>BAT (Investments) v Commission</i>	[2002] ECR II-2781	RP GC 62, 8; 64, 45; 68, 8; 86, 24; 91, 4
T-318/00	<i>Freistaat Thüringen v Commission</i>	*	RP GC 92, 3
T-320/00	<i>Cartondruck v Council and Commission</i>	[2005] ECR II-27	RPGC 51, 6
T-324/00	<i>CDA Datenträger Albrechts v Commission</i>	*	RP GC 92, 3
T-329/00	<i>Bonn Fleisch Ex- und Import v Commission</i>	[2003] ECR II-291	RP GC 47, 19; 58, 33
T-339/00	<i>Bactria v Commission</i>	[2001] ECR II-1721	RP GC 107, 1
T-340/00	<i>Arne Mathisen v Council</i>	[2002] ECR II-2905	RP GC 48, 23
T-341/00	<i>Pflugradt v ECB</i>	[2002] ECR II-1039	RP GC 44, 58, 67
T-342/00	<i>Petrolessence and SG2R v Commission</i>	[2001] ECR II-67	RP GC 104, 33
T-350/00	<i>Free Trade Foods v Commission</i>	[2001] ECR II-493	RP GC 104, 27, 54; 105, 11

* Italics indicate cases not yet published in the ECR.

Case Number	Parties	ECR [*]	Reference
T-353/00	<i>Le Pen v Parliament</i>	[2001] ECR II-125	RP GC 104, 44
T-354/00	<i>Métropole Télévision – M 6 v Commission</i>	[2001] ECR II-3143	RP GC 113, 5
T-366/00	<i>Scott v Commission</i>	[2003] ECR II-1763	RP GC 64, 36
T-369/00	<i>Département Loiret v Commission</i>	[2003] ECR II-1789	RP GC 64, 31
T-373/00	<i>Tralli v ECB</i>	[2001] ECR II-83	RP GC 104, 33
T-374/00	<i>Verband der freien Recherche A. O. v Commission</i>	[2003] ECR II-2275	RP GC 44, 41, 44; 116, 25
T-383/00	<i>Beamglow v Parliament, Council and Commission</i>	[2005] ECR II-5459	RPGC 51, 6
T-384/00	<i>Ajour A. O. v Commission</i>	[2002] ECR II-885	RP GC 86, 44
T-387/00	<i>Comitato organizzatore del convegno internazionale v Commission</i>	[2002] ECR II-3031	RP GC 14, 6; 46, 35; 114, 28
T-2/01	<i>Verein für Konsumenteninformation v Commission</i>	[2005] ECR II-1121	RP GC 76a, 30
T-18/01	<i>Goldstein v Commission</i>	[2001] ECR II-1147	RP GC 104, 7
T-33/01	<i>Infront WEM AG v Commission</i>	[2008] *	RP GC 91, 45, 47, 50, 60; 92, 3, 7
T-40/01	<i>Scan Office Design v Commission</i>	[2002] ECR II-5043	RP GC 86, 24
T-45/01	<i>Sanders A. O. v Commission</i>	[2007] ECR II-2665	RP GC 115, 7; 116, 30
T-47/01	<i>Co-Frutta v Commission</i>	[2003] ECR II-4441	RP GC 76a, 30
T-53/01	<i>Poste Italiane v Commission</i>	[2001] ECR II-1479	RP GC 104, 39; 116, 19
T-66/01	<i>Imperial Chemical Industries v Commission</i>	[2010] ECR II-0000	RP GC 83, 2, 3, 4
T-85/01	<i>IAMI Consulting v Commission</i>	[2003] ECR II-4973	RP GC 46, 20
T-87/01	<i>Boessen v ECOSOC</i>	[1993] ECR II-235	RP GC 48, 2, 15, 29
T-95/01	<i>Coget A. O. v Court of Auditors</i>	[2001] ECR I-191; [2001] ECR II-879	RP GC 76a, 5
T-99/01	<i>Mystery Drinks v OHIM</i>	[2003] ECR II-43	RP GC 46, 20
T-110/01	<i>Vedial v OHIM</i>	[2002] ECR II-5275	RP GC 134, 5
T-111/01	<i>Saxonia Edelmetalle v Commission</i>	[2001] ECR II-2335	RP GC 104, 21
T-120/01; 300/01,	<i>De Nicola v EIB</i>	[2004] ECR II-1671	RP GC 58, 7
T-132/01	<i>Euroalliances A. O. v Commission</i>	[2002] ECR II-77; [2003] ECR II-2359; [2006] *	RP GC 64, 49; 76 a, 30; 92, 3; 105, 9
T-137/01	<i>Stadtsportverband Neuss v Commission</i>	[2003] ECR II-3103	RP GC 64, 37
T-138/01	<i>F v Court of Auditors</i>	[2001] ECR II-987; [2003] ECR II-25; [2003] ECR II-137	RP GC 43, 36; 84, 3, 5
T-139/01	<i>Comafrika and Dole Fresh Fruit Europe v Commission</i>	[2001] ECR II-2415; [2002] ECR II-799; [2005] ECR II-409	RP GC 66, 1; 102, 1; 104, 38; 116, 29

* Italics indicate cases not yet published in the ECR.

Cases GC

Court of Justice of the European Union

Case Number	Parties	ECR*	Reference
T-141/01	<i>Entorn v Commission</i>	[2005] ECR II-95	RP GC 64, 43
T-146/01	<i>DLD Trading v Council</i>	[2003] ECR II-6005	RP GC 44, 37; 116, 26
T-151/01	<i>Duales System Deutschland v Commission</i>	[2001] ECR II-3295	RP GC 104, 53, 71, 73
T-154/01	<i>Distilleria Palmi v Commission</i>	[2004] ECR II-1493; [2004] ECR II-1512	RP GC 44, 1
T-157/01	<i>Danske Busvognmænd v Commission</i>	[2007] *	RP GC 91, 47, 69, 70
T-172/01	<i>M v ECJ</i>	[2004] ECR II-1075	RP GC 48, 7
T-177/01	<i>Jégó Quéré v Commission</i>	[2002] ECR II-2365,	RP GC 114, 30
T-180/01	<i>Euroagri v Commission</i>	[2004] ECR II-369	RP GC 58, 32
T-184/01	<i>IMS Health v Commission</i>	[2001] ECR II-2349; [2001] ECR II-3193	RP GC 35, 25; 104, 31, 32, 40; 105, 17; 116, 3, 9
T-195/01; 207/01	<i>Government of Gibraltar v Commission</i>	[2001] ECR II-3915, 3919	RP GC 76a, 12, 22; 104, 26; 109, 2
T-198/01	<i>Technische Gaswerke Illmenau v Commission</i>	[2002] ECR II-2153; [2004] ECR II-2717	RP GC 76 a, 30; 104, 61; 105, 8, 12; 108, 1
T-207/01	<i>Government of Gibraltar v Commission</i>	[2001] ECR II-3915, 3919	RP GC 76a, 12, 22; 104, 26; 109, 2
T-209/01	<i>Honeywell v Commission</i>	[2005] ECR II-5527	RP GC 44, 41; 50, 1; 64, 34
T-225/01	<i>Gobierno Foral de Navarra v Commission</i>	[2007] *	RP GC 92, 3
T-226/01	<i>CAS Succhi di Frutta v Commission</i>	[2006] ECR II-2763	RP GC 91, 16
T-239/01	<i>SGL Carbon v Commission</i>	[2009] *	RP GC 92, 2
T-243/01	<i>Sony Computer Entertainment Europe v Commission</i>	[2005] ECR II-1121	RP GC 92, 28
T-259/01	<i>Nutrinvest v Commission</i>	[2004] ECR II-649	RP GC 47, 17
T-287/01	<i>Biolettrica v Commission</i>	[2006] *	RP GC 84, 1
T-293/01	<i>Ineichen v Commission</i>	[2001] ECR I-83; [2003] ECR II-441	RP GC 43, 24; 46, 25
T-300/01	<i>De Nicola v EIB</i>	[2004] ECR II-1671	RP GC 58, 7
T-306/01	<i>Aden A. O. v Council and Commission</i>	[2002] ECR II-2387	RP GC 104, 65, 67, 74
T-306/01	<i>Yusuf and Al Barakaat International Foundation v Council and Commission</i>	[2005] ECR II-3533	RP GC 44, 66; 76a, 26
T-310/01	<i>Schneider v Commission</i>	[2002] ECR II-4071	RP GC 76a, 26, 28, 32, 37
T-315/01	<i>Kadi v Council and Commission</i>	[2005] ECR II-3649	RP GC 44, 66
T-318/01	<i>Othman v Council and Commission</i>	[2006] *	RP GC 94, 9
T-320/01	<i>Roquette Frères v Commission</i>	[2006] ECR II-3137	RP GC 44, 25; 62, 9
T-333/01	<i>Meyer v Commission</i>	[2003] ECR II-117	RP GC 44, 29

* Italics indicate cases not yet published in the ECR.

Case Number	Parties	ECR*	Reference
T-5/02	<i>Tetra Laval v Commission</i>	[2002] ECR II-4381	RP GC 53, 4; 58, 13, 29; 64, 31; 76a, 10, 28; 91, 40, 61, 64, 77; 92, 3, 19, 24, 62
T-7/02	<i>Zapf Creation v OHIM</i>	[2003] ECR II-271	RP GC 86, 44
T-19/02	<i>Commission and EMEA</i>	[2006] *	RP GC 92, 3
T-20/02	<i>Interquelle v Commission</i>	[2004] ECR II-1001	RP GC 44, 42
T-27/02	<i>Kronofrance v Commission</i>	[2010] *	RP GC 41, 11, 27; 91, 53, 60; 92, 3
T-28/02	<i>First Data A. O. v Commission</i>	[2005] ECR II-4119	RP GC 86, 44; 113, 7
T-29/02	<i>GEF v Commission</i>	[2005] ECR II-835	RP GC 113, 4
T-34/02	<i>Le Levant 001 v Commission</i>	[2006] ECR II-267	RP GC 44, 76, 86
T-34/02	<i>Le Levant 015 and Others v Commission</i>	[2010] ECR II-0000	RP GC 91, 7, 9, 53
T-43/02	<i>Jungbunzlauer v Council</i>	[2007] ECR II-3435	RP GC 84, 8
T-44/02	<i>Dresdner Bank v Commission</i>	[2004] *; [2006] ECR II-3567	RP GC 43, 30; 122, 10, 12, 16, 18
T-54/02	<i>Dresdner Bank v Commission</i>	[2006] ECR II-3567	RP GC 43, 30; 122, 16, 18
T-54/02	<i>Bayrische Hypo- und Vereinsbank v Commission</i>	[2009] *	RP GC 91, 8, 53; 92, 3, 8
T-56/02	<i>Bayrische Hypo- und Vereinsbank v Commission</i>	[2004] ECR II-3495	RP GC Prelims pre 100, 10; 122, 10
T-63/02	<i>Cerafogli and Poloni v ECB</i>	[2003] ECR II-4929	RP GC 44, 53
T-76/02	<i>Mara Messina v Commission</i>	[2003] ECR II-3203; [2004] *	RP GC 76a, 30; 91, 1
T-77/02	<i>Schneider v Commission</i>	[2002] ECR II-4201	RP GC 51, 5; 76a, 10, 28
T-80/02	<i>Tetra Laval v Commission</i>	[2011] *	GC 91, 40, 61, 64, 77; RP GC 92, 19, 24, 62
T-94/02	<i>Hugo Boss v OHIM</i>	[2004] ECR II-813	RP GC 134, 3
T-104/02	<i>Gondrand v Commission</i>	[2004] ECR II-3211	RP GC 54, 14
T-109/02 et seq.	<i>Bolloré A. O. v Commission</i>	[2007] ECR II-947	RP GC 64, 46
T-114/02	<i>Babyliss v Commission</i>	[2003] ECR II-1279	RP GC 48, 10; 64, 4; 76a, 5, 28; 116, 26
T-115/02	<i>AVEX v OHIM</i>	[2004] ECR II-2907	RP GC 135, 3
T-118/02	<i>Bolloré A. O. v Commission</i>	[2007] ECR II-947	RP GC 64, 46
T-119/02	<i>Royal Philips Electronics v Commission</i>	[2003] ECR II-1433	RP GC 44, 79; 76a, 10
T-127/02	<i>Concept v OHIM</i>	[2004] ECR II-1113	RP GC 44, 41
T-160/02; 162/02	<i>Naipes Heraclio Fournier v OHIM</i>	[2005] ECR II-1643	RP GC 134, 1
T-163/02	<i>Montan Gesellschaft Voss A. O. v Commission</i>	[2002] ECR II-3219	RP GC 104, 33
T-171/02	<i>Regione autonoma della Sardegna v Commission</i>	[2005] ECR II-2123	RP GC 116, 25
T-181/02	<i>Neue Erba Lautex v Commission</i>	[2002] ECR II-5081	RP GC 104, 35
T-184/02	<i>IMS Health v Commission</i>	[2005] ECR II-817	RP GC 86, 44

* Italics indicate cases not yet published in the ECR.

Cases GC

Court of Justice of the European Union

Case Number	Parties	ECR*	Reference
T-185/02	<i>Ruiz-Picasso A. O. v OHIM</i>	[2004] ECR II-1739	RP GC 44, 80
T-198/02	<i>N. v Commission</i>	[2002] ECR II-763	RP GC 104, 47
T-210/02	<i>British Agregates Association v Commission</i>	[2006] ECR II-2789	RP GC 76a, 30
T-211/02	<i>Tideland v Commission</i>	[2002] ECR II-3781	RP GC 76a, 10, 28
T-228/02	<i>Organisation des Modjahedines du peuple d'Iran v Council</i>	[2006] ECR II-4665	RP GC 44, 66
T-229/02	<i>PPK and KNK v Council</i>	[2005] ECR II-539	RP GC 44, 66
T-236/02	<i>Marcuccio v Commission</i>	[2005] ECR I-365; [2005] ECR II-1621	RP GC 46, 27; 117
T-237/02	<i>Technische Glaswerke Ilmenau v Commission</i>	[2006] ECR II-5131	RP GC 76a, 30
T-242/02	<i>The Sunrider Corp. v OHIM</i>	[2005] ECR II-2793	RP GC 135, 2
T-250/02	<i>Autosalone Ispra v EAEC</i>	[2005] ECR II-5227	RP GC 65, 10
T-259-264/02; 271/02	<i>Raiffeisen Zentralbank Österreich A. O. v Commission</i>	[2006] ECR II-5167	RP GC 84, 6
T-266/02	<i>Deutsche Post v Commission</i>	[2007] *	RP GC 116, 10
T-269/02	<i>PepsiCO v OHIM</i>	[2005] ECR II-1341	RP GC 135, 10
T-270/02	<i>MLP Finanzdienstleistungen v OHIM</i>	[2004] ECR II-2837	RP GC 132, 2
T-285/02; 395/02	<i>Vega Rodríguez v Commission</i>	[2004] ECR II-1527	RP GC 64, 39
T-288/02	<i>AIT v Commission</i>	[2003] ECR II-2885	RP GC 104, 74
T-303/02	<i>Westfalen Fassen Nederland v Commission</i>	[2006] ECR II-4567	RP GC 48, 8
T-310/02	<i>Theodorakis v Council</i>	[2004] ECR II-427	RP GC 44, 31
T-313/02	<i>Meca-Medina A. O. v Commission</i>	[2004] ECR II-3291	RP GC 76a, 30
T-315/02	<i>Klitgaard v Commission</i>	[2006] *	RP GC 92, 18
T-323/02	<i>La Baronia de Turis v OHIM</i>	[2006] ECR II-2085	RP GC 84, 6
T-346-347/02	<i>Cableuropa A. O. v Commission</i>	[2003] ECR II-4251	RP GC 76a, 28, 36
T-351/02	<i>Deutsche Bahn AG v Commission</i>	[2006] ECR II-1047	RP GC 84, 1, 8, 9
T-356/02	<i>Vitakraft-Werke Wührmann v OHIM</i>	[2004] ECR II-3445	RP GC 131, 4
T-371/02	<i>Internationaler Hilfsfond v Commission</i>	[2003] ECR II-4389	RP GC 46, 16; 47, 18; 91, 78
T-388/02	<i>Kronoply A. O. v Commission</i>	[2007] *; [2008] ECR II-305	RP GC 116, 7, 10, 14, 17
T-392/02	<i>Solvay Pharmaceuticals v Council</i>	[2003] ECR II-1825	RP GC 104, 26, 59
T-395/02	<i>Vega Rodríguez v Commission</i>	[2004] ECR II-1527	RP GC 64, 39
T-398/02	<i>Linea GIG v Commission</i>	[2003] ECR II-1139	RP GC 104, 19, 35, 42
T-8/03	<i>El Corte Inglés v OHIM</i>	[2007] *	RP GC 91, 35
T-10/03	<i>Koubi v OHIM</i>	[2004] ECR II-719	RP GC 134, 1
T-23/03	<i>CAS v Commission</i>	[2007] ECR II-289; [2009] *	RP GC 68, 5; 91, 36, 39, 41, 50, 52, 77; 92, 3
T-28/03	<i>Holcim v Commission</i>	[2005] ECR II-1357	RP GC Intro VIII, 26

* Italics indicate cases not yet published in the ECR.

Case Number	Parties	ECR [*]	Reference
T-31/03; 378/03	<i>Musée Grévin v Commission</i>	[2004] ECR II-1421	RP GC 44, 62
T-31/03	<i>Grupo Sada v OHIM</i>	[2005] ECR II-1667	RP GC 70, 3
T-46/03	<i>Leali v Commission</i>	[2003] ECR II-4473	RP GC 104, 42
T-47/03	<i>Sison v Council and Commission</i>	[2003] ECR II-2047	RP GC Prelims pre 104, 2
T-57/03	<i>SPAG v OHIM</i>	[2005] ECR II-287	RP GC 99, 1; 134, 4
T-60/03	<i>Regione Siciliana v Commission</i>	[2005] ECR II-4139	RP GC 86, 25
T-81/03; 103/03	<i>Mast-Jägermeister v OHIM</i>	[2006] ECR II-5409	RP GC 44, 69; 63, 4
T-119/03	<i>Royal Philips v Commission</i>	[2004] ECR II-3471	RP GC 76a, 28
T-125/03; 253/03	<i>Akzo Nobel Chemicals and Akros Chemicals v Commission</i>	[2003] ECR II-4771	RP GC 104, 53
T-131/03	<i>Gerolsteiner Brunnen v OHIM</i>	[2004] ECR II-3019	RP GC Prelims pre 115, 4
T-141/03	<i>Sniace v Commission</i>	[2005] ECR II-1197	RP GC 113, 9; 114, 1
T-146/03	<i>Asociación de Estaciones de Servicio de Madrid and Federación Catalana de Estaciones de Servicio v Commission</i>	[2008] *	RP GC 92, 3
T-151/03	<i>Nuova Agricast v Commission</i>	[2005] ECR II-1967	RP GC 76a, 27; 113, 7
T-155/03; 157/03 331/03	<i>Cwik v Commission</i>	[2005] ECR II-1865	RP GC 91, 8
T-158/03	<i>Industrias Químicas Del Vallés v Commission</i>	[2003] ECR II-3041	RP GC 44, 91; 104, 72
T-160/03	<i>AFCon Managements Consultants A. O. v Commission</i>	[2005] ECR II-981	RP GC Prelims pre 64, 3
T-164/03	<i>Ampafrance v OHIM</i>	[2005] ECR II-1404	RP GC 135, 5
T-169/03	<i>Sergio Rossi v OHIM</i>	[2005] ECR II-685	RP GC 132, 2
T-175/03	<i>Schmitt v European Agency</i>	[2003] ECR I-175; [2003] ECR II-883	RP GC 104, 66
T-195/03	<i>Thommes v Commission</i>	[2005] ECR I-273; [2005] ECR II-1255	RP GC 84, 8
T-198/03	<i>Bank Austria Creditanstalt v Commission</i>	[2003] ECR II-4879	RP GC 104, 23, 38
T-200/03	<i>G. v Commission</i>	[2003] ECR II-1549	RP GC 104, 47
T-217/03	<i>FNCBV v Commission</i>	[2004] ECR II-239; [2006] ECR II-4987	RP GC 62, 6; 104, 53; 108, 6
T-241/03	<i>Marcuccio v Commission</i>	[2006] ECR II-517	RP GC 48, 15; 86, 18
T-245/03	<i>FNSEA A. O. v Commission</i>	[2004] ECR II-271; [2006] ECR II-4987	RP GC 62, 6
T-251-252/03	<i>FNIGGV v Commission</i>	[2004] ECR II-315	RP GC 104, 43, 52
T-264/03	<i>Schmoldt A. O. v Commission</i>	[2004] ECR II-1515	RP GC 44, 31; 102, 4, 14
T-265/03	<i>Helm Düngemittel v Commission</i>	[2005] ECR II-2009	RP GC 113, 4
T-271/03	<i>Deutsche Telekom v Commission</i>	[2006] ECR II-1747	RP GC 116, 15, 17
T-272/03	<i>Fernández Gómez v Commission</i>	[2003] ECR II-979	RP GC 104, 33
T-273/03	<i>Merck Sharp & Dohme A. O. v Commission</i>	[2007] *	RP GC 91, 53, 60; 92, 3

* Italics indicate cases not yet published in the ECR.

Cases GC

Court of Justice of the European Union

Case Number	Parties	ECR*	Reference
T-279/03	<i>Galileo International Technology A. O. v Commission</i>	[2006] ECR II-1291	RP GC 44, 34
T-283/03	<i>Mühlens v OHIM</i>	[2009] *	RP GC 91, 52; RP GC 91, 52
T-285/03	<i>Agraz A. O. v Commission</i>	[2008] *	RP GC 91, 54; RP GC 91, 54
T-289/03	<i>BUPA A. O. v Commission</i>	[2005] ECR II-81; [2005] ECR II-741	RP GC 55, 5; 76a, 30; 116, 15, 16; RP GC 55, 5; 76a, 30; 116, 15, 16
T-291/03	<i>Consorzio per la tutela del formaggio Grana Padano v OHIM</i>	[2007] ECR II-3081	RP GC 63, 4
T-292/03	<i>Messe Berlin v OHIM</i>	[2004] ECR II-1143	RP GC 113, 7
T-306/03	<i>Volkswagen v OHIM</i>	[2006] ECR II-12	RP GC 113, 8
T-310/03	<i>Kreuzer Medien v Parliament and Council</i>	[2004] ECR II-3243	RP GC Intro VIII, 26; 104, 17, 21
T-317/03	<i>Volkswagen v OHIM</i>	[2006] ECR II-12	RP GC 86, 44; 113, 7
T-322/03	<i>Telefon & Buch Verlagsgesellschaft mbH v OHIM</i>	[2006] ECR II-835	RP GC 132, 3
T-331/03	<i>Cwik v Commission</i>	[2005] ECR II-1865	RP GC 91, 8
T-339/03	<i>Clotuche v Commission</i>	[2003] ECR II-1423	RP GC Prelims pre 104, 2
T-344/03	<i>Saiwa v OHIM</i>	[2006] ECR II-1097	RP GC 135, 5
T-346/03	<i>Krikorian v Commission</i>	[2003] ECR II-6037	RP GC 86, 8; 111, 7
T-350/03	<i>Wirtschaftskammer Kärnten A. O. v Commission</i>	[2006] ECR II-68	RP GC 113, 4
T-357/03	<i>Gollnisch A. O. v Parliament</i>	[2005] ECR II-1	RP GC 42, 13; 64, 50
T-367/03	<i>Yedaş Tarım ve Otomotiv Sanayi ve Ticaret AS v Council and Commission</i>	[2009] *	RP GC 125, 2
T-369/03	<i>Arizona Chemical A. O. v Commission</i>	[2004] ECR II-205; II-5839	RP GC 44, 34; 104, 13, 23
T-373/03	<i>Solo Italia v OHIM</i>	[2005] ECR II-1881	RP GC 134, 4; 136, 2
T-378/03	<i>Musée Grévin v Commission</i>	[2004] ECR II-1421	RP GC 44, 62
T-383/03	<i>Hynix Semiconductor v Council</i>	[2005] ECR II-621; [2009] *	RP GC 91, 19, 49, 54; 116, 11, 14, 16
T-391/03	<i>Franchet and Byk v Commission</i>	[2006] ECR II-2023	RP GC 42, 10; 76a, 30
T-398/03	<i>Castets v Commission</i>	[2005] ECR II-507	RP GC 41, 27; 54, 14
T-413/03	<i>Shandong Reipu Biochemicals v Commission</i>	[2006] ECR II-2243	RP GC 63, 3, 4
T-419/03	<i>Altstoff Recycling Austria v Commission</i>	[2011] ECR II-0000	RP GC 48, 20
T-422/03	<i>Enviro Tech Europe A. O. v Commission</i>	[2004] ECR II-2003	RP GC Intro VIII, 26; 104, 13, 64, 72
T-16/04	<i>Arcelor v Parliament and Council</i>	[2010] ECR II-211	RP GC 44, 37

* Italics indicate cases not yet published in the ECR.

Case Number	Parties	ECR*	Reference
T-22/04	<i>Reemark v OHIM</i>	[2005] ECR II-1559	RP GC 136, 2
T-32/04	<i>Lichtwer Pharma v OHIM</i>	[2007] *	RP GC 84, 10
T-36/04	<i>API v Commission</i>	[2007] ECR II- 3201	RP GC 42, 15, 16; 46, 30
T-37/04	<i>Regiao autónomo dos Açores v Council</i>	[2004] ECR II-2153	RP GC 104, 19, 54
T-49/04	<i>Hassan v Council and Commission</i>	[2006] *	RP GC 94, 9
T-53-56/04; 59/04	<i>Budějovický Budvar, národní podnik v OHIM</i>	[2007] ECR II-57	RP GC 134, 4
T-66/04	<i>Gogos v Commission</i>	[2010] *	RP GC 91, 41, 54
T-71/04	<i>Budejovický Budvar O.A. v OHIM</i>	[2007] ECR II-1829	RP GC 70, 2
T-76/04	<i>Bactria v Commission</i>	[2004] ECR II-2025	RP GC 104, 72
T-78/04	<i>Sumitomo Chemical v Commission</i>	[2004] ECR II-2049	RP GC 104, 72
T-140/04	<i>Ehcon v Commission</i>	[2005] ECR II-3287	RP GC 91, 16
T-148/04	<i>TQ3 Travel Solutions Belgium v Commission</i>	[2004] ECR II-3027; [2005] ECR II-2627	RP GC 76a, 30; 104, 33
T-155/04	<i>SELEX v Commission</i>	[2006] ECR II-4797	RP GC 68, 2
T-176/04	<i>Marcuccio v Commission</i>	[2011] *	RP GC 92, 26, 27
T-191/04	<i>MIP v OHIM</i>	[2006] ECR II-2855	RP GC 135, 4
T-192/04	<i>Flex Equipos de Descanso v OHIM</i>	[2007] ECR II-2411	RP GC 62, 4
T-201/04	<i>Microsoft v Commission</i>	[2004] ECR II-2977; [2004] ECR II-4463; [2005] ECR II-1491	RP GC 104, 33, 36, 63, 70, 25; 105, 8, 12; 107, 4; 109, 4; 115, 12, 17; 116, 29
T-209/04	<i>Spain v Commission</i>	[2005] ECR II-47	RP GC 76a, 28; 113, 2
T-214/04	<i>The Royal County of Berkshire Polo Club v OHIM</i>	[2006] ECR II-239; [2007] *	RP GC 91, 53, 58; 92, 3, 23; 134, 5
T-219/04	<i>Spain v Commission</i>	[2007] ECR II-1323	RP GC 63, 3, 9
T-279/04	<i>Editions Jacob v Commission</i>	[2007] *	RP GC 116, 10, 12
T-288/04	<i>Van Noyghem v Committee of Regions</i>	[2007] *	RP GC 86, 24; 102, 12
T-294/04	<i>Internationaler Hilfsfond v Commission</i>	[2005] ECR II-2719	RP GC 91, 9
T-303/04	<i>Evropaiki Dynamiki v Commission</i>	[2004] ECR II-3889; [2004] ECR II-4621; [2008] *	RP GC 91, 25; 104, 5, 46; 108, 3; 109, 5
T-311/04	<i>Buendia Sierra v Commission</i>	[2006] ECR II-4137	RP GC 14, 7; 63, 4
T-316/04	<i>Wam v Commission</i>	[2004] ECR II-397; [2004] ECR II-3917	RP GC 104, 25, 33
T-346/04	<i>Sadas v OHIM</i>	[2005] ECR II-4891	RP GC 132, 2
T-350/04; 352/04	<i>Bitburger Brauerei v OHIM</i>	[2006] ECR II-4255	RP GC 135, 2
T-358/04	<i>Neumann v OHIM</i>	[2007] ECR II-3329	RP GC 64, 47
T-359/04	<i>British Aggregates A. O. v Commission</i>	[2010] *	RP GC 44, 25
T-363/04	<i>Koipe v OHIM</i>	[2007] ECR II-3355	RP GC 44, 86
T-373/04	<i>Guggenheim v Cedefop</i>	*	RP GC 91, 7
T-390/04	<i>Schröder v Commission</i>	[1997] ECR II-501	RP GC 44, 80
T-396/04	<i>Soffass v OHIM</i>	[2005] ECR II-4789	RP GC 132, 2

* Italics indicate cases not yet published in the ECR.

Cases GC

Court of Justice of the European Union

Case Number	Parties	ECR*	Reference
T-437/04; 441/04	<i>Standertskjöld-Nordenstam A. O. v Commission</i>	[2006] ECR II-A-2, 127	RP GC 48, 27
T-444/04	<i>France Télécom v Commission</i>	[2008] *	RP GC 116, 29
T-447/04	<i>Capgemini Netherlands v Commission</i>	[2005] ECR II-257	RP GC 76a, 3
T-464/04	<i>Impala v Commission</i>	[2006] ECR II-2289	RP GC 47, 21; 76a, 10; 150, 5
T-489/04	<i>US Steel Kočice v Commission</i>	[2007] *	RP GC 122, 3
T-500/04	<i>Commission v HC Informations-Industrie Consulting</i>	[2007] ECR II-1443	RP GC 64, 33
T-504/04	<i>Ruiz Bravo-Villasante v Commission</i>	[2005] ECR II-606; II-1606	RP GC Prelims pre 100, 10; 43, 9, 10
T-12/05	<i>TV Denmark and Kanal 5 Denmark v Commission</i>	[2007] *	RP GC 116, 10
T-23/05	<i>Giraudy v Commission</i>	[2006] *	RP GC 62, 6
T-85/05	<i>Dimos Ano Liosion A. O. v Commission</i>	[2005] ECR II-1721	RP GC 104, 32, 69
T-87/05	<i>EDP v Commission</i>	[2005] ECR II-3745	RP GC 44, 2; 76a, 28, 37
T-117/05	<i>Rodenbröker A. O. v Commission</i>	[2005] ECR II-2593	RP GC 104, 25, 69
T-125/05	<i>Umwelt- und Ingenieurtechnik Dresden v Commission</i>	[2005] ECR II-1901	RP GC 104, 33
T-146/05	<i>Gorostiaga Atxalandabaso v Parliament</i>	[2005] ECR II-5989	RP GC Prelims pre 100, 7
T-158/05	<i>Trek Bicycle v OHIM</i>	[2007] ECR II-49	RP GC 48, 5; 135, 1, 5
T-171/05	<i>Nijs v Court of Auditors</i>	[2005] ECR II-761	RP GC 104, 70; 109, 5
T-172/05	<i>Armaccell v OHIM</i>	[2006] ECR II-4061	RP GC 135, 5
T-174/05	<i>Elf Aquitaine v Commission</i>	[2009] *	RP GC 84, 6
T-177/05	<i>Strohm v Commission</i>	[2005] ECR II-1	RP GC 44, 67
T-178/05	<i>United Kingdom v Commission</i>	[2005] ECR II-4806	RP GC 76a, 10, 28
T-182/05	<i>Kowalski v Poland</i>	[2005] *	RP GC 111, 12
T-203/05	<i>Varga v Hungary and Greece</i>	[2005] *	RP GC 111, 12
T-221/05	<i>Huvis v Council</i>	[2010] *	RP GC 91, 40; 92, 3
T-237/05	<i>Odile Jacobs v Commission</i>	[2010] ECR II-2245	RP GC 42, 13
T-290/05	<i>Weber v Commission</i>	[2006] ECR II-96	RP GC 44, 67
T-295/05	<i>Document Security System v ECB</i>	[2007] ECR II- 2835	RP GC 111, 10
T-321/05	<i>AstraZeneca v Commission</i>	[1997] ECR II-1085	RP GC 44, 60
T-322/05	<i>Brinkmann v OHIM</i>	[2007] ECR II-28	RP GC 63, 4
T-345/05	<i>V v Parliament</i>	[2007] ECR II-160	RP GC 76a, 3
T-357/05	<i>Comunidad Autónoma de Valencia v Commission</i>	[2006] ECR II-2015	RP GC 111, 13
T-376/05; 382-383/05	<i>TEA-CEGOS A. O. v Commission</i>	[2006] ECR II-205	RP GC 76a, 10, 28
T-382/05	<i>Platte v Commission</i>	[2005] *	RP GC 94, 13
T-3855/05	<i>Portugal v Transnautica and Commission</i>	[2010] *	RP GC 104, 6; 123, 8

* Italics indicate cases not yet published in the ECR.

Case Number	Parties	ECR [*]	Reference
T-390/05	<i>Kumar v Commission</i>	[2005] *	RP GC 94, 14
T-392/05	<i>MMT v Commission</i>	[2007] ECR II-97	RP GC 102, 15
T-417/05	<i>Endesa v Commission</i>	[2005] ECR II-2533; [2008] *	RP GC 76a, 10; 91, 56
T-455/05	<i>Componenta v Commission</i>	[2010] *	RP GC 91, 39, 42, 50 64, 82; 92, 3
T-456-357/05	<i>Gütermann and Zwicky v Commission</i>	[2010] ECR II-1443	RP GC 48, 20
T-2/06	<i>Yusef v Council</i>	*	RP GC 43, 36
T-7/06	<i>Babatunde v Germany</i>	*	RP GC 94, 14
T-11/06	<i>Romana Tabacchi v Commission</i>	[2006] ECR II-2491	RP GC 104, 66; 108, 7
T-13/06	<i>Sama v Germany</i>	*	RP GC 94, 14
T-19/06	<i>Mindo v Commission</i>	[2011] *	RP GC 113, 4
T-23/06	<i>Aidoo v Germany</i>	*	RP GC 94, 12
T-24/06	<i>MABB v Commission</i>	[2007] ECR II-198	RP GC 116, 10, 20
T-27/06	<i>Bapack Ngue v Germany</i>	[2007] *	RP GC 94, 13
T-39/06	<i>Transcatab v Commission</i>	[2011] *	RP GC 44, 41
T-62/06	<i>Eurallumina v Commission</i>	[2011] *	RP GC 104, 6
T-83/06	<i>Roy v European Court of Human Rights and Germany</i>	[2007] *	RP GC 94, 12
T-89/06	<i>Lebard v Commission</i>	[2009] *	RP GC 111, 16
T-93/06	<i>Mülhens v OHIM</i>	[2010] *	RP GC 91, 39, 82
T-95/06	<i>Agrarias de la Comunidad Valenciana v OCVV</i>	[2009] *	RP GC 91, 49, 52
T-95/06	<i>Schuerings A. O. v ETF</i>	[2010] *	RP GC 62, 5
T-100/06	<i>Rajani v OHIM</i>	[2007] *	RP GC 94, 9; 95, 6
T-108/06	<i>Wersal v Spain</i>	[2006] *	RP GC 111, 12
T-110/06	<i>Bangert v Germany</i>	*	RP GC 94, 12
T-113/06	<i>Fjord Seafood Norway and Others v Council</i>	[2010] *	RP GC 84, 6
T-135/06	<i>Al-Faqih v Council</i>	[2009] *	RP GC 94, 8, 9
T-137/06	<i>Abdrabbah v Council</i>	[2009] *	RP GC 95, 2
T-144/06	<i>O'Loughlin v Ombudsman and Ireland</i>	[2006] *	RP GC 111, 12
T-158/96	<i>Acciaierie di Bolzano v Commission</i>	[1999] ECR II-3927	RP GC 116, 4
T-170/06	<i>Alrosa v Commission</i>	[2007] ECR II-2601	RP GC 76a, 10, 28
T-173/06	<i>Aisne and Nature v Commission</i>	[2006] *	RP GC 44, 17
T-182/06	<i>Netherlands v Commission</i>	[2005] ECR II-4807; [2007] ECR II-1983	RP GC 76a, 10, 28
T-223/06	<i>Parliament v Eistorp</i>	[2007] ECR II-1581	RP GC 43, 9; 44, 86
T-234/06	<i>Klosterbrauerei Weissenohe</i>	[2011] *	RP GC 91, 59, 79; 92, 3, 21, 23, 28
T-238/06	<i>Pax v OHIM</i>	[2007] *	RP GC 44, 91
T-244/06	<i>Pietschmann v Germany</i>	[2006] *	RP GC 111, 7
T-250/06	<i>Ott A. O. v Commission</i>	[2009] *	RP GC 145, 3

* Italics indicate cases not yet published in the ECR.

Cases GC

Court of Justice of the European Union

Case Number	Parties	ECR*	Reference
T-251/06	<i>Meyer-Falk v Commission</i>	[2008] *	RP GC 94, 9
T-253/06	<i>Chassagne v Commission</i>	[2008] *	RP GC 138, 3
T-270/06	<i>Lego Juris A/S v OHIM</i>	[2010] *; [2011] *	RP GC 91, 13; 92, 3, 13
T-274/06	<i>El Marenly v Commission</i>	[2007] *	RP GC 102, 6
T-282/06	<i>Sun Chemical v Commission</i>	[2007] ECR II-2149	RP GC 76a, 10, 27
T-284/06	<i>Gualtieri v Commission</i>	[2011] *	RP GC 92, 17
T-299/06	<i>Leclercq v Commission</i>	[2008] *	RP GC 113, 4
T-310/06	<i>Hungary v Commission</i>	[2007] ECR II-4619	RP GC 51, 4; 76a, 10, 28
T-314/06	<i>Whirlpool Europe v Council</i>	[2010] *	RP GC 115, 10; 116, 29
T-350/06	<i>Tsorakis v Commission and European Court of Human Rights</i>	[2007] *	RP GC 94, 12
T-413/06	<i>Gualtieri v Commission</i>	[2008] *	RP GC 145, 3
T-28/07	<i>Fels A. O. v Commission</i>	[2007] ECR II-98	RP GC 76a, 10
T-31/07	<i>DuPont de Nemours v Commission</i>	[2007] ECR II-2767	RP GC 104, 23
T-35/07	<i>Leche Celta v OHIM</i>	[2011] *	RP GC 91, 72; 92, 3
T-40/07; 62/07	<i>Carvalho v Commission</i>	[2012] *	RP GC 126, 3
T-46/07	<i>Alpha Omega Solicitors v Council of Europe</i>	[2007] *	RP GC 111, 10, 12
T-54/07	<i>Vtesse Networks v Commission</i>	[2010] *	RP GC 116, 29
T-59/07	<i>Polimeri Europa v Commission</i>	[2011] *	RP GC 44, 47
T-63/07	<i>Mülhens v OHIM</i>	[2009] *	RP GC Prelims pre 115, 4
T-68/07	<i>Landtag Schleswig Holstein v Commission</i>	[2007] *	RP GC 111, 7
T-77/07	<i>Di Pasquale v Commission</i>	[2007] *	RP GC 111, 12
T-77/07	<i>Carvalho v Commission</i>	[2012] *	RP GC 126, 3
T-90/07; 99/07	<i>Belgium v Ginette</i>	[2008] *	RP GC 139, 1
T-92/07	<i>Frankin A. O. v Commission</i>	[2008] *	RP GC 138, 3
T-98/07	<i>Hoffmann v Commission</i>	[2007] *	RP GC 94, 13
T-98/07	<i>Belgium v Ginette</i>	[2008] *	RP GC 139, 1
T-107/07	<i>Rossi Ferreras v Commission</i>	[2008] *	RP GC 138, 3
T-134/07	<i>Widhalm</i>	[2007] *	RP GC 94, 13
T-139/07	<i>Pioneer Hi-Bred International v Commission</i>	[2011] *	RP GC 91, 42
T-141/07 et seq.	<i>General Technic-Otis v Commission</i>	[2011] *	RP GC 44, 40
T-161/07	<i>Group Lottuss Corporation SL v OHIM</i>	[2011] *	RP GC 91, 48
T-164/07	<i>Sundholm v Commission</i>	[2008] *	RP GC 138, 4
T-175/07	<i>TEA v Commission</i>	[2007] *	RP GC 90, 5; 111, 13
T-176/07	<i>S.A.B.A.R v Commission</i>	[2007] *	RP GC 90, 5
T-177/07	<i>Mediaset v Commission</i>	[2010] *	RP GC 44, 46

* Italics indicate cases not yet published in the ECR.

Case Number	Parties	ECR [*]	Reference
T-206/07	<i>Foshan Shunde Yongjian Housewares v Council</i>	[2008] ECR II-1; [2009] *	RP GC 76a, 10; 92, 17
T-222/07	<i>Kerstens v Commission</i>	[2008] *	RP GC 139, 2
T-223/07	<i>Thierry v Commission</i>	[2008] *	RP GC 48, 11
T-236/07	<i>Germany v Council</i>	[2010] *	RP GC 48, 14
T-264/07	<i>CSL Behring GmbH v Commission and EMA</i>	[2012] *	RP GC 91, 29
T-274/07	<i>Zhejiang Harmonic Hardware Products v Council</i>	*	RP GC 116, 13
T-292/07	<i>Berliner Institut für Vergleichende Sozialforschung v Commission</i>	[2007] *	RP GC 104, 6
T-299/07	<i>Ringhead v Commission</i>	[2007] *	RP GC 94, 13
T-311/07	<i>Nijs v Court of Auditors</i>	[2007] *	RP GC 145, 3
T-320/07	<i>Jones and Jones v Commission</i>	[2009] *; [2011] *	RP GC 94, 9
T-333/07	<i>Entrance Services v Parliament</i>	[2008] *	RP GC 76a, 10
T-341/07	<i>Sison v Council</i>	[2007] *	RP GC 76a, 10
T-385/07	<i>FIFA v Commission</i>	*	RP GC 84, 6
T-461/07	<i>Visa Europe and Visa International Service v Commission</i>	[2011] *	RP GC 44, 46, 47
T-466/07	<i>Osram v Council</i>	[2008] *; [2011] *	RP GC 76a, 29; 92, 6
T-12/08	<i>M v EMEA</i>	[2010] ECR II- 3735	RP GC 96, 7; 121c
T-17/08	<i>Andreasen v Commission</i>	[2010] *	RP GC Prelims pre 136, 6
T-33/08	<i>Bastos Viegas v OHIM</i>	[2010] *	RP GC 92, 3
T-45/08	<i>Transportes Evaristo Molina v Commission</i>	[2008] *	RP GC 102, 3
T-46/08	<i>Marcuccio v Commission</i>	[2009] *	RP GC Prelims pre 136, 5
T-49/08	<i>Michail v Commission</i>	[2009] *	RP GC 141, 2
T-55/08	<i>UEFA v Commission</i>	*	RP GC 84, 6
T-50/08	<i>Michail v Commission</i>	[2009] *	RP GC Prelims pre 136, 7
T-60/08	<i>Kerelov v Commission</i>	[2010] *	RP GC 96, 5
T-68/08	<i>FIFA v Commission</i>	*	RP GC 84, 6
T-87/08	<i>Schuerings A. O. v ETF</i>	[2010] *	RP GC 33, 4; 62, 5
T-100/08	<i>Kerelov v Commission</i>	[2010] *	RP GC 11, 3; 44, 21, 48; 138, 4
T-139/08	<i>Loufrani v OHIM</i>	[2009] *	RP GC Prelims pre 115, 4
T-148/08	<i>Beifa Group v OHIM</i>	[2010] *	RP GC 44, 39
T-169/08	<i>DEI v Commission</i>	[2010] *	RP GC 44, 39; 84, 3
T-181/08	<i>Tay Za v Council</i>	[2010] *	RP GC Intro VIII, 24
T-188/08	<i>infeurope v Commission</i>	[2009] *	RP GC 48, 15
T-190/08	<i>Kuzneckie ferrosplavy OAO v Council and Commission</i>	[2009] *	RP GC 114, 5

* Italics indicate cases not yet published in the ECR.

Cases GC

Court of Justice of the European Union

Case Number	Parties	ECR*	Reference
T-213/08	<i>Marinova v Commission and Université Libre de Bruxelles</i>	[2009] *	RP GC 11, 1; 13, 6
T-227/08	<i>Brehm v Commission</i>	[2008] *	RP GC 90, 5
T-230/08	<i>Asenbaum Fine Arts v OHIM</i>	[2010] *	RP GC Prelims pre 115; 4
T-239/08	<i>Comtec Translation Ltd v Commission</i>	[2011] *	RP GC 91, 29, 39, 41, 50
T-246/08; 332/08	<i>Bank Melli Iran v Council</i>	[2008] *	RP GC 76a, 10
T-248/08	<i>Doktor v Council</i>	[2010] ECR II-0000	RP GC 81, 9
T-253/08	<i>Addis Group v OHIM</i>	[2008] *	RP GC 43, 27, 29
T-255/08	<i>Padilla v OHIM</i>	[2009] *	RP GC 94, 9
T-284/08	<i>People's Mojahedin Organization of Iran v Council</i>	[2008] ECR II-334; [2008] ECR II-3487; [2009] ECR II-161	RP GC 76a; 10; 129, 4, 5
T-303/08	<i>Tresplain Investments v OHIM</i>	[2010] ECR II-0000	RP GC 44, 47; 48, 25
T-304/08	<i>Bank Melli Iran v Council</i>	[2008] *	RP GC 76a, 10
T-304/08	<i>Smurfit Kappa Group v Commission</i>	[2010] *	RP GC 116, 15
T-340/08	<i>Timmer v Court of Auditors</i>	[2009] *	RP GC 138, 4
T-355/08	<i>De Fays v Commission</i>	[2010] *	RP GC 144
T-361/08	<i>Peek & Cloppenburg and van Graaf v OHIM</i>	*	RP GC 134, 2
T-369/08	<i>EWRIA A. O. v Commission</i>	[2010] *	RP GC 44, 47
T-376/08	<i>Nijs v Court of Auditors</i>	[2009] *	RP GC 138, 4
T-383/08	<i>New Europe v Commission</i>	[2009] *	RP GC 44, 84, 85
T-397/08	<i>Ferrazzano v Italy</i>	[2008] *	RP GC 11, 1; 90, 5
T-421/08	<i>Performing Right Society v Commission</i>	[2010] *	RP GC 116, 13, 20
T-425/08	<i>KODA v Commission</i>	[2009] *	RP GC 35, 21, 23
T-429/08	<i>Grain Millers v OHMI – Grain Millers</i>	[2011] *	RP GC 91, 11, 12, 41, 53, 72; 92, 3, 22
T-441/08	<i>ICO Services v Parliament and Council</i>	[2009] *	RP GC 116, 12
T-487/08	<i>Kureha v OHIM</i>	[2011] *	RP GC 84, 8
T-491/08	<i>Bui Van v Commission</i>	[2010] *	RP GC Prelims pre 136, 7
T-526/08	<i>Commission v Strack</i>	[2010] *	RP GC Prelims pre 136, 4
T-528/08	<i>Delice v Commission and Erlangen</i>	[2008] *; [2009] *	RP GC 90, 5; 111, 15
T-560/08	<i>Commission v Meierhofer</i>	[2010] ECR II-1739	RP GC 64, 41; 65, 1; 67, 2; Prelims pre 36. 4; 136a, 8
T-572/08	<i>Commission v Traore</i>	[2008] *	RP GC 76a, 10
T-590/08	<i>Landolfo v ECB</i>	[2011] *	RP GC 95, 9
T-2/09	<i>Internationale Fruchthandels-Gesellschaft Weichert v Commission</i>	[2009] *	RP GC Intro VIII, 25

* Italics indicate cases not yet published in the ECR.

Case Number	Parties	ECR [*]	Reference
T-9/09	<i>Marcuccio v Commission</i>	[2010] *	RP GC 81, 8
T-16/09	<i>Marcuccio v Commission</i>	[2010] *	RP GC Intro IV, 12; 102 10
T-27/09	<i>Stella Kunststofftechnik v OHIM</i>	[2010] *	RP GC 91, 41, 51
T-43/09	<i>Cachuera v OHIM</i>	[2009] *	RP GC 44, 80
T-80/09	<i>Commission v Q</i>	[2011] *	RP GC 113, 4; Prelims pre 136, 6
T-82/09	<i>Geert-Jan eannekamp v Parliament</i>	[2009] *	RP GC 115, 2
T-85/09	<i>Kadi v Commission</i>	[2009] *	RP GC 76a, 10
T-101/09	<i>Maftah v Council and Commission</i>	[2010] *; [2011] *	RP GC 94, 9; 96, 5; 102, 3
T-102/09	<i>Elosta v Council and Commission</i>	[2010] *	RP GC 94, 9
T-127/09	<i>Abdulrahim v Council and Commission</i>	[2009] *	RP GC 94, 2, 9
T-141/09	<i>Molter v Germany</i>	[2009] *	RP GC 90, 5
T-157/09	<i>Marcuccio v Commission</i>	[2010] *	RP GC 44, 27; 102, 10
T-200/09	<i>Albertis Infraestructuras v Commission</i>	[2010] *	RP GC 102, 16
T-206/09	<i>Maslyukov v OHMI</i>	[2009] *	RP GC 95, 6
T-219/09; 326/09	<i>Albertini and Others v Parliament</i>	[2011] *	RP GC 84, 1
T-235/09	<i>Commission v Edificios Inteco</i>	[2010] *	RP GC 94, 3
T-239/09	<i>Marcuccio v Commission</i>	[2011] *	RP GC Prelims pre 136, 5
T-260/09	<i>OHIM v Simoes Dos Santos</i>	[2010] *	RP GC 44, 36
T-264/09	<i>Technoprocess v Commission and Délégation de l'Union au Maroc</i>	[2011] *	RP GC 111, 15
T-270/09	<i>PVS – Privatärztliche Verrechnungsstelle Rhein-Ruhr GmbH v OHIM</i>	[2012] *	RP GC 91, 72
T-280/09	<i>Morte Navarro v Parliament</i>	[2010] *	RP GC 94, 9
T-283/09	<i>Laleh Aayhan v Parliament</i>	[2009] *	RP GC 43, 27, 29; 145, 2
T-287/09	<i>Radke Solution+Technologie EURL v Germany</i>	[2009] *	RP GC 90, 5
T-288/09	<i>Mangini v OCCAR</i>	[2009] *	RP GC 94, 12
T-320/09	<i>Planet v Commission</i>	[2011] *	RP GC 44, 61
T-320/09	<i>Albertini and Others v Parliament</i>	[2011] *	RP GC 84, 1
T-352/09	<i>Novácke chimické závody v Commission</i>	[2010] *	RP GC 84, 1
T-354/09	<i>Goldmann v Bulgaria</i>	[2009] *	RP GC 90, 5
T-384/09	<i>SKW Stahl-Metallurgie Holding and Others v Commission</i>	[2011] *	RP GC 116, 6, 8, 12
T-390/09	<i>Noko Ngele v Commission</i>	[2009] *	RP GC 111, 13
T-413/09	<i>Brain Invest v Sweden</i>	[2009] *	RP GC 90, 5
T-416/09	<i>Castellano v Switzerland, France and Italy</i>	[2009] *	RP GC 90, 5
T-429/09	<i>Campailla v Commission</i>	[2011] *	RP GC 44, 6, 7
T-441/09	<i>Lagier v France</i>	[2009] *	RP GC 90, 5

* Italics indicate cases not yet published in the ECR.

Cases GC

Court of Justice of the European Union

Case Number	Parties	ECR*	Reference
T-442/09	<i>Torre v Spain</i>	[2009] *	RP GC 90, 5
T-454/09	<i>van Arum v Parliament</i>	[2011] *	RP GC 44, 45; Prelims pre 136, 5; 145, 1
T-456/09	<i>Bakonyi v Hungary</i>	[2009] *	RP GC 90, 5
T-459/09	<i>Hendel v Poland</i>	[2009] *	RP GC 90, 5
T-493/09	<i>Y v Commission</i>	[2010] *	RP GC 94, 9
T-494/09	<i>Mezidi v Mezidi</i>	[2009] *	RP GC 94, 12
T-496/09	<i>Bell v Belgium</i>	[2010] *	RP GC 90, 5
T-498/09	<i>Kerstens v Commission</i>	[2010] *; [2012] *	RP GC 91, 30, 75; 92, 8; Prelims pre 136, 6
T-507/09	<i>Liu v United States and Others</i>	[2010] *	RP GC 94, 12
T-510/09	<i>V v Commission and European Data Protection Supervisor</i>	[2010] *	RP GC 94, 9
T-515/09	<i>Marcuccio v Commission</i>	[2010] *	RP GC 81, 6
T-527/09	<i>Ayadi v Commission</i>	[2010] *	RP GC 94, 9
T-3/10	<i>Peréz Guerra v BNP Parisbas and Spain</i>	[2010] *	RP GC 90, 5
T-4/10	<i>Al Saadi v Commission</i>	[2011] *	RP GC 94, 4, 9
T-8/10	<i>Michelová v Czech Republik</i>	[2010] *	RP GC 90, 5
T-12/10	<i>Marcuccio v Commission</i>	[2011] *	RP GC 145, 4
T-15/10	<i>Noko Ngele v Commission and Others</i>	[2011] *	RP GC 111, 12
T-18/10	<i>Inuit Tapiriit Kanatami A. O. v Council and Parliament</i>	[2010] ECR II-75	RP GC 64, 50
T-38/10	<i>Marcuccio v Commission</i>	[2010] *	RP GC 92, 12
T-48/10	<i>Meister v OHIM</i>	[2011] *	RP GC 11, 2
T-54/10	<i>Wnuk v UNO and Others</i>	[2010] *	RP GC 94, 12
T-64/10	<i>Dorval SAS v Commission</i>	[2010] *	RP GC 90, 5
T-73/10	<i>Apostolov v Commission</i>	[2010] *	RP GC 93, 4; Prelims pre 100, 11
T-98/10	<i>Franssons Verkstäder v OHIM</i>	[2010] *	RP GC Intro VIII, 25
T-103/10	<i>Parliament v U</i>	[2010] *	RP GC 104, 6
T-136/10	<i>M. v EMA</i>	[2011] *	RP GC 114, 32
T-160/10	<i>J v Parliament and Commission</i>	[2011] *	RP GC 94, 9
T-175/10	<i>Milux Holding v OHIM</i>	[2011] *	RP GC 113, 4
T-190/10	<i>Hackett v Parliament</i>	*	RP GC 94, 3
T-208/10	<i>Cree Inc. v OHIM</i>	[2011] *	RP GC 84, 8
T-212/10	<i>Strålfors v OHIM</i>	[2010] *	RP GC 44, 43
T-237/10	<i>Vuitton Malletier v OHIM</i>	[2011] *	RP GC 115, 8
T-256/10	<i>Marcuccio v Commission</i>	[2011] *	RP GC Prelims pre 136, 6
T-261/10	<i>Brinkmann v Germany</i>	[2010] *	RP GC 90, 5
T-267/10	<i>Land Wien v Commission</i>	[2011] *	RP GC 44, 31

* Italics indicate cases not yet published in the ECR.

Case Number	Parties	ECR [*]	Reference
T-270/10	<i>Deutsche Telekom v Commission</i>	[2011] *	RP GC 35, 21
T-296/10	<i>Gheorghe V. Varga v Council</i>	[2010] *	RP GC 44, 91
T-306/10	<i>Yusef v Commission</i>	[2010] *	RP GC 94, 9
T-309/10	<i>Klein v Commission</i>	[2011] *	RP GC 94, 2
T-311/10	<i>Platis v Council and Greece</i>	[2010] *	RP GC 90, 5
T-317/10	<i>L v Parliament</i>	[2011] *	RP GC 94, 9
T-323/10	<i>Chickmouza Chabou v OHIM</i>	[2012] *	RP GC 92, 9
T-330/10	<i>M v Commission</i>	[2011] *	RP GC 44, 47; 94, 9; 96, 4
T-341/10	<i>Bonnetaud A.O v Commission</i>	[2012] *	RP GC 114, 5
T-344/10	<i>UPS v Commission</i>	[2012] *	RP GC 114, 5
T-366/10	<i>Marcuccio v Commission</i>	[2011] *	RP GC 92, 1
T-469/10	<i>Conneely v Commission</i>	[2011] *	RP GC 101, 3
T-472/10	<i>Cavankee Fishing Co. Ltd. v Commission</i>	[2011] *	RP GC 43, 33
T-476/10	<i>N v Court of First Instance</i>	[2011] *	RP GC 94, 12
T-502/10	<i>Gers v Commission</i>	[2011] *	RP GC 114, 5
T-527/10	<i>Google v OHIM</i>	*	RP GC 134, 2
T-541/10	<i>Adedy and Others v Council</i>	[2011] *	RP GC 115, 3
T-563/10	<i>De Luca v Commission</i>	[2011] *	RP GC 141, 2; 142
T-591/10	<i>Castiglioni v Commission</i>	[2011] *	RP GC 104, 29
T-47/11	<i>Mandu v Romania</i>	[2011] *	RP GC 90, 5
T-55/11	<i>AD v Parliament and Others</i>	[2011] *	RP GC 95, 9
T-73/11	<i>ANCMRR v Romania</i>	[2011] *	RP GC 90, 5; 111, 12
T-75/11	<i>AH v Parliament and Others</i>	[2011] *	RP GC 94, 12
T-79/11	<i>Ing. Nando Groppo Srl. A. O. v Parliament and Council</i>	[2011] *	RP GC 90, 5
T-81/11	<i>Kremser v Frankfurt am Main</i>	[2011] *	RP GC 90, 5; 111, 6, 12
T-86/11	<i>Bamba v Council</i>	[2011] *	RP GC 76a, 10
T-105/11	<i>Noko Ngele v Commission</i>	[2011] *	RP GC 111, 14
T-133/11	<i>Fundatia Pro Fundbis – 1946 Semper v European Court of Human Rights</i>	[2011] *	RP GC 111, 12
T-138/11	<i>Brouha Nathanael Ahouma v Council</i>	[2011] *	RP GC 86, 44
T-143/11	<i>Consorzio vino Chianti Classico v OHIM</i>	[2011] *	RP GC 135, 1
T-155/11	<i>Bana A. O. v Romania</i>	[2011] *	RP GC 90, 5
T-157/11	<i>Adamut A. O. v Romania</i>	[2011] *	RP GC 90, 5
T-198/11	<i>Strack v Commission,</i>	pending	RP GC 46, 35
T-210/11	<i>AP v Bundesverfassungsgericht</i>	*	RP GC 94, 12
T-213/11	<i>Collège des représentants du personnel de la BEI and Others v Bömcke</i>	[2011] *	RP GC 115, 9
T-218/11	<i>Dagher v Council and Italy</i>	[2011] *	RP GC 104, 6
T-221/11	<i>West Indies Pack v France</i>	[2011] *	RP GC 111, 15
T-271/11	<i>BC v HSBC Bank</i>	[2011] *	RP GC 94, 12
T-289/11	<i>Deutsche Bahn A. O. v Commission</i>	[2012] *	RP GC 35, 32

* Italics indicate cases not yet published in the ECR.

Cases CST

Court of Justice of the European Union

Case Number	Parties	ECR*	Reference
T-374/11	<i>Libyan Investment Authority and Others v Council</i>	[2011] *	RP GC 102, 2
T-375/11	<i>Houej v Council</i>	[2011] *	RP GC 102, 2
T-376/11	<i>CBL v Council</i>	[2011] *	RP GC 102, 2
T-377/11	<i>FDES and Others v Council</i>	[2011] *	RP GC 102, 2
T-532/11	<i>Städter v ECB</i>	[2011] *	RP GC Prelims pre 100, 12
T-134/12	<i>Investigación y Desarrollo en Soluciones y Servicios v Commission</i>	[2012] *	RP GC 104, 36
T-163/12	<i>Ternavsky v Council</i>	[2012] *	RP GC 104, 36

European Union Civil Service Tribunal (CST)

Case Number	Parties	ECR*	Reference
F-1/05	<i>Landgren v ETF</i>	[2007] *	RP GC 129, 1, 5
F-5/05	<i>Violetti A. O. v Commission</i>	[2007] *	RP GC 62, 3
F-8/05	<i>Fouwels A. O. v Commission</i>	*	RP GC 127, 3
F-52/05	<i>Q v Commission</i>	[2007] *	RP GC 42, 9; RP GC 64, 28
F-78/05	<i>Rounis v Commission</i>	[2007] *	RP GC 64, 13
F-95/05	<i>N. v Commission</i>	[2007] *	RP GC 94, 5, 9
F-100/05	<i>Chatziioannidou v Commission</i>	[2007] *	RP GC 91, 41, 55, 62; 92, 3
F-103/05	<i>Pickering v Commission</i>	[2007] *	RP GC 50, 14
F-124/05	<i>A. and G. v Commission</i>	*	RP GC 44, 41; 77, 9
F-126/05	<i>Borbély v Commission</i>	[2007] *	RP GC 55, 9; RP GC 64, 35
F-11/06	<i>Larsen v Commission</i>	[2007] ECR II-1-531	RP GC 64, 13
F-45/06	<i>De Buggenoms A. O. v Commission</i>	[2011] *	RP GC 127, 3
F-83/06	<i>Bianchi v ETF</i>	[2006] ECR II-1-93	RP GC 104, 44
F-88/06	<i>Pantalis v Commission</i>	[2007] ECR II-1-807	RP GC 64, 13
F-92/06	<i>Antas v Council</i>	[2007] *	RP GC 64, 13
F-98/06	<i>Lohiniva v Commission</i>	[2007] *	RP GC 64, 9
F-101/06	<i>Atanasov v Commission</i>	[2007] *	RP GC 95, 6
F-103/06	<i>Saintraint v Commission</i>	[2011] *	RP GC 127, 3
F-127/06	<i>H v Council</i>	[2007] *	RP GC 64, 13
F-128/06	<i>Noworyta v Parliament</i>	[2007] *	RP GC 94, 6
F-129/06	<i>Salvador Roldán v Commission</i>	[2007] *	RP GC 111, 17
F-142/06	<i>Bligny v Commission</i>	[2007] *	RP GC 94, 14
F-2/07	<i>Matos Martins v Commission</i>	[2010] *	RP GC 42, 8; 64, 28

* Italics indicate cases not yet published in the ECR.

Case Number	Parties	ECR [*]	Reference
F-6/07	<i>Suvikas v Commission</i>	[2007] *; [2008] *	RP GC 92, 3; 114, 28, 31
F-7/07	<i>Angioi v Commission</i>	[2011] *	RP GC 116, 26
F-12/07	<i>O'Connor v Commission</i>	[2007] *	RP GC 91, 14; 94, 5
F-20/07	<i>Marcuccio v Commission</i>	[2007] *	RP GC 94, 3
F-74/07	<i>Meierhofer v Commission</i>	[2008] *	RP GC 42, 8
F-116/07	<i>Tomas v Parliament</i>	[2010] *	RP GC Prelims pre 100, 7
F-121/07; 132/07	<i>Strack v Commission</i>	*	RP GC 46, 35; Intro pre 49; 58, 7; 114, 23
F-142/07	<i>Kaminska v CoR</i>	[2008] *	RP GC 47, 3
F-3/08	<i>Marcuccio v. Commission</i>	[2009] *	RP GC 90, 8
F-5/08	<i>Brune v Commission</i>	[2012] *	RP GC 91, 6, 63; 92, 31
F-7/08	<i>Schönberger v Parliament</i>	[2010] *	RP GC 91, 35, 61; 92, 3, 30
F-13/08; 31/08	<i>Tomas v Parliament</i>	[2010] *	RP GC Prelims pre 100, 7
F-14/08	<i>X v Parliament</i>	[2009] *	RP GC 91, 75; 92, 3, 31
F-55/08	<i>De Nicola v EIB</i>	[2011] *	RP GC 44, 55, 64; 88, 6, 9; 91, 26; 92, 14, 31
F-86/08	<i>Voslamber v. Commission</i>	[2009] *	RP GC 90, 8
F-87/08	<i>Schuerings A. O. v ETF</i>	[2010] *	RP GC 33, 4; 62, 5
F-101/08	<i>Pappas v Commission</i>	[2010] *	RP GC 102, 9, 11
F-102/08	<i>Marcuccio v. Commission</i>	[2010] *	RP GC 90, 8
F-7/09	<i>Marcuccio v Commission</i>	[2010] *	RP GC 92, 12
F-23/09	<i>Cerafogli/ECB</i>	[2010] *	RP GC 64, 22, 28; 91, 9
F-52/09	<i>Da Silva Pinto Branco v Court of Justice</i>	[2011] *	
F-63/09	<i>Donati v ECB</i>	[2010] *	RP GC 64, 28
F-65/09	<i>Marcuccio v Commission</i>	[2010] *	RP GC 62, 5
F-68/09	<i>Barbin v Parliament</i>	[2010] *	RP GC 62, 3
F-71/09	<i>Caminiti v. Commission</i>	[2011] *	RP GC 90, 8
F-76/09	<i>AH v Commission</i>	[2011] *	RP GC 44, 22
F-92/09	<i>U v Parliament</i>	[2011] *	RP GC 92, 30, 31
F-102/09	<i>Bennett v OHIM</i>	[2011] *	RP GC 44, 24; 62, 6
F-2/10; 14/10; 21/10, 69/10	<i>Marcuccio v Commission</i>	[2010] *	RP GC 90, 8
F-8/10	<i>Gheysens v Council</i>	[2010] *	RP GC 44, 22, 44, 27
F-41/10	<i>Bermejo v ECOSOC</i>	[2011] *	RP GC 47, 9

* Italics indicate cases not yet published in the ECR.

Cases CST

Court of Justice of the European Union

Case Number	Parties	ECR*	Reference
F-42/10	<i>Skareby v Commission</i>	[2012] *	RP GC Prelims pre 42, 9, 10
F-43/10	<i>Cerafogli v ECB</i>	[2012] *	RP GC Prelims pre 42, 9, 10
F-45/10	<i>AO v Commission</i>	[2011] *	RP GC Intro VIII, 27
F-54/10	<i>Verheyden v Commission</i>	[2011] *	RP GC Intro VIII, 27; 81, 9
F-64/10	<i>Montzouratos v Parliament</i>	[2011] *	RP GC 44, 24
F-112/10	<i>Trentea v Fundamental Rights Agency</i>	[2011] *	RP GC 47, 7
F-155/10	<i>Noko Ngele v Commission</i>	[2011] *	RP GC 41, 25
F-3/11	<i>Marcuccio v. Commission</i>	[2012] *	RP GC 90, 8
F-8/11	<i>M v EMEA</i>	[2011] *	RP GC 11, 1
F-38/11	<i>Alari v Parliament</i>	[2011] *	RP GC 77, 10
F-51/11	<i>Pachtitis v Commission</i>	[2011] *	RP GC 104, 19
F-61/11	<i>Possanzini v Frontex</i>	[2011] *	RP GC 104, 18
F-38/12	<i>BP v FRA</i>	[2012] *	RP GC 47, 7; 105, 7

* Italics indicate cases not yet published in the ECR.

STATUTE OF THE COURT OF JUSTICE OF THE
 EUROPEAN UNION

INTRODUCTION

Outline:

I. Hierarchy of European Legal Norms.....	1
1. Primary Law	3
a) Treaties.....	4
b) Three judicial instances.....	5
aa) Court of Justice (hereafter: ECJ).....	7
bb) General Court (hereafter: GC).....	8
cc) Civil Service Tribunal (hereafter: CST).....	9
c) Statute ECJ	11
d) General principles of law.....	13
aa) Fundamental rights.....	13
bb) Other general principles of law.....	14
(1) Common rules.....	14
(2) Principles not common to all Member States.	15
(3) Other international Courts.	16
(4) Third Party States.....	17
2. Secondary Law.....	18
3. The third level: Provisions derived from the Rules of Procedure.....	19
4. The role of the case-law.....	20
II. Necessary global view	21
III. Recent amendments of the Statute ECJ and recast of the RP ECJ	22
1. Introduction.....	22
2. Codification of transitional procedures?.....	25
IV. Titles of the provisions and numbering of the paragraphs	27
V. Notations in ECJ Case Law	28

I. Hierarchy of European Legal Norms

For many lawyers accustomed to the national law of their respective States and 1
 even more so for those lawyers with a Common Law background, the procedural
 rules governing the legal remedies and proceedings applicable to European Union
 (EU) Courts are, at best, unfamiliar. These Rules of Procedure are not, unlike the
 vast majority of EU legislation, the result of a formal harmonisation of national
 rules, nor do they originate in the common law legal tradition. Much of the
 substantive and procedural rules applicable to EU Courts were determined by
 French and, to some extent, German administrative law, i.e. Continental law,
 though the Common law legal tradition found in the UK and Ireland has also
 influenced EU legal reasoning and functioning.

- 2 The everyday application of EU laws pertaining to the functioning of the European courts is furthermore complicated by the fact that while the vast majority of legal remedies are established in the TFEU, a single piece of legislation, the relevant procedural rules are scattered throughout at least three different levels of legislation. When considering a case before an EU Court, it is therefore essential to remember the hierarchy of norms in European law: primary law, secondary law, and provisions derived from the Rules of Procedure.

1. Primary Law

- 3 The fundamental parameters of the judicial system of the EU and important institutional rules governing its three judicial bodies are laid down in the primary EU law, i.e. the EU Treaties and the “Statute of the Court of Justice of the European Union” (hereafter: Statute ECJ):

a) Treaties

- 4 The **Treaty of Lisbon**, which was ratified in 2009 and which replaces the unsuccessful Treaty on the European Constitution, resulted in a far less glamorous sounding title: “**European Treaty on the Functioning of the European Union**” (hereafter: TFEU). This treaty coexists with the “**Treaty on the European Union**” (hereafter: TEU). The TFEU¹, the TEU² (to a much lesser extent), and the Treaty Establishing the European Atomic Energy (hereafter: EAEC-Treaty³) provide the foundational legal basis for the EU judicial system. They describe the nature of EU jurisdictions, the number of Judges in each legal instance, the various legal remedies available to Member States, institutions and private parties, as well as other fundamental characteristics of EU judicial proceedings.

b) Three judicial instances

- 5 The EU institution called “**Court of Justice of the European Union**” comprises three judicial instances, i.e. the Court of Justice, the General Court (1988) and the Civil Service Tribunal (2004). Pursuant to Art. 13 (2) TEU each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. Thus, the judicial instances of the EU have only jurisdiction with respect to those areas which have been **expressly** conferred upon them by virtue of EU primary law or secondary legislation⁴.
- 6 The “Court of Justice of the European Union”, which has its seat in Luxembourg⁵, was established in 1951 as part of the European Coal and Steel Community⁶

¹ See Arts. 251–281 TFEU.

² See Art. 19 TEU.

³ See Arts. 136–160 EAEC-Treaty.

⁴ Case C-143/10 P, *Tomasz Uznanski v Poland* [2010] (not published in the ECR), para. 13.

⁵ Which is sometimes mixed up with the European Court of Human Rights, a judicial body set up in the context of the European Convention on Human Rights, which has its seat in Strasbourg, France.

⁶ Which expired in 2002.

and has since its establishment served as a vital means of European political, economic, and legal integration. It is governed by Arts. 251 to 281 TFEU.

aa) Court of Justice (hereafter: ECJ)

Art. 251–281 TFEU emphasize the ECJ’s integration-focused role, since it has 7 jurisdiction over cases concerning Member States’ failure to comply with EU law⁷; cases concerning the legality of EU institutional acts⁸; EU institutional failure to act⁹; primary instance interpretation of EU law¹⁰; and appeals from the GC¹¹. The ECJ thus possesses powers of judicial review and responsibilities of judicial coherence similar to those of the US or UK Supreme Courts. Unlike these two Courts, however, the ECJ may not exercise discretion over which cases it will or will not hear, but must instead provide a reasoned judgement or order for all cases referred to it. This has caused the ECJ’s caseload to increase exponentially since 1951, which has subsequently necessitated the formation of further judicial instances.

bb) General Court (hereafter: GC)

The GC was established in 1988 as the Court of First Instance¹². Originally, the 8 GC was intended to reduce the workload of the ECJ while maintaining consistency in the interpretation and application of EU law. The GC, like the ECJ, is a judicial review Court with jurisdiction over first instance actions lodged by non-Member State parties, essentially **natural and legal persons**¹³ concerning essentially non-contractual liability¹⁴, actions for annulment¹⁵, and actions for failure to act¹⁶. It also has exclusive jurisdiction for appeals from the **Civil Service Tribunal**¹⁷. Under Art. 256(3) TFEU the GC may provide preliminary rulings if the Statute allows, but until now preliminary rulings remain strictly within the jurisdiction of the ECJ.

cc) Civil Service Tribunal (hereafter: CST)

As the GC encountered similar problems concerning overloaded dockets in the 9 early 2000 s, the CST was established in 2004 under Art. 271 TFEU to relieve some

⁷ See Art. 258 and Art. 259 TFEU. It is important to note that parties to a case brought before the ECJ need not be nationals of an EU Member State; the case in question need only be brought first before a national Court of an EU Member State. See Case C-457/09, *Claude Chartry v State of Belgium*, [2011](not yet published in the ECR), paras 19 and 20.

⁸ See Art. 263 TFEU.

⁹ See Art. 265 TFEU.

¹⁰ Or the interpretation and application of (sometimes opaque) EU law and treaties; see Art. 267 TFEU.

¹¹ Art 59–61 Statute ECJ. According to Art 62 Statute ECJ, the ECJ may, on recommendation from the First Advocate-General, also exercise judicial review over decisions of the GC in order to ensure the consistency of EU law.

¹² This name was changed in 2004, when the GC began hearing appeals from the CST and thus could not properly be called a “Court of First Instance.”

¹³ In certain instances (pertaining to state aid, decisions based on Art 207 TFEU, and Council-implemented regulations), the GC may hear actions lodged by Member States. See commentary on Art. 51 Statute ECJ for more.

¹⁴ Art 268 and Art 340 TFEU; Art 51 Statute ECJ.

¹⁵ See Art 256(1) TFEU.

¹⁶ Art 331 TFEU.

¹⁷ Art 9 Annex I Statute ECJ.

of the GC's case load. The CST has jurisdiction over cases set out in **Art. 270 TFEU** pertaining to disputes between EU institutions (as well as all EU agencies and bodies with legal personality) and their "servants"¹⁸, i.e., their officials, temporary agents, and contractual staff, as well as retired staff and those contesting a selection procedure¹⁹.

- 10 While one may find a general overview of each Court's jurisdiction and functioning as well as the interactions among the three Courts in the **Statute ECJ**, each Court's internal workings are also governed by its own distinct **Rules of Procedure**, which shall be further explained later in this volume.

c) Statute ECJ

- 11 The Statute ECJ, provided for by **protocol no. 3 of the TFEU**²⁰, is the **framework legislation** which is directly applicable to the Court's structure and functioning. Most of its rules are designed to be implemented and further detailed in the Rules of Procedure of the various EU Courts.
- 12 Despite its name, the Statute ECJ, which has not been significantly altered since the 2003 Treaty of Nice, applies not only to the ECJ as a judicial instance, but also contains a **special chapter**²¹ on the GC and, in its "**Annex I**" provides the framework legislation for the CST.

d) General principles of law

- 13 These principles are a further important source of law.

aa) Fundamental rights

These rights are an integral part of the general principles of law applicable in EU law²². A number of fundamental rights are enshrined in EU or international legislation, such as the UN Charter²³, the UN Declaration of Human Rights, the EU Charter on Fundamental Rights (EUCFR) and the European Convention on Human Rights (ECHR) (such as the presumption of innocence within the meaning of Art. 14.2 of the UNCPR, Art. 6 of the ECHR, and Art. 48 of the EUCFR)²⁴.

- 14 **bb) Other general principles of law. (1) Common rules.** Other general principles of law are part of the **constitutional traditions common to the Member States**²⁵.

¹⁸ Its role is thus very similar to the one of the Administrative Tribunal of the International Labour Organization, which is based in Geneva.

¹⁹ See commentary on Art. 1, Annex 1 Statute ECJ in this volume.

²⁰ See Art. 281 TFEU and Art. 51 TEU, which provides that "Protocols and Annexes to the Treaties shall form an integral part thereof".

²¹ Arts. 47 to 62 b of the Statute ECJ.

²² Case T-138/07, *Schindler Holding and others v Commission* [2011] (not published in the ECR), paras 149 et seq.; Case 222/84, *Marguerite Johnson v Chief Constable of the Royal Ulster Constabulary* [1986], ECR 01651, para. 18.

²³ The UN Charter and Declarations have primacy over EU law; furthermore, the ECJ does not have jurisdiction over UN resolutions or over actions undertaken by the UN Security Council; see Case T-253/02, *Ayadi v Council* [2006], ECR II-02139, paras 4 and 5.

²⁴ Case C-73/10 P, *Internationale Fruchthandels-Gesellschaft Weichert v Commission* [2010] (not yet published in the ECR), paras 48–50, 56.

²⁵ See e.g. Case T-43/02, *Jungbunzlauer v Commission* [2006] ECR II-3435.

These principles, which apply even if there is no specific legislative provision to that effect²⁶, comprise e.g. the sound administration of justice²⁷, the principle of fair legal process²⁸, the principle of equality of arms²⁹, the principle of legal certainty³⁰, the protection of legitimate expectation³¹, the rights of defence³², the principle of proportionality³³, the principle of equal treatment³⁴, the principle of the legality of criminal offences and penalties³⁵, the principle of effective judicial protection³⁶, but also seemingly more marginal principles, such as the principle of reasonable delay³⁷ or of unjust enrichment³⁸.

(2) **Principles not common to all Member States.** General principles of law which are specific to one or a few Member States are, by definition, not a common standard, and thus hardly qualify as principles having to be taken into account by the EU jurisdiction. This is the case for e.g. the *reformatio in pejus*³⁹ and the principle of transparency⁴⁰.

(3) **Other international Courts.** Case law from other international jurisdictions, such as the Administrative Tribunal of the ILO⁴¹, is not a source of law under EU law.

²⁶ Case T-36/09, *dm-drogerie markt v OHIM* [2011] (not yet published in the ECR), paras 108–110.

²⁷ See e.g. Art. 18 Statute ECJ.

²⁸ Case C-411/04 P, *Salzgitter Mannesmann GmbH v Commission* [2007], para. 40 and 41; re: trial rights and judicial admissibility, see Case T-107/94, *Kik v Council and Commission* [1995], ECR II-01717, para. 2; re: trial rights and time-limits, see Case 257/85, *Dufay v Parliament* [1987], ECR-01561, paras 9 and 10.

²⁹ Case T-36/04, *API v Commission* [2007] ECR p. II- para. 79 and the case-law cited.

³⁰ Case T-240/07, *Heineken Nederland and Heineken v Commission* [2011] (not yet published in the ECR), paras 383 to 386; for non-retroactivity, see Case 63/83, *Regina v Kent Kirk* [1984], ECR 02689, para. 22.

³¹ See Case T-115/94, *Opel Austria v Council* [1997] ECR II-39, paras 93 and 124; Joined Cases C-201/09 P and C-216/09 P, *ArcelorMittel Luxembourg SA et al. v Commission* [2011], paras 141–144.

³² Case T-110/07, *Siemens v Commission* [2011] (not yet published in the ECR), paras 189, 199; Arts. 47–50, EUCFR; Case C-6/60, *Humblet v State of Belgium* [1960], ECR I-00559, para. 1, which states that in case of doubt concerning trial rights, one must err on the side of the defendant.

³³ Art. 6(1), Lisbon Treaty; Art. 5, (EC Treaty); Case T-181/08, *Tay Za v Council* [2010], paras 159–169.

³⁴ See Council Directive 2000/78/EC of 27 November 2000 (OJ 2000 L 303, p. 16); case C-67/09 P, *Nuova Agricast and Cofra v Commission* [2010] (not yet published in the ECR), para. 65; regarding incorporation of all party submissions, case C-221/97 P, *Schröder et al. v Commission* [1998], ECR I-08255, para. 1.

³⁵ Or *nullum crimen, nulla poena sine lege*. See Case C-546/09, *Aurubis Bulgaria* [2011] (not yet published in the ECR), paras 42–43.

³⁶ Case C-432/05, *Unibet (London) and Unibet (International) Ltd v Justitiekanslern* [2007], para. 1.

³⁷ Case T-235/07, *Bavaria NV v Commission* [2011] (not yet published in the ECR), paras 316 et seq; Joined Cases T-44/01, T-119/01, and T-126/01, *Vieria SA et al v Commission* [2003], ECR II-01209, para. 167.

³⁸ Case C-309/10, *Agrana Zucker* [2011] (not yet published in the ECR), paras 53–54.

³⁹ Case F-25/07, *Bleser v Court of Justice* [2010] (not yet published in the ECR), para. 132.

⁴⁰ Case F-98/09, *Whitehead v BCE* [2011] (not yet published in the ECR), para. 50; the “duty of transparency” (cf Art. 2, 6–8, 13 EC Reg. 1049/2001, case T-84/03, *Turco v Commission* [2008], paras 61–64; Art. 42, EUCFR) is curbed by numerous exceptions protecting personal and legal data, Art. 8 EUCFR, Art. 4 (1b), (2) and Art. 9 EC Reg. 1049/2001.

⁴¹ Case F-98/09, *Whitehead v BCE* [2011] (not yet published in the ECR), para. 76.

- 17 (4) **Third Party States.** Likewise, general principles of law which apply in third party States, but not in the Member States are not sources of EU law either.

2. Secondary Law

- 18 The Member States left it to the EU Courts, i.e. to those instances which through their daily practice and experience are most familiar with the full spectrum of procedural issues, to implement the legal framework found in the TFEU and the Statute ECJ through their Rules of Procedure. By limiting the approval of these Rules of Procedure to the level of the Council⁴² rather than requiring the much larger Parliament to approve these Rules, the Member States also opted for a less cumbersome and time-consuming legislative procedure concerning ECJ procedural rules than the one required for amending e.g. distinctiveness, let alone primary law⁴³.

3. The third level: Provisions derived from the Rules of Procedure

- 19 On the basis of their Rules of Procedure⁴⁴ the EU Courts then autonomously, i.e. with no need to involve the Council or any other institution, and abundantly adopted implementing rules of a more **practical nature**. This third regulatory level comprises e.g. the supplementary Rules of Procedure of the ECJ⁴⁵, the instructions to the Registrars of the various judicial instances⁴⁶, the various “practice directions” to parties⁴⁷, etc.

4. The role of the case-law

- 20 The role the case law plays with respect to the rules of procedure of the EU Courts is very much determined by the continental law system and thus differs from the common law system, where case law is of equal if not greater importance as codified law. Pursuant to Art. 19 (1) TEU the EU Judge “*shall ensure that in the interpretation and application of the Treaties the law is observed*”. Thus, his mission is focused, from the outset, on the *interpretation* of existing **EU legislation**⁴⁸, which implies the existence of a high degree of **codified law**, as it the case with the Statute ECJ and the three sets of rules of procedure. Consequently, the case-law of the EU courts in the area of procedural law is not a source of law proper, which would have the same weight as codified law. That said, the continental law system does not rule

⁴² See Art. 253 (6) TFEU and Art. 254 (5) TFEU.

⁴³ The fact that the European Parliament is not involved at all in this process might be perceived as a possible democratic deficit, but on the other hand any involvement of the EP in this particular matter would come at the risk of political issues diluting or even prevailing over the procedural needs and constraints in proceedings at the EU Courts.

⁴⁴ See Art. 136 a RP GC and Art. 208 RP ECJ.

⁴⁵ See Art. 207 RP ECJ.

⁴⁶ See www.curia.europa.eu: Instructions to the Registrar of the CST/GC/ECJ.

⁴⁷ See www.curia.europa.eu: Practice Directions Relating to Direct Actions and Appeals.

⁴⁸ In other areas of EU law the exact limits of the role of the ECJ vis-à-vis the legislative bodies of the EU give rise to recurrent and complex debates on such questions as separation of powers, democratic legitimacy, etc.

out the filling in of gaps in the law. In the area of procedural law, when confronted to e.g. missing time-limits, the EU Courts have removed the lacuna by interpreting the principle of reasonable delay in the light of provisions which, *de jure*, were not applicable, because they related to other institutions⁴⁹.

II. Necessary global view

Bearing in mind this **vertical structure** it is important – and on some occasions 21 vital – to take account of **all three regulatory levels**⁵⁰ when confronted with an ECJ procedural issue or question. It is also important to remember that, contrary to one's expectations, the Rules of Procedure do not always contain a more detailed and explicit provision than their counterparts in the Statute ECJ. For instance, while the Rules of Procedure of all EU Courts specify the details of the time-limit provided by Art. 45 (1) Statute ECJ, they do not contain any further indication regarding the meaning of the concept of “unforeseeable circumstances” or “force majeure”, laid down in Art. 45 (2) Statute ECJ. This and indeed many other procedural issues were left to the case-law. On the other hand, the third legislative level, e.g. the “Practice Directions to Parties” adopted by the GC, provides many binding rules, such as the upper limit regarding the page numbers of the various written submissions.⁵¹

III. Recent amendments of the Statute ECJ and recast of the RP ECJ

1. Introduction

In March 2011, the President of the European Court of Justice proposed a 22 number of amendments to the EU Parliament and the Council:

These **proposals** include major changes at the level of the **Statute ECJ**, comprising an amendment of the rules relating to the composition of the Grand Chamber, the establishment of the office of **Vice-President** of the Court of Justice, a – substantial – increase of the number of Judges at the GC⁵² and the removal of the time-limit on account of distance, etc. In the meantime all proposals entered into force, **except** the suppression of the **time-limit** on account of distance, whilst the decision on the increase of numbers of Judges at the GC has been **postponed**.

In March 2011, the President furthermore proposed a substantive **recast** of the 23 **RP ECJ**, which came into force on 1st November 2012, adding another one hundred or so articles to the previously existing rules.⁵³

⁴⁹ See e.g. Joined Cases T-7/98, T-208/98 and T-109/99, *De Nicola v EIB* [2001] ECR SC p. II-185, paras 98–101, 106–111; Case T-192/99, *Dunnnett A. O. v EIB* [2001] ECR SC p. II-313, paras 52–54, 56.

⁵⁰ This includes also e.g. Art. 6 of the European Convention on Human Rights and Arts. 47 to 49 of the Charter of Fundamental Rights of the European Union.

⁵¹ See www.curia.europa.eu: Practice Directions Relating to Direct Actions and Appeals, para. 10; and, for penalties for excessively lengthy written submissions, para. 59.

⁵² 12 new Judges would be added to the currently 27 Judges.

⁵³ OJ L 265 of 29.9.2012 et seq.

- 24 The subsequent comments on the Statute EJC and the Rules of Procedure of the three Courts take account of the various changes adopted.

2. Codification of transitional procedures?

- 25 While the principle of *tempus regit actum* is enshrined in EU case law⁵⁴, in which admissibility dates are determined by the rules in effect when the case was submitted⁵⁵, and in which admissibility is judged at the time of lodging the application⁵⁶, there is no clear rule applying any of these principles to current and future legislative proposals in a standardized way.
- 26 All there is is the **settled case-law**⁵⁷ according to which procedural rules are generally held to apply to all proceedings pending at the time when they enter into force. It would perhaps be worth adding such a **rule** in the interest of legal certainty and good functioning of the Court.

IV. Titles of the provisions and numbering of the paragraphs

- 27 In the official version of the **Statute ECJ**, the articles do not bear individual titles, nor are their paragraphs numbered, with the exception of some provisions in Annex I relating to the CST. This is not particularly user-friendly, which is why all articles commented hereafter are given non-official – titles, and their paragraphs are numbered.

V. Notations in ECJ Case Law

- 28 The case law of the three European Courts can be consulted on the website of the Court, <http://curia.europa.eu>. The definitive version of all cases is also published in the European Court Reports (ECR), comprised of two volumes, the “Reports of Cases before the Court of Justice and the General Court” (for the ECJ and the GC) and the “ECR-Reports of European Staff Cases” (for the CST). All case citations include the page number (and, often, the volume number as well) to aid in finding the case within the ECR. If the case is very recent (i.e., from 2012 or sooner) or if for some other reason it is not yet in the ECR, the following notation has been placed beside the citation of the case: (not yet published in the ECR).
- 29 Up until the formation of the CFI (which now became the GC) in 1988, all cases were designated by a two-part number: the second number designated the last two digits of the year in which the case was submitted, and the first number designated the numerical order of that case in that year (so, for the fifth case submitted in 1965,

⁵⁴ See Case 12/71, *Henck*, [1971] ECR p. 00743, para. 5.

⁵⁵ See Case 60/72 *Campogrande v Commission* [1973] ECR p. 00489, para. 4.

⁵⁶ See Case T-301/01 *Alitalia v Commission* [2008] ECR p. II-01753, para. 37 and the case law cited.

⁵⁷ See e.g. Case C-293/04, *Beemsterboer Coldstore Services v Inspecteur der Belastingdienst* [2006] ECR p. I-2263, para. 19 and the case-law cited.

Case 05/65). Once the CFI was founded, cases were distinguished between CFI and ECJ cases (Case C-05/06), which are marked by a C for Court, while CFI cases were marked by a T, for “Tribunal” (Case T-05/06), while CST cases are marked by an F, for “Fonction publique”. Appeal cases are marked by a P, for “pourvoi”, which follows the case number (Case C-05/06 P or Case T-07/10 P).

INTERPRETATION

Article 1 [Legal framework]

The Court of Justice of the European Union shall be constituted and shall function in accordance with the provisions of the Treaties, of the Treaty establishing the European Atomic Energy Community (EAEC Treaty) and of this Statute.

The “Court of Justice of the European Union” is the name of the overall European judicial **institution**⁵⁸, which comprises three judicial instances, i.e. the Court of Justice (ECJ), the General Court (GC) and the Civil Service Tribunal (CST), which to date is the only specialized Court. By referring to those provisions of the Treaties which govern the creation, activity and competence of the European Court of Justice, this provision is almost stating the obvious. At the same time, these references illustrate the extent to which the rules governing the institutional and procedural law of the EU Courts are decentralized and left in the hands of the Courts themselves. This provision does not explicitly refer to the Rules of Procedure of the three jurisdictions, which are an important element of this decentralized procedural legal framework, but does so in an implicit manner, by referring to the Statute which the Rules of Procedure implement.

TITLE I
JUDGES AND ADVOCATES GENERAL

Article 2 [Oath]

Before taking up his duties each Judge shall, before the Court of Justice sitting in open Court, take an oath to perform his duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

Outline:

I. Introduction	1
1. The importance of impartiality.....	1
2. Role of the oath.....	2
3. Contents of the oath.....	3
II. Impartially	4
1. Importance	4
a) Nature.....	4
b) Requirements.....	5
2. Conscientiously	6

⁵⁸ See also the heading of Art. 251 to 281 TFEU.

3. Preserving the secrecy of the deliberations	7
a) Purpose	7
b) Scope	8
4. Other relevant provisions	9

I. Introduction

1. The importance of impartiality

The Court of Justice has consistently held that the right to a fair trial, which 1 derives *inter alia* from Art. 6(1) of the ECHR, constitutes a fundamental right which the European Union respects under Art. 6(2) TEU and Art. 47 of the Charter of Fundamental Rights of the EU. Such a right necessarily implies access for every party to an independent and impartial tribunal⁵⁹.

2. Role of the oath

One of the means to guarantee and demonstrate the required level of judicial 2 independence and impartiality is the **oath**, which every Judge⁶⁰ (and Advocate General) must take in open Court. To date this oath is the most solemn and binding means for a Judge or Advocate General to commit himself or herself to personal impartiality and to professional actions which further the good functioning of the Court.

3. Contents of the oath

Art. 2 defines the abstract contents of the oath; its wording is laid down in the 3 respective Rules of Procedure and is identical for all three jurisdictions⁶¹. The oath is limited to only the most essential qualifications of impartiality, conscientiousness, and confidentiality, unlike oaths taken by Judges of international jurisdictions, which also often include other adjectives, such as “faithfully”, “independently”, “honourably”⁶², etc.

⁵⁹ See Case C-308/07 P, *Koldo Gorostiaga Atxalandabaso* [2009] ECR p. I-01059, paras 41–42 and the case law quoted.

⁶⁰ It is worth noting that despite marked gender diversity among Judges, Advocates General, Registrars, and other Court officials as well as among lawyers and parties to cases, the Statute ECJ employs the singular masculine pronoun (he, him, his) to refer to both male and female Members of the Court as well as parties to cases and lawyers. While the use of gendered pronouns is a largely descriptive matter rendered more or less problematic depending on the language version of the Statute used, it might be worth considering the addition of an explanatory note clarifying the use of the masculine pronoun to refer to both male and female participants in the Statute and Rules of Procedure of the ECJ into the pending legislative proposal currently before the European Parliament.

⁶¹ See Art. 4 (1) RP GC, Art. 4 RP ECJ and Art. 5 of the Annex I of the Statute ECJ.

⁶² See e.g. Rule 5(1)(a) of the Rules of Procedure of the International Criminal Court; Rule 3 of the Rules of Court of the ECHR; Rule 4(1) of the Rules of Court of the International Court of Justice.

II. Impartially

4 **1. Importance. a) Nature.** Impartiality is certainly one of, if not the most essential value a Judge needs to comply with at all times⁶³. The importance of this principle is commonly illustrated by **Lady Justice**, the Roman goddess of Justice, who is an allegorical personification of the moral force in judicial systems and is frequently depicted wearing a blindfold. This is why the Judges and Advocates-General are chosen from persons “whose independence is beyond doubt”⁶⁴. This is likely to be much more than a matter of mere legal training and long standing experience, for it is ultimately a matter of personality. Being perfectly aware of the importance of impartiality is one thing, but complying with it at all times and under all circumstances is another challenge, which requires a high level of sense of duty and self-control.

b) Requirements

5 Pursuant to the case law there are two aspects to the requirement of impartiality. In the first place, the juridical body must be **subjectively impartial**, that is, none of its members must show bias or personal prejudice, as there exists a **presumption of personal impartiality** in the absence of evidence to the contrary. In the second place, the judicial body must be **objectively impartial**, i.e., it must offer guarantees sufficient to exclude any legitimate doubt regarding institutional or personal bias⁶⁵. In the daily life these principles imply, *inter alia*, that the Judge must practice the highest possible degree of **objectivity** and **restraint** vis-à-vis all parties involved.

2. Conscientiously

6 While one would expect every public servant to perform his duties “**conscientiously**”, in the case of Judges and Advocates-General of the ECJ it is so vital that it is explicitly incorporated into their oath.

7 **3. Preserving the secrecy of the deliberations. a) Purpose.** The incorporation of this obligation⁶⁶ into the oath is a matter of principle. Preserving the secrecy of the deliberations is a means to protect the judicial bodies against any attempts from in- or outsiders to influence the magistrates prior to a given Judgment and/or in view of a future decision.

⁶³ Which does not mean, however, that other institutions, such as the Commission, are exempted from this duty, see in this respect Case C-425/08, *Enviro Tech* [2009] ECR I-10035, para. 62 and the case law quoted.

⁶⁴ Arts. 253 (1), 254 (2) and 257 (4) TFEU.

⁶⁵ Case C-308/07 P, *Koldo Gorostiaga Atxalandabaso* [2009] ECR p. I-01059, para. 46 and the case law quoted.

⁶⁶ Not to be confused with the professional secrecy laid down in Art. 339 TFEU.

b) Scope

The secrecy of deliberations applies to all cases, whether *sub judice* or long since 8 closed, in which the Judge concerned either personally took part or with which the Judge was familiar⁶⁷ without being personally involved. Since this is a matter of principle, there is no test as to whether the non compliance with the secrecy of deliberations had any consequences, e.g. whether it was seriously prejudicial to the proceedings. Thus, Judges and Advocates-Generals are not only well advised to show a high degree of restraint with respect to all professional matters in general, but to demonstrate total discretion towards any third person when it comes to the deliberations.

4. Other relevant provisions

There are a number of articles in the Statute ECJ⁶⁸ designed to either prevent a 9 loss of impartiality⁶⁹, or to sanction a failure to comply with the obligations arising from the office of Judge or Advocate-General⁷⁰.

Article 3 [Immunity]

(1) The Judges shall be immune from legal proceedings. After they have ceased to hold office, they shall continue to enjoy immunity in respect of acts performed by them in their official capacity, including words spoken or written.

(2) The Court of Justice, sitting as a full Court, may waive the immunity. If the decision concerns a member of the General Court or of a specialised Court, the Court shall decide after consulting the Court concerned.

(3) Where immunity has been waived and criminal proceedings are instituted against a Judge, he shall be tried, in any of the Member States, only by the Court competent to Judge the members of the highest national judiciary.

(4) Articles 11 to 14 and Art. 17 of the Protocol on the privileges and immunities of the European Union shall apply to the Judges, Advocates General, Registrar and Assistant Rapporteurs of the Court of Justice of the European Union, without prejudice to the provisions relating to immunity from legal proceedings of Judges which are set out in the preceding paragraphs.

Outline:

I. Immunity from legal proceedings (paragraph 1)	1
1. Purpose	1
2. Limits of immunity	2
a) Professional sphere.....	2
b) Scope	3
II. Possibility to waive the immunity (paragraphs 2 and 3)	4
1. No acquired right.....	4

⁶⁷ Because e.g. he was, at some stage, part of the Chamber in charge of the case.

⁶⁸ See also the “Code of Conduct”, OJEC 223 of 22/9/07, p.1.

⁶⁹ Art. 4 (incompatible activities) and Art. 18 (cases of conflict of interest).

⁷⁰ Art. 6 Statute ECJ.

2. Competent body.....	5
a) Full Court.....	5
b) Right of initiative.....	6
3. Reasons for waiving immunity.....	7
4. Range of the decision.....	8
III. Other privileges and immunities (paragraph 4).....	9

I. Immunity from legal proceedings (paragraph 1)

1. Purpose

- 1 The privileges and immunities are a further and indeed major means by which the legislator guarantees the independence of the magistrates, which is elementary for the exercise of every judicial activity⁷¹ and which therefore continues to apply after the Judge has ceased to hold office.

- 2 **2. Limits of immunity. a) Professional sphere.** The wording of paragraph 1 (“immune from legal proceedings”) is very broad and in the absence of any case-law, it is difficult to assess its exact scope. It is clear though that the immunity conferred is, in line with its purpose, **strictly personal** and relates exclusively to the **professional sphere** (“acts performed by them in their official capacity”). Thus, it would seem, *a contrario*, that acts performed by a Judge as a **private person**/out of Courtroom are not covered by immunity. In practice, it may not always be easy to clearly separate the professional and the private sphere of a Judge.

b) Scope

- 3 An isolated reading of paragraph 1 suggests that the Judge’s immunity is absolute, meaning that it protects him against any form of proceedings, regardless of whether they are based on civil, criminal, administrative or any other law. But it is clear from paragraphs 2 and 3 that this is the case only for as long as the immunity has not been waived. In case of such waiver criminal proceedings may take place (see paragraph 3), which seems to suggest that the immunity is ultimately limited to the prohibition of payment of civil damages.

II. Possibility to waive the immunity (paragraphs 2 and 3)

1. No acquired right

- 4 The concept of immunity is not acquired once and for all, but a protection which is conferred by virtue of the term in office which may thus be waived, if need be.

⁷¹ Needless to say that they do not provide protection against possible deprivation of office, see Art. 6 and Art. 47 (2) Statute ECJ.

2. Competent body. a) Full Court. The decision to waive immunity is taken by the full Court, i.e. evidently without the participation of the Judge concerned. It is now clearer from the rephrased 2nd paragraph of this Art. that the Court of Justice plays a central role due to its ability to waive the immunity of Judges of the GC or the CST after having consulted the judicial instance concerned. “Full Court” does not mean that the decision requires unanimity amongst the Judges, unlike the case of deprivation of office, which requires a “unanimous opinion” (see Art. 6 (1) Statute ECJ).

b) Right of initiative

The wording of paragraphs 2 and 3 suggests that the ECJ may waive the immunity of its **own motion**, meaning that this does not require a formal request by an instance of a Member State to waive the immunity of a given Judge.

3. Reasons for waiving immunity

Art. 3 does not explicitly indicate the situations likely to cause immunity to be waived. A Judge suspected of a criminal offence is likely to see his immunity waived, regardless of whether the offence is serious or not. It would seem that the ECJ’s discretionary power is rather limited, since in order to preserve the independence and image of the judiciary it can hardly afford to maintain the immunity of a Judge in case of tangible suspicions of criminal offence, which would furthermore amount to ignoring a request coming from the authorities of a Member States, as the case may be. But it is less clear if this also applies to offences of a non-criminal nature.

4. Range of the decision

Judicial immunity may only be waived with respect to a specific set of facts giving rise to a particular issue. Immunity removal cannot be seen as prejudging the result of a criminal procedure if any. In the absence of ECJ jurisdiction over criminal proceedings against Judges, such proceedings are a matter for the Member States.

III. Other privileges and immunities (paragraph 4)

Paragraphs 1 to 3 explicitly apply only to “Judges,” and thus also to Judges of the GC⁷² and of the CST⁷³ and, by virtue of Art. 8 of the Statute ECJ, to Advocate Generals. By contrast paragraph 4 mainly reflects those privileges and immunities referred to in Art. 21 of the Protocol on the Privileges and Immunities of the European Communities by applying the privileges and immunities provided in Articles 11 to 14 and 17 of this Protocol to Judges, Advocates-General, the Registrar and Assistant Rapporteurs of the Court of Justice.

⁷² See Art. 44 Statute ECJ.

⁷³ See Art. 5 of Annex I of the Statute ECJ.

Article 4 [Exclusion of other occupation]

- (1) The Judges may not hold any political or administrative office.
- (2) They may not engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the Council, acting by a simple majority.
- (3) When taking up their duties, they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom, in particular the duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.
- (4) Any doubt on this point shall be settled by decision of the Court of Justice. If the decision concerns a member of the General Court or of a specialised Court, the Court shall decide after consulting the Court concerned.

Outline:

I. Introduction	1
1. Scope	1
2. Purpose	2
II. Exclusion of any political or administrative office (paragraph 1).....	3
1. Any political office	3
2. Any administrative office	4
a) Separation of powers.....	4
b) Academic activity.....	5
3. No exemptions.....	6
III. No additional occupation (paragraph 2).....	7
1. Principle	7
2. Exemptions.....	8
IV. Solemn undertaking (paragraph 3).....	12
1. Difference with the oath.....	12
2. Obligations	13
V. Decision by the Court of Justice (paragraph 4)	14
1. Competence of the Court	14
2. Procedure.....	15
a) No specific rules	15
b) No sanctions.....	16

I. Introduction

1. Scope

- 1 This provision, which covers a purely institutional issue and is thus not detailed in the Rules of Procedure of the EU Courts, also applies to the Judges of the GC⁷⁴, of the CST⁷⁵ and to the Advocates-General⁷⁶.

⁷⁴ See Art. 47 Statute ECJ.

⁷⁵ See Art. 5 of Annex I of the statute ECJ.

⁷⁶ See Art. 8 Statute ECJ.

2. Purpose

This provision's purpose seems to be twofold: On the one hand (see paragraphs 1 and 2), it is designed to avoid situations where the independence of the Judges could be compromised⁷⁷ and thus complements, to some extent, Art. 3's various legal instruments designed to protect judicial impartiality. On the other hand, this provision contains a general obligation for every Judge to respect all obligations arising from his term in office (see paragraph 3).

II. Exclusion of any political or administrative office (paragraph 1)

1. Any political office

Activities such as a simple membership in a political party, a political association or trust, a participation in a politically motivated citizen initiative, or an honorary activity as an observer of a given general election, should normally (i.e. unless it is a radical party or extremist group) remain below the threshold of activities sanctioned by paragraph 1. Activities with a higher degree of political engagement, such as e.g. an active participation in a political campaign, might however meet that threshold and thus be sanctioned or reprimanded.

2. Any administrative office. a) Separation of powers. The independence of a Judge is furthermore potentially compromised whenever he accepts to carry out tasks which are typically part of the public administration, since this is not in line with the separation of powers. That said, in the light of the abovementioned *ratio legis* holding an "administrative office" within the meaning of paragraph 1 requires a minimum of duration, structure and defined tasks, but not necessarily remuneration.

b) Academic activity

Art. 4 does not exclude an academic activity, such as being a professor or lecturer, provided this activity does not require a status as an official of a Member State on active duty and does not absorb so much time as to interfere with the accomplishment of the Judge's work load.

3. No exemptions

There is no possibility of exemption under paragraph 1, unlike what is provided for occupations within the meaning of paragraph 2, due to the greater potential for conflicts of interest arising from the simultaneous holding of judicial and political office as compared to the most likely lesser potential arising from other forms of employment or engagement (i.e., an academic post).

⁷⁷ See Art. 253 (1) TFEU and Art. 254 (2) TFEU.

III. No additional occupation (paragraph 2)

1. Principle

- 7 Judges must also abstain from any additional “occupation” within the meaning of professional occupation, whether gainful or not. Again, an “occupation” requires a certain minimum of time spent, of continuity and focus, which, on the face of it, seems to exempt very sporadic activities from sanctions under paragraph 2. On the other hand, a part time occupation is likely to come under sanction due to paragraph 2.

2. Exemptions

- 8 Unlike in the case of the holding of a political or administrative office (see paragraph 1), the Council may grant an exemption by simple majority. This possibility may come at the price of a practical challenge though:
- 9 Firstly, any Judge formally seeking an exception in order to accommodate an additional occupation is likely to create the impression that he is either not sufficiently committed to his duties as a Judge, and/or underemployed. It may furthermore be disadvantageous for the Judge concerned, e.g. with respect to his chances to obtain a further term in office in Luxembourg. Thus, prior to any formal request for an exemption, a Judge should certainly address the issue of external employment informally with the President of the ECJ.
- 10 Secondly, such request may also become an institutional issue, since it could raise the question of appropriate division of labour amongst the Judges and, worse, tend to contradict the statements of those judicial instances, such as the GC, which currently face a very high case load, to the point that the ECJ has proposed to increase the number of Judges, or the CST, who seek the recruitment of “temporary Judges”.
- 11 Thirdly, such publicity and politicization could be detrimental to the image and ultimately legitimacy of European Court of Justice as an institution.

IV. Solemn undertaking (paragraph 3)

1. Difference with the oath

- 12 By contrast to the oath (Art. 2), which covers a number of specific and fundamental obligations of every Judge, the “solemn undertaking” given by the Judge when taking up his duties relates to **all obligations** arising from his term in office.

2. Obligations

The duties arising from Judges' terms of office are not concentrated in a specific chapter, as one would expect, but are instead scattered all over the Statute ECJ⁷⁸. Even though the judicial term of office is rather short as compared to their national counterparts in most Member States, the obligation to "behave with integrity and discretion" is fully justified, given the role of the Judges.

V. Decision by the Court of Justice (paragraph 4)

1. Competence of the Court

It is, quite naturally, a matter for the Court of Justice to settle "any doubt on this point", i.e., on appropriate judicial conduct. A literal interpretation of this paragraph seems to limit the Court's role to those requirements listed in the preceding paragraph 3, while the *ratio legis* suggests that the Court may look at all issues raised under paragraphs 1 to 3 of Art. 4. Regarding permission for Judges to pursue external employment as mentioned in paragraph 2, the Council alone may grant employment exceptions to any Judge concerned from any of the three tribunals (i.e., the ECJ, the GC⁷⁹ or the CST⁸⁰). Judges would probably be well advised to enquire with the Court of Justice prior to formally requesting an exception.

2. Procedure. a) No specific rules. There are no specific rules governing the procedure which the Court of Justice needs to follow when considering the acceptability of certain judicial affiliation or activity. The Judge concerned is in any event entitled to exercise his right to be heard and, as has now been explicitly laid down in paragraph 4, the Court of Justice needs to consult the GC or CST, if one of their Judges is concerned.

b) No sanctions

Also, paragraph 4 does not provide for any sanctions, unlike Art. 6 Statute ECJ, which governs the conditions of the deprivation of office and therefore addresses much more serious offenses than the conflicts of time and (potentially) interest addressed in this Article.

Article 5 [Term in office]

(1) Apart from normal replacement, or death, the duties of a Judge shall end when he resigns.

(2) Where a Judge resigns, his letter of resignation shall be addressed to the President of the Court of Justice for transmission to the President of the Council. Upon this notification a vacancy shall arise on the bench.

⁷⁸ See e.g. Art. 14 (obligation of residence), and Art. 18 para. 1 (conflict of interest).

⁷⁹ Art. 47 (2) Statute ECJ.

⁸⁰ Art. 5 of the Annex I of the Statute ECJ.

(3) Save where Art. 6 applies, a Judge shall continue to hold office until his successor takes up his duties.

Outline:

I. Introduction	1
1. Appointing Judges.....	1
2. End of term in office.....	2
II. Resignation (paragraphs 1 and 2)	3
1. Decision of the Judge	3
2. Procedural requirements	4
III. Continuity (paragraph 3).....	5

I. Introduction

1. Appointing Judges

1 Each Member State appoints⁸¹ its respective Judge at the ECJ and the GC (notwithstanding a possible increase of the Judges of the latter jurisdiction), whereas the Council appoints the seven Judges at the CST⁸².

2. End of term in office

2 Art. 5, which applies to the Judges of the three EU Courts as well as the Advocates-General⁸³, lists the reasons why a term in office ends, while Art. 6, referred to in paragraph 3, is about the exceptional case of a deprivation of office. It is clear from Art. 5 Statute ECJ and Art. 253 (1), 254 (2) TFEU, that while Member States may appoint the Judges of the ECJ and the GC; they cannot withdraw such appointment in the course of a term. The same is true for the Council with respect to the Judges of the CST (see Art. 257 (4) TFEU). The only option for the Member States or the Council to alter their choice of Judge is to refuse a renewal of his term of office.

II. Resignation (paragraphs 1 and 2)

1. Decision of the Judge

3 Since the term in office of a Judge is the result of an appointment⁸⁴, and not of a contractual arrangement, any resignation requires a formal act. A resignation is an

⁸¹ The conditions of appointment are laid down in Arts. 253 and 254 TFEU. There is no formal age limit, be it as a minimum or maximum, nor, at least *de jure*, a probationary and/or approval period, unlike what is provided in the legislation of some Member States with respect to their national Judges.

⁸² While a policy aimed at securing a balanced representation of the sexes is now part of the legal standard in the public service, it seems difficult to apply it to the nomination of Judges in all three EU judicial bodies.

⁸³ Art. 8 Statute ECJ.

⁸⁴ See Art. 253 (1) and Art. 254 (2) TFEU, which provide that the governments of the Member States appoint the Judges by common accord after having heard the consultative body within the meaning of Art. 255 TFEU.

autonomous decision of the Judge concerned. The appointing Member States cannot (at least officially) suggest, let alone force a Judge to resign, since this would be manifestly incompatible with his independence and, more generally, with the division of powers. It is worth noting that judicial resignations are rather rare, which might be also due to the fact that the term in office is limited in time⁸⁵.

2. Procedural requirements

A resignation requires the notification of a unilateral written declaration to that 4 effect. *De jure* there is no period of notice, unlike in the case of a termination, nor must the letter of resignation, *de jure*, state any reasons. But since the Judge shall normally continue to hold office until his successor takes up his duties (see paragraph 3), a resignation never has a fully immediate effect.

III. Continuity (paragraph 3)

This provision introduces a *de facto* period of notice, which guarantees the 5 continuity of the bench and enables the Member State concerned to search for a suitable successor at an early stage, while bearing in mind the need to allow sufficient time to allow the consultative body within the meaning of Article 255 TFEU to verify the suitability of the person proposed by a Member State for becoming a Judge at the ECJ or the GC, prior to him or her being nominated by the Member State.

Article 6 [Deprivation of office]

- (1) A Judge may be deprived of his office or of his right to a pension or other benefits in its stead only if, in the unanimous opinion of the Judges and Advocates-General of the Court of Justice, he no longer fulfils the requisite conditions or meets the obligations arising from his office. The Judge concerned shall not take part in any such deliberations. If the person concerned is a member of the General Court or of a specialised Court, the Court shall decide after consulting the Court concerned.
- (2) The Registrar of the Court shall communicate the decision of the Court to the President of the European Parliament and to the President of the Commission and shall notify it to the President of the Council.
- (3) In the case of a decision depriving a Judge of his office, a vacancy shall arise on the bench upon this latter notification.

Outline:

I. Preliminary comments.....	1
1. No classical disciplinary rules	1
2. Purpose	2

⁸⁵ Six years, see Art. 253 (1) and Art. 254 (2) TFEU.

3. Prevention	3
4. ECJ jurisdiction	4
II. Reasons for deprivation of office (paragraph 1)	5
1. Requisite conditions	5
2. Obligations arising from his office	6
3. Subjective elements	8
III. Procedure (paragraphs 1–3)	9
1. Jurisdiction	9
a) A matter for the ECJ	9
b) Consultation	10
2. Rights of defence	11
a) Right to be heard	11
b) No formal legal remedy	12
3. Unanimity	13

I. Preliminary comments

1. No classical disciplinary rules

- 1 The Statute ECJ does not contain rules on disciplinary proceedings and sanctions⁸⁶, unlike those provided for in a number of international Courts⁸⁷. Art. 6, which applies to Judges and Advocates-General⁸⁸, and is further detailed in the Rules of Procedure⁸⁹, only concerns the most far reaching measures, i.e. the **deprivation** of office or pension and other benefits. To date, it has never occurred at the EU jurisdictions.

2. Purpose

- 2 A deprivation of office is primarily designed to maintain the good functioning of the judicial instance concerned and thus of the institution altogether. By contrast, depriving a Judge of his right to a pension or other benefits is a pecuniary sanction and thus more personally disciplinary in nature.

3. Prevention

- 3 The magistrate concerned may prevent a formal procedure of deprivation of office by resigning beforehand. However, this kind of punitive, preventative resignation may not necessarily entail the same legal consequences as a “normal” resignation, since the Judge concerned shall not necessarily continue to hold office until his successor takes up his duties, unlike what is provided in Art. 5 paragraph (3). In any event a resignation occurring *after* the formal commencement of the procedure of deprivation of office does most probably not exclude a deprivation of the right to a pension. The same should be the case in the event of a resignation

⁸⁶ Anything from a reprimand to a removal from office.

⁸⁷ See e.g. Rule 30 of the Rules of Court of the International Criminal Court.

⁸⁸ See Art. 8 of the Statute ECJ.

⁸⁹ Art. 6 RP ECJ; Art. 5 RP GC, Art. 4 RP CST.

prior to the formal opening of deprivation proceedings, as resignation should not become a preventative measure in order to keep his or her pension.

4. ECJ jurisdiction

The ECJ is also competent for the procedure of deprivation with respect to 4 Members of the **European Commission**⁹⁰, the **Court of Auditors**⁹¹ and the **Ombudsman**⁹².

II. Reasons for deprivation of office (paragraph 1)

1. Requisite conditions

The requirements in Art. 6 paragraph (1), i.e. that the Advocate-General or Judge 5 concerned no longer fulfils the “requisite conditions” and/or no longer “meets the obligations arising from his office”, are rather vague. It is safe to assume that deprivation of office primarily occurs when the magistrate concerned no longer fulfils one or several of his **conditions of appointment**, e.g. if his independence is no longer “beyond doubt”⁹³. Since deprivation is a very far reaching measure, a mere transitory absence of fulfilment of the requisite conditions may not necessarily suffice as grounds for such proceedings.

2. Obligations arising from his office

Judges and Advocates-General have to comply with a variety of obligations, 6 meaning that a deprivation of office is hardly limited to cases where the person concerned meets none of its obligations. A deprivation must be possible if the person fails to comply with a major obligation. Any proven breach of oath within the meaning of Art. 2 would be a clear reason for a deprivation of office and a case for the “unanimous opinion” required in paragraph 1.

In other words, bearing in mind the principle of proportionality, a failure to meet 7 an obligation of minor importance, such as a non-compliance with the obligation of residence⁹⁴, would hardly justify a deprivation of office. Besides, it is unlikely that such a far-reaching measure on such a minor point would be backed by the required unanimity.

3. Subjective elements

Subjective elements, such as inappropriate knowledge or malicious intention of 8 the Judge in question, are hardly a *sine qua non* prerequisite for deprivation of

⁹⁰ Art. 247 TFEU.

⁹¹ Art. 286 (6) TFEU.

⁹² Art. 228 (2), sub-para. 2 TFEU.

⁹³ Art. 253 (1) TFEU, Art. 254 (1) TFEU and Art. 257 (4) TFEU.

⁹⁴ Art. 14 Statute ECJ.

office, since it must remain possible to remove a magistrate who turns out to be physically and/or mentally unable to exercise his mandate if he failed to anticipate such a measure by handing in his resignation. That said, subjective elements may well be aggravating circumstances and e.g. relevant when it comes to the question of deprivation of the right to pension or other benefits.

III. Procedure (paragraphs 1–3)

- 9 **1. Jurisdiction.** a) **A matter for the ECJ.** The ECJ has jurisdiction over all EU Courts and may thus initiate deprivation of office proceedings on its own motion. Neither the Member States nor the institutions, let alone the parties to any contentious proceedings, are entitled to suggest the opening of, let alone initiate such procedures.

b) Consultation

- 10 The GC or the CST have no formal right of initiative, but need to be consulted if one of their Judges is concerned.

- 11 **2. Rights of defence.** a) **Right to be heard.** For obvious reasons the Judge concerned shall **not** take part in the deliberations of the Court. Judges' rights of defence are, somewhat surprisingly, not mentioned in Art. 6 Statute ECJ, but are instead detailed in the Rules of Procedure⁹⁵. Pursuant to Art. 6 (1) RP ECJ, the Judge or Advocate General concerned shall "*make representations*" to the Court.

b) No formal legal remedy

- 12 While the Judge may thus defend himself in closed session *prior* to a decision being adopted, none of these provisions provide a formal legal remedy, e.g. an action for annulment, enabling the person concerned to challenge such decision, once adopted. This raises a question-mark in the light of Art. 6 ECHR, as Judge-defendants are certainly entitled to the same legal rights as any other defendant.

3. Unanimity

- 13 With currently 27 and soon 28⁹⁶ Member States the required "**unanimous opinion**" of the Judges and Advocates-General of the ECJ has become increasingly unrealistic, as it requires a consensus between 35 or 36 persons⁹⁷. While an adaptation of this requirement to a three-quarters or even two-thirds majority might more accurately reflect the reality of the current Court, it would seem that such an adaptation has not taken place because Art. 6 has so far never been used.

⁹⁵ See e.g. Art. 6 RP ECJ.

⁹⁶ With the accession of Croatia on 1 July 2013.

⁹⁷ That is to say 27 Judges and 8 Advocates-General.

Article 7 [New appointments]

A Judge who is to replace a member of the Court whose term of office has not expired shall be appointed for the remainder of his predecessor's term.

The purpose of this provision is to ensure continuity of the Court's judicial activity. If the term in office of a Judge or Advocate-General⁹⁸ ends before the end of the term for one of the reasons set out in Art. 5 and 6, one must nevertheless comply with Art. 9, which states that every three years there shall be a partial replacement of the Judges and Advocates-General⁹⁹ and thus the newly appointed Judge's term must be limited to the remainder of his predecessor's.

Article 8 [Advocates-General]

The provisions of Articles 2 to 7 shall apply to the Advocates-General.

Even though the functions and duties¹⁰⁰ of the eight¹⁰¹ Advocates-General¹⁰² differ substantially from those of a Judge, their legal status is, in many respects, identical, as Art. 8 illustrates.

TITLE II ORGANISATION OF THE COURT OF JUSTICE

Article 9 [Replacing of Judges]

(1) When, every three years, the Judges are partially replaced, 14 and 13 Judges shall be replaced alternately.

(2) When, every three years, the Advocates General are partially replaced, four Advocates General shall be replaced on each occasion.

Every three years there shall be a partial replacement of the Judges and Advocates-General¹⁰³, a rule which is in the interest of continuity, since judicial activity would come to a standstill if the term of office of all Judges and Advocates

⁹⁸ Art. 8 Statute ECJ.

⁹⁹ See Arts. 253 (2) and 254 (2) TFEU.

¹⁰⁰ Pursuant to Art. 252 (1) TFEU the Judges at the ECJ are assisted by eight Advocates-General.

¹⁰¹ Prior to the year 2000 there were 9 Advocates-General.

¹⁰² Five out of the eight posts of Advocates-General are permanently held by the same Member States (Germany, France, Italy, the United Kingdom and Spain), while the other three "rotate" between all other Member States. From the latter's point of view it might seem questionable whether the limitation to 8 posts is justified now that there are 27 Member States; Poland in particular has requested a (sixth) permanent Advocate-General position, in view of its similar size to Spain. But it must also be taken into account that the Advocates-General no longer make reasoned submissions ("opinions") in each and every case (see e.g. Art. 99 RP ECJ) and thus their role's relative importance has been reduced.

¹⁰³ See Art. 253 (2) TFEU.

General were all to end at the same time. Art. 9 has opted for a balanced rule in which half or as close to half of all judges are replaced every three years. This rule has been adapted with each enlargement of the EU and will thus be adopted after the accession of Croatia¹⁰⁴.

Article 9a [Vice-President]

(1) The Judges shall elect the President and the Vice-President of the Court of Justice from among their number for a term of three years. They may be re-elected.

(2) The Vice-President shall assist the President in accordance with the conditions laid down in the Rules of Procedure. He shall take the President's place when the latter is prevented from attending or when the office of President is vacant.

The creation of the office of **Vice-President of the Court of Justice**, who shall assist the President¹⁰⁵, is probably long overdue, given the sharp increase of administrative work resulting from the current, greatly-expanded number of Judges, which is bound to grow further if the number of Judges at the GC is increased by 12, as proposed.

Article 10 [Oath of the Registrar]

The Registrar shall take an oath before the Court of Justice to perform his duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court of Justice.

I. Oath

- 1 This oath is taken by the Registrars of the ECJ, the GC, and the CST¹⁰⁶. Reflecting the similarity in the legal status of Registrars as compared to Judges and Advocates General, this oath is the same as the one taken by Judges and Advocates-General and is detailed in the Rules of Procedure¹⁰⁷.

II. Registrar's duties

- 2 Nevertheless, the Registrar's functions are distinct from those of a Judge or Advocate-General, as he does not directly participate in judicial activity. The

¹⁰⁴ 1 July 2013.

¹⁰⁵ This function is thus more than the one of a Deputy-President.

¹⁰⁶ Art. 6 (2) of annex I of the statute ECJ.

¹⁰⁷ Art. 18 (5) in conjunction with Art. 3 RP ECJ.

Registrar exercises **judicial administrative** functions vis-à-vis the parties, which is why he also has a duty to act with impartiality. While participation in the deliberations is reserved to Judges¹⁰⁸ the Registrar has a certain “proximity” to the secret of deliberation, due to his participation in general meetings of the Court of Justice. For this reason, the Registrar also needs to respect the secret of deliberation.

Article 11 [Replacement of the Registrar]

The Court of Justice shall arrange for replacement of the Registrar on occasions when he is prevented from attending the Court of Justice.

Pursuant to the Rules of Procedure¹⁰⁹ the replacement of the Registrar is not only 1 necessary when he is prevented from attending sessions the Court of Justice, but also in case of absence and vacancy of his post for any reason. It is within the discretion of the President of the Court of Justice to decide who replaces the Registrar.

By contrast, the temporary replacement of Judges is not left to the President’s 2 discretion, as it is determined by the rank in precedence according to the seniority in office¹¹⁰, which is created in the interest of the best possible objectivity and transparency.

Article 12 [Administrative support]

Officials and other servants shall be attached to the Court of Justice to enable it to function. They shall be responsible to the Registrar under the authority of the President.

I. Support staff

The officials and other servants attached to the Court of Justice include the 1 members of the cabinet of each Judge¹¹¹ (and each Advocate-General) as well as other personnel¹¹² responsible to the Registrar under the authority of the President. Pursuant to Art. 52 Statute ECJ, officials and other personnel attached to the ECJ also render services to the GC, since the latter instance does not benefit from an administrative support of its own, as one might assume. The CST also relies on the administrative support of the Court of Justice and the GC¹¹³.

¹⁰⁸ See Art. 32 et seq. RP ECJ.

¹⁰⁹ See Art. 19 RP ECJ.

¹¹⁰ See e.g. Art. 7 RP ECJ.

¹¹¹ Referred to as “référéndaires” within the ECJ and similar to judicial clerks found in national Supreme Courts.

¹¹² Usually refers to administrative staff and a chauffeur.

¹¹³ Art. 6 (1) of Annex of the Statute ECJ.

II. Oath

- 2 The Rules of Procedure of the various EU Courts provide a number of specific rules pertaining to ECJ staff, such as the oath taken by the support personnel. While the staff regulations applicable to officials differ from those of temporary agents, the oath is the same for both categories of Court employee.

Article 13 [Assistant Rapporteurs]

(1) At the request of the Court of Justice, the European Parliament and the Council may, acting in accordance with the ordinary legislative procedure, provide for the appointment of Assistant Rapporteurs and lay down the rules governing their service. The Assistant Rapporteurs may be required, under conditions laid down in the Rules of Procedure, to participate in preparatory inquiries in cases pending before the Court and to cooperate with the Judge who acts as Rapporteur.

(2) The Assistant Rapporteurs shall be chosen from persons whose independence is beyond doubt and who possess the necessary legal qualifications; they shall be appointed by the Council, acting by simple majority. They shall take an oath before the Court to perform their duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

I. Purpose

1. ECJ

- 1 This provision¹¹⁴ aims at reducing, if need be, the work load of the ECJ in general and of the respective Judge Rapporteur¹¹⁵ in particular. Assistant Rapporteurs are not Judges and thus belong to no particular chamber.

2. GC

- 2 This provision does not apply to the GC¹¹⁶, even though this judicial instance suffers from a particularly high workload, at least at this point in time, which is why the extension of this provision to the GC could be considered. That said, such

¹¹⁴ Which no longer requires a unanimous decision by the Council.

¹¹⁵ The Judge Rapporteur summarizes written pleadings and applicable law in a preliminary report ("rapport préalable") which is then used as the basis for subsequent deliberations. Judge Rapporteurs are likewise responsible for creating the final, unanimous decision handed down at the end of deliberations. As this can be a lengthy process, and as the ECJ's case load is rather large, an Assistant Rapporteur might theoretically be sometimes necessary in order to produce preliminary reports in a timely fashion.

¹¹⁶ See Art. 47 Statute ECJ.

measure might not, as such suffice to reduce the workload and thus reduce the average duration of proceedings.

II. Non-applied provision

The fact that so far the legislature has never made use of this provision¹¹⁷ might 3 have to do with the requirement of unanimity at the level of the Council, which was only recently dropped. Moreover the increase of the number of cabinet members (i.e., “référéndaires”) per Judge¹¹⁸ reduces each individual Judge’s work load to some extent. While these référéndaires are *de jure* not Assistant Rapporteurs, they are actively and directly involved in the Judges’ Court activities, and thus the volume and intensity of their contributions often go well beyond the functions of an assistant. In fact, their role can be more accurately compared to that of a clerk for a US Supreme Court Justice or a UK Supreme Court Judicial Assistant. In fact, these référéndaires are often more influential than their Anglophone counterparts, as référéndaires serve for longer (on average, 5 years, though the longest-serving served 33 years), which enables them to not only treat their work as a longer-term profession, but also gives them a much greater ability to influence and ensure the continuity of case law¹¹⁹.

Article 14 [Requirements of residence]

The Judges, the Advocates General and the Registrar shall be required to reside at the place where the Court of Justice has its seat.

I. Purpose

The Judges of the three EU Courts¹²⁰, the Advocates-General, and the Registrars 1 must always be in a position to fulfil the obligations arising from their office, hence the “requirement of residence”. Too great a distance between the place of residence and the respective offices generates losses in terms of time and is thus potentially detrimental to the productivity of the Judge concerned and ultimately to the functioning of the Court of Justice.

¹¹⁷ Thus the implementing provisions in Art. 17 RP ECJ remain, so far at least, rather theoretical.

¹¹⁸ Each Judge at the Court of Justice and the GC is entitled to 3 référéndaires.

¹¹⁹ For more on the role of the référéndaire and a comparison with US Supreme Court Clerks, see Sally J. Kenny, “Beyond Principals and Agents: Seeing Courts as Organizations by Comparing Référéndaires at the European Court of Justice and Law Clerks at the US Supreme Court”, *Comparative Political Studies*, Vol 33 No 5, June 2000, pp 593–625.

¹²⁰ See also Art. 47 (1) Statute ECJ and Art. 5 (1) of annex I Statute ECJ.

II. Reasonable geographic distance

- 2 A literal interpretation of Art. 14, meaning that the persons concerned need to reside in Luxembourg City or even on the Kirchberg, would be overly restrictive, if not absurd, as it would not be in line with the purpose of this obligation. Thus the place of residence needs to be reasonably close to the place where the Court of Justice has its seat. This leaves some room for interpretation, in the absence of any published rules, but is normally a matter to be sorted out internally. This provision does of course not rule out any second residence at a different location, nor does it mean that the Judge is not entitled to be on leave during the judicial vacations¹²¹, as long as he complies with Art. 14 during the time in which his presence is required at the Court.

Article 15 [Judicial vacations]

The Court of Justice shall remain permanently in session. The duration of the judicial vacations shall be determined by the Court with due regard to the needs of its business.

I. Introduction

- 1 This provision, which is further clarified in Articles 23 to 24 RP ECJ and Art. 34 RP GC, means that the judicial vacations, which tend to be rather long, notably during the summer, do not entail a standstill of judicial activity.

II. Written proceedings

- 2 Thus, legal remedies may also be lodged during the judicial vacations, meaning that all time-limits for applications, appeals and other legal remedies, as much as for statements of defence, rejoinders, etc. continue throughout the judicial vacations. There is no interruption or suspension of legal activity at the ECJ whatsoever.

III. Oral hearings

- 3 With the exception of interim proceedings, oral hearings take place neither during the judicial vacations nor during a week in the middle of each trimester (“semaine blanche”).

¹²¹ During which the Court of Justice shall remain permanently in session.

IV. Judgments

Judgments, orders, and other decisions of the Courts are only exceptionally ⁴ handed down during the judicial holidays.

Article 16 [Chambers]

(1) The Court of Justice shall form chambers consisting of three and five Judges. The Judges shall elect the Presidents of the chambers from among their number. The Presidents of the chambers of five Judges shall be elected for three years. They may be re-elected once.

(2) The Grand Chamber shall consist of 15 Judges. It shall be presided over by the President of the Court. The Vice-Presidents of the Court and in accordance with the conditions laid down in the Rules of Procedure, three of the Presidents of the chambers of five Judges and other Judges shall also form part of the Grand Chamber.

(3) The Court shall sit in a Grand Chamber when a Member State or an institution of the Union that is party to the proceedings so requests.

(4) The Court shall sit as a full Court where cases are brought before it pursuant to Art. 228 (2), Art. 245 (2), Art. 247 or Art. 286 (6) of the Treaty on the Functioning of the European Union.

(5) Moreover, where it considers that a case before it is of exceptional importance, the Court may decide, after hearing the Advocate General, to refer the case to the full Court.

Outline:

I. Introduction	1
1. Overview on formations.....	1
2. No specialised chambers	2
3. No honorary Judges.....	3
4. Attribution to chamber not predictable.....	4
II. Chambers (paragraph 1).....	6
1. Number of Judges.....	6
2. Presidents of chambers.....	7
III. Grand Chamber (paragraphs 2 and 3).....	8
1. Number of Judges.....	8
2. Composition	9
3. Recently amended rules	10
4. Prerogatives of Member States and institutions	11
a) Upon request.....	11
b) Statistics.....	12
IV. Full Court (paragraphs 4 and 5).....	13
1. Exceptions	13
2. Statistics.....	14

I. Introduction

1. Overview on formations

- 1 Formations at the ECJ, to which this provision applies exclusively¹²², comprise “small” (i.e., three-Judge) and “extended” (i.e., five-Judge) chambers, a Grand Chamber and the full Court, as is the case with other Courts, e.g. the European Court for Human Rights. The concept of a “single Judge” does not apply to the ECJ, only to the GC and the CST¹²³. Every year in September the Judges are attributed to a chamber.

2. No specialised chambers

- 2 At the ECJ there are no specialised chambers for a number of reasons, one being that the formation of such chambers would prove politically problematic, as only a fraction of the Member States would be represented in such formations. Thus, unlike the GC, the ECJ does not feature an appeals chamber, though it is responsible for hearing appeals from the GC.

3. No honorary Judges

- 3 There are no honorary Judges at the EU Courts or indeed in other international judicial bodies. One could theoretically include honorary Judges in the CST, given its exclusive jurisdiction in staff matters. In practice though, it is doubtful whether these Judges would serve as anything more than symbols, and they would likely bring little or no tangible added value to the quality and credibility of the jurisdiction.

4. Attribution to chamber not predictable

- 4 An applicant does not know beforehand to which of the currently eight chambers or formations his application will be attributed. This has triggered debate, e.g. in Germany, as to whether the rule of law and the principle of proper judicial protection require a system by which the attribution to a given chamber is pre-determined, i.e. even before the applicant goes to Court. While this principle is

¹²² See Art. 50 Statute ECJ regarding the GC and Art. 4 (2) of Annex I Statute ECJ regarding the CST.

¹²³ Due to the principle of collegiality, in which Judges deliberate in odd-numbered groups in order to control for potential individual judicial bias (cf Art. 18 Statute ECJ) and reach unanimous decisions. Unlike many common law Courts, the ECJ does not publish minority or dissenting opinions.

enshrined in the German constitution¹²⁴, it may not be imperatively required by the rule of law and would, besides, be hardly feasible.¹²⁵

As the attribution of chamber and Judge to one's case is not knowable in 5 advance, it is important to consider that one's Judges may not come from one's own legal background and will not necessarily speak one's first language. It is thus very important to write all written and oral proceedings for a general audience, avoiding legal jargon that is specific to one's national jurisdiction and employing short, clear sentences that are easily translated into the working language of the EU courts, i.e. French.

II. Chambers (paragraph 1)

1. Number of Judges

The currently 27 Judges are assigned to one or several of the eight chambers, each 6 of which is comprised of either three or five Judges. As stated above, in accordance with the principle of collegiality there is no "single Judge" at the ECJ, unlike in the GC¹²⁶ and the CST¹²⁷. The number of Judges sitting in the Grand Chamber and in plenary session evolves, by definition, according to the total number of Member States, (which in turn determines the number of Judges).

2. Presidents of chambers

There is a certain hierarchy amongst the Presidents of the chambers, insofar as 7 the term is three years in the case of chambers comprising five Judges (see Art. 16 (1), 1st sentence Statute ECJ), while it is limited to one year in the case of chambers of three Judges¹²⁸. Moreover, every president of a Chamber comprising five Judges is automatically a member of the Grand Chamber.

III. Grand Chamber (paragraphs 2 and 3)

1. Number of Judges

The number of Judges sitting in the Grand Chamber is not directly proportional 8 to the number of Member States, as the Grand Chamber is now currently

¹²⁴ In the German constitution the concept of *Gesetzlicher Richter* (literally, "Legal Judge"), requires not only judicial impartiality but also clearly delineates the jurisdiction of each Judge and Court within the German legal system based on geographic region as well as legal subject matter. Should this pre-determined jurisdiction not be respected in regards to one's case assignment, one may claim violation of fundamental rights and the trial be deemed a mistrial. See Art. 101, para. 1, *Grundgesetz*; § 16, *Gerichtsverfassungsgesetzes*.

¹²⁵ See Case T-199/118, *Strade v Commission*, [2012] (not yet published in the ECR).

¹²⁶ See Art. 50 RP GC.

¹²⁷ See Art. 4 Annex 1 Statute ECJ.

¹²⁸ See Art. 12 (2) RP ECJ.

comprised of 15 Judges¹²⁹. In the meantime it has *de facto* taken over the role so far played by the plenary session.

2. Composition

- 9 The Grand Chamber is comprised of the President of the Court of Justice, the Vice-President, three (instead of previously all) Presidents of the Chambers of five Judges and other Judges.

3. Recently amended rules

- 10 Since the President is a member of the Grand Chamber by law, the same applies to the Vice-President. As a result of this change the Grand Chamber no longer comprises all Presidents of chambers of 5 Judges, but only three.

- 11 **4. Prerogatives of Member States and institutions. a) Upon request.** In contrast to other parties, e.g. natural or legal persons in referrals for preliminary rulings, all Member States and institutions enjoy the right to have their cases heard by the Grand Chamber, if they so request. This right is one of a whole series of privileges Member States and institutions enjoy before the ECJ. Other such Member State privileges include a privileged status regarding direct challenges, appeal proceedings, interventions, etc.

b) Statistics

- 12 To date, it would seem that the privileged (i.e., Member State) have shown a high degree of restraint in exercising this privilege; in **2011**, only 11 % of Member State-initiated cases were heard by the Grand Chamber¹³⁰.

IV. Full Court (paragraphs 4 and 5)

1. Exceptions

- 13 In all cases explicitly foreseen in the TFEU (see paragraph 4 of Statute ECJ, above) the ECJ **must** sit as full Court.¹³¹ Apart from these few specific cases only proceedings of “exceptional importance” may be referred to the full Court. This referral is as restrictive in practice as it sounds in writing, since the Grand Chamber

¹²⁹ It increased from 11 to 13 in 2004, as a consequence of the then major enlargement.

¹³⁰ “Statistics of Judicial Activity of the General Court”, *Annual Report of the European Court of Justice*, 2011 edition, <http://curia.europa.eu>.

¹³¹ The TFEU specifies that the ECJ must sit in full Court during cases involving dismissal of the European Ombudsman (Art. 228 (2)); disciplinary action concerning members of the European Commission (Art. 245(2) and Art. 247); and deprivation of benefits for members of the Court of Auditors (Art. 286(6)).

has *de facto* taken over this full-Court function for the aforementioned cases of “exceptional importance”.

2. Statistics

Percentage of cases sent to respective instances which were heard by those 14 instances in 2011 (for 2010 see figures in brackets):

Chambers – 3 Judges:	32.54 %	(26.61 %)
Chambers – 5 Judges:	55.14 %	(58.06 %)
Grand Chamber:	11.40 %	(14.31 %)
Full Court:	–	(–)
President:	0.01 %	(1.01 %) ¹³²

Article 17 [Ability to deliberate]

(1) Decisions of the Court of Justice shall be valid only when an uneven number of its members is sitting in the deliberations.

(2) Decisions of the chambers consisting of either three or five Judges shall be valid only if they are taken by three Judges.

(3) Decisions of the Grand Chamber shall be valid only if 11 Judges are sitting.

(4) Decisions of the full Court shall be valid only if 17 Judges are sitting.

(5) In the event of one of the Judges of a chamber being prevented from attending, a Judge of another chamber may be called upon to sit in accordance with conditions laid down in the Rules of Procedure.

I. Introduction

This provision, which also applies to the GC insofar as far as paragraphs one, two, 1 four and five are concerned¹³³, illustrates the difference between the number of Judges **belonging** to a given chamber and the minimum number of Judges who must be **present** in the deliberations in order to produce a valid decision (“Quorum”).

¹³² “Statistics of Judicial Activity of the Court of Justice,” *Annual Report of the European Courts of Justice*, 2011 version, p 8, <http://curia.europa.eu>.

¹³³ Art. 47 Statute ECJ.

II. Uneven number of Judges (paragraph 1)

- 2 Every formation comprises an uneven number of Judges whose votes all have equal weight¹³⁴, which avoids a tie and thus situations where no decision can be taken. A further guarantee is provided by allowing additional Judges to participate in the proceedings if a chamber’s Judge cannot participate in proceedings¹³⁵.

III. Quorum (paragraphs 2 to 4)

1. Current quorum

- 3 In the case of the Grand Chamber and the full Court the minimum number of Judges who need to be sitting in order to be able to take a valid decision (now 11 and 17 Judges) is substantially lower than the number of Judges belonging to the respective formation¹³⁶.

Article 18 [Conflict of interest, bias]

(1) No Judge or Advocate General may take part in the disposal of any case in which he has previously taken part as agent or adviser or has acted for one of the parties, or in which he has been called upon to pronounce as a member of a Court or tribunal, of a commission of inquiry or in any other capacity.

(2) If, for some special reason, any Judge or Advocate General considers that he should not take part in the judgment or examination of a particular case, he shall so inform the President. If, for some special reason, the President considers that any Judge or Advocate General should not sit or make submissions in a particular case, he shall notify him accordingly.

(3) Any difficulty arising as to the application of this Art. shall be settled by decision of the Court of Justice.

(4) A party may not apply for a change in the composition of the Court or of one of its chambers on the grounds of either the nationality of a Judge or the absence from the Court or from the chamber of a Judge of the nationality of that party.

Outline:

I. Introduction	1
1. Purpose	1
2. Are the Judges of the ECJ structurally biased?.....	2

¹³⁴ I.e., the votes of the president of the ECJ and other presidents of the chambers carry the same weight as those of the other Judges.

¹³⁵ See Art. 11 e, Rules of Procedure ECJ.

¹³⁶ In the case of the full Court the previous quorum was 15 Judges up from 11 prior to the enlargement of 2004, see OJEU, L 132 of 29 April 2004, p. 1.

II. Exclusion by law (paragraph 1)	3
1. Irrefutable presumption	3
2. Absence of general clause	4
III. “Special reasons” (paragraph 2)	5
1. Self-assessment	5
2. Overemphasis of the ECJ’s perspective?	6
IV. Decision by the Court of Justice (paragraph 3)	7
V. Exclusion for reasons of bias (paragraph 4)	9
1. Introduction	9
2. Rule	10
a) Criteria	10
aa) Presumption of personal impartiality	10
bb) Objective test	11
cc) Magistrate’s personal interest in the case	12
b) Private sphere	13
aa) Presumption of lack of bias	13
(1) Acquaintance	13
(2) Shareholder	14
bb) Risk of bias	15
cc) Borderline cases	16
c) Professional sphere	17
aa) Past	17
bb) Present	18
(1) No or little risk of bias	18
(a) Sitting in various chambers	18
(b) The way proceedings are conducted	19
(aa) Written proceedings	19
(bb) Oral proceedings	20
(2) Risk of bias	22
(aa) Press articles, speeches, etc.	22
(bb) Amicable settlement of proceedings	23
3. Exception	24
4. Procedure	25

I. Introduction

1. Purpose

This provision, which also applies to Judges of the GC¹³⁷ and the CST¹³⁸, governs 1 the exclusion of Judges and Advocates-General in case of an **actual or potential lack of impartiality**, the latter being perhaps the most important duty of any magistrate (Art. 4 Statute ECJ). Lack of impartiality in a Tribunal is a serious matter and an allegation of this sort should be neither made nor taken lightly¹³⁹. It is, in fact, a very sensitive issue, which the Court of Justice is certainly keen to prevent by all appropriate means. The ECJ is already facing more or less recurrent criticisms as to an alleged overstepping of its powers. So far, the EU jurisdictions have been

¹³⁷ See Art. 47 (1) Statute ECJ.

¹³⁸ Art. 5 of annex I Statute ECJ.

¹³⁹ Judgment No. 2021 of the Administrative Tribunal of the ILO, *Reis-Ekelund v OIE*, [2001] paras 12 et seq.

successful in preventing issues of bias¹⁴⁰, as is illustrated by the rather arid case-law on this subject¹⁴¹. The drawback is that there is to date **little or no guidance for parties** confronted with this question¹⁴².

2. Are the Judges of the ECJ structurally biased?

- 2 Sometimes, critics argue that since each Member State designates “its” Judges to the ECJ, the ECJ judges, unlike e.g. the Judges of the CST, are bound to have a certain lack of independence. It is more than doubtful though whether ECJ judges’ national-based nomination makes them necessarily biased¹⁴³. Moreover, a Judge cannot be the Judge-Rapporteur in a case to which his Member State is a party. Finally, the collegial nature of decisions taken by the ECJ, as outlined in Art. 16 Statute ECJ, neutralizes any structural bias linked to the national nature of ECJ Judges’ nominations.

II. Exclusion by law (paragraph 1)

1. Irrefutable presumption

- 3 Paragraph 1 lists a number of factual situations which *de lege* and thus automatically exclude the Judge or Advocate-General concerned from taking part in the proceedings: Judges or Advocates-General who have previously taken part in a matter before it became a Court case, acting on the side of the party as agent, adviser or lawyer, or as a member of the Court, or a commission of enquiry. It is safe to assume that this provision also applies if the Judge or Advocate General was only marginally, be it formally or informally, and/or at a very early stage during the non-contentious phase, involved in said proceedings.

¹⁴⁰ This success is at least partly contributable to the ECJ’s independence as a judicial institution; since EU states must reach consensus to legislatively counteract an ECJ decision and/or limit ECJ jurisdiction, it is highly unlikely that legislative curbing of the judiciary (which happens somewhat frequently, for example, in US law) could either directly (through legislative override) or indirectly (through fear of such measures) bias ECJ decisions. See R.D. Kelemen, “The Political Foundations of Judicial Independence in the EU”, Paper presented at EU Studies Association Board, 5 March 2011.

¹⁴¹ It is important to note that the aridity of Art. 18 is offset by the *Code of Conduct of the Court of Justice*, 2007/C 223/01, <http://curia.europa.eu>, which outlines preventative measures by which Judges may preserve their independence in Arts. 2, 3, 4, and 5(2).

¹⁴² One might consider the guideline provided by the Belgian Cour de Cassation, which states that a party to a case may determine bias from a sum total of circumstances which reveal that a Judge’s attitude toward a lawyer and/or a party in a case impedes the good functioning of deliberations, Case N°C020615F, 23 December 2002.

¹⁴³ This is particularly true since Member States are nominating academics for ECJ Judgeships with increasing frequency; while an academic career is no absolute insulation from questions of bias, these Judges’ non-political careers certainly mitigate concerns about their national and/or political biases.

2. Absence of general clause

Given the importance of the magistrates' impartiality, the legislature could have completed the currently limited catalogue of irrefutable reasons of bias by a general clause covering other causes of lack of impartiality¹⁴⁴. Instead, under the current Art. 18, it is for the Judge or Advocate-General concerned to detect and, if necessary, resolve a potential or actual case of bias, if need be upon the initiative of the President (see paragraph 2), in so far as the case is not covered by paragraph 1.

III. "Special reasons" (paragraph 2)

1. Self-assessment

According to this provision it is for the Judge or Advocate General to assess on his own motion whether, for "some special reason" he should not take part in the judgment or proceedings. This paragraph distinguishes between the case of a Judge or Advocate General excluding himself, after having informed the President accordingly and, as some sort of *ultima ratio*, the exclusion decided on the President's own initiative.

2. Overemphasis of the ECJ's perspective?

The logic of self-assessment has the merit of solving a number, if not a majority of cases of potential bias by way of prevention, thus preventing bias from becoming a potentially prejudicial element in a case. It seems that this provision is also designed to protect the European jurisdictions against the risk of politically motivated claims of bias. Nevertheless, this approach seems somewhat incomplete, given the absence of a provision explicitly granting the parties the possibility to raise, if need be, a question of lack of impartiality. Parties' only current recourse when confronted with judicial bias is a rather indirect confirmation of the parties' rights in paragraph 4, with no further indications as to how one might raise a question of judicial bias in the course of a case¹⁴⁵.

¹⁴⁴ Such general clause could be worded as follows "for any other reason, his independence or impartiality may legitimately be called into doubt", see e.g. Rule 28 of the Rules of Procedure of the European Court on Human Rights.

¹⁴⁵ It is worth noting that Art. 3(2) of the Explanatory Note to the European Charter on the Statute for Judges specifically states that all European jurisdictions (including, presumably, the ECJ) must provide for a body independent of the judiciary as well as the executive or legislature which may assess allegations of judicial bias brought by parties to a case. While one could argue that the ECJ serves as such a body for the GC (and both the ECJ and the GC serve as such a body for the CST), such an independent body for bias-based appeals does not currently exist for the ECJ, rendering such an appeal potentially problematic.

IV. Decision by the Court of Justice (paragraph 3)

- 7 In case of any “difficulty”, which presumably means those cases in which it remains unclear whether there is a reason for judicial exclusion, or if the Judge or Advocate-General concerned contests the existence and/or the weight of said reason, the President may refer the matter to the Court of Justice.
- 8 That said, the mere threat of a given case reaching such proportions serves as an incentive for the Judge or Advocate-General concerned to do his utmost to reach a swift and consensual exclusion.

V. Exclusion for reasons of bias (paragraph 4)

1. Introduction

- 9 This provision is structured in a peculiar way, since it only **indirectly** confirms the possibility for a party to formally reject a Judge or Advocate-General for reasons of bias, by explicitly defining one case in which a change in the composition of the Court or one of its chambers may not be applied for, i.e. for **reasons of nationality of a Judge**. It would seem that the purpose of this minimalistic provision is to encourage the ECJ to proactively control for judicial bias before deliberation through the “self-assessment” set out in paragraph 2. Furthermore, this provision’s minimalism may reveal a lack of desire to be perceived as unnecessarily encouraging parties to object to Judges for reasons of alleged bias.
- 10 **2. Rule. a) Criteria. aa) Presumption of personal impartiality.** Accusing a Judge or Advocate-General of bias is a serious matter, which should thus never be undertaken for a superficial reason, also having in mind that a manifestly unfounded or frivolous accusation may be perceived as a contempt of court. Parties to the proceedings should bear in mind that there is a presumption of personal judicial impartiality in the absence of evidence to the contrary¹⁴⁶. Thus, verification of judicial impartiality by the EU judiciary only takes place if the challenge on that point does not appear from the outset **manifestly devoid of merit**¹⁴⁷. This test is likely to prevent futile, vexatious, or similarly unfounded initiatives against judges and serves as a real life reminder for any lawyer bringing a case before the ECJ to act judiciously and to, at times, filter his client’s perceptions of judicial bias.

bb) Objective test

- 11 It follows from the above that the party concerned must provide the Court or Tribunal with **objective evidence** capable of raising doubt as to the impartiality of

¹⁴⁶ Case C-308/07 P, *Koldo Gorostiaga Atxalandabaso* [2009] ECR I-01059, para. 46 and the case law quoted.

¹⁴⁷ Case C-308/07 P, *Koldo Gorostiaga Atxalandabaso* [2009] ECR p. I-01059, para. 42 and the case law quoted.

the Judge concerned¹⁴⁸. A party's purely subjective opinion or impression that a Judge is not impartial does not suffice. It is also not enough to merely verify whether a reasonably informed person, viewing the matter realistically and having thought the matter through, would apprehend any bias¹⁴⁹. Thus, the party concerned needs to put forward objective facts either proving or at least raising doubt in the eyes of third parties¹⁵⁰ as to the existence of a Judge's personal interest in the case.

cc) Magistrate's personal interest in the case

A personal interest in the case, including a spousal, parental or other close family, 12 personal or professional relationship, or a subordinate relationship with any of the parties is capable of raising doubt as to the Judge's or Advocate General's impartiality¹⁵¹. Thus, a situation of bias may result from his/her former or current **private and/or professional relationships**. Given the absence of legislative definition, which is compounded by a lack of jurisprudential guidance, one must assume that the weaker the private and/or professional link between the magistrate and the party is, the less likely it is that the ECJ will consider such a relation as grounds for a genuine case of bias.

b) Private sphere. aa) Presumption of lack of bias. (1) Acquaintance. Being a mere 13 acquaintance or neighbour of one of the parties, having attended the same school¹⁵² or university¹⁵³, being members of the same social club, e.g. the Rotary, or being a free-mason¹⁵⁴, being a member of a political party, a trade union, or a church does not normally suffice as grounds for proving bias *per se*.

(2) Shareholder. The same should be true if the magistrate concerned is a very 14 minor shareholder in a company, unless despite his minor shareholder status he nevertheless possesses a tangible financial interest in one of the parties to the case. However, judicial bias might be relevant if a Judge's political action as a legislator as well as his membership in political or social group demonstrate a distinct preconceived opinion about the central issue of the case at hand (as seen in Justice Cranston's decision to recuse himself from an animal rights case in British High Court)¹⁵⁵.

¹⁴⁸ Case C-308/07 P, *Koldo Gorostiaga Atxalandabaso* [2009] ECR p. I-01059, para. 49.

¹⁴⁹ This is in marked contrast to the "reasonable observer" standard found in international law; see ICTY, *Prosecutor v Furundzija*, Case IT-95-17/1A, Judgement of 21 July 2000, para. 189 (B)(ii) and para. 190 (which defines a "reasonable observer" as "an informed person, with knowledge of all the relevant circumstances, including the traditions of integrity and impartiality that form a part of the background and apprised also of the fact that impartiality is one of the duties that Judges swear to uphold").

¹⁵⁰ See, to that effect, Case T-89/01 *Wieheme v Commission* [2002] ECR SC-I-A-153; II-803, paragraph 58.

¹⁵¹ See e.g. Rule 34 (1) (a) of the Rules of Procedure of the International Criminal Court.

¹⁵² Judgment No. 2021 of the Administrative Tribunal of the ILO, *Reis-Ekelund v OIE*, [2001] para. 23.

¹⁵³ Case C-411/11 P, *Altner v Commission* [2011] (not published in the ECR), paras 14 et seq.

¹⁵⁴ CSM (Superior Council of Magistracy), 19 April 2000. French éd. J.O, p 15.

¹⁵⁵ Valerie Elliot, "Justice Cranston rules himself out of foxhunting case", *The Times*, 28 July 2008.

bb) Risk of bias

- 15 There is a clear risk of bias if a Judge is e.g. a **relative** of a party¹⁵⁶, a former staff member of a private or public company which is a party, an opponent of one of the parties in a pending or previous Court case, a material witness in the case at hand, a creditor or a debtor of one of the parties¹⁵⁷, or a member of a heritage community, if he has drafted any legal instrument whose legality is at stake. A close friendship, a close relationship¹⁵⁸, and/or a manifest animosity between a Judge and a party may also prove problematic in terms of impartiality.

cc) Borderline cases

- 16 Regarding a recent referral case on limiting privatisation of the pharmacy sector and the freedom of establishment ("**Doc Morris**")¹⁵⁹, press articles questioned whether the Advocate General was biased on the grounds that his wife and his daughter are pharmacists. It remains unknown whether the matter was taken up by the President of the Court, as nothing transpired in the public sphere. That said, it is safe to assume that the AG's wife and daughter must have had an interest in limiting the liberalisation of the sector against potentially cheaper competitors. But did this suffice to create a personal bias¹⁶⁰ for the Advocate General? At first sight, it seems tempting to answer in the affirmative, given the direct relationship by marriage and blood¹⁶¹. But then again his wife and daughter were not a party to the proceedings, which would have been a clear case of bias. This case certainly raises sufficient doubts in order to raise the matter in Court and to adopt a **precautionary approach** to cases of judicial bias concerning family members. Finally, despite the fact that in principle paragraphs 1 and 2 apply equally to Judges and Advocate Generals, this case might have triggered more serious consequences within the ECJ had the party concerned been a Judge (whose views are binding) as opposed to an Advocate General (whose opinions, while highly important, are not legally binding).
- 17 c) **Professional sphere. aa) Past.** A Judge would in all likelihood be deemed biased if he is e.g. a former employee of one of the parties. The determination as to whether there might be a reasonable delay after employment beyond which the Court would consider there to be no residual bias is potentially difficult, since the

¹⁵⁶ In some judicial instances (i.e. the US Supreme Court and the French Cour de Cassation), a Judge is supposed biased if he is a relative of a party up to a certain degree of kinship (according to US Code, Art. 28, Section 455 (5), a Judge must recuse himself if he, his spouse, his child, or any "relation of the third degree" (uncle, aunt, grandparent) or their spouse is implicated as a party, a lawyer, or a material witness in a trial), Court.

¹⁵⁷ This is usually controlled for in advance, as under Art. 4 of the Code of Conduct of the ECJ Judges are required to declare their specific financial interests and to make a general declaration that "I have no interest in any property or asset which might compromise my impartiality and my independence in the performance of my duties".

¹⁵⁸ See *a contrario* Case F-58/10, *Allgeier v FRA* [2012], (not yet published in the ECR), paragraph 60 see as to the lack of impartiality on the part of an investigator.

¹⁵⁹ Joined Cases C-171/07 and C-172/07, *Apothekerkammer des Saarlandes a.o.* [2009] ECR-I-04171.

¹⁶⁰ Joined Cases C-341/06 P and C-342/06 P, *Chronopost* [2008] ECR I-04777, para. 55.

¹⁶¹ See in this respect Judgment no. 170 of 8.11.1971 of the Administrative Tribunal of the ILO; and US Code Art 28, Section 455 (4).

issue of impartiality remains relevant despite the passage of time¹⁶². The situation might be different if the Judge and a party had, in the past, a professional relationship and/or are the co-authors of an academic work.¹⁶³ This situation is different if the Judge is a former official of an EU institution, a status which, as such, does not raise a question of bias, quite simply because a number of current Judges in all three EU jurisdictions are former officials of EU institutions. The mere fact that the applicant was a member of staff of the Court of Justice does not result in the Judges of the then Court of First Instance, which at the time had jurisdiction to hear the case, having a lack of impartiality vis-à-vis the applicant¹⁶⁴.

bb) Present. (1) No or little risk of bias. (a) Sitting in various chambers. The ECJ 18 held that “the fact that the same Judge in the two successive formations was entrusted with the duties of Judge-Rapporteur is, by itself, irrelevant to the assessment of compliance with the requirement of impartiality, since those duties are performed in a collegiate formation of the Court”¹⁶⁵. The fact that the same Judge sits in two Chambers hearing and determining the same case in succession, cannot, by itself, give rise to doubt as to the impartiality of the GC in the absence of any other objective evidence¹⁶⁶.

(b) The way proceedings are conducted. (aa) Written proceedings. In practice, it 19 seems very difficult, in an appeal, to raise the question of judicial bias during the **written proceedings** merely by examining the way in which the first instance assessed the legal grounds¹⁶⁷. The same is true with respect to a decision of the Court to allow or to refuse e.g. a second exchange of written submissions and similar decisions taken by virtue of the Court’s general authority to direct proceedings¹⁶⁸. The mere fact that in a case rejected as unfounded the GC did not assess a given legal ground relating to the substance of a case is under no circumstance a token of impartiality, but the expression of a good application of the law¹⁶⁹.

(bb) Oral proceedings. Under normal circumstances a Judge’s putting more or less 20 critical or even “hostile” questions to a party during an **oral hearing** or simply signalling that he does not agree with the party on a given point of fact or law is not, per se a sign of bias, as long as such questions remain strictly within the scope of the case. This might be different in the – rather unlikely – event of questions being recurrently un-constructive and/or accompanied by inappropriate comments. After

¹⁶² In setting such a criterion one could consider the fact that the ECJ and other international jurisdictions already instate a three-year moratorium on legal intervention after employment with a Court; see Art. 7 of the Practice Directions of the International Court of Justice regarding a three-year moratorium on former agents, counsels, or advocates in the ICJ becoming ad hoc Judges; Art. 6(2) of the Code of Conduct of the ECJ likewise sets a limit of three years before a former Judge may serve as a party representative in the ECJ.

¹⁶³ See to this effect Case F-58/10, *Allgeier v FRA* [2012] (not yet published in the ECR), paragraph 60.

¹⁶⁴ Case T-259/97, *Teixera Neves v Court of Justice* [2000] ECR II-00773.

¹⁶⁵ Joined Cases C-341/06 P and C-342/06 P, *Chronopost* [2008] ECR I-04777, para. 53.

¹⁶⁶ Joined Cases C-341/06 P and C-342/06 P, *Chronopost* [2008] ECR I-04777, para. 56.

¹⁶⁷ This was attempted and rejected as inadmissible in Case C-107/07 P, *Weber*.

¹⁶⁸ See in this respect the Judgment no. 935 of 8.12.1988 of the Administrative Tribunal of the I.L.O.

¹⁶⁹ Case C-272/11 P, *Noko Ngele v Commission* [2011] (not published in the ECR), para. 16.

all, while any party is under an obligation to respect the dignity of the ECJ¹⁷⁰, it is safe to conclude that Judges are bound to ensure a normal level of respect vis-à-vis the parties and their advisers/lawyers, which requires a certain restraint as to how questions are put to the parties, in which tone, etc.

- 21 Also, any unfounded accusation and/or offensive comment of a **party** with respect to a member of the bench hearing the case is unlikely to generate a loss of impartiality. A party cannot, by making wholly frivolous and unsubstantiated allegations force one or more members of the judicial body concerned to recuse themselves¹⁷¹, but such behaviour might well be considered as contempt of Court and sanctioned accordingly¹⁷².
- 22 (2) **Risk of bias. (aa) Press articles, speeches, etc.** Impartiality is at risk if a Judge expresses opinions in **public**, be it in writing or orally, relating either directly to a pending Court case heard by that Judge or to a closed case, which has a bearing on a pending case. There is a clear bias should a Judge ever express or even only hint or allude to a concluded view as to the merits of the application or appeal pending. Even a press article or speech on a general subject may, as the case may be, raise doubts as to the Judge's impartiality¹⁷³.
- 23 (bb) **Amicable settlement of proceedings.** The Rules of Procedure of all three EU Courts¹⁷⁴ provide the possibility of an amicable settlement of proceedings, but it is at the CST that this non contentious modus of bringing a case to an end plays an important role. At all stages of proceedings, including the time when the application is filed, the CST may examine the possibility of an amicable settlement of the dispute and may try to facilitate such settlement (see Art. 7 (4) of Annex I of the Statute and Art. 68 to 70 RP CST). A Judge Rapporteur, in the course of such informal talks, giving hints or even more or less explicit indications as to his overall impression if not view in the case at issue does not *ipso facto* create a bias, since it does not, *per se*, prove that there is a lack of independence vis-à-vis one party. However, this hint-giving may, depending upon the circumstances, raise doubts as to the Judge being impartial, should the Judge e.g. insist too much and the attempt to settle the case fail.

3. Exception

- 24 The exception in paragraph 4, which provides that a Judge cannot directly or indirectly be excluded for reasons of his **nationality**¹⁷⁵, takes account of the fact that the EU Judges do not represent the national interests of their respective home state. Thus, pointing at e.g. "the legal background of the Belgian Judge"¹⁷⁶ or asking for

¹⁷⁰ Art. 46 RP ECJ.

¹⁷¹ Judgment No. 2021 of the Administrative Tribunal of the ILO, *Reis-Ekelund v OIE*, [2001] para. 22.

¹⁷² See Art. 46 RP ECJ and Art. 41 RP GC.

¹⁷³ Judicial discretion concerning public statements is clearly enshrined in Art. 1 of the Code of Conduct ECJ.

¹⁷⁴ Art. 147 RP ECJ, Art. 64 (2) (d) RP GC and Art. 68–70 RP CST.

¹⁷⁵ See also Art. 31 of the Statute of the International Court of Justice.

¹⁷⁶ Case T-47/92, *Lenz v Commission*, [1992] ECR, p. II-2523, para. 33.

the case to be heard by a chamber not comprising the Luxembourg Judge¹⁷⁷ is not a valid reason for excluding the Judge concerned. This is line with the fundamental principle that nobody should suffer any disadvantage, be it directly or indirectly, because of his nationality¹⁷⁸.

4. Procedure

A request for having a Judge excluded for bias can be articulated by way of a preliminary plea¹⁷⁹. Otherwise the jurisdiction concerned decides the matter in the context of its final decision¹⁸⁰, which in the case of the GC and the CST may be challenged by way of an appeal.

TITLE III PROCEDURE

Title III of the Statute ECJ (Art. 19 to 46) is the **backbone** of the written and oral proceedings, since it applies not only the ECJ, but also the GC¹⁸¹ and the CST¹⁸². This does not mean, however, that the contents of the Rules of Procedure of all three EU jurisdictions are identical, far from it! There are a few substantial and sometimes tricky differences between the three jurisdictions' Rules of Procedure regarding e.g. the time-limits for a formal plea of inadmissibility¹⁸³.

Article 19 [Representing the parties at Court]

(1) The Member States and the institutions of the Union shall be represented before the Court of Justice by an agent appointed for each case; the agent may be assisted by an adviser or by a lawyer.

(2) The States, other than the Member States, which are parties to the Agreement on the European Economic Area and also the EFTA Surveillance Authority referred to in that Agreement shall be represented in same manner.

(3) Other parties must be represented by a lawyer.

(4) Only a lawyer authorised to practise before a Court of a Member State or of another State which is a party to the Agreement on the European Economic Area may represent or assist a party before the Court.

(5) Such agents, advisers and lawyers shall, when they appear before the Court, enjoy the rights and immunities necessary to the independent exercise of their duties, under conditions laid down in the Rules of Procedure.

¹⁷⁷ Joined Cases T-479/93 and T-559/93, *Bernardi v Commission*, [1994] ECR p. II-1115, para. 19.

¹⁷⁸ See in this respect the Judgment No. 110 of 9.5.1967 of the Administrative Tribunal of the ILO.

¹⁷⁹ Art. 151 RP ECJ and Art. 114 RP GC.

¹⁸⁰ Case T-497/93, *Hogan v Court*, [1995] ECR, p. II-703, para. 26.

¹⁸¹ Art. 53, para. 1, which is part of Title IV, which applies to the GC, refers to Title III.

¹⁸² See Art. 7, para. 1 of Annex I Statute ECJ, which excludes Art. 22 and 23.

¹⁸³ Two months in the case of the ECJ (Art. 151 RP ECJ) and the GC (Art. 114 RP GC), but only one month in the case of the CST (Art. 78, para. 1, RP CST).

(6) As regards such advisers and lawyers who appear before it, the Court shall have the powers normally accorded to Courts of law, under conditions laid down in the Rules of Procedure.

(7) University teachers being nationals of a Member State whose law accords them a right of audience shall have the same rights before the Court as are accorded by this Art. to lawyers.

Outline:

I. Introduction	1
1. Compulsory representation	1
2. Room for national law	2
II. Member States and Institutions (paragraph 1)	3
1. Agent	3
a) Introduction	3
b) Member States	4
c) Institutions	5
aa) Agent(s)	5
bb) National experts	6
2. Assisted by an external lawyers	7
a) Introduction	7
b) Status	8
c) Fees	9
3. Assisted by an adviser	10
a) Introduction	10
b) Definition	11
c) Legal status	12
III. Other parties (paragraph 3)	13
1. Obligation to be represented by a lawyer	13
a) Rule	13
aa) Purpose	13
bb) Scope	14
b) No self-representation	15
aa) Principle	15
(1) No self representation	15
(2) No exception	16
bb) Examples	17
(1) GC	17
(2) CST	18
c) Exceptions	19
aa) Referral	19
bb) Legal aid	20
d) Free choice of lawyer	21
2. Role of the lawyer	22
3. Advisers	23
IV. Authorised to practice before a Court of a Member State (paragraph 4)	24
1. General	24
2. Authorised to practice	25
a) Before a Court of a Member State	25
b) Code of conduct	26
3. Not authorised to practice	27
a) Third States	27
b) Certain categories of lawyers	28
c) Incompatibilities	29
d) Former or suspended lawyers	30
V. Rights and immunities of lawyers (paragraph 5)	31

VI. Powers of the Court vis-à-vis advisers and lawyers (paragraph 6).....	32
1. Scope	32
2. Measures.....	33
a) Proportionality.....	33
b) Examples.....	34
3. Misbehaviour.....	35
a) Amongst advisers and lawyers	35
b) Vis-à-vis agents	36
c) Possible bearing on the costs	37
VII. University teachers (paragraph 7)	38

I. Introduction

1. Compulsory representation

Each party to proceedings at the EU Courts must be represented¹⁸⁴, an obligation 1 which applies to all legal remedies¹⁸⁵, at every stage of the proceedings. To this end the Member States and institutions appoint an “agent”, who need not necessarily be a lawyer or a person with a legal background (see paragraph 1). Other parties must be represented by a lawyer (see paragraph 3).

2. Room for national law

Art. 19 reveals an interface between EU law and national law with respect to the 2 authorisation to practice before a Court of a Member State (see paragraph 4) and University teachers in Member States (see paragraph 7).

II. Member States and Institutions (paragraph 1)

1. Agent. a) Introduction. It is important to remember that EU institutions as well 3 as the governments of Member States are necessarily represented by one or several Agent(s), regardless of the nature of the legal remedy or procedure concerned. In practice, the agent is almost always a member of the institutions’ or Member State’s legal department, even though in law this is not compulsory. The Agent¹⁸⁶ is responsible for primary representation of the institution or Member State in question, as well as for directing and organizing any further members of his legal team.

¹⁸⁴ See also p. 7 of the notes for the guidance of Counsel.

¹⁸⁵ With the exception of a request for judicial aid, see Art. 95 (1) RP GC, Art. 186 RP ECJ and Art. 96 (1) RP CST.

¹⁸⁶ Who might have the title “legal adviser” or “principal legal adviser”, but is nevertheless an “agent” in the proceedings, i.e. not an “adviser” within the meaning of Art. 19 Statute ECJ.

b) Member States

- 4 They¹⁸⁷ are normally represented by one or more members of their respective public service, who, at least *de jure*, do not need to be lawyers or have a legal training, even though this is of course mostly the case in practice.
- 5 c) **Institutions.** aa) **Agent(s).** Institutions¹⁸⁸ and other EU bodies, such as agencies, foundations and other decentralised bodies created under primary or secondary law (in so far as they have the capacity to be a party to proceedings), must equally be represented by an **agent**. Normally, but not necessarily¹⁸⁹, the agent is a member of the respective party's legal service.

bb) National experts

- 6 National officials who are being dispatched to an EU institution as “national experts” may, depending upon the institution, only act if accompanied by a member of staff of that institution.
- 7 2. **Assisted by an external lawyers.** a) **Introduction.** The agents representing Member States and EU institutions may be assisted by one or several external lawyers, which is quite frequently seen in cases involving e.g. the UK. The same applies to States which are a member of the EEA-agreement (see paragraph 2). If the agent of the Member State or the institution is prevented from attending the oral hearing, the external lawyer may lead in the case alone.

b) Status

- 8 Lawyers have the same trial status and trial rights as Agents in a case, and are equally subject to Court standards of conduct and decorum. It is worth noting that in ECJ case law Lawyers are referred to by the term used within the legal system of their respective Member State, i.e., “barrister” or “solicitor” for Lawyers from the UK or Ireland and “avocat” for Lawyers from France, etc. This does not mean, however, that national rules preventing certain lawyers, such as Solicitors, from pleading at certain national judicial instances apply in proceedings at the EU courts.

c) Fees

- 9 The fees of the external lawyer are in principle a necessary expenditure and thus part of the reimbursable costs¹⁹⁰. Since Members States and institutions are entitled to make use of external lawyers, a reimbursement of their fees cannot be validly contested by arguing that given their own resources there is no need for having recourse to an external lawyer (see detailed comments regarding the rules on taxation of costs in the various Rules of Procedure).

¹⁸⁷ This provision does not apply to States within a Federal State. In so far Art. 19 (3) applies.

¹⁸⁸ See definition in Art. 13 TEU.

¹⁸⁹ Case C-409/96 P-DEP, *Commission v Sveriges Betodlares Centralförening and others*, [1999] ECR I-4939 et seq.

¹⁹⁰ Case T-460/93 DEP, *Tête and other v EIB*, [1995] ECR II-229, para. 10 and the case law quoted.

3. Assisted by an adviser. a) Introduction. Instead of or in addition to being assisted by an external lawyer, the agent of a Member State¹⁹¹ or EU institution¹⁹² may also choose to be assisted by an “adviser”. That said, in referrals for preliminary rulings, an adviser, e.g. a legal adviser, may well represent a party, e.g. a national ministry of a given Member State, whilst the latter needs to be represented by an agent¹⁹³.

b) Definition

Advisers are persons who generally possess expertise in a field outside that of the Agent or external lawyer. These Advisers may (though in the case of Member States and EU institutions this is rare) also possess a legal background or education, whilst being not yet admitted as a fully qualified lawyer¹⁹⁴.

c) Legal status

Advisers have the same legal status before the Court as Agents or Lawyers as well as the same freedom to intervene in proceedings; they are likewise subject to the same expectations for conduct as Lawyers and Agents. It is worth noting that as the ECJ, unlike national Courts, very rarely admits expert witness testimony as part of oral hearings Advisers can often serve a similar purpose to expert witnesses, providing vital information on a particularly complicated point of law or fact (i.e., trademarks, patents, atomic energy, environmental protection, etc).

III. Other parties (paragraph 3)

1. Obligation to be represented by a lawyer. a) Rule. aa) Purpose. All “other parties”, i.e. natural and legal persons as defined by private or public law, must be “represented” by a lawyer. The requirement to have recourse to a **third party** is based on a conception of the lawyer’s role as collaborating in the administration of justice and as being required to provide, in **full independence** and in the overriding interests of justice, such legal assistance as his client needs. Such a conception reflects legal traditions common to the Member States and is also to be found in the European Union legal order, as is demonstrated by, precisely, Art. 19 of the Statute ECJ¹⁹⁵. The obligation to be represented by a lawyer does not infringe the parties’ right to judicial protection, access to an impartial tribunal and fair trial¹⁹⁶.

bb) Scope

This obligation applies with respect to **all legal remedies and proceedings** before the EU Courts, and to all the phases of the proceedings (written, oral, informal

¹⁹¹ See e.g. Case C-402/09, *Ioan Tatu* [2011] (not yet published in the ECR).

¹⁹² See e.g. Case 13/68, *Salgoil* [1968] ECR p. 632.

¹⁹³ Case C-588/10, *Minister Finansów v Kraft Foods Polska* [2012] (not yet published in the ECR).

¹⁹⁴ See e.g. Case T-247/08, *C-Content v Commission* [2010] (not yet published in the ECR).

¹⁹⁵ Joined Cases T-139/10, T-280/10 to T-285/10 and T-349/10 to T-352/10, *Milux v OHIM* [2011] (not published in the ECR), para. 21.

¹⁹⁶ Case C-265/11 P, *Campailla v Commission* [2011] (not published in the ECR), para. 9.

meetings, etc.). Paragraph 3 is thus an essential procedural requirement and a prerequisite for admissibility of the legal remedy concerned¹⁹⁷.

- 15 **b) No self-representation. aa) Principle. (1) No self representation.** Since parties within the meaning of paragraph 3 are thus not entitled to conduct proceedings themselves¹⁹⁸, an applicant may **not represent himself**, even if he happens to be a qualified lawyer¹⁹⁹, but must be represented by a colleague²⁰⁰ authorised to practise before a Court of a Member State or of a State which is a party to the Agreement on the European Economic Area²⁰¹. In other words, a party and its counsel cannot be one and the same person²⁰².
- 16 **(2) No exception.** Neither is there an **exception or derogation** to this principle²⁰³, nor can it be put in order pursuant to Art. 44 (6) RP GC or Art. 36 RP CST²⁰⁴. While the party concerned is not prevented, *de jure*, to refer to “force majeure”²⁰⁵ it will hardly be ever able prove the exceptional circumstances this concept requires.
- 17 **bb) Examples. (1) GC.** Accordingly, a party may not be validly represented by its CEO²⁰⁶, Director²⁰⁷, charity trustee²⁰⁸, or person in charge of the daily administration of the company²⁰⁹, even if each of them is admitted as a lawyer and enjoys legal professional privilege²¹⁰.
- 18 **(2) CST.** An official of an EU institution may not represent himself, even if he obtained permission by his employer to be admitted at the bar of a Member State whilst being an official²¹¹.
- 19 **c) Exceptions. aa) Referral.** In the case of **referral for preliminary rulings** the Rules of Procedure of the ECJ take account of the national procedural rules²¹². If the respective national proceedings do not require a lawyer at that level then there is no

¹⁹⁷ Case T-296/10, *Gheorghe V Varga v Council* [2010] (not published in the ECR).

¹⁹⁸ Joined cases T-479/93 and T-559/93, *Bernardi v Commission*, [1994] ECR SC p. II-1115, para. 20.

¹⁹⁹ Case T-37/09, *F v Commission* [2009] (not published in the ECR), para. 11 and the case-law cited.

²⁰⁰ Case C-174/90 P, *Lopes v Court of Justice* [1996] ECR p. I-6401, paras 8 and 11.

²⁰¹ Joined Cases T-139/10, T-280/10 to T-285/10 and T-349/10 to T-352/10, *Milux v OHIM* [2011] (not published in the ECR), para. 20.

²⁰² Joined Cases C-74/10 P and C-75/10 P, *European Renewable Energies Federation ASBL v Commission* [2010] (not published in the ECR), para. 54.

²⁰³ Case T-229/09, *Palladino v Italy* [2009] (not published in the ECR), para. 10 and the case-law cited.

²⁰⁴ Case F-123/11, *de Abreu v ECOSOC* [2012] (not published in the ECR), para. 16 and the case-law cited.

²⁰⁵ Case C-265/11 P, *Campailla v Commission* [2011] (not published in the ECR), para. 11.

²⁰⁶ Case T-79/99, *Euro-Lex v OHMI*, [1999] ECR p. II-3555, para. 29.

²⁰⁷ Joined Cases T-139/10, T-280/10 to T-285/10 and T-349/10 to T-352/10, *Milux v OHIM* [2011] (not published in the ECR), para. 22.

²⁰⁸ Case T-452/10, *ClientEarth v Council* [2011] (not published in the ECR), para. 21.

²⁰⁹ Case T-40/08, *EREF v Commission* [2009] (not published in the ECR), paras 28 et seq.

²¹⁰ Joined Cases T-139/10, T-280/10 to T-285/10 and T-349/10 to T-352/10, *Milux v OHIM* [2011] (not published in the ECR), para. 31.

²¹¹ Case F-123/11, *de Abreu v ECOSOC* [2012] (not published in the ECR), para. 14.

²¹² Art. 97 (3) RP ECJ.

obligation for the party concerned to be represented by a lawyer in proceedings before the ECJ²¹³.

bb) Legal aid

A further exception applies for requests for legal aid.

20

d) Free choice of lawyer

The parties are free to choose their lawyer, as long as he/she is authorised to practice within the meaning of paragraph 4. The Rules of Procedure do not require the lawyer chosen to possess an established competence in EU law and/or relevant experience. The parties remain free to select a new lawyer, be it during the written proceedings or for the purposes of the oral hearing²¹⁴, as long as the Court is informed in a timely manner²¹⁵ by handing in a power of attorney. There is nothing to prevent a party from selecting a relative or a spouse as their legal representation, as long as he or she is a qualified lawyer within the meaning of paragraph 4²¹⁶. That said, instructing e.g. a close relative might have a bearing in the event of a taxation of costs, since it may be difficult to convince a Judge that an impressive amount of fees was effectively paid to e.g. one's own spouse.

21

2. Role of the lawyer

According to the legal traditions common to the Member States the lawyer is expected to collabourate in the administration of justice and is thus "required to provide, in full independence and in the overriding interests of justice, such legal assistance as his client needs"²¹⁷. While this concept may seem somewhat idealistic by today's standards, the requirement to have recourse to a lawyer before the EU Courts remains justified. It is not only in the interest of the party concerned to be represented by a lawyer, but also in the interest of justice, as a situation in which one party were represented by a lawyer and the other by a layperson might give rise to lopsided representation and thus a potentially misinformed and thus unjust decision. In any event, in many proceedings, the economic importance and/or the complexity of the case are such that a party would be ill-advised should it intend to represent itself, even if the representatives of that party have a legal background.

22

3. Advisers

In addition to being represented by a lawyer, a natural or legal person may wish to have its lawyers assisted by one or several advisers, such as a tax adviser or

23

²¹³ Case 168/92, *Konstantinidis v Commission*, [1993] ECR p. I-1215.

²¹⁴ Joined cases T-39/93 and T-553/93, *Baltsavias v Commission* [1995] ECR p. II-695.

²¹⁵ Case T-123/08, *Spitzer v OHIM* [2010] (not published in the ECR).

²¹⁶ Case T-108/03, *von Pezold v Commission*, [2005] ECR p. II-655.

²¹⁷ Case T-79/99, *Euro-Lex v OHIM*, [1999] ECR p. II-3555, para. 28.

auditor²¹⁸, an expert in Common Customs Tariff matters²¹⁹ an expert in VAT matters²²⁰ or a legal adviser²²¹.

IV. Authorised to practice before a Court of a Member State (paragraph 4)

1. General

24 The lawyer must be authorised to practice before a Court of a Member State. Thus, there is no specific or additional authorisation to practice before the EU Courts, nor is there any other form of “*numerus clausus*”, unlike what is the case with respect to the highest judicial instances in some Member States, such as the German Bundesgerichtshof (Federal Supreme Court), or the Belgian Conseil d’Etat (highest administrative court).

25 **2. Authorised to practice. a) Before a Court of a Member State.** The requirement in paragraph 4 is based on a conception of the lawyer’s role as collaborating in the Courts’ administration of justice and as being required to provide, in full independence, and in the overriding interests of that cause, such legal assistance as the client needs. The Statute ECJ’s definition of a lawyer thus reflects the legal traditions which form the basis of Community law and are also common to the Member States²²². It also reflects the Member States’ jurisdiction over the training, certification, and discipline of lawyers and the legal profession within their territory.

b) Code of conduct

26 As lawyers are employed by private parties and, as the case may be, by Institutions and Member States, as representatives of those groups, they are, unlike ECJ judges, not under the jurisdiction of the ECJ regarding conduct and thus there is no ECJ code of conduct for lawyers. Instead, lawyers’ roles are clearly defined by the rules of professional ethics and discipline which are laid down and enforced by national-level bodies endowed with the requisite powers for that purpose²²³, such as the bar to which a lawyer is admitted.

27 **3. Not authorised to practice. a) Third States.** It is clear from paragraph 4 that all lawyers who are only authorised to practice before a court of a **third party State** which is not an EEA-state²²⁴, may not appear at the EU Courts.

²¹⁸ Case C-83/08, *Glückauf Brauerei GmbH v Hauptzollamt Erfurt* [2009] ECR p. I-2857.

²¹⁹ Case C-196/05, *Sachsenmilch v Oberfinanzdirektion Nürnberg* [2006] ECR p. I-5161.

²²⁰ Case C-288/07, *The Commissioners of Her Majesty’s Revenue & Customs* [2008] ECR p. I-7203.

²²¹ Case C-242/09, *Albron Catering v FNV* [2010] (not yet published in the ECR).

²²² Case 155/79, *AM & S v Commission*, [1982] ECR p. 1575, para. 24.

²²³ Such institutions include national lawyers’ or bar associations and their codes of conduct as well as ministries and other government institutions and their codes of conduct or standards of behaviour.

²²⁴ Case T-37/98, *FTA v Council*, [2000] ECR II-373 et seq.

b) Certain categories of lawyers

Patent- and trademark lawyers²²⁵, including “Patent Attorney Litigators”, which 28
exist in the UK²²⁶, should they not be authorised to practice before a Court of a
Member State²²⁷ (even if this non-authorisation is the direct result of a provision in
national law) are also excluded.

c) Incompatibilities

Furthermore, those persons who are both lawyer and manager of a company may 29
not represent that company before the ECJ²²⁸. Neither may a lawyer who is also an
employee (i.e., not an owner or manager) of a company represent that party before
the ECJ²²⁹. In both cases, the concept of independence prevails over the financial
benefits such rationalization might generate²³⁰.

d) Former or suspended lawyers

This is also the case for those persons who by virtue of national laws are entitled 30
to represent a party before their respective national Courts²³¹, but are not, or are no
longer²³², admitted in those Courts as a lawyer²³³. If the admission of a lawyer to the
bar is suspended, but not revoked, the question of whether this lawyer can still
appear in Court during and/or after suspension is determined by national law²³⁴.

V. Rights and immunities of lawyers (paragraph 5)

It is clear from this provision that lawyers’ “rights and immunities”, as detailed in 31
the Rules of Procedure²³⁵, are exclusively conferred in interest of proper trial
procedure at the ECJ.

VI. Powers of the Court vis-à-vis advisers and lawyers (paragraph 6)**1. Scope**

The “powers” of the Court, which are derived from the “powers normally accorded 32
to courts of law” and detailed in the Rules of Procedure²³⁶, only apply vis-à-vis

²²⁵ Except if they appear in the context of referral proceedings and qualify as legal representative under the National rules, see e.g. Case C-246/05, *Häupl v Lidl*, [2007] ECR I-04673.

²²⁶ Case T-487/07, *Imperial Chemical Industries v OHIM* [2008] (not published in the ECR), para. 22.

²²⁷ Case T-14/04, *Alto de Casablanca v OHIM*, [2004] ECR II-3077, para. 11.

²²⁸ Case T-184/04, *Sulvida v Commission*, [2005] ECR II-85, paras 10 to 12.

²²⁹ Case T-226/10, *Prezes Urzedu Komunikacji Elektronicznej v Commission*, [2011] (not yet published in the ECR), paras 21 and 25.

²³⁰ Also bearing in mind the proverb “He who is his own lawyer has a fool for a client”.

²³¹ Case T-445/04, *ET v OHIM*, [2005] ECR II-677, para. 9.

²³² Case T-296/10, *Varga and Halio v Council* [2010] (not published in the ECR), para. 9.

²³³ Case T-357/05, *Comunidad Autónoma de Valencia – Generalidad Valenciana v Commission*, [2006] ECR p. II-2015, para. 7, 10 and 12.

²³⁴ Case 18/57, *Nold v High Authority* [1959] ECR, page 91, 132.

²³⁵ Arts. 43 to 47 RP ECJ and Arts. 38 to 42 RP GC.

²³⁶ Arts. 46 RP ECJ and Art. 41 RP GC.

advisers and lawyers, i.e. not EU institution agents. This is due to the fact that the ECJ has no power of injunction vis-à-vis staff of other EU institutions and Member States. But in the – rather unlikely – event of an agent standing in contempt of Court, there is nothing to prevent the ECJ from informing the agent's employer about the matter.

- 33 **2. Measures. a) Proportionality.** The Court may, depending upon the gravity of the circumstances, apply one of the measures laid down in the Rules of Procedure²³⁷, and, as an *ultima ratio*, exclude an adviser or lawyer from a given procedure if he misuses his competences and/or disregards the dignity of the Court. It remains unknown whether the EU Courts have ever applied such an extreme measure to a legal representative.

b) Examples

- 34 In some instances, the Court has informed the **Law Society** of certain disrespectful behaviour of a lawyer²³⁸ and/or banned **parties** from entering the premises of the Court. Presumably, a more or less formal **warning**, e.g. during the oral hearing, should suffice in most instances.

- 35 **3. Misbehaviour. a) Amongst advisers and lawyers.** An adviser or lawyer behaving in a disrespectful, or even slanderous or otherwise inappropriate way vis-à-vis another lawyer and/or an agent does not automatically disregard the Court's dignity or imply contempt of Court. However, such behaviour may well be considered to be incompatible with the proper administration of justice, or as an abuse of rights²³⁹ or of lawyers' immunity regarding their spoken or written statements concerning the case or the parties²⁴⁰.

b) Vis-à-vis agents

- 36 In addition, in cases of disrespect or other misconduct of a lawyer or adviser vis-à-vis an agent, the institution or Member State concerned may inform the respective Law Society or professional body accordingly²⁴¹.

c) Possible bearing on the costs

- 37 Moreover, such behaviour, if considered to be vexatious, may have an impact on the costs of the proceedings²⁴².

²³⁷ Arts. 46 RP ECJ and Art. 41 RP GC.

²³⁸ Case T-398/03, *Castets v Commission*, [2005] ECR II-507 (lawyer does not turn up at the oral hearing without informing the Court beforehand); this case has now been explicitly incorporated into Art. 50 RP CST.

²³⁹ Art. 46 RP ECJ and Art. 41 RP GC.

²⁴⁰ Art. 46 (1) RP ECJ and Art. 38 (1) RP GC.

²⁴¹ The institutions have a duty to care vis-à-vis their personnel and the latter may request protection under Art. 24 of the Statute of the EU officials.

²⁴² Art. 139 RP ECJ, Art. 87 § 3 (2) RP GC and Art. 88 RP CST.

VII. University teachers (paragraph 7)

University teachers may enjoy the same rights as qualified lawyers²⁴³ if one's 38 Member States provides for this. The national law of each Member State is also responsible for defining the qualifications necessary for persons to be considered "university teachers" competent to try cases before the ECJ.

Article 20 [Written and oral procedure]

(1) The procedure before the Court of Justice shall consist of two parts: written and oral.

(2) The written procedure shall consist of the communication to the parties and to the institutions of the Union whose decisions are in dispute, of applications, statements of case, defences and observations, and of replies, if any, as well as of all papers and documents in support or of certified copies of them.

(3) Communications shall be made by the Registrar in the order and within the time laid down in the Rules of Procedure.

(4) The oral procedure shall consist of the hearing by the Court of agents, advisers and lawyers and of the submissions of the Advocate General, as well as the hearing, if any, of witnesses and experts.

(5) Where it considers that the case raises no new point of law, the Court may decide, after hearing the Advocate General, that the case shall be determined without a submission from the Advocate General.

Outline:

I. Introduction	1
1. Relevance	1
2. Specific rules	2
II. Written and oral part (paragraph 1)	3
1. Introduction.....	3
a) Oral part not the rule.....	3
b) The importance of both parts differs.....	4
2. No oral hearing	5
3. Optional oral hearing.....	6
4. Possibility to renounce to an oral hearing.....	7
a) ECJ.....	7
b) GC	8
III. Written procedure (paragraph 2)	9
1. Variety of written submissions	9
2. Second exchange of submissions.....	10
3. Expedited proceedings.....	11
IV. Communications of written submissions (paragraph 3)	12
V. Oral procedure (paragraph 4)	13
1. General.....	13
2. Report for the hearing	14
a) No more reading of the report at the hearing	14

²⁴³ See page 6 of the instructions to the parties.

b) Notification to the parties.....	15
3. The hearing	16
a) Questions to the parties	16
b) Communication with the Judges.....	17
4. Submissions of the Advocate-General.....	18
a) ECJ.....	18
b) The GC.....	19
c) Handing down the opinion	20
d) No written comments by the parties	21
5. Hearing of witnesses and experts	22
a) Introduction	22
b) Communication with the Judges.....	23
VI. No involvement of an Advocate General (paragraph 5)	24
1. Introduction.....	24
2. Statistics.....	25

I. Introduction

1. Relevance

- 1 This provision is fundamental since it applies to **all** procedures before the three jurisdictions of the EU²⁴⁴, regardless of their nature, including more ancillary legal remedies, such as an application for the taxation of costs.

2. Specific rules

- 2 By contrast, Art. 21 to 23 a Statute ECJ provide more specific framework rules regarding such important legal remedies as **direct action** (Art. 21), e.g. actions for annulment²⁴⁵ or failure to act²⁴⁶, and **referrals for preliminary rulings** (Art. 23 and Art. 23a)²⁴⁷.

II. Written and oral part (paragraph 1)

- 3 **1. Introduction. a) Oral part not the rule.** The wording of paragraph 1 should not be interpreted literally, since all proceedings at the ECJ and the other EU jurisdictions involve **written proceedings**, while in contrast an oral hearing is not mandatory. On the contrary, in order to curb the workload of the three EU judicial instances due in large part to the successive jurisdictional enlargements provided for in the TFEU, the legislature has rendered proceedings more efficient by suppressing the oral hearing wherever possible and appropriate, always tempering the need for efficiency with the need for effective individual judicial protection.

²⁴⁴ Regarding the GC see the reference to Art. 20 in Art. 53 Statute ECJ; regarding the CST see Art. 7 of Annex I of the Statute ECJ.

²⁴⁵ Art. 263 TFEU.

²⁴⁶ Art. 266 TFEU.

²⁴⁷ Art. 267 TFEU.

b) The importance of both parts differs

In practice, the written and oral phases are not equally important, since under the 4 current rules all pleas in law must be expressed within the first exchange of **written** submissions. No new plea may be introduced in the course of proceedings, i.e. during the second exchange of written submissions, if any, in a reply to measures of organization or during the oral hearing, unless said plea is based on matters of law or of fact which have come to light in the course of the proceedings²⁴⁸.

2. No oral hearing

In a number of proceedings no oral hearing is foreseen, e.g. in the case of a request 5 for legal aid²⁴⁹ or taxation of costs²⁵⁰. If a given case turns out to be manifestly inadmissible and/or unfounded there is no oral hearing either²⁵¹.

3. Optional oral hearing

In other proceedings (such as interim proceedings) it is within the discretionary 6 power of the Judges to decide whether an oral hearing is necessary²⁵², while in the case of certain legal remedies, such as requests for preliminary rulings²⁵³ and appeals²⁵⁴ the party concerned must initiate the application for an oral hearing and provide adequate reasons.

4. Possibility to renounce to an oral hearing. a) ECJ. In the case of a direct action 7 the ECJ has the possibility to decide upon the case **without** a prior oral hearing if **both** parties agree²⁵⁵.

b) GC

There is **no** such possibility in the case of the GC, which means that an oral 8 hearing takes place even in those cases where the parties do not wish and/or require such hearing to take place.

²⁴⁸ Art. 127 RP ECJ; Art. 48 (2) RP GC and Art. 43 RP CST.

²⁴⁹ Arts. 115 et seq. and 184 et seq. RP ECJ; Arts. 94 to 95 RP GC and Arts. 95 to 98 RP CST.

²⁵⁰ Art. 145 RP ECJ; Art. 92 RP GC, and Art. 92 RP CST.

²⁵¹ Art. 151 RP ECJ; Art. 111 RP GC and Art. 76 RP CST.

²⁵² Art. 160 (5) RP ECJ, Art. 105 (1) RP GC and Art. 104 (1) RP CST.

²⁵³ Art. 99 RP ECJ.

²⁵⁴ Art. 59 Statute ECJ, Art. 181 RP ECJ and Art. 146 RP GC.

²⁵⁵ Art. 76 RP ECJ.

III. Written procedure (paragraph 2)

1. Variety of written submissions

- 9 This provision illustrates that the number and nature of written submissions varies from one legal remedy²⁵⁶ or category of proceeding²⁵⁷ to another. The Statute ECJ merely provides a framework for the most important of these legal remedies; the details are laid down in the Rules of Procedure of the ECJ²⁵⁸ and the GC²⁵⁹. The written submissions are not only furnished to all parties involved in the proceedings but also, as the case may be, to the national or EU institutions whose decisions are in dispute.

2. Second exchange of submissions

- 10 In proceedings at the ECJ the parties are always given the possibility of a second exchange of written submissions (reply and rejoinder), at least during direct actions, while in proceedings at the GC reply and rejoinder is almost mandatory and in the case of the CST almost nonexistent.

3. Expedited proceedings

- 11 The still relatively new concept of “accelerated proceedings” is of some importance in the case of direct actions²⁶⁰ to the GC and is also used, even though to a lesser extent, in referrals for preliminary rulings²⁶¹.

IV. Communications of written submissions (paragraph 3)

- 12 The notification of a written submission²⁶² to the other parties in the proceedings is not the responsibility of the respective party or, as is the case in certain Member States, a bailiff, but rather the responsibility of the Registrar of the respective EU Court. Since November 2011, the “E-curia” service has made communication of written submission by and to the Registrar considerably easier²⁶³.

²⁵⁶ E.g. direct challenges.

²⁵⁷ E.g. referral proceedings.

²⁵⁸ Arts. 120 to 126 RP ECJ.

²⁵⁹ Arts. 43 to 54 RP GC. Furthermore, practical advice including a model application for a suit at the GC or CST as well as checklists for applications, defences, and hearings of oral arguments is available at www.curia.europa.eu.

²⁶⁰ Art. 76 a RP GC and Arts. 133 et seq. RP ECJ.

²⁶¹ Arts. 105 to 106 RP ECJ.

²⁶² Art. 48 RP ECJ and Art. 100 RP GC.

²⁶³ For more on this system, see the “Decision of the Court of Justice of 13 September 2011 regarding the lodging and service of procedural documents by means of e-Curia”, <http://curia.europa.eu>.

V. Oral procedure (paragraph 4)

1. General

This provision provides a rather general overview on the oral proceedings. It does 13 not, however, reflect the sequence of steps of an oral hearing:

2. Report for the hearing. a) **No more reading of the report at the hearing.** In his 14 report for the hearing the Judge Rapporteur summarises the factual and legal aspects of the case and the arguments of the parties²⁶⁴. Since many years the report for the hearing is no longer read at the oral hearing. This paragraph has been now adapted accordingly.

b) Notification to the parties

The parties are notified of the report approximately 3 to 4 weeks before the oral 15 hearing takes place. The parties may then request corrections to the report either prior to or at the beginning of the oral hearing.

3. The hearing. a) **Questions to the parties.** The Judges and Advocates-General 16 tend to be mainly interested in putting their questions to the parties. Thus, pleadings are likely to provide a genuine contribution if the agent, adviser or lawyer manages to anticipate potential questions of the bench and thus provides replies in advance. That said, such anticipatory action remains a matter of personal preference and strategy; one may also wait for the questions to be put to him, depending upon the circumstances.

b) Communication with the Judges

It is also worth noting that while all lawyers, agents, or advisers need to plead in 17 the **language of the procedure**, which may or may not coincide with their native language, all of their statements and responses must and will be simultaneously translated into **French**, the working language of the Court²⁶⁵. As a result, it is highly advisable for lawyers and other representatives to speak slowly and clearly, using sentences of reasonable length and avoiding legal jargon specific to the judiciary of their respective Member State. This is especially important for lawyers from a common law background, as translators may be particularly unfamiliar with common law terminology. The ECJ furthermore advises speaking from concise

²⁶⁴ Case. C-161/97 P, *Kernkraftwerke-Lippe-Ems v Commission*, [1999] ECR p. I-2057, para. 58.

²⁶⁵ The use of French for official Court proceedings dates back to the initial European Coal and Steel Community; at the time when the ECSC was formed in 1950, three of the six founding member states were predominantly or entirely Francophone (France, Luxembourg, and Belgium) and thus when the ECJ was founded by the Treaty of Paris in 1952, French was the most logical choice for its working language. The use of French has since become ECJ custom, and, despite the increasing prevalence of English in cases, does not appear to be likely to change soon.

talking points rather than reading out a fully-written argument, as one tends to read one's native language quickly, making simultaneous translation quite difficult²⁶⁶.

- 18 **4. Submissions of the Advocate-General.** a) ECJ. If an Advocate-General²⁶⁷ is involved in a case²⁶⁸, he submits his opinion to the ECJ, as a Judge Rapporteur would, although the Advocate-General is not a member of a formation of Judges. One of the main characteristics of an Advocate-General is that he is completely independent of the collegial judicial structure and thus, unlike the ECJ Judges, does not need to make any compromises when providing his opinion. Advocate-Generals' opinions are structured like legal opinions and contain in many instances an in-depth analysis of the various legal questions raised by the respective case. In many instances these opinions provide useful guidance for the Judges²⁶⁹ and are followed in approximately 80 % of all cases. This applies to the opinion in a general sense; it does not necessarily mean that the ECJ will share each and every legal view contained in an opinion.

b) The GC

- 19 The GC, which does not have its own Advocates-General, but may entrust Judges with such functions in a given case, which was the case only in the very early years; they have not been involved at all in the CST.

c) Handing down the opinion

- 20 The Advocate-General does not actually read his opinion in full at the end of the oral procedure, but hands it down, on average several months later, by reading the actual proposal in a public hearing. This closes the oral procedure and initiates the phase of deliberation of the Judges.

d) No written comments by the parties

- 21 Since the opinion is exclusively addressed to the ECJ, neither the parties to the proceedings, nor, *a fortiori*, third parties, are entitled to comment on the opinion, be it in writing or orally²⁷⁰. This also means that a party cannot request a reopening of the oral procedure²⁷¹ for the purpose of commenting on the opinion of the Advocate-General²⁷².

²⁶⁶ See "Advice to counsel appearing before the Court", <http://curia.europa.eu>.

²⁶⁷ Currently, the ECJ is assisted by eight Advocates-General, see Art. 252 (1) TFEU.

²⁶⁸ Which is by far no longer the rule, see Art. 20, para. 5, Statute ECJ.

²⁶⁹ See A. Arnulf, *The European Union and its Court of Justice (First Edition)*, Oxford/New York: Oxford University Press, 2003, p. 8.

²⁷⁰ Case C-17/98, *Emesa Sugar*, [2000] ECR I-665, paras 13 et seq.

²⁷¹ Art. 83 RP ECJ.

²⁷² Case C-50/96, *Deutsche Telekom*, [2000] ECR I-743, paras 19–24; Joined Cases C-234/96 and C-235/96, *Deutsche Telekom* [2000] ECR I-799, paras 25–30 and Joined Cases C-270/97 and C-271/97, *Deutsche Post AG v Sievers and Schrage* [2000] ECR I-929, para. 30. It is, however, worth noting that the Courts can re-open oral hearings on the advice of the Advocate General or on their own initiative in order to clarify a point of law or fact raised during previous written or oral proceedings in order to allow for further debate on a key point of a case. That said, many times the Court finds an Advocate General's reports sufficiently clear and illuminating to clarify a point of law left

5. Hearing of witnesses and experts. a) Introduction. Contrary to what is suggested by the wording of paragraph 4, any hearing of witness and expert witness testimony takes place, if at all, prior to the handing down of the Advocate General's opinion. Both are extremely rare in the case of the ECJ and very rare in the case of the GC and the CST.

b) Communication with the Judges

It is worth noting that, in the case of witness and expert testimony, the advice found above concerning lawyers' speaking slowly and clearly to aide simultaneous translation also applies: it is highly advisable for witnesses to avoid language-specific jargon and slang whenever possible to assist in translation and comprehension of testimony.

VI. No involvement of an Advocate General (paragraph 5)

1. Introduction

Art. 20 (5) Statute ECJ²⁷³ is in the interest of economy and expediency of procedure, since the ECJ may decide that a case shall be determined without a submission of an Advocate-General in so far as the proceedings raise “**no new point of law**”. This is normally the case if the issue has already been addressed in one or several judgements, which after half a century of cases is inevitable in a number of cases.

2. Statistics

In about **thirty percent** of all cases the Court of Justice makes use of this provision. Furthermore, in a number of cases no oral hearing takes place in the interest of efficient procedure.

Article 21 [Contents of a written application]

(1) A case shall be brought before the Court of Justice by a written application addressed to the Registrar. The application shall contain the applicant's name and permanent address and the description of the signatory, the name of the party or names of the parties against whom the application is made, the subject-matter of the dispute, the form of order sought and a brief statement of the pleas in law on which the application is based.

(2) The application shall be accompanied, where appropriate, by the measure the annulment of which is sought or, in the circumstances referred to in Art. 265

unclear in oral hearings and thus to enable judicial determination of a case without re-opening oral hearings; see case C-229/09, *Hogan Lovells International*, [2010], (not yet published in the ECR), paras 26–28; case T-206/06, *Total and Elf Aquitaine v Commission*, [2011], (not yet published in the ECR), para. 306.

²⁷³ See also Art. 252 (2) TFEU.

of the Treaty on the Functioning of the European Union, by documentary evidence of the date on which an institution was, in accordance with those Articles, requested to act. If the documents are not submitted with the application, the Registrar shall ask the party concerned to produce them within a reasonable period, but in that event the rights of the party shall not lapse even if such documents are produced after the time-limit for bringing proceedings.

Outline:

I. Introduction	1
1. Direct challenges	1
2. Complying with substantive conditions.....	2
II. Application (paragraph 1).....	3
1. Minimum requirements	3
2. Importance	4
III. No explicit provision regarding the statement of defence.....	5
IV. Documents which need to accompany the written application by law (paragraph 2)	6

I. Introduction

1. Direct challenges

1 This provision, which also applies to the GC²⁷⁴ and the CST²⁷⁵, is fundamental for all direct challenges, i.e. actions for annulment, e.g. of an EU directive or regulation, actions due to a Member State's or EU institution's failure to act, actions for extra-contractual liability etc., since this Art. defines the contents of the written application. It is then echoed – rather than further detailed – in the Rules of Procedure of the ECJ²⁷⁶, the GC²⁷⁷ and the CST²⁷⁸.

2. Complying with substantive conditions

2 Complying with Art. 21 Statute is the second step in preparing a case for the ECJ or indeed the two other EU jurisdictions, since the potential applicant first needs to have a clear idea about the substantive conditions of judicial protection under EU law, i.e. he needs to choose the right legal remedy and be aware about its substantive requirements²⁷⁹ and limits²⁸⁰.

²⁷⁴ Art. 53 Statute ECJ.

²⁷⁵ Art. 7 of Annex 1 of the Statute ECJ.

²⁷⁶ Art. 120 RP ECJ.

²⁷⁷ Art. 44 RP GC.

²⁷⁸ Art. 35 RP CST.

²⁷⁹ Art. 251 to 281 TFEU.

²⁸⁰ For instance, according to the well-established case law the EU jurisdictions may not address injunctions to an institution and, in the case of the ECJ, a Member State.

II. Application (paragraph 1)

1. Minimum requirements

Any application, which is by definition written, is intended for the President and 3 the Members of the respective EU Court but is to be addressed to the Registrar of the respective judicial body. Paragraph 1 lays down “minimum requirements”²⁸¹ of an application, which are echoed by the various Rules of Procedure²⁸², and then very much detailed and complemented by a whole range of derived procedural rules²⁸³.

2. Importance

As the application is the procedural instrument by which the applicant expresses 4 his *petitum* vis-à-vis the EU Judge and which thereby enables the defendant to exercise his rights of defence, a clear separation and presentation of the factual and legal arguments are of the essence. In fact, the more rigorously the applicant complies with these procedural requirements, the more he has a chance to conduct a critical self-assessment as to the pertinence and strength of his substantive arguments.

III. No explicit provision regarding the statement of defence

Art. 20 (2) Statute ECJ merely provides an overview of the subsequent steps in 5 written proceedings before the ECJ, i.e. the statement of defence²⁸⁴, followed by “replies”, i.e. the reply and the rejoinder. However, none of these steps are defined in the Statute ECJ, but are rather left to the respective Courts’ Rules of Procedure, in so far as the contents of the statement of defence is concerned²⁸⁵.

IV. Documents which need to accompany the written application by law (paragraph 2)

The requirement in paragraph 2, i.e. to annex the challenged legal act or the 6 request to act to the respective application²⁸⁶, applies “where appropriate”, but in fact the Rules of Procedure of all three EU jurisdictions make it compulsory²⁸⁷.

²⁸¹ Case T-468/93, *Frinil v Commission* [1994] ECR II-33, para. 30.

²⁸² Art. 120 RP ECJ, Art. 44 RP GC and Art. 35 RP CST.

²⁸³ Such as the ECJ’s “Practice Directions relating to direct actions and appeals”, the GC’s “Practice directions to parties”, etc.

²⁸⁴ Provided the defendant does not raise a formal plea of inadmissibility.

²⁸⁵ Art. 124 RP ECJ; Art. 46 RP GC, Art. 39 RP CST.

²⁸⁶ Art. 263 TFEU, Art. 265 TFEU and Art. 148 EAEC-Treaty.

²⁸⁷ See e.g. Art. 44 (4) RP GC.

While the applicant may produce these documents even **after** the time-limit for bringing proceedings has elapsed (presumably because the measure challenged is necessarily known to the other party), this generous legislative approach does **not** apply to all other documents the applicant intends to rely on at Court. He needs to annex all other documents to his initial application²⁸⁸, since by the time a reply is required the deadline of admissibility may have passed for the submission of other pertinent documents²⁸⁹.

Article 22 [EAEC-Treaty]

(1) A case governed by Art. 18 of the EAEC Treaty shall be brought before the Court of Justice by an appeal addressed to the Registrar. The appeal shall contain the name and permanent address of the applicant and the description of the signatory, a reference to the decision against which the appeal is brought, the names of the respondents, the subject-matter of the dispute, the submissions and a brief statement of the grounds on which the appeal is based.

(2) The appeal shall be accompanied by a certified copy of the decision of the Arbitration Committee which is contested.

(3) If the Court rejects the appeal, the decision of the Arbitration Committee shall become final.

(4) If the Court annuls the decision of the Arbitration Committee, the matter may be reopened, where appropriate, on the initiative of one of the parties in the case, before the Arbitration Committee. The latter shall conform to any decisions on points of law given by the Court.

- 1 Art. 22 governs the procedural requirements of a truly marginal legal remedy, i.e. of an application against a decision of the **Arbitration Committee** within the meaning of Art. 18 EAEC Treaty. It results from a merger between the former EAEC statute of the ECJ and the EEC statute of the ECJ.

Article 23 [Referral for preliminary rulings]

(1) In the cases governed by Art. 267 of the Treaty on the Functioning of the European Union, the decision of the Court or tribunal of a Member State which suspends its proceedings and refers a case to the Court of Justice shall be notified to the Court by the Court or tribunal concerned. The decision shall then be notified by the Registrar of the Court to the parties, to the Member States and to the Commission, and to the institution, body office or agency of the Union which adopted the act the validity or interpretation of which is in dispute.

(2) Within two months of this notification, the parties, the Member States, the Commission and, where appropriate, the institution, body office or agency which adopted the act the validity or interpretation of which is in dispute, shall be entitled to submit statements of case or written observations to the Court.

²⁸⁸ Art. 122 (4) RP ECJ, Art. 43 (4) RP GC and Art. 34 (4) RP CST.

²⁸⁹ See. e.g. Art. 127 RP ECJ, Art. 48 (2) RP GC, and Art. 43 (2) RP CST.

(3) In the cases governed by Art. 267 of the Treaty on the Functioning of the European Union, the decision of the national Court or tribunal shall, moreover, be notified by the Registrar of the Court to the States, other than the Member States, which are parties to the Agreement on the European Economic Area and also to the EFTA Surveillance Authority referred to in that Agreement which may, within two months of notification, where one of the fields of application of that Agreement is concerned, submit statements of case or written observations to the Court.

(4) Where an agreement relating to a specific subject-matter, concluded by the Council and one or more non-member States provides that those States are to be entitled to submit statements of case or written observations where a Court or tribunal of a Member State refers to the Court of Justice for a preliminary ruling a question falling within the scope of the agreement, the decision of the national Court or tribunal containing that question shall also be notified to the non-member States concerned. Within two months from such notification, those States may lodge at the Court statements of case or written observations.

Outline:

I. Introduction	1
1. General	1
2. Special procedures	2
3. Recent legislative amendments	3
II. The nature of referrals for preliminary rulings	4
1. General	4
2. The role of the ECJ in referrals for preliminary rulings	6
a) Overview	6
aa) Interpretation of EU law	6
bb) No interpretation of national law	8
cc) No finding of facts	9
dd) Validity of secondary law	10
b) Primary EU law	11
aa) Included	11
bb) Not included	12
c) Secondary EU law	13
3. The role of the national court or tribunal	14
4. Further specificities of the referral for preliminary ruling	15
III. Court or tribunal of a Member State (paragraph 1, 1st sentence)	16
1. Introduction	16
a) Exclusivity	16
aa) Only judicial bodies	16
bb) No other bodies	17
b) Definition	18
c) Details	19
aa) Distinct body	19
bb) Contradictory proceedings	20
cc) Independence	21
2. Courts and tribunals entitled to seek preliminary rulings	24
a) Highest authorities when they give legal advice	25
b) Absence of contradictory proceedings	25
c) Definition of 'jurisdiction'	26
aa) Case law in the line of Dorsch Consult	27
bb) Contentious proceedings and decision of a judicial nature	28
cc) Procedure for the award of public contracts	29

dd) “Court or tribunal” of a Member State/several Member States.....	30
d) Jurisdiction and arbitration	31
e) Independence of the ‘jurisdiction’	32
3. Bodies which are not entitled to referrals for preliminary rulings.....	33
a) Tribunals acting as administrative authorities	33
aa) General.....	33
bb) Examples.....	34
b) Special case of the former Brussels Convention	35
c) Absence of one of the criteria defining the term ‘jurisdiction’	36
aa) Absence of independence.....	36
(1) Organizational link	36
(2) Operational link.....	37
bb) Absence of contentious proceedings.....	38
cc) Absence of an obligatory jurisdiction.....	39
dd) Party to the proceedings.....	40
ee) Other	41
4. Creation of a possible informal procedure for referral eligibility	42
5. Obligation to refer questions to the ECJ.....	43
a) Obligation	43
b) No obligation.....	44
c) Acte clair.....	45
IV. Suspension of national proceedings and referral to the ECJ (paragraph 1, 1st sentence)	46
1. Introduction.....	46
2. Contents of the request for a preliminary ruling.....	47
3. Timing of the referral.....	48
4. Repeated referrals in the same matter.....	49
a) Not excluded	49
b) Restraint required	50
V. Notification by the Registrar (paragraph 1, 2nd sentence).....	51
1. Limited list of addressees.....	51
2. Notifying the order.....	52
VI. Written observations (paragraph 2).....	53
1. Time-limit	53
2. No possibility of extension.....	54
a) Two months.....	54
b) Too rigid?.....	55
3. Written observations.....	56
a) Introduction.....	56
b) Language.....	57
c) Contents of written observations.....	58
aa) Within the framework of the questions	58
bb) Comments on questions of admissibility	59
cc) Comments on the question(s) referred.....	60
dd) Role of the Commission	61
4. Oral hearing.....	62
VII. EEA-Member States (paragraph 3)	63
VIII. Third States (paragraph 4)	64
1. Association agreements.....	64
2. International jurisdictions.....	65
IX. Excursus: Is there a need for a filter mechanism?	66
1. No need for immediate action.....	66
2. A difficult tightrope.....	68
a) Limitation “at the source”?	69
b) Filter at the level of the ECJ?	70

I. Introduction

1. General

The rules governing the “classic” referral for preliminary ruling²⁹⁰, to which there is no equivalent in most Member States, are laid down in Art. 267 TFEU²⁹¹, 23 Statute ECJ and Art. 93 to 104 RP ECJ. The “Information note on references by the national courts for preliminary rulings”²⁹² provides useful guidance on practical aspects of this particular procedure.

2. Special procedures

The special referral procedures, added in recent years through Art. 23 a Statute ECJ, include the **expedited procedure** (Art. 105 RP ECJ), which applies to all areas of EU law and the **urgent procedure** (Art. 107 et seq. RP ECJ), which is limited to referrals in the area of freedom, security and justice.

3. Recent legislative amendments

Art. 23 and 23 a Statute ECJ remained unchanged, while the three relevant implementing provisions in the RP ECJ (Art. 104 to 104b) have been replaced by no less than **22 new or partly new articles** (Art. 93 to 118). These comprise such measures as the – long overdue – definition of the content of the request for a preliminary ruling (Art. 95), a provision on anonymity (Art. 96), etc.

II. The nature of referrals for preliminary rulings

1. General

Unlike all other legal remedies the referral for preliminary rulings is **not a contentious procedure**²⁹³, but an instrument of cooperation and coordination between the ECJ and the national courts and tribunals, based on a strict **division of labour**²⁹⁴ for the implementation of EU law.

²⁹⁰ The preliminary ruling procedure ensures the uniform application of EU law by enabling the ECJ to interpret EU legislation while also in certain cases striking down secondary EU legislation that conflicts with EU primary law. A rough analogy can be drawn to the US and UK’s practice of judicial review, though in judicial review a supreme court has jurisdiction to determine the constitutionality of secondary legislation, while in a primary ruling the actual application of the ECJ’s interpretation of EU law (and thus the analysis of national laws’ compatibility) is left to the national judges and courts.

²⁹¹ See also Art. 150 EAEC-Treaty.

²⁹² See OJEU C 143, 11. 06. 2005, page 1 et seq., and www.curia.europa.eu.

²⁹³ Thus there is no room for interim proceedings within a referral for a preliminary ruling, see Case C-186/01 R, *Dori* [2001] ECR I-7823, paras 6–8, 10.

²⁹⁴ Case 244/80, *Foglia/Novello*, [1981] ECR, 3045, para. 14.

- 5 In practice, however, the cooperative nature of preliminary proceedings are frequently ignored²⁹⁵. This is one of the reasons why the number of provisions in the RP ECJ governing the conditions of this particular legal procedure²⁹⁶ has been substantially increased.
- 6 **2. The role of the ECJ in referrals for preliminary rulings. a) Overview. aa) Interpretation of EU law.** The ECJ provides the national court or tribunal with all indications regarding the **interpretation of primary and/or secondary EU law** which the national Judge requires for deciding the pending case or which enable him to assess whether a piece of national legislation is compatible with EU law²⁹⁷. In other words, the ECJ has jurisdiction to give the national Court full guidance on the interpretation of EU law in order to enable it to determine the issue of a national law's compatibility with EU law for the purposes of the case before it²⁹⁸ and to further refine understanding and application of legal terms in EU law based on community-wide definitions interpreted at the EU level, rather than (except in very specific circumstances) basing such definitions on those provided by or found in the law of one or more Member States²⁹⁹.
- 7 In addition to harmonizing the application of EU law within Member States, the ECJ is furthermore expected to harmonize EU and international law by interpreting EU law in accordance with international legal principles, statutes, and precedents as much as possible³⁰⁰.

bb) No interpretation of national law

- 8 In preliminary rulings, the ECJ is **not** required to rule upon the compatibility of provisions of national law with the legal rules of the EU³⁰¹. However, during preliminary rulings the ECJ may interpret national law which is relevant to the provisions of an EU directive, even if that national law applies to purely internal situations³⁰².

cc) No finding of facts

- 9 During preliminary rulings it is obviously not the task of the ECJ to find or assess the **facts** in the national proceedings, which is exclusively a matter for the national Judge³⁰³.

²⁹⁵ See overview by B. Wägenbaur, EuZW 2000, p. 37 et seq.

²⁹⁶ See Arts 93–118 RP ECJ.

²⁹⁷ Case C-292/92, *Hünernmund*, [1993] ECR, p. I-6787, para. 8; when interpreting secondary EU law, Judges must give preference to the interpretation of that law most consistent with the TFEU and general principles, see Case C-314/89, *Rauh*, [1991] ECR I-01647, para. 1.

²⁹⁸ See, to that effect, inter alia, Case C-292/92 *Hünernmund and Others* [1993] ECR I-6787, para. 8, and Case C-380/05 *Centro Europa 7* [2008] ECR I-349, para. 50.

²⁹⁹ See Case C-103/01, *Commission v Germany*, [2003], ECR I-05369, para. 33; Case 12/73, *Muras v Hauptzollamt Hamburg Jonas*, [1973], ECR 00963, para. 1 (summary).

³⁰⁰ Case C-76/00, *Petrotub SA et al v Council* [2003] ECR I-00079, para. 57.

³⁰¹ Consistent case-law, see e.g. Case C-118/08, *Transportes Urbanos y Servicios Generales* [2010] ECR I-0000, para. 23–24.

³⁰² Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08, *Salahadin Abdulla and Others* [2010] ECR I-1493, para. 48.

³⁰³ Case C-140/09, *Fallimento Traghetti del Mediterraneo* [2010] (not yet published in the ECR), paras 22, 24.

dd) Validity of secondary law

The ECJ may verify the **validity** of an act of **secondary** legislation³⁰⁴, but has no 10 such jurisdiction with respect to the validity of primary law. When applying, assessing validity, or interpreting secondary law, preference must always be given to that interpretation of secondary law which is most consistent with the TFEU and general principles³⁰⁵.

b) Primary EU law. aa) Included. Primary EU law is comprised of not only the 11 TFEU, the TEU, and the EAEC-Treaty, but also includes a broad variety of **general principles of law**³⁰⁶, both written and unwritten, **fundamental legal rights**³⁰⁷, and certain **international treaties**³⁰⁸, such as association agreements with third countries³⁰⁹, the AETR-Convention³¹⁰, and the TRIPs Agreement³¹¹.

bb) Not included

Primary law does not include e.g. the EEA agreement insofar as its application to 12 the EEA-Member States is concerned³¹². Furthermore, it does not include certain provisions of the WTO³¹³.

c) Secondary EU law

The area of derived legislation comprises not only **regulations, directives** and 13 **decisions**, but also those EU acts which are non-binding³¹⁴.

3. The role of the national court or tribunal

The national courts and/or tribunals remain competent for assuring the necessity 14 of a preliminary ruling and the relevance of the questions posed to the ECJ³¹⁵. They are also responsible for providing all factual³¹⁶ and legal aspects of the national proceedings. Thus it is to the national courts' responsibility to e.g. assess whether the order of referral is in line with national procedural rules³¹⁷ and it is furthermore their responsibility to find the relevant facts, to apply and/or interpret the relevant

³⁰⁴ Case C-165/03, *Längst*, [2005] ECR I-5637, para. 30.

³⁰⁵ Case C-314/89, *Rauh*, [1991] ECR p. I-01647, para. 1.

³⁰⁶ Case C-27/95 *Woodspring district Council/Bakers of Nailsea*, [1997] ECR I-1847, paras 16–29; Case C-361/97, *Nour/Burgenländische Gebietskrankenkasse*, [1998] ECR I-3101, paras 12–13.

³⁰⁷ See e.g. legal opinion 2/94 of 28th of March 1996, ECR I-1759, para. 33.

³⁰⁸ This excludes treaties to which the EU is not a party; see e.g. Case C-379/92, *Peralta*, [1994] ECR I-3453, paras 15–70.

³⁰⁹ Case 12/86, *Demirel/Stadt Schwäbisch Gmünd*, [1987] ECR 3719, paras 9–11.

³¹⁰ Case C- 439/01, *Cipra and Kvasnicka*, [2003] ECR I-745, para. 23–24.

³¹¹ Case C-245/02, *Anheuser Bush*, [2004] ECR I-10989, para. 41.

³¹² Case C-300/01, *Salzmann*, [2003] I-4899, paras 65–71.

³¹³ Case C- 377/02, *Van Parys*, [2005] I-1465, paras 39–32.

³¹⁴ Case C-188/91, *Deutsche Shell AG*, [1993] ECR I-363, para. 18.

³¹⁵ Case C-138/09, *Todaro Nunziatina*, [2010] ECR I-04561, para. 25.

³¹⁶ Well-established case-law: see e.g. Case 6/64, *Costa/Enel*, [1964] ECR, 1141.

³¹⁷ Case C-10/92, *Balocchi*, [1993] ECR I-5133, 5138, para. 16; Case C-143/99, *Adria-Wien Pipeline und Wietersdorfer & Peggauer Zementwerke*, [2001] ECR I-8365, para. 19.

national provisions³¹⁸, and ultimately also to apply the ECJ's answers to the individual case in question³¹⁹. Such application may prove a difficult exercise, as seen in the case of classifying tariffs according to combined EU nomenclature³²⁰.

4. Further specificities of the referral for preliminary ruling

- 15 Due to its non-contentious nature there is no room for **interim proceedings**³²¹, **revision**³²², **intervention**³²³ or **interpretation** of judgments³²⁴ in a preliminary ruling.

III. Court or tribunal of a Member State (paragraph 1, 1st sentence)

- 16 **1. Introduction. a) Exclusivity. aa) Only judicial bodies.** Only “courts or tribunals” of a Member State³²⁵ are entitled to apply for a preliminary ruling to the ECJ. This rules out any such initiative by the parties to the respective national proceedings or any third party (such as a non-Member State), no matter how important their interest as to the outcome and/or legitimate such initiative may be³²⁶.

bb) No other bodies

- 17 This also rules out bodies which are clearly part of the administration, such as e.g. a local council³²⁷. There is no doubt that various non-judicial administrations in the Member States and national legislations are often confronted with sometimes difficult questions of interpretation of EU law. However, the principle of separation of powers excludes their consulting the ECJ for such interpretation; they thus must depend upon experts' advice and guidance within the context of their respective national instances³²⁸.

³¹⁸ Case 80/86, *Kolpinghuis*, [1987] ECR, 3969; Case C-37/92, *Vanacker and Lesage*, [1993] ECR I-4947, para. 7.

³¹⁹ Case 35/76, *Simmmenthal Spa/Ministero delle finanze*, [1976] ECR 1871; Joined Cases C-165/09, C-166/09, and C-167/09, *Stichting Natuur en Milieu*, [2011] (not yet published in the ECR), para. 47.

³²⁰ See e.g. Case C-500/04, *Proxxon*, [2006] ECR I-1545, para. 23; Case C-196/05, *Sachsenmilch*, [2006] ECR -05161, para. 19.

³²¹ Case C-186/01 R, *Dory*, [2001] ECR I-7823, 7827, paras 6 et seq.

³²² Case C-116/96 REV, *Reisebüro Binder*, [1998] ECR I-1889, paras 7–9.

³²³ Case 69/85, *Wünsche/Deutschland*, [1986] ECR, 947, paras 13–16.

³²⁴ Case 40/70, *Sirena/Eda*, [1979] ECR 3169; see also Art. 104 RP ECJ.

³²⁵ See also Art. 267 TFEU and Art. 23 Statute ECJ.

³²⁶ Case 5/72, *Grassi/Amministrazione delle finanze dello Stato*, [1974] ECR 443.

³²⁷ Case C-408/09, *Municipio de Barcelos* [2010] (not published in the ECR), para. 6.

³²⁸ Of course, an administrator or legislator on the national level could possibly informally bring such a case to the attention of a Member State's tribunal or formally raise the issue through a well-argued exposition of an EU statute's ambiguity in a national court. Nevertheless, they would remain parties to the case; the judges of the national court would still be directly responsible for any referrals.

b) Definition

The term “court or tribunal” needs to be interpreted within the meaning of EU law³²⁹ on the basis of a series of **objective criteria** such as the legal foundation of the body, its **permanent character**, the **obligatory jurisdiction**, the **contentious nature of its proceedings**, the consistent application of legal norms by the body as well as its judicial and political **independence**³³⁰.

c) Details. aa) **Distinct body**. In keeping with the principle of division of powers, the judicial body must be a **distinct** third party from the legislative (or, sometimes, executive) body which has adopted the legal act which forms the object of the national proceedings³³¹.

bb) Contradictory proceedings

The national proceedings ought preferably to be **contradictory in nature**, but this is not an absolute criterion³³², even if it is within the interest of the good administration of justice that the application for preliminary ruling takes place after a contradictory debate³³³.

cc) Independence

The **independence** of the body making a reference implies that said body is protected against external intervention or pressure liable to jeopardise the independent judgment of its members as regards proceedings before them³³⁴. Those guarantees of independence and impartiality require rules, particularly as regards the composition of the body as well as the appointment, length of service, and grounds for rejection and dismissal of its members. In order for the referring body to meet the requirement for independence, ECJ case-law requires, *inter alia*, that dismissals of members of that body should be determined by express legislative provisions³³⁵. Such guarantees help dismiss any reasonable doubt in the minds of individuals as to the independence of that body in relation to other governmental and nongovernmental bodies and thus its neutrality with respect to the interests before it.

A tribunal of a Member State does not lose its independence merely because a national rule requires it to inform the national ministry of justice of its referral of a request for a preliminary ruling to the ECJ, if such information is not a *conditio sine quo non* for the referral³³⁶.

³²⁹ Case C-259/04, *Emanuel*, [2006] ECR p. I-3089, paras 19, 23–24.

³³⁰ Well-established case-law, see e.g. Case C-54/96, *Dorsch Consult*, [1997] ECR p. I-4961, para. 23.

³³¹ Case C-24/92, *Corbiau*, [1993] ECR p. I-1300, paras 15 and 16.

³³² Case C-162/73, *Birra Dreher S.p.a./Amministrazione delle finanze dello Stato*, [1974] ECR 201; Case C-54/96, *Dorsch Consult*, [1997] ECR p. I-4961, para. 31.

³³³ Case C-10/92, *Balocchi/Ministero delle finanze dello Stato*, [1993] p. I-5105, paras 13–14.

³³⁴ Case C-109/07, *Pilato*, [2008] ECR p. I-3503, para. 23 and the case-law cited.

³³⁵ Case C-109/07, *Pilato*, [2008] ECR p. I-03503, para. 24 and the case-law cited.

³³⁶ Case C-137/08, *VB Pénzügyi Lízing*, ECR p. I-0000, paras 31–34.

- 23 Furthermore the national Courts or tribunals may only apply for preliminary rulings if a case is **pending**³³⁷, be it as a main or interim proceeding³³⁸, provided that the resulting decision in the case is of a **judicial nature**³³⁹. The latter is determined by the kind of activity of the deliberative body concerned, rather than its name.

2. Courts and tribunals entitled to seek preliminary rulings

- 24 The following bodies are entitled to refer questions to the ECJ, whilst those indicated in section 3 below are not:

a) Highest authorities when they give legal advice

The Italian “Consiglio di Stato”³⁴⁰, when it issues an opinion in the context of an extraordinary petition, as well as the Dutch “Raad van State”³⁴¹.

b) Absence of contradictory proceedings

- 25 The President of the “Tribunale di Genova”³⁴² before which the proceedings were not contradictory is, nevertheless, a jurisdiction.

c) Definition of ‘jurisdiction’

- 26 In its *Dorsch Consult* case³⁴³, which defines the criteria which a body needs to meet in order to qualify as ‘Court or tribunal’ within the meaning of what is now 267 TFEU, the ECJ considered the German “Vergabeüberwachungsausschuss des Bundes” (Federal Public Procurement Awards Supervisory Board) to be a ‘court or tribunal’.

aa) Case law in the line of *Dorsch Consult*

- 27 The following bodies were declared to be entitled to seek preliminary rulings: The British “Immigration Adjudicator”³⁴⁴; the Spanish-Catalan “Tribunales Económico-Administrativos Regional de Cataluña”, which are competent for a specific legal remedy in tax matters³⁴⁵; the Swedish “Överklagandeämnden för Högskolan”, (Universities’ Appeal Board), which is competent for matters relating to higher education³⁴⁶; and a Finnish Complaint Commission for agricultural matters³⁴⁷.

³³⁷ It does not matter which subject of national law it concerns, see e.g. Case 82/71, *S.A.I.L.*, [1972] ECR p. 119.

³³⁸ Joined Cases C-143/88 and C-92/89, *Süderdithmarschen*, [1991] ECR p. 415.

³³⁹ Case C-134/97, *Victoria Film*, [1998] ECR p. I-7023, para. 14.

³⁴⁰ Joined Cases C-69/96 to C-79/96, *Garofalo and others*, [1997] ECR p. I-5603, paras 19, 27.

³⁴¹ Joined Cases C-69/96 to C-79/96, *Garofalo and others*, [1997] ECR p. I-5603, para. 16.

³⁴² Joined Cases C-277/91, C-318/91 and C-319/91, *Ligur Carni*, [1993] ECR I-6621, para. 16.

³⁴³ Case C-54/96, *Dorsch Consult*, [1997] ECR I-4961, para. 38.

³⁴⁴ Case C-416/96, *Eddline El-Yassine*, [1999] ECR I-1209, paras 17–22.

³⁴⁵ Joined Cases C-110/98 to C-147/98, *Gabalfria and others*, [2000] ECR I-1577, 1610, paras 33 et seq.

³⁴⁶ Case C-407/98, *Abrahamsson and Andreson*, [2000] ECR I-5539, paras 29 to 30.

³⁴⁷ Joined Cases C-9/97 and C-118/97, *Jokela and Pitkäranta*, [1998] I-6267, paras 18 to 24.

bb) Contentious proceedings and decision of a judicial nature

An Italian Investigating Judge in the context of criminal proceedings³⁴⁸; the 28 Austrian Supreme Court in the context of special proceedings, which take place outside any individual contentious matter³⁴⁹; in certain circumstances a notary involved in tax matters³⁵⁰; the Swedish “Regeringsrätten” (Supreme Administrative Court)³⁵¹ in so far as it assesses the legality of an opinion of a Swedish tax body³⁵² issued a decision of a judicial nature were all considered eligible to refer cases for preliminary rulings.

cc) Procedure for the award of public contracts

The “Tiroler Landesvergabeamt” (Procurement Office of the Land of Tyrol)³⁵³; 29 the “Vergabekontrollsenat” of Vienna (Public Procurement Review Chamber of the Vienna Region)³⁵⁴; the Austrian “Vergabeüberwachungsausschuss des Bundes” (Committee supervising procurement proceedings)³⁵⁵ are entitled to refer for preliminary rulings in procedures for the award of a public contract.

dd) “Court or tribunal” of a Member State/several Member States

The “Deputy High Bailiff’s Court”, even though it is not part of the judicial 30 system of the United Kingdom³⁵⁶; a judicial body competent for overseas matters of a Member State³⁵⁷; and the “BENELUX-Court”³⁵⁸, as a court common to three Member States faced with the task of interpreting Community rules in the performance of its function, may also refer questions to the ECJ.

d) Jurisdiction and arbitration

An “ordinary” Dutch Court, which assesses an arbitration decision³⁵⁹ according 31 to what seems fair and reasonable, is an eligible jurisdiction.

e) Independence of the ‘jurisdiction’

The “Collège juridictionnel de la Région de Bruxelles-Capitale”³⁶⁰ is not depend- 32 ent on the Belgian executive and is thus eligible since the members of the College are appointed by the Conseil de la region Bruxelles-Capitale for an unlimited period of time and since their appointments are irrevocable. The Lithuanian Commission

³⁴⁸ Case C-235/02, *Saetti and Frediani*, [2004] ECR I-1005, para. 23; Case C-105/03, *Pupino*, [2005] ECR I-5285, para. 22.

³⁴⁹ Case C-195/98, *Österreichischer Gewerkschaftsbund*, [2000] ECR I-10497, para. 32.

³⁵⁰ C-165/03, *Längst*, [2005] ECR I-5637, paras 25 to 26.

³⁵¹ Case C-200/98, *X AB and Y AB*, [1999] ECR I-8261, paras 15 to 17.

³⁵² Which as such is not entitled to refer preliminary rulings, see Case C-134/97, *Victoria Films*, [1998] ECR I-7023, paras 14 to 16 and 18.

³⁵³ Case C-103/97, *Köllensperger and Atzwanger*, [1999] ECR I-551, paras 17–19 and 22–25.

³⁵⁴ Case C-92/00, *HI*, [2002] ECR I-5553, paras 24 et seq.

³⁵⁵ Case C-54/96, *Dorsch Consult*, [1997] ECR I-4961, para. 38.

³⁵⁶ Case C-355/89, *Barr and Montrose Holdings*, [1991] ECR I-3497, paras 6–10.

³⁵⁷ Joined Cases C-100/89 and C-101/89, *Procacci*, [1990] ECR I-4647, paras 8 to 10.

³⁵⁸ Case C-337/95, *Parfums Christian Dior*, [1997] ECR I-6013, para. 21.

³⁵⁹ Case C-393/92, *Almelo*, [1994] ECR I-1477, para. 22 and the case law cited.

³⁶⁰ Case C-17/00, *De Coster*, [2001] ECR I-9445, paras 9 et seq.

for contentious matters in the fiscal area³⁶¹ and the “Austrian Oberste Berufungs- und Disziplinarkommission”³⁶² are similarly considered independent and thus entitled to refer requests for preliminary rulings.

- 33 **3. Bodies which are not entitled to referrals for preliminary rulings. a) Tribunals acting as administrative authorities. aa) General.** The ECJ has always adopted a **functional approach** to the definition of a jurisdiction, and thus in some cases a tribunal may not be entitled to referrals for preliminary rulings whenever it acts as an **administrative authority**.

bb) Examples

- 34 This is the case when, in accordance with the applicable Italian legislation and, under the “giurisdizione volontaria” procedure, the national Court rules on an application for confirmation of a company’s articles of association with a view to its registration³⁶³; when a German Lower Court in family matters exercises administrative authority, without at the same time being called on to decide a dispute³⁶⁴; a district Court (“Bezirksgericht”) insofar as it acts as an administrative body with respect to the register on ground property³⁶⁵; an Austrian “Landesgericht”³⁶⁶ insofar as it is not dealing with a dispute but merely acting as an authority responsible for keeping the commercial register³⁶⁷ or register of companies³⁶⁸; the Italian “Corte dei Conti”³⁶⁹ insofar as it audits and assesses the outcome of an administrative activity; a German “Amtsgericht”, if in appointing a ‘supplementary’ liquidator for the assets of a company, the essential task of the Judge consists in deciding whether the person suggested by the applicant or another person is appropriate to wind-up the remaining assets of a company struck off the register³⁷⁰; and the Swedish “Miljö- och hälsoskyddsnämnden”, which carries out certain supervisory tasks in the area of the protection of the environment and human health³⁷¹.

b) Special case of the former Brussels Convention

- 35 A French “Tribunal de Commerce”³⁷² or a Luxembourg “Tribunal de paix” with respect to the former “Brussels Convention”³⁷³ were not eligible, as these Courts

³⁶¹ Case C-385/09, *Nidera Handelscompagnie* [2010] (not yet published in the ECR), paras 35–36, 40.

³⁶² Case C-118/09, *Koller* [2010] (not yet published in the ECR), paras 22–23.

³⁶³ Case C-111/94, *Job Centre* [1993] ECR I-3361, paras 11 and 12.

³⁶⁴ Case C-96/04, *Standesamt Stadt Niebüll*, [2006] ECR I-03561, paras 13–19.

³⁶⁵ Case C-178/99, *Salzmann* [2001] ECR I-4421, paras 16 et seq.

³⁶⁶ See also the analogous case of a German “Amtsgericht”, Case C-86/00, *HSB-Wohnbau* [2001] ECR I-5353, para. 16.

³⁶⁷ Case C-447/00, *Holto* [2002] ECR I-735, paras 20 et seq.

³⁶⁸ Case C-182/00, *Lutz* [2002] ECR I-547, paras 15 et seq.

³⁶⁹ Case C-192/98, *ANAS* [1999] ECR I-8583, paras 22 to 25.

³⁷⁰ Case C-497/08, *Amiraike Berlin* [2010] (not yet published in the ECR), paras 17–21.

³⁷¹ Case C-344/09, *Bengtsson*, [2011] (not yet published in the ECR), paras 18–19, 21, 23–25.

³⁷² Case C-24/02, *Marseille Fret* [2002] ECR I-3383, para. 13.

³⁷³ Case C-69/02, *Reichling* [2002] ECR I-3393, paras 8 et seq. Today, as the Brussels convention has been replaced by the EC regulation 44/2001, these tribunals would be considered entitled to referrals for preliminary rulings.

were not mentioned in Art. 2(1) and (3) of the protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention and thus could not refer questions for a preliminary ruling. However, today, with the Brussels Convention being replaced by the EC Regulation 44/2001, these tribunals would be considered entitled provided they met the conditions laid down in *Dorsch Consult*³⁷⁴.

c) Absence of one of the criteria defining the term ‘jurisdiction’ aa) **Absence of independence.** (1) **Organizational link.** Since both the “Berufungssenat der Finanzlandesdirektion Wien” (the Appeal Chamber of the Provincial Finance Directorate Vienna)³⁷⁵ and the “Directeur des contributions et des accises” in Luxembourg³⁷⁶ had an organisational link with the administrative authority who took the challenged decision, neither would be considered eligible. The same applies to the Belgian “Collège d’autorisation et de contrôle du Conseil supérieur de l’audiovisuel”³⁷⁷.

(2) **Operational link.** A national anti-trust authority, such as the Greek “Epitropi Antagonismou”³⁷⁸, whose president has disciplinary power over the members of the Secretariat, is not regarded as a ‘jurisdiction’; neither is the “Prud’homme de pêche de Martigue”³⁷⁹, since its members are subject to supervision by the administration and may be dismissed by the Director of Maritime registration.

bb) Absence of contentious proceedings

A national anti-trust authority, such as the Greek “Epitropi Antagonismou”³⁸⁰, 38 may not ask preliminary questions as the Commission may relieve such an authority of its competence. Consequently, the proceedings may not lead to a decision of judicial nature.

cc) Absence of an obligatory jurisdiction

A Belgian contractual arbitration court (“Collège d’arbitrage de la Commission des Litiges Voyages”) is not an eligible ‘jurisdiction’ if the parties are under no obligation, in law or in fact, to refer their disputes to arbitration and if the public authorities of the Member State concerned (i.e., Belgium) are not involved in the decision to opt for arbitration nor required to intervene of their own accord in the proceedings before the arbitrator³⁸¹.

dd) Party to the proceedings

A party to national proceedings, like the Italian “Procura della Repubblica”, 40 cannot ask the European Court of Justice for a preliminary ruling, since its role in those proceedings is not to rule on an issue in complete independence but is instead

³⁷⁴ Case C-54/96, *Dorsch Consult*, [1997] ECR I-4961, para. 23.

³⁷⁵ Case C-516/99, *Schmid* [2002] ECR I-4573, paras 34 et seq.

³⁷⁶ Case C-24/92, *Corbiau* [1993] ECR I-1300, paras 16 and 17.

³⁷⁷ Case C-517/09, *RTL Belgium* [2010] (not yet published in the ECR), 36, 39–42, 44–46.

³⁷⁸ Case C-53/03, *Syfait and others* [2005] ECR I-4609, paras 29 et seq.

³⁷⁹ Case C-109/07, *Pilato*, [2008] ECR I- 03503.

³⁸⁰ Case C-53/03, *Syfait and others* [2005] ECR I-4609, paras 29 et seq.

³⁸¹ Case C-125/04, *Denuit and Cordenier* [2005] ECR I-923, para. 13 and the case law cited.

to act as **prosecutor** in the proceedings and to submit that issue, if appropriate, for consideration by the competent judicial body³⁸².

ee) Other

- 41 A judicial body of an international organization, such as the chamber of appeal of the European Schools, may not refer a request for a preliminary ruling, since it is part of an international organization which is distinct from the EU and the Member States³⁸³.

4. Creation of a possible informal procedure for referral eligibility

- 42 As dialogue and clarity between Member States and EU institutions are fundamental principles which are clearly enshrined in the preliminary ruling procedure found in Art. 267 TFEU and Art. 23 Statute ECJ and given the considerable number of referrals rejected as inadmissible, it would be advisable to instate an informal, dialogic procedure by which Member State bodies could ask the ECJ whether they qualify as “courts” or “tribunals” under Art. 23 and thus whether or not they are eligible to bring a request for preliminary ruling before the ECJ. This informal procedure, which need not necessarily include written submissions and which would precede the submission of a request for preliminary rulings, would enable the ECJ to easily answer questions of eligibility and thus forestall unnecessary requests for preliminary rulings from ineligible Member State bodies. This would in turn reduce the time and effort currently required of Member State bodies and the ECJ to answer questions of eligibility via a request for preliminary ruling.

- 43 **5. Obligation to refer questions to the ECJ. a) Obligation.** Pursuant to Art. 267 TFEU, if a preliminary question arises in the context of pending cases before a court or tribunal of a Member State, against whose decisions there is **no** judicial remedy under national law, that court **shall** bring the matter before the ECJ³⁸⁴. This is also the case if the respective court or tribunal has doubts concerning whether the national legislation at issue is compatible with the Constitution³⁸⁵, or if the Commission does not initiate infringement proceedings against the Member State concerned because of national legislation at issue³⁸⁶.

b) No obligation

- 44 However, the court or tribunal is **not obliged** to refer a matter to the ECJ for a preliminary ruling if its decisions may be appealed at its national High Court, even if such an appeal requires a preliminary assessment of its admissibility³⁸⁷. The same

³⁸² Joined Cases C-74/95 and C-129/95, *Criminal proceedings against X* [1996] ECR I-6609, 6635, para. 19.

³⁸³ Case C-196/09, *Miles and Others* [2011] (not yet published in the ECR), paras 37–39, 42–43, 46.

³⁸⁴ Case C-393/98, *Gomes Valente* [2001] ECR I-1327, paras 16 and case law quoted.

³⁸⁵ Case C-348/89, *Mecanarte-Metalurgica/Alfandego do Porto* [1991] I-3277, para. 46.

³⁸⁶ Case C-393/98, *Gomes Valente* [2001] ECR I-1327, paras 19.

³⁸⁷ Case C 99/00, *Lyckeskog* [2002] ECR I-4839, paras 16, 19.

applies for a court or tribunal of last instance hearing interim measures³⁸⁸ which are not binding for the court in the main proceedings³⁸⁹.

c) Acte clair

A court or tribunal against whose decisions there is no judicial remedy under national law is **required**, where a question of EU law is raised before it, to comply with its obligation to bring the matter before the Court of Justice **unless** it has established that the question raised is **irrelevant**; that the EU provision in question has **already been interpreted** by the ECJ; or that the correct application of EU law is **so obvious** as to leave no scope for any reasonable doubt (“**acte clair**”)³⁹⁰.

IV. Suspension of national proceedings and referral to the ECJ (paragraph 1, 1st sentence)

1. Introduction

It is exclusively a matter for the national court or tribunal to suspend the national proceedings and refer the matter to the ECJ for preliminary ruling. Thus, the parties to the national proceedings, which cannot undertake such referral on their own³⁹¹, play an important role in both convincing the national judge of the necessity of such referral and in influencing the contents of the preliminary question(s) and the reasons given in the request for preliminary ruling.

2. Contents of the request for a preliminary ruling

While the Rules of Procedure provide detailed provisions on e.g. the contents of an application³⁹², they said little with respect to the contents or structure of a request for a preliminary ruling. This *lacuna* has caused many national Courts or Tribunals to provide the ECJ with either incomplete and/or irrelevant information. The ECJ’s non-binding “**information note for references by national courts for preliminary rulings**”, which was meant to provide useful guidance for both the national Judges and parties, was only the first step towards improvement: the new Art. 94 RP ECJ, finally, provides parties with detailed rules for a request for preliminary ruling.

3. Timing of the referral

It is for the national magistrate to determine at what stage of the national proceedings he refers the question(s) to the ECJ, bearing in mind that it may well

³⁸⁸ Case 107/76, *Hoffmann-Laroche v Centrafarm* [1977] ECR 957.

³⁸⁹ Joined cases 35 and 36/82, *Morson and Jhanjan* [1982] ECR 3723, para. 10.

³⁹⁰ Case 283/81, *Cilfit* [1982] ECR 3415 et seq.; Case C-461/03, *Gaston Schul* [2006] ECR I-10513, para. 16.

³⁹¹ Case C-364/92, *SAT Fluggesellschaft* [1994] ECR I-43, para. 9.

³⁹² See Art. 38 RP ECJ, Art. 44 RP GC and Art. 35 RP CST.

be in the interest of an orderly administration of justice to seek the preliminary ruling after the oral hearing takes place in the national court³⁹³.

- 49 **4. Repeated referrals in the same matter. a) Not excluded.** The fact that judgments delivered on the basis of references for a preliminary ruling are binding on the national court does not preclude the national court to which such a judgment is addressed from making a further reference for preliminary ruling to the ECJ if it considers it necessary in order to further clarify a point which might then enable the court to give judgment in the main proceedings³⁹⁴. Such a reference may be justified when the national court encounters difficulties in understanding or applying the initial ECJ preliminary ruling; when it refers a fresh question of law raised by the previous procedure to the ECJ; or again when it submits new considerations which might lead the ECJ to give a different answer to a previously submitted question³⁹⁵.

b) Restraint required

- 50 There is nothing to prevent a national Judge from making a further reference for a preliminary ruling if his initial attempt was declared inadmissible, e.g. for lack of sufficient factual and/or legal reasons in the order of referral. On the contrary, such reapplication of a request for primary ruling is encouraged (see also Art. 104(2) RP ECJ) as it necessarily involves learning from an order of inadmissibility. Referring a further request for preliminary ruling in the same matter should nevertheless be limited to cases of genuine necessity. Moreover, the national court or tribunal may not, through such further reference, question the validity of the ECJ's initial judgment³⁹⁶.

V. Notification by the Registrar (paragraph 1, 2nd sentence)

1. Limited list of addressees

- 51 The Registrar of the ECJ furnishes the order for reference to the **parties** of the main proceedings³⁹⁷, including any intervening parties³⁹⁸, all **Member States**, and the **Commission**. While until recently the order was also furnished to the Council, the Parliament and the European Central Bank in those cases concerning the interpretation or the validity of a legal act of the Council, such an order is now furnished "to the institution, body, office or agency of the Union which adopted the act the validity or interpretation of which is in dispute"³⁹⁹. This list of actual and

³⁹³ Joined cases C-277/91, C-318/91 and C-319/91, *Ligur Carni* [1993] ECR I-6621, para. 16 et seq.

³⁹⁴ Case 14/86, *Pretore di Salò* [1987] ECR 2545, para. 12.

³⁹⁵ Case 69/85, *Wünsche v Germany* [1986] ECR 947, para. 15 and Case C-446/00, *Kaba* [2003] ECR I-2219, para. 39.

³⁹⁶ Case 69/85, *Wünsche v Germany* [1986] ECR 947, paras 13–16.

³⁹⁷ Case 62/72, *Bollmann* [1973] ECR 269.

³⁹⁸ Case C-379/98, *PreussenElektra* [2001] ECR I-2099, 2173.

³⁹⁹ Art. 23 (1), 2nd sentence Statute ECJ.

potential addressees is exhaustive⁴⁰⁰. Thus the Registrar may not notify the order to any interested third party who does not appear on this list⁴⁰¹, let alone admit them as “interveners”⁴⁰².

2. Notifying the order

Only the order proper is furnished, not the files of the main proceedings. For this reason alone the order for reference must indicate the factual and legal contents in an exhaustive and self-explanatory manner in order to enable the addressees to in turn submit useful observations⁴⁰³.

VI. Written observations (paragraph 2)

1. Time-limit

Within **two months** (plus ten days to allow for varied post times due to distance)⁴⁰⁴ dating from the official notification of the request for preliminary ruling, the addressees of the order of reference⁴⁰⁵ have the possibility, but not the obligation, to hand in written observations regarding the question(s) referred by the national Judge⁴⁰⁶. In the case of the parties to the main proceedings, this time-limit is *de facto* considerably longer, since the referral constitutes the first time they were informed about the case referred to the ECJ.

2. No possibility of extension. a) Two months. The time-limit cannot be extended and the addressees may not hand in any further written submission or observations after the two-month-and-ten-day time-limit is passed. In the case of expedited proceedings⁴⁰⁷, which are very rare in practice, this time-limit is much shorter; nevertheless, it is never less than 15 days. In the case of the increasingly more frequent urgent proceedings⁴⁰⁸, however, the time limit may be even shorter.

b) Too rigid?

The lack of possibility to request an extension of the time-limit raises the question of its fairness, in particular since elsewhere in the RP ECJ the rules are less rigid: for example, the defendant in a direct application case is not prevented from requesting an extension of the time-limit for the purpose of its statement of

⁴⁰⁰ Case 19/68, *di Cicco* [1968] ECR 689.

⁴⁰¹ Case 19/68, *di Cicco* [1968] ECR 707, 716 et seq.

⁴⁰² Case 6/64, *Costa/ENEL* [1964] ECR 1307 et seq.

⁴⁰³ See comments regarding Art. 94 RP ECJ.

⁴⁰⁴ The additional 10 days on account of distance apply to all EU jurisdictions, see Art. 51 RP ECJ, Art. 102 (2) RP GC and Art. 100 (3) RP CST.

⁴⁰⁵ See Art. 23 (2) Statute ECJ as amended.

⁴⁰⁶ See also “Notes for the Guidance of Counsel”, pages 16–17.

⁴⁰⁷ Art. 105 RP ECJ.

⁴⁰⁸ Art. 107 RP ECJ.

defence⁴⁰⁹. This applies even in the cases before the GC and the CST, where the time-limit may also be extended upon request, even though the defendant benefits from *two* months from the outset. The absence of any possibility of extension in requests for referrals may arise from the circumstance that requests for referrals tend to involve many parties and that extensions “à la carte” might complicate the administration by the Registry – and thus prove detrimental to the average duration of these proceedings. But the fact remains that addressees of a referral receive the same non-extendable, two-month time-limit as parties to an appeal do, while in contrast to an appeal the addressees of the referral, apart from the parties to the main proceedings, do not know the case beforehand. Additionally, the number and complexity of questions referred to the ECJ varies from one case to another, making the two month time-limit quite generous in certain cases and quite restrictive in others. Nevertheless, there is ultimately no mandatory reason for making the time-limit extendable, since Member States and institutions normally have the necessary resources to cope with the workload a complex referral might generate.

- 56 **3. Written observations. a) Introduction.** The addressees may choose whether or not they submit “statements of case” or “written observations” to the ECJ. These are **synonyms**, which reflect the discretionary power of the addressees regarding the kind of written submission they wish to hand in, the structure they may opt for, etc.

b) Language

- 57 Written observations need to be drafted in the **language of procedure** chosen by the national court or tribunal. This rule does not apply to Member States, which may use their own official language⁴¹⁰ since the Registrar will subsequently provide a translation into the language of procedure.

- 58 **c) Contents of written observations. aa) Within the framework of the questions.** The order of reference in general and the question(s) referred to the Court in particular are the parameters within which the written submission needs to remain. Thus, the addressees may not alter the contents of the questions referred⁴¹¹, let alone add new questions.

bb) Comments on questions of admissibility

- 59 If an addressee of the order of reference is of the opinion that certain questions or even the entire referral for preliminary ruling is inadmissible, e.g. because the national body is not entitled to make such referrals to the ECJ, he may express his views in the written observations and/or during the oral hearing, preferably in a separate chapter. Given the non-contentious nature of the referral procedure, however, a formal plea of inadmissibility⁴¹² is itself inadmissible. While it is up to the addressee to decide whether to limit his observations to questions of admissi-

⁴⁰⁹ Art. 124 (3) RP ECJ.

⁴¹⁰ Art. 37 (1) (a) RP ECJ.

⁴¹¹ Case C-178/95, *Wiljo* [1997] ECR I-585, paras 29–30.

⁴¹² Art. 151 RP ECJ.

bility, it seems advisable to also respond to the questions found within the referral unless the referral seems *manifestly* inadmissible.

cc) Comments on the question(s) referred

Every addressee decides which question(s) he wishes to address. If necessary he 60 may provide his own interpretation of the question(s) as long as he takes due account of their wording, purpose and sequence and as long as the resulting observations remain within the limits of the questions referred. Every party should keep in mind that the ECJ may not respond to any additional question or sub-question raised by an addressee in his written submission⁴¹³, even if these questions should appear to be relevant for the purpose of main proceedings and/or interesting for related matters. In particular, the parties to the main proceedings should remember when providing their comments that the ECJ will always use the individual case to assess and answer the question(s) referred in view of larger legal principles of Community law, i.e. not strictly confined to the circumstances of the individual case referred.

dd) Role of the Commission

In line with its role as the custodian of the Treaties, the European Commission 61 submits written observations in all referral proceedings. By contrast, the participation of Member States in the individual proceedings depends upon a multitude of factors, in particular their direct and indirect legal, economic, financial and political interests.

4. Oral hearing

Unlike in contentious proceedings a party which did not hand in written 62 submissions in a timely manner may still appear at the oral hearing but risks such a hearing not taking place⁴¹⁴.

VII. EEA-Member States (paragraph 3)

Whenever the referral for preliminary ruling concerns the interpretation of the 63 EEA-Agreement the order of referral is also notified to the Member States of that Agreement.

⁴¹³ Case C-412/96, *Kainuun Liikenne and Pohjolan Liikenne* [1998] ECR I-5141, paras 22–24.

⁴¹⁴ See Art.99 RP ECJ.

VIII. Third States (paragraph 4)

1. Association agreements

- 64 Third States may take part in referral proceedings, under the conditions set out in paragraph 4⁴¹⁵. To date the association agreements between the EU and a multitude of third States do **not** contain such clause and thus a third State may not serve as party to a referral proceedings due to such an association agreement alone. To date, it remains unknown whether there is an objective need for these Tribunals and Courts to receive assistance from the ECJ regarding the interpretation of the association agreements concerned.

2. International jurisdictions

- 65 The Administrative Tribunal of the ILO (Geneva) has jurisdiction over, *inter alia*, two bodies created under the Convention of Lomé, since then replaced by the Agreement of Cotonou⁴¹⁶. Even though the staff regulations apply to both Centres and are part of EU secondary law, since they were adapted on the basis of the aforementioned agreements⁴¹⁷ and thus published in the OJEU the Administrative Tribunal has no right of referral over them. However, since all three EU jurisdictions have contributed to create an abundant case law regarding staff matters, said Tribunal should be in a position to interpret those staff regulations even in the absence of any possibility of referral.

IX. Excursus: Is there a need for a filter mechanism?

1. No need for immediate action

- 66 The debate⁴¹⁸ on the reform of the EU, which took place prior⁴¹⁹ to and after⁴²⁰ the Treaty of Nice also focused on the future of the European judicial system⁴²¹. Many observers considered this future precarious, threatened by the ECJ's work load and the substantial increase of the number of cases expected from the then forthcoming massive enlargement of 2004. One of the points of debate was thus

⁴¹⁵ See Council Decision 2002/653/EC, OJEC 218 of 13.8.2002, p. 1.

⁴¹⁶ The Centre for Technical Assistance in Agriculture (CTA) and the Centre for the Development of Enterprise (CDE).

⁴¹⁷ Which, pursuant to the ECJ's case law, is part of EU law.

⁴¹⁸ See overview in *Craig/De Búrca*, EU Law, third edition, 2002, p. 473 et seq.

⁴¹⁹ See e.g. *Scorey*, ELR 1996, 224 et seq.

⁴²⁰ See e.g. *Timmermanns*, CMLR 2004, 393 et seq.; *Jacobs* ELR 2004, 823 et seq.

⁴²¹ See also the ECJ's reflection papers: "The future of the judicial system of the European union" (may 1999); "Contribution by the Court of Justice and the Court of First Instance to the Intergovernmental conference" and "The EC Court of Justice and the institutional reform of the European Union" (April 2000).

whether the right to request a preliminary ruling should be limited, and if so in which manner, in order to curb the ECJ's work load.

To date the fears of a dramatic increase of cases at the ECJ have not become reality;⁴²² Between 2000 and 2009 the overall number of new cases lodged at the ECJ rose from 503 to 561 per year and the number of referrals increased from 224 to 302. During the same period the average duration of proceedings did not rise. On the contrary, in the case of referrals for preliminary rulings it continuously decreased, from 21.6 in 2000 to 16.4 months⁴²³ in 2011. Even though the way towards the "ideal" average duration of 12 months⁴²⁴ still seems quite long, a substantial reform of the referral procedure, e.g. by limiting the right to refer questions to the ECJ, does not appear as necessary. This does not rule out alternative measures to reduce referrals and to e.g. regulate the modalities of an order of referral, which might include a limitation of the number of pages similar to the page number limitation which already exists concerning applications in direct challenges⁴²⁵.

2. A difficult tightrope

Despite the current lack of any pressing need for action, the various options to limit the right to referral discussed at the time raise complex legal questions, which can be outlined as follows:

a) Limitation "at the source"?

At first sight, limiting⁴²⁶ the right to refer preliminary questions to the courts of last instance within each Member State⁴²⁷ seems an attractive idea to reduce ECJ case load. But this would disregard the fact that approximately three quarters of all referrals originate from lower courts and tribunals, which means that these instances essentially serve as the protagonists of this extraordinarily successful instrument⁴²⁸ of European integration⁴²⁹. The national courts of first instance and other lower national courts⁴³⁰ thus initiated proceedings to establish such fundamental cornerstones of EU constitutional law⁴³¹ as the principles of direct effect⁴³², supremacy⁴³³, and liability of Member States in case of infringement of EU law⁴³⁴. Moreover, one must remember that the referral procedure provides an essential

⁴²² See *Rasmussen*, CMLR 2000, 1081.

⁴²³ "Statistics of Judicial Activity of the Court of Justice", *Annual Report of the European Courts of Justice 2011*, p 14.

⁴²⁴ *Van Gerven*, ELR 1996, 218; *Dryberg* ELR 2001, 293.

⁴²⁵ See e.g. paras 43 and 44 of the ECJ's "Practice directions relating to direct applications and appeals".

⁴²⁶ *Rasmussen*, CMLR 2000, 1092.

⁴²⁷ As was the case in the former Art. 68 EC-Treaty.

⁴²⁸ *Allot*, ELR 2000, 540.

⁴²⁹ *Jacqué/Weiler*, CMLR 1990, 187.

⁴³⁰ *Barnard/Sharpston*, CMLR 1997, 1164.

⁴³¹ *Tridimas*, CMLR 2003, 11 speaks of the "constitutionalization of the Treaties".

⁴³² Case 26/62, *Van Gend en Loos* [1963] ECR I.

⁴³³ Case 6/64, *Costa v ENEL* [1964] ECR 585, 593.

⁴³⁴ Joined Cases C-6/90 and 9/90, *Francovich and others* [1991] ECR I-5357.

means by which all natural and legal persons may have the validity of an act of secondary law assessed or a legal act interpreted⁴³⁵. Limiting referrals to courts of last instance would, in many instances, prevent parties from accessing the Court of Justice, or to limit it to those who can afford it in terms of time and fees. This would appear as a disproportionate, undemocratic way to reduce the workload of the Court of Justice. Moreover, in order to justify its restrictive interpretation of the conditions for admissibility laid down in the fourth paragraph of the former Art. 230 EC (now Art. 263 TFEU) the Court of Justice has always emphasised that where natural or legal persons cannot directly challenge EU measures of general application, they are able, depending on the case, either indirectly to plead the invalidity of such acts before the EU Courts or to do so before the national Courts. Such persons may do so by asking national Courts, which lack jurisdiction to declare those measures invalid⁴³⁶, to refer cases to the Court of Justice for a preliminary ruling on validity⁴³⁷. This reasoning would turn into pure cynicism if referrals were limited to courts of last instance, as the Treaty would then no longer provide “a complete system of legal remedies and procedures designed to ensure judicial review of the legality of acts of the institutions”⁴³⁸.

b) Filter at the level of the ECJ?

- 70 It has also been suggested, as an alternative, that the Court of Justice should be entitled to select those questions which are new, complex or important and thus genuinely require an answer⁴³⁹. This view is inspired by the “certiorari”-mechanism applied by the US Supreme Court, but fails to consider that these jurisdictions fundamentally differ from one another⁴⁴⁰, since there is no direct hierarchy between the Court of Justice in Luxembourg and the national courts, but rather a more cooperative, horizontal relationship. Moreover, the national tribunals and courts⁴⁴¹ could perceive such a “filter” as a disincentive or even a form of EU paternalism, thus deterring them from referring questions to the ECJ.

Article 23a [Expedited and urgent procedures]

(1) The Rules of Procedure may provide for an expedited or accelerated procedure and, for references for a preliminary ruling relating to the area of freedom, security and justice, an urgent procedure.

(2) Those procedures may provide, in respect of the submission of statements of case or written observations, for a shorter period than that provided for by Art. 23, and, in derogation from the fourth paragraph of Art. 20, for the case to be determined without a submission from the Advocate General.

⁴³⁵ As the ECJ stresses in Case C-263/02 P, *Jégo-Quéré* [2004] ECR I-3425, paras 29–31 and Case C-50/00 P, *Unión de Pequeños Agricultores v Council* [2002] ECR I-6677, paras 39 and 41; see also Case T-18/10, *Inuit Tapiriit Kanatami A. O. v Council* [2011] (not yet published in the ECR), paras 36 et seq.

⁴³⁶ Case 314/85, *Foto-Frost* [1987] ECR 4199, para. 20.

⁴³⁷ Case C-50/00 P, *Unión de Pequeños Agricultores v Council* [2002] ECR I-6677, para. 40.

⁴³⁸ Case 294/83, *Les Verts* [1986] ECR 1339, para. 23.

⁴³⁹ See “The future of the judicial system of the European Union”, p. 27, www.curia.europa.eu.

⁴⁴⁰ As rightly emphasized by *Heffernan*, ICLQ 2003, 928 et seq.

⁴⁴¹ *Voss*, CMLR 1996, 1119 et seq.

(3) In addition, the urgent procedure may provide for restriction of the parties and other interested persons mentioned in Art. 23, authorised to submit statements of case or written observations and, in cases of extreme urgency, for the written stage of the proceedings to be omitted.

Outline:

I. Introduction	1
1. Overview.....	1
2. Referrals for preliminary ruling	2
3. Recently adopted amendments.....	3
4. Direct challenges and appeals	4
5. Similar and yet distinct remedies	5
a) Interim proceedings.....	5
b) Giving priority over other cases.....	6
II. Expedited preliminary ruling (Arts. 105 et seq. RP ECJ).....	7
1. Lex generalis	7
2. Requirements	8
3. New Art. 105 and 106 RP ECJ	9
4. Statistics.....	10
III. Urgent preliminary ruling (Arts. 107 et seq. RP ECJ)	11
1. Scope	11
2. Procedure.....	12
3. New provisions	13
4. Statistics.....	14

I. Introduction

1. Overview

Even though the average duration of referral proceedings has been declining for 1 years there are situations in which the current average duration of 16.4 (2011) months is too long⁴⁴². The Member States have thus created two specific referral procedures designed to substantially reduce the average duration of referral proceedings. Such exceptional proceedings must be urgent; and the requirements to qualify a case as urgent are, as one would expect, particularly demanding.

2. Referrals for preliminary ruling

Art. 23 a, which came into force on 1 March 2008, provides the legal basis for 2 both the “**expedited or accelerated referral procedure**”⁴⁴³, which was already introduced in 2000 by way of the former Art. 104 a RP ECJ, which became **Art. 105 to 106 RP ECJ**, and the more recent **urgent referral procedure**, which was laid down in the former Art. 104 b RP ECJ, now **Art. 107 to 114 RP ECJ**, and

⁴⁴² President V. Skouris, “The Court of Justice in 2011: Changes and Activity,” in Annual Report of the European Court of Justice. 2011 Version, p 3, accessed via www.curia.europa.eu.

⁴⁴³ These terms are synonyms, as other linguistic versions of Art. 23 a illustrate. In practice, the Court of Justice consistently uses the term “expedited procedure”.

only applies to questions relating to the area of **freedom, security and justice**⁴⁴⁴. Hence, the urgent referral procedure is a legal remedy tailored to the specificities of a particular area of law – a first in the history of the ECJ⁴⁴⁵.

3. Recently adopted amendments

- 3 The ex. Art. 104 a, and Art. 104 b to an even greater extent have been replaced by more elaborate rules, a total of 10 articles, the Art. 105 to 114 RP ECJ.

4. Direct challenges and appeals

- 4 There is also an “**expedited procedure**” for **direct challenges and appeals** to the ECJ (see Arts. 133 to 136 RP ECJ) and the GC (see Art. 76 a RP GC)⁴⁴⁶, even though Art. 23 a Statute ECJ does not refer to these legal remedies.

- 5 **5. Similar and yet distinct remedies. a) Interim proceedings.** The abovementioned expedited or accelerated proceedings need to be distinguished from interim proceedings, where the element of “urgency” is also a central parameter. But the aforementioned urgency is ancillary to direct applications and thus does not exist with respect to referrals for preliminary rulings.

b) Giving priority over other cases

- 6 The Rules of Procedure furthermore provide the opportunity to request that a case be given **priority** over others with respect to the timing of the oral hearing⁴⁴⁷.

II. Expedited preliminary ruling (Arts. 105 et seq. RP ECJ)

1. Lex generalis

- 7 Unlike Art. 107 et seq. RP ECJ, this procedure is not limited to a specific area of law. In principle this expedited procedure may thus be used for every referral procedure not covered by Art. 107 RP ECJ, which is *lex specialis*.

⁴⁴⁴ The “Supplement following the implementation of the urgent preliminary ruling procedure applicable to references concerning the area of freedom, security, and justice” states that this procedure is most specifically targeted to cases whose verdict will directly determine an individual’s detention or deprivation of liberty as well as to cases whose verdict will directly determine which court has jurisdiction over child custody cases.

⁴⁴⁵ This is not, however, unprecedented in overall ECJ case law: there are specific procedural rules (Art. 130 to 136 RP GC) with respect to disputes in the area of intellectual property rights in the GC Rules of Procedure.

⁴⁴⁶ On average, an expedited procedure lasts 9.6 months (compared to a duration of 28.4 months for completion of a direct challenge).

⁴⁴⁷ See. Art. 53 (3) RP ECJ, Art. 55 (2) RP GC and Art. 47 RP CST.

2. Requirements

The former Art. 104 a (1) RP ECJ applied only “**exceptionally**”, i.e., “where the 8 circumstances referred to establish that a ruling on the question put to the ECJ is a matter of **exceptional urgency**.” This requirement was very demanding indeed and, due to this very restrictive wording as well as the ECJ’s strict interpretation of said wording, such a request was only rarely granted.

3. New Art. 105 to 106 RP ECJ

Pursuant to Art. 105, the President may decide, on his own motion, to apply an 9 expedited procedure to a reference for a preliminary ruling. More importantly, this procedure does not ask for parties to fulfil the more stringent requirement of “exceptional urgency” but may apply “**where the nature of the case requires that it be dealt with within a short time**”. On the face of it, this requirement appears to be less demanding than the previous one. In any event, in the light of the almost homeopathical use of the former Art. 104 a (see marginal note 10 hereafter), a less restrictive interpretation of its requirements would seem appropriate.

4. Statistics

The former Art. 104 a RP ECJ was invoked 18 times by national Courts but only 10 granted 4 times, which gives an average success rate of 22 % for national Courts⁴⁴⁸. The average duration of an expedited procedure is 4.5 months, thus about 4 times faster than the average of 16.4 months in 2011 for a “normal” referral procedure.

III. Urgent preliminary ruling (Arts. 107 et seq. RP ECJ)

1. Scope

Previously, everything was laid down in one provision, the former Art. 104 b RP 11 ECJ, which detailed the “urgent procedure”⁴⁴⁹ provided for in Art. 23 a Statute ECJ, which is limited to referrals in the area of freedom, security and justice. There was a need for such a specific provision, since neither the normal⁴⁵⁰ nor the expedited procedure⁴⁵¹ is designed to cover referrals concerning inherently urgent situations pertaining to security, freedom, and justice. This is why the former Art. 104 b did not, by contrast to the former Art. 104 a, specify the required degree of urgency.

⁴⁴⁸ Case C-189/01, *Jippes* [2001] ECR I-5689, Case C-127/08, *Metock and others* [2008] ECR I-06241; Case C-550/09, *E and F* [2010] ECR I-06209 and Case C-66/08, *Kozłowski*, ECR I-06041, even though this case would have qualified for the former Art. 104 b RP ECJ, which had not yet come into force at the time it was referred.

⁴⁴⁹ The Case numbers bear the acronym “PPU” (“procédure préliminaire urgente”).

⁴⁵⁰ Art. 267 TFEU and Art. 23 Statute ECJ.

⁴⁵¹ Arts. 105 to 106 RP ECJ.

2. Procedure

- 12 In his order of referral the national Judge must nevertheless indicate the **reasons** why he believes that Art. 107 RP ECJ should apply. Art. 105 RP ECJ includes the same procedural steps as the normal referral procedure, while the urgent procedure limits and simplifies these steps. In order to facilitate the use of this new instrument the ECJ has published a **specific information note**⁴⁵².

3. New provisions

- 13 The former Art. 104 b has now been replaced by eight new provisions (Art. 107 to 114 RP ECJ), but which do not include any major substantive amendments.

4. Statistics

- 14 Between 1st March 2008 and 2009, the Court has granted an urgent procedure as stated in the former Art. 104 b RP ECJ five times⁴⁵³, followed by further 5 cases in 2010 and 2 in 2011, while 8 requests were refused between 2008 and 2011⁴⁵⁴. The average duration of such a procedure is 2.2 months while a normal reference for preliminary ruling takes about 17 months (a difference of 15 months or eight times faster!).

Article 24 [Measures of organisation and inquiry]

(1) The Court of Justice may require the parties to produce all documents and to supply all information which the Court considers desirable. Formal note shall be taken of any refusal.

(2) The Court may also require the Member States and institutions, bodies, offices and agencies not being parties to the case to supply all information which the Court considers necessary for the proceedings.

Outline:

I. Introduction	1
II. Producing documents and providing information (paragraph 1)	2
1. Measures of organisation of procedure	2
2. Measures of inquiry	3
3. Differences between both categories	4
a) Measures of organisation of procedure	4
b) Measures of inquiry	5
aa) Purpose	5

⁴⁵² See “SUPPLEMENT following the implementation of the urgent preliminary ruling procedure applicable to references concerning the area of freedom, security and justice”, www.curia.europa.eu.

⁴⁵³ Case C-195/08-PPU, *Rinau* [2008] ECR I-05271. Case C-296/08 PPU, *Santesteban Goicoechea* [2008] ECR I-06307, Case C-388/08 PPU, *Leymann and Pustovarov* [2008] ECR I-08993, Case C-357/09 PPU, *Kadzoev* [2009] ECR I-11189, Case C-403/09 PPU, *Detiček* [2009] ECR I-12193.

⁴⁵⁴ See the very informative “Report on the use of the urgent preliminary ruling procedure by the Court of Justice”, published on www.curia.europa.eu.

bb) Measures of inquiry excluded.....	6
c) Obligations of the parties and the Courts	7
d) No sanctions.....	8
4. Ex officio or upon request	9
5. Refusal to comply	10
a) No formal sanction.....	10
b) Confidentiality	11
III. Request for information (paragraph 2).....	12
1. General.....	12
2. Member States	13
3. Institutions	14

I. Introduction

In proceedings before the EU Courts⁴⁵⁵ the principle of party initiative (a 1 hallmark of the common law system) and the inquisitorial principle (a hallmark of civil law procedure) coexist, with the understanding that the latter can only be exercised within the limits of the pleas sought and legal grounds put forward. Art. 24 provides the legal basis for **measures of organisation** of procedure⁴⁵⁶ and, together with Art. 25 to 30 Statute ECJ, for **measures of inquiry**⁴⁵⁷. In addition, the ECJ may, pursuant to Art. 24 (2), request necessary information from Member States⁴⁵⁸ and institutions. This does not apply with respect to third parties⁴⁵⁹.

II. Producing documents and providing information (paragraph 1)

1. Measures of organisation of procedure

Paragraph 1 mentions the two most important measures of organisation, which 2 are complemented by further measures in the RP ECJ. That said, while Art. 64 RP GC contains a detailed but non exhaustive catalogue of measures of organisation, Art. 61 and 62 RP ECJ remain rather minimalistic. This tangible difference seems due to the fact that the GC has jurisdiction for all direct actions introduced by natural and legal persons, which often involve more complex factual situations than those facing the ECJ. Hence, the GC and even more so the CST, frequently adopt measures of procedural organisation. By contrast, the cases coming under the ECJ's jurisdiction are essentially if not exclusively about legal questions and thus do not require as detailed an organisation of procedure for procuring evidence, etc. That said, the ECJ may always adopt measures of organisation of the procedure directly on the basis of Art. 24 Statute ECJ.

⁴⁵⁵ See also Art. 46 Statute ECJ regarding the GC and Art. 7 (1) of the Annex of the Statute ECJ regarding the CST.

⁴⁵⁶ See Arts. 61–62 RP ECJ, Art. 64 RP GC and Art. 55 to 56 RP CST.

⁴⁵⁷ See Art. 63–75 RP ECJ, Art. 65 to 67 RP GC and Art. 57 to 58 RP CST.

⁴⁵⁸ See also their duty to cooperate as laid down in Art. 4 TEU.

⁴⁵⁹ See however Art. 24 (2) Statute ECJ as amended, whereby the ECJ may request “Member States and institutions, bodies, offices and agencies” to provide information.

2. Measures of inquiry

- 3 The EU Courts may also adopt the measures of inquiry within the meaning of Art. 25 to 30 Statute ECJ, and as detailed in the various RP⁴⁶⁰. In practice such measures are very rarely ordered.

4 3. Differences between both categories. a) Measures of organisation of procedure.

Measures of organisation of procedure ensure that cases are prepared for hearing, procedures carried out, and disputes resolved under the best possible conditions⁴⁶¹. Their purpose is in particular to ensure efficient conduct of the written and oral procedure, to facilitate the taking of evidence, to determine the points on which the parties must present further argument or which call for measures of inquiry, and to clarify the forms of order sought by the parties, i.e., their pleas in law and arguments and the points at issue between them⁴⁶². For the parties, such measures provide guidance as to which aspects the Judges consider to be both important and not yet sufficiently clarified.

- 5 b) Measures of inquiry. aa) Purpose. They enable parties to prove, if need be, that their factual statements are true⁴⁶³.

bb) Measures of inquiry excluded

- 6 If a party seeks measures of inquiry, but fails to produce the slightest evidence which might rebut the presumption of validity enjoyed by all legal acts of the EU, it is not appropriate for the Court to order the measures of inquiry requested⁴⁶⁴. There is no basis for measures of organisation of procedure or measures of inquiry requested by an applicant if the purpose of such measure is not to clarify pertinent pleas in law or to prove factual allegations, but is merely an attempt to obtain new elements for the purpose of the contentious case (“fishing expedition”)⁴⁶⁵. The same is true if the party does not identify either the precise facts which those measures are supposed to substantiate or how those measures could serve to establish the sanction-worthy nature of the conduct alleged to an EU body or institution⁴⁶⁶.

c) Obligations of the parties and the Courts

- 7 The assessment of the **appropriateness** of adopting a measure of organisation of procedure or a measure of inquiry is a matter for the Court, not for the parties. However, the latter may, if they see fit, challenge the choice made at first instance within the framework of an appeal. The parties are under an obligation to comply with both a measure of organisation of procedure and a measure of inquiry, but the

⁴⁶⁰ Arts. 63 et seq. RP ECJ, Art. 65 et seq. RP GC and Art. 57 et seq. RP CST.

⁴⁶¹ See e.g. Art. 64 (1) RP GC.

⁴⁶² See e.g. Art. 64 (2) RP GC.

⁴⁶³ Case T-175/97, *Bareyt v Commission* [2000] ECR SC II-1053, paras 89–91.

⁴⁶⁴ Case T-34/92, *Fiatagri* [1994] ECR II-905, para. 27.

⁴⁶⁵ Case T-175/97, *Bareyt v Commission* [2000] ECR SC II-1053, paras 89–91.

⁴⁶⁶ Case T-250/02, *Autosalone Ispira v EAEC* [2005] ECR II-5227, para. 100.

RP of the EU Courts enable that party to request that the confidential parts of such documents, if any, must be protected.

d) No sanctions

Neither the Statute of the ECJ nor the RP of the EU Courts impose sanctions in 8 case of a refusal to comply with such an order, the only possible response to a refusal being for the Court to draw the appropriate inferences from that refusal in the decision closing the case⁴⁶⁷.

4. Ex officio or upon request

Measures of organisation of procedure and, by definition, measures of inquiry, 9 may not only be ordered *ex officio*, but may also be requested by the parties. The modalities with respect to e.g. the explanations to be provided by the party concerned in order to obtain such measure(s), the timing, etc. are specified in the RP and to an even greater extent in the case-law. For instance, if a party requests that the other party should provide the Court with a certain document, it must explain why it considers its request to be relevant and in which way it may be decisive for the case.

5. Refusal to comply. a) **No formal sanction.** A party refusing to comply with a 10 request to e.g. provide the ECJ with a document or information **cannot be sanctioned**, e.g. by way of a fine⁴⁶⁸, but might face the consequences in terms of the outcome of the case.

b) Confidentiality

The **secret or confidential** nature of a document or information does not 11 automatically relieve the party concerned of its obligation to provide this information or to cooperate with the Courts⁴⁶⁹. This does not apply for documents which are confidential **by law**, such as lawyer-client correspondence protected under attorney-client privilege⁴⁷⁰, the duty of silence of doctors, or the right of the Member States to preserve their essential security interest⁴⁷¹.

III. Request for information (paragraph 2)

1. General

Member States, institutions, agencies and other EU bodies are under an obliga- 12 tion to supply the ECJ, upon request, with information, even if they are not parties

⁴⁶⁷ Case T-560/08 P, *Commission v Meierhofer* [2010] ECR II-01739, para. 73.

⁴⁶⁸ By contrast witnesses and expert witnesses failing to comply with a measure of enquiry face the risk of being fined, see Art. 27 Statute ECJ.

⁴⁶⁹ But see the exception in Art. 339 TFEU (secret of profession).

⁴⁷⁰ Case T-321/05, *AstraZeneca v Commission* [2010] ECR II-02805, para. 25.

⁴⁷¹ Art. 346 (1) *litera a*) TFEU.

to the case giving rise to such request. This instrument of fact-finding does not extend to natural or private legal persons not connected to the case.

2. Member States

- 13 They⁴⁷² are, by definition, best positioned to supply “**information**”, i.e. explanations relating to their respective legal sphere, such as the structure of the national system of higher education⁴⁷³, or the contents of a given tax legislation⁴⁷⁴. This source of information relieves EU Courts of having to investigate such matters themselves at a considerable price in terms of time and potential errors. EU Courts cannot, however, require the Member States concerned to provide documents.

3. Institutions

- 14 The same rule applies with respect to the institutions of the EU, and is particularly relevant in e.g. staff cases⁴⁷⁵.

Article 25 [Expert opinions]

The Court of Justice may at any time entrust any individual, body, authority, committee or other organisation it chooses with the task of giving an expert opinion.

1. Measure of inquiry

- 1 Of all the measures of enquiry, which are only rarely used anyway, the request for an expert opinion⁴⁷⁶ is probably the least used, despite the fact that the Judges can order such a request at any time, either *ex officio* or upon request by a party. There is, however, nothing to prevent the ECJ to request an expert opinion on a given subject *without* adopting a formal measure of inquiry. Such an expert opinion may cover, e.g. a comparative analysis on the legislation of the Member States on a given legislative concept.

2. Parties providing expert opinions

- 2 This provision does not apply to expert opinions submitted by a party on their own motion, as an annex to their written submissions.

⁴⁷² This provision does not apply to the EEA-States (Norway, Iceland and Liechtenstein).

⁴⁷³ Case T-82/92, *Cortez Jimenez A. O. v Commission* [1994] ECR SC II-237, para. 8.

⁴⁷⁴ Joined Cases T-195/01 R and T-207/01 R, *Government of Gibraltar v Commission* [2001] ECR II-3919, para. 41.

⁴⁷⁵ Case T-8/93, *Huet v Court of Auditors* [1994] ECR II-365, paras 14 et seq.

⁴⁷⁶ Art. 70 RP ECJ, Art. 70 RP GC and Art. 62 RP CST.

Article 26 [Hearing of witnesses]

Witnesses may be heard under conditions laid down in the Rules of Procedure.

The amounts of provisions (Art. 26 to 30 Statute ECJ) regarding the hearing of witnesses, which are detailed in the various Rules of Procedure, are in stark contrast to their reduced relevance in practice. The EU Courts will, in the vast majority of cases, be able to determine the matter properly on the basis of the forms of order sought, pleas in law and arguments presented during the written and oral procedure, and in light of the documents produced⁴⁷⁷.

Article 27 [Defaulting witnesses]

With respect to defaulting witnesses the Court of Justice shall have the powers generally granted to Courts and tribunals and may impose pecuniary penalties under conditions laid down in the Rules of Procedure.

While a refusal to produce documents or to provide information⁴⁷⁸ does not entail any formal sanction, any defaulting witness may, depending on the relevant legislation of his country of origin, have to pay a fine of up to EUR 5.000⁴⁷⁹.

Article 28 [Oath]

Witnesses and experts may be heard on oath taken in the form laid down in the Rules of Procedure or in the manner laid down by the law of the country of the witness or expert.

1. Purpose

Hearing witnesses and experts under oath is a classical fact-finding instrument in the judicial system of the Member States. Putting witnesses and experts under a certain pressure or, rather, responsibility, by hearing them under oath⁴⁸⁰ is a legitimate means in order to provide an exhaustive and objective contribution to the Court's truth-finding mission. It is likely to apply, if at all, only if the statement of witness or expert is vital for the outcome of the proceedings.

2. Not applicable to measures of organisation

A party heard in the context of a measure of organisation of procedure cannot be heard under oath.

⁴⁷⁷ Case T-333/03, *Masdar v Commission* [2006] ECR II-4377, paras 145, 149.

⁴⁷⁸ Art. 24 Statute ECJ.

⁴⁷⁹ Art. 69 RP ECJ and Art. 69 (2) RP GC.

⁴⁸⁰ See e.g. Case T-203/96, *Embassy Limousines v Parliament* [1998] ECR II-04239, para. 102; Case T-151/94, *British Steel v Commission* [1999] ECR II-00629, para. 508.

Article 29 [Letter rogatory]

- (1) The Court of Justice may order that a witness or expert be heard by the judicial authority of his place of permanent residence.
- (2) The order shall be sent for implementation to the competent judicial authority under conditions laid down in the Rules of Procedure. The documents drawn up in compliance with the letters rogatory shall be returned to the Court under the same conditions.
- (3) The Court shall defray the expenses, without prejudice to the right to charge them, where appropriate, to the parties.

Even though hearing witnesses or experts remains rare in practice, this instrument for obtaining judicial assistance from abroad might gain some significance in an enlarged Union.

Article 30 [Violation of an oath]

A Member State shall treat any violation of an oath by a witness or expert in the same manner as if the offence had been committed before one of its Courts with jurisdiction in civil proceedings. At the instance of the Court of Justice, the Member State concerned shall prosecute the offender before its competent Court.

This provision, which is hardly of any practical relevance, illustrates not only the particular importance and significance of the oath, but also that the EU has now a competence of its own to have a violation of an oath sanctioned by the Member State concerned.

Article 31 [Public hearing]

The hearing in Court shall be public, unless the Court of Justice, of its own motion or on application by the parties, decides otherwise for serious reasons.

Outline:

I. Introduction	1
II. Principle	2
1. Oral hearing	2
2. Other public sessions	3
III. Modalities	4
1. General	4
2. Misuse of rights	5
3. Access by the media	6
IV. Exceptions	7
1. Congregations other than oral hearings	7
2. Exclusion for “serious reasons”	8
3. Application by the parties	9

I. Introduction

This provision, detailed in the Rules of Procedure of the three Courts⁴⁸¹, reflects 1
the principles of due process, fair trials, and public hearings enshrined in the
fundamental judicial rights found in Art. 6 (1) ECHR, as well as its exceptions.

II. Principle

1. Oral hearing

The right granted to the “public”, i.e. any third person regardless of whether he is 2
an EU citizen or not, to witness the oral hearing at an EU Court as a spectator, is
designed to prevent a secret justice and to enhance public confidence in the
European judicial system.

2. Other public sessions

Judgments are always handed down in open Court⁴⁸².

3

III. Modalities

1. General

The person in charge of applying the house rules, i.e. the President of the judicial 4
body or the Presidents of the chambers, defines the rules of access for third persons.
The access to the premises of the EU Courts is only granted after a security check⁴⁸³,
as is the case with all EU institutions.

2. Misuse of rights

Individuals who misuse the right of access or who are under a house ban may be 5
excluded from access to the premises or a given oral hearing.

3. Access by the media

Access by the media to the premises, the right to take pictures etc. are detailed in 6
the “**Services for the media**” and, in particular, the “**Guide for journalists**”
available on the ECJ’s website.

⁴⁸¹ Art. 79 RP ECJ, Art. 57 RP GC and Art. 51 RP CST.

⁴⁸² Art. 37 Statute ECJ.

⁴⁸³ Control of identity and metal detector at the entrance.

IV. Exceptions

1. Congregations other than oral hearings

- 7 While the public has access to the “hearing in Court” meaning the oral hearing during which the parties plead and the Judges ask questions, etc., it does obviously not have any access to the sittings of the Judge Rapporteur, and/or the deliberations of the Judges. The same applies to internal proceedings involving hearings, such as the hearing in cases of revocation of a Judge or Advocate General⁴⁸⁴.

2. Exclusion for “serious reasons”

- 8 Excluding the public from the oral hearing is an exceptional measure and must thus be interpreted narrowly. It is unclear, however, what exactly is to be understood by “serious reasons”. The cases heard by the EU Courts hardly lead to situations where the classical reasons for excluding the public, such as the interests of morals, public order, and national security in a democratic society, or cases involving juveniles, apply. In practice, it is limited to those cases where the protection of the **private life** of parties is at stake, such as medical secrets in certain staff cases, or similar cases, where the protection of the individual interests clearly prevails over the principle a transparent judiciary.

3. Application by the parties

- 9 Each party may lodge a reasoned request for a closed hearing, which may concern either the whole hearing or a part of the hearing and may be made at any time.

Article 32 [Hearing experts, witnesses and parties]

During the hearings the Court of Justice may examine the experts, the witnesses and the parties themselves. The latter, however, may address the Court of Justice only through their representatives.

1. General

- 1 Such a hearing, which is detailed in the various Rules of Procedure and is a relatively rare event, may take place prior to, during, or even after the date of the oral hearing. It relates to specific facts, which have been defined beforehand.

⁴⁸⁴ Art. 6 Statute ECJ.

2. Parties

The purpose of the hearing of witnesses and experts is that they address the Court of Justice directly. By contrast, while the obligation for the parties to be represented by a lawyer or counsel may be consistent with their general obligation to be represented, such restriction of in-Court expression to legal representatives with no exception whatsoever may, in some instances, distort or even hamper a proper fact finding. In cases involving complex and/or very technical facts, as it the case in a number of proceedings at the GC and the CST, the obligation for the party to address the Court through its representatives implies that the latter understand on the spot what the parties wish to explain or express. If the party's answer is too technical and time too short, which is the typical situation of an oral hearing, there is a risk that not all of it reaches the Judges. Thus, it might be easier, in some carefully determined instances, if parties could be allowed to address the Court directly.

Article 33 [Minutes of the hearing]

Minutes shall be made of each hearing and signed by the President and the Registrar.

The details of such minutes, which are drafted in the language of the procedure, are laid down in the Rules of Procedure⁴⁸⁵ and the Instructions to the Registrar⁴⁸⁶. They are not a summary, let alone a verbatim record of everything said during the oral hearing. The verbatim record is provided by an audio recording of the hearing, which may be used by the Judges and the Advocate General, if necessary. The minutes are a rather minimalistic document, which contains administrative indications such as the date and the place of the oral hearing, the names of the persons attending the meeting, the duration of the various pleadings, and the phase of questions and answers. In addition, the minutes indicate relevant procedural acts, such as the withdrawal of a plea sought or of a given legal ground. Thus the party concerned does not have to hand in a specific written submission to that effect.

Article 34 [Case list]

The case list shall be established by the President.

1. Definition

The “case list”, i.e. the sequence by which the cases are heard, is determined by the President of the chamber in which they are pending. It is determined when the evidence finding or other measures preparing the oral hearing are accomplished. Otherwise, the sequence is determined by the chronological order in which the cases are lodged.

⁴⁸⁵ Art. 84 RP ECJ, Art. 63 (1) RP GC and Art. 53 RP CST.

⁴⁸⁶ See. e.g. Art. 7 (2) of the Instructions to the Registrar of the ECJ.

2. Internal document

- 2 The case list is an internal document, which thus cannot be accessed by the parties. On the ECJ's website the dates for the hearings are published approximately two to three weeks in advance, while the parties are informed in writing approximately four to six weeks beforehand.

3. Exceptions from chronological order

- 3 Requests for interim measures⁴⁸⁷, cases determined pursuant to an expedited procedure⁴⁸⁸ or which are given priority over others⁴⁸⁹, and references for a preliminary ruling which qualify for either an expedited procedure⁴⁹⁰ or are dealt with under an urgent procedure⁴⁹¹ are, by definition, heard much earlier than all other cases.

Article 35 [Secrecy of deliberations]

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

1. Purpose

- 1 Art. 6 ECHR provides that the oral hearing and the handing down of judgments must, as a rule, take place in public. This expression of the principle of transparency may not, however, interfere with the independence of the Judges, which is why it does not apply with respect to deliberations of the Court. Thus, the secret of deliberations applies at all times without *any* exception and is explicitly subject to the Judges' oath⁴⁹².

2. Scope

- 2 The term "deliberations" covers every internal view a Judge has ever expressed in a given case, be it in writing or orally, as well as the subsequent voting. It is clear from the provisions' wording that the secret of deliberations applies at all times with respect to all cases and proceedings, regardless of whether the case concerned is currently pending or has been closed a long time ago.

3. Obligations for parties and third persons

- 3 The preservation of the secret of deliberations also implies that neither the parties nor any third person shall address such issues, be it directly or indirectly, with

⁴⁸⁷ Arts. 160 et seq. RP ECJ, Art. 104 et seq. RP GC and Art. 102 et seq. RP CST.

⁴⁸⁸ Art. 133 RP ECJ and 76 a RP GC. The RP of the CST do not provide such rules.

⁴⁸⁹ Art. 53 (3) RP ECJ and Art. 55 (2) RP GC. The RP of the CST do not provide such rules.

⁴⁹⁰ Arts. 105–106 RP ECJ.

⁴⁹¹ Arts. 107 et seq. RP ECJ.

⁴⁹² Art. 10 Statute ECJ.

neither members of staff of the EU Courts in general nor a Judge, Advocate-General, the Registrar and “référéndaires” in particular. It is needless to say that a request for access to documents on the basis of transparency rules is bound to be unfounded.

Article 36 [Statement of reasons]

Judgments shall state the reasons on which they are based. They shall contain the names of the Judges who took part in the deliberations.

Outline:

I. Introduction	1
II. Quantity and quality of reasoning.....	2
1. Differences between the judicial instances.....	2
a) Court of Justice	2
aa) Critics.....	2
bb) Comment	3
b) General Court.....	4
c) CST	5
2. Common constraints	6
a) Translation	6
b) Comment	7
3. Instructional judgments	8
a) General.....	8
b) ECJ.....	9
c) GC	10
III. Indicating the names of the participating Judges.....	11

I. Introduction

The obligation to state reasons⁴⁹³ in judgments and orders is a general principle of law⁴⁹⁴ enshrined in Art. 6 ECHR and is thus a fundamental pillar of the rule of law. Its purpose is to enable the parties to proceedings to understand the operative part of the decision handed down and to force the Judges to explain and justify their views accordingly. The reasons and the names of the Judges who took part in the deliberations are merely two out of a catalogue of indications which need to be indicated in those decisions⁴⁹⁵.

II. Quantity and quality of reasoning

1. Differences between the judicial instances. a) Court of Justice. aa) Critics. In the past the Court of Justice, and in particular the ECJ, has been criticised for the

⁴⁹³ Art. 296 TFEU contains analogous obligations for legal acts of the EU legislature.

⁴⁹⁴ Case C-283/90 P, *Vidrányi v Commission* [1991] ECR I-4339, para. 29.

⁴⁹⁵ See also Art. 87 RP ECJ; Art. 81 RP GC and Art. 79 RP CST.

allegedly “apodictic” way it reasons its judgments. Critics held that the reasoning was often too short, too affirmative or “too sloppy”, rather than detailed and exhaustive, as one would expect under the rule of law. In many instances, critics were actually aiming at the substance, e.g. that the ECJ tends to ignore the will of the legislator⁴⁹⁶, which triggered recurrent debates about the obligation of judicial restraint.

bb) Comment

- 3 One should not forget though that the “aridity” of certain Judgements in terms of reasoning is a structural issue, as it often reflects the difficulty of finding the required consensus between the Judges. Also, as of the mid seventies the judgments became easier to read and understand (and thus sometimes more brief), when the ECJ abandoned the technique of providing reasons by way of recitals⁴⁹⁷. By contrast, the debate as to whether the ECJ is overstepping its powers is a substantive, i.e. not a procedural issue.

b) General Court

- 4 The Judgements of the GC tend to be amply reasoned. This is certainly due to the factual nature of these proceedings, in contrast to the cases heard by the ECJ, as well as to the fact that parties may challenge GC judgments by an appeal on points of law, and thus insufficient reasoning on the part of the GC can be examined *ex officio*⁴⁹⁸. Thus, the GC tends to add to its legal arguments as many factual arguments as possible or appropriate in order to make its judgments as “appeal-proof” as possible. That said, when giving reasons the GC is not required to respond in detail to every single argument advanced by the applicant, be it in first instance⁴⁹⁹ or upon appeal⁵⁰⁰, particularly if the argument was not sufficiently clear and precise and was not adequately supported by evidence.

c) CST

- 5 The CST also, as the GC, hears cases in first instance, and thus tends to hear cases of a factual nature. Since its decisions can be appealed to the GC the CST’s decisions are normally amply reasoned.
- 6 **2. Common constraints.** a) **Translation.** While every judgment needs to state the reasons on which it is based, all EU Judges, regardless of the instance, face a number of constraints which go beyond those of their national colleagues. The need to translate every judgment⁵⁰¹ into the other official languages has a clear bearing on

⁴⁹⁶ *Roman Herzog and Lüder Gerken*, Frankfurter Allgemeine Zeitung of 8.9.2009.

⁴⁹⁷ “Attendu que...”, “Considérant que...”, etc.

⁴⁹⁸ See e.g. Case C-185/95 P, *Baustahlgewebe v Commission* [1998] ECR I-8417, 8497.

⁴⁹⁹ Joined Cases T-191/98, T-212/98 to T-214/98, *Atlantic Container AO v Commission* [2003], ECR II-3275, para. 90.

⁵⁰⁰ Case C-274/99 P, *Connolly v Commission* [2001], ECR I-1611, para. 121 and the case law cited.

⁵⁰¹ Many decisions of the CST exist only in the language of procedure, which is French in approximately 80 % of all cases. A summary is available in the other official languages, but is not published on the ECJ’s website.

the choice of legal terminology and the structure of the reasoning. Whenever suitable the Judges will use **text modules** when quoting earlier case-law e.g. on the principles governing admissibility or basic principles of EU law.

b) Comment

While such rationalisation is understandable, it sometimes inevitably results in a 7
litany-like reasoning, in particular when the judgment is more confirmative rather than innovative. Since it is essentially looking at legal as opposed to factual aspects, the ECJ seems more exposed to this phenomenon than the GC and the CST, who often need to conduct voluminous assessments of facts. Some measures of rationalisation of the statement of reasons seem questionable, however: for example, the ECJ quite regularly refers to specific parts of the preceding Advocate General's opinion⁵⁰². While this is undoubtedly convenient and, by the same token, provides the Advocate General with a tangible feed-back, it amounts to *de facto* integrating the parts of the opinion concerned into the Judgment. Also, all three EU Courts tend, to various degrees, to use rather long sentences when stating reasons. In this respect they face a classical dilemma in that the fragmenting of sentences is normally in the interest of better readability, while it may well fragment and thus complicate the reasoning.

3. Instructional judgments. a) **General.** On some occasions the EU Courts not only 8
insert "*obiter dicta*", but opt for a particularly detailed reasoning which carries an instructional "lesson" or "message" for either the EU legislature or potential future applicants,

b) ECJ

In its judgment on a "total ban on tobacco advertising" the ECJ quashed 9
Directive 98/43/EC, while simultaneously outlining those legislative restrictions or advertising bans which would be in line with the then Art. 100 a EC Treaty⁵⁰³ when writing a new directive.

c) GC

In so far as the judgments of the GC contain messages, they are instead addressed 10
to the parties or potential applicants. In a major competition law case the applicants had filed very voluminous applications including over one hundred legal pleas and – industrial – quantities of annexes. The GC assessed every single plea and then held, even though it found that two pleas were well founded, that the applications amounted to a misuse and that the applicants had to bear their own costs even though they had won the case⁵⁰⁴.

⁵⁰² Case C-210/96, *Gut Springenheide* [1998] ECR I-4657, para. 25.

⁵⁰³ Case C-376/98, *Germany v Parliament and Council* [2000] ECR I-8419, paras 97 et seq.; see annotation of B. Wägenbaur, EuZW 2002, 404.

⁵⁰⁴ Joined cases T-191/98, T-212/98 to T-214/98, *Atlantic Container and others v Commission* [2003] ECR II-3275. This was before the GC introduced a limit to the number of pages of applications.

III. Indicating the names of the participating Judges

- 11 All decisions of the EU Courts indicate the names of the Judges who took part in the deliberations. Evidently, decisions do not indicate any element of deliberation, e.g. whether the voting took place unanimously or by a majority. Unlike US and UK Supreme Courts, the judicial system of the EU does not allow for the publication of **dissenting opinions**, presumably as this would weaken the authority of its Courts.

Article 37 [Handing down of judgments]

Judgments shall be signed by the President and the Registrar. They shall be read in open Court.

1. Judgments

- 1 This provision is a further expression of Art. 6 (1) ECHR and the common legal traditions of the Member States, as is the case with Art. 36 Statute ECJ. In practice only the **operative part**, i.e. not the judgment in full, is read in open Court. On the same day a paper version of the judgment is made available outside the Courtroom and is published on the ECJ’s webpage⁵⁰⁵.

2. Orders

- 2 These are also signed by the President and the Registrar and published on the ECJ’s website, but are not read in open Court. Not all judgments and only selected orders are published in the European Court Report.

3. Decisions and measures

- 3 The ECJ’s website is now even more user-friendly, since even seemingly marginal acts, such as decisions regarding reviews by the ECJ, are published. Even more importantly, research is no longer limited to the case law as of mid-2007.

Article 38 [Costs]

The Court of Justice shall adjudicate upon costs.

Outline:

1. Introduction	1
2. Costs of the proceedings	2
3. Court costs	3

⁵⁰⁵ All judgments are most easily accessible on: www.curia.europa.eu.

a) Rule.....	3
b) Comments.....	4
aa) Principle outdated.....	4
bb) Modalities.....	5
4. Taxation of costs.....	6

1. Introduction

The rules governing the adjudication upon costs are very similar, if not identical 1 in the case of the ECJ and the GC, while the CST has its own specific rules governing costs⁵⁰⁶. These rules cover three areas, i.e. the costs of the proceedings, meaning essentially the legal costs and expenses incurred by the parties; the Court costs; and the taxation of costs.

2. Costs of the proceedings

The EU Courts need to decide, in their final judgments and orders, which party/ 2 parties bear(s) the costs of the proceedings. This does not imply a decision on the actual amount(s) to be reimbursed as a result of such decision.

3. Court costs. a) Rule. Proceedings before the EU Courts are, as a rule, free of 3 charge, by contrast to the rules applicable in many, if not all Member States. The two exceptions provided in the Rules of Procedure (avoidable costs and costs for copies/translations), which are slightly stricter in the case of the CST (manifest abuse of process), are of little significance.

b) Comments. aa) Principle outdated. The underlying idea is most probably that 4 the absence of Court costs makes access to EU jurisdiction easier, in particular for natural and legal persons, who need to pay the fees and costs of their lawyer without knowing whether they will ultimately bear these costs – and those of the other party – or not. That said, over the decades the number of proceedings has not only increased, but many proceedings, in particular those heard by the GC at first instance, tend to be more complex and more voluminous than in the past. The resulting economic impact on the EU budget, in terms of Judges, “référéndaires” and other staff, registries, translators, interpreters, etc. is very considerable. These costs are likely to increase further both due to future enlargement and to the ECJ’s current proposal to increase the number of Judges at the GC by 12 to a total of 39 in order to enable this jurisdiction to cope with its heavy work load. The question is thus why all of these costs should be borne by the European tax-payer, with no direct contribution whatsoever from natural or legal persons? Is there an objective reason why e.g. a major company in a case where dozens or even hundreds of millions of euro are at stake does not in any way participate in the Court costs this case has generated? The same is true in case of an appeal.

⁵⁰⁶ See Arts. 137–146 RP ECJ, Art. 87 to 93 RP GC and Art. 86 to 94 RP CST.

bb) Modalities

- 5 As to the modalities of such contribution to the Court costs, there are probably good reasons to differentiate, to some extent, between the various legal remedies and to determine the Court costs on an *ad valorem* basis, within the principle of equal treatment.

4. Taxation of costs

- 6 Parties use this procedure as a last resort, i.e. in case they fail to reach an agreement on the amounts to be reimbursed. The purpose of taxation proceedings⁵⁰⁷ is to determine those expenses which were “necessarily incurred”⁵⁰⁸, such as lawyer’s fees and certain travel costs, and the amount of those expenses deemed to be necessary. Decisions on costs and orders regarding taxation matters cannot be appealed.

Article 39 [Interim proceedings and suspending enforcement]

(1) The President of the Court of Justice may, by way of summary procedure, which may, in so far as necessary, differ from some of the rules contained in this Statute and which shall be laid down in the Rules of Procedure, adjudicate upon applications to suspend execution, as provided for in Art. 278 of the Treaty on the Functioning of the European Union and Art. 157 of the EAEC Treaty, or to prescribe interim measures pursuant to Art. 279 of the Treaty on the Functioning of the European Union or to suspend enforcement in accordance with the fourth paragraph of Art. 299 of the Treaty on the Functioning of the European Union or the third paragraph of Art. 164 of the EAEC Treaty.

(2) The powers referred to in the first paragraph may, under the conditions laid down in the Rules of Procedure, be exercised by the Vice-President of the Court of Justice.

Should the President and the Vice-President be prevented from attending, another Judge shall take their place under the conditions laid down in the Rules of Procedure.

(3) The ruling of the President or of the Judge replacing him shall be provisional and shall in no way prejudice the decision of the Court on the substance of the case.

Outline:

I. Summary procedure (paragraph 1).....	1
1. Absence of details	1
2. Implementing rules	2
II. Jurisdiction (paragraph 2).....	3
III. Provisional ruling (paragraph 3).....	4
1. Ratio legis.....	4

⁵⁰⁷ See Arts. 144–145 RP ECJ, Arts. 91–92 RP GC and Arts. 91 to 92 RP CST.

⁵⁰⁸ See *B. Wägenbaur*, EuZW 1997, 197 et seq.

2. Comment	5
3. Provisional order	6

I. Summary procedure (paragraph 1)

1. Absence of details

The first paragraph of Art. 39 mainly echoes the legal basis in the TFEU and the EAEC-Treaty regarding a suspension of the execution of a decision, the adoption of interim measures, and the – far less prevalent – suspension of enforcement. A “summary procedure” is furthermore bound *“in so far as necessary to differ from some of the rules contained in this Statute”*.¹

2. Implementing rules

This rather arid legal framework is implemented through the various Rules of Procedure⁵⁰⁹ and even more so through the case law⁵¹⁰. In practice, these “summary procedures” are mainly characterised by the fact that there is only **one** exchange of written submissions, which are submitted within a short time-limit, and that an oral hearing remains the exception rather than the rule.

II. Jurisdiction (paragraph 2)

So far, summary procedures were heard by the **President** of the judicial body³ where the main procedure is pending, unless he is represented by another Judge⁵¹¹. The President is sometimes accompanied by the Judge Rapporteur, who attends as an observer. The new paragraph 2 enables the President to confer the powers to hear summary procedure to the Vice-President.

III. Provisional ruling (paragraph 3)

1. Ratio legis

The very purpose of “interim proceedings” would be negated if a resulting ruling⁴ could prejudice the decision of the Court or Tribunal on the substance of the case, i.e. the decision in the main proceedings. While paragraph 3 thus seems to state the obvious, the principle expressed is so fundamental that it needed indeed to be explicitly enshrined in the law.

⁵⁰⁹ See Art. 160–166 RP ECJ, Art. 104–110 RP GC and Art. 102–108 RP CST.

⁵¹⁰ See overview by B. Wägenbaur, EuZW 1996, 327 et seq.

⁵¹¹ In case of the GC and the CST the name of the Judge replacing the President, who changes on a yearly basis, is published in the OJEU and on the ECJ’s website.

2. Comment

5 In practice, the full compliance with this principle may prove to be difficult, depending upon the circumstances, since the Judge needs to assess the *prima facie* chances of success of the application in the main proceedings⁵¹². Thus, the *fumus boni juris* test may not be applied too generously, let alone become a formality, since there would be no proper justification for granting interim measures. Likewise, this test must not result in a too-detailed assessment of the merits of the case. On the other hand, there nevertheless needs to be enough proof in the resulting order that the test was carried out.

3. Provisional order

6 At the same time it is within the very nature of summary proceedings that an order may be adapted or retrieved in case of new facts, since interim orders do not have the binding force of a judgment⁵¹³. Orders of the GC and the CST may be appealed, unlike those of the ECJ.

Article 40 [Intervention]

(1) Member States and institutions of the Union may intervene in cases before the Court of Justice.

(2) The same right shall be open to the bodies, offices and agencies of the Union and to any other person which can establish an interest in the result of a case submitted to the Court. Natural or legal persons shall not intervene in cases between Member States, between institutions of the Union or between Member States and institutions of the Union.

(3) Without prejudice to the second paragraph, the States, other than the Member States, which are parties to the Agreement on the European Economic Area, and also the EFTA Surveillance Authority referred to in that Agreement, may intervene in cases before the Court where one of the fields of application of that Agreement is concerned.

(4) An application to intervene shall be limited to supporting the form of order sought by one of the parties.

Outline:

I. Introduction	1
1. Opportunity for natural and legal persons	1
2. Similar procedures	2
II. Member States and EU institutions (paragraph 1)	3
1. Privileged status	3
2. EU institutions.....	4
a) Definition.....	4

⁵¹² In addition to assessing the urgency and a balancing of interests, as the case may be.

⁵¹³ Case C-440/01 P (R), *Artegodan v Commission* [2002] ECR I-1489, para. 70.

b) European Data Protection Supervisor	5
3. Pending cases	6
a) Legal remedies	6
b) Exceptions	7
III. Bodies, offices, agencies and any other person (paragraph 2)	8
1. No privileged status	8
a) General	8
b) Bodies, offices and agencies of the Union	9
c) Any other person	10
aa) Natural and legal persons	10
bb) Territorial entities within the EU	11
cc) Associations	12
dd) Third States	13
2. Interest in the result of the case	14
a) Requirements	14
aa) Interest	15
bb) Result of the case	16
b) Irrelevant or insufficient elements	17
c) Inadmissibility of the main proceedings	18
3. Legal areas	19
a) Competition	19
aa) Admitted to intervene	19
bb) Rejected	20
b) Anti-Dumping	21
c) State aid	22
d) Other proceedings	23
e) Regional and territorial entities	24
aa) Admitted to intervene	24
bb) Rejected	25
f) Associations	26
aa) Admitted to intervene	27
bb) Not admitted to intervene	28
g) Trade unions	29
4. Interim proceedings	30
5. Appeal	31
6. Intervention excluded by law	32
a) Rule	32
aa) All natural and legal persons	32
bb) No matter their status	33
b) Exception	34
IV. EFTA-States (paragraph 3)	35
V. No altering of the subject-matter of the dispute (paragraph 4)	36
1. Principle	36
a) General	36
b) Room for new arguments and pleas	37
aa) General	37
bb) New arguments	38
cc) New pleas, but only with certain limits	39
c) Inadmissible arguments	40
d) No altering of the form of order sought	41
2. Exceptions	42
3. Procedural economy	43

I. Introduction

1. Opportunity for natural and legal persons

- 1 The possibility to intervene in a pending Court case⁵¹⁴ is **ancillary** in that it requires the existence of main proceedings, and yet it is important, in particular for **natural and legal persons**, who may thereby express their views in cases initiated by others. There is a hurdle, however, since natural and legal persons have to apply to be admitted as interveners and thus they must “establish an interest in the result of the case”, a requirement which also applies to bodies, offices and agencies of the Union. Member States and institutions are privileged in that they do not have to establish such interest. All interveners, once they are admitted, become a party in the main proceedings, but they do not benefit from the same autonomy in terms of pleas sought and legal grounds as do the main parties to the case.

2. Similar procedures

- 2 An intervention is always the result of a voluntary decision, since the Rules of Procedure do not provide for a compulsory intervention⁵¹⁵, except in the RP CST⁵¹⁶.

II. Member States and EU institutions (paragraph 1)

1. Privileged status

- 3 In Court proceedings the **Member States** and **EU institutions**⁵¹⁷ have a **privileged status**: in direct challenges (Art. 263 TFEU) they do not need to prove that they are directly and individually concerned by the challenged act⁵¹⁸. Pursuant to Art. 56 (3) Statute ECJ they may lodge an appeal with respect to any decision of first instance, even if they were not a party in the initial proceedings. Additionally, in order to intervene in a given case, Member States⁵¹⁹ and institutions⁵²⁰ do **not need to establish an “interest in the result of the case”** within the meaning of Art. 40 (2) Statute ECJ, unlike “any other person”, meaning natural and legal persons. This prerogative is justified by the fact that Member States and EU institutions are the protagonists of the EU legal order and thus have a natural interest – and mission – in preserving it.

⁵¹⁴ See Art. 129–132 RP ECJ, Arts. 115 and 116 RP GC and Arts. 109 to 111 RP CST.

⁵¹⁵ Case 12/69, *Wonnerth v Commission* [1969] ECR 577, para. 8; Case T-1/90, *Casariago v Commission* [1991] ECR II-143, para. 43.

⁵¹⁶ Art. 111 RP CST.

⁵¹⁷ Art. 13 TEU.

⁵¹⁸ Case C-138/79, *Roquette v Council* [1980] ECR 333, paras 19–21; Case 139/79, *Maizena v Council* [1980] ECR 3393, paras 19–21.

⁵¹⁹ Joined Cases T-32/98 and T-41/98, *Nederlands Antillen v Commission* [2000] ECR II-201, paras 30–31.

⁵²⁰ Case F-25/07, *Bleser v ECJ* [2007] (not yet published in the ECR).

2. EU institutions. a) Definition. Institutions within the meaning of Art. 40 Statute 4
ECJ are only those listed in Art. 13 (1) TEU⁵²¹, thus excluding individual members
of an institutions, such as a Commissioner⁵²², or those bodies not listed therein,
such as the European Economic and Social Committee or the European Investment
Bank⁵²³.

b) European Data Protection Supervisor

The “EDPS” is not an EU institution, but has the right to intervene within the 5
limits of his tasks⁵²⁴, by virtue of Regulation Nr. 45/2001⁵²⁵, and insofar as the
contentious matter concerns data protection matters⁵²⁶.

3. Pending cases. a) Legal remedies. An intervention is only admissible with 6
respect to **contentious proceedings** such as actions for annulment, for failure to
act and liability, interim proceedings⁵²⁷, a request for the interpretation of judgments⁵²⁸, and appeals⁵²⁹.

b) Exceptions

No intervention is possible with respect to non-contentious proceedings, such as 7
a referral for preliminary ruling⁵³⁰ or a legal opinion of the ECJ.

III. Bodies, offices, agencies and any other person (paragraph 2)

1. No privileged status. a) General. Unlike Member States and the institutions of 8
the EU, the bodies, offices, and agencies of the Union, which are now explicitly
mentioned in this provision, and “any other person”, need not only to apply in
order to be admitted as interveners but must, in addition, prove that they have “an
interest” in the result of the case.

b) Bodies, offices and agencies of the Union

The institutions of the EU are listed in Art. 13 (1) TEU. As of the mid seventies 9
and increasingly over the last decade the EU has decentralised the administration in
charge of certain specific areas of law, such as trade-marks, medicinal products,

⁵²¹ Case C-40/10, *Commission v Council* [2010] (not published in the ECR), para. 8.

⁵²² Case 358/85, *France v Parliament* [1986] ECR 2149, para. 9.

⁵²³ See Cases C-176/03, *Commission v Council* [2004] (not published in the ECR), paras 7 to 10
and Case C-155/07, *Parliament v Council* [2007] (not published in the ECR), para. 6.

⁵²⁴ Case C-318/04, *Parliament v Commission* [2005] ECR 2149, para. 9.

⁵²⁵ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December
2000 on the protection of individuals with regard to the processing of personal data by the EU
institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1).

⁵²⁶ Case C-40/10, *Commission v Council* [2010] (not published in the ECR), para. 9.

⁵²⁷ Case T-5/00 R, *Nederlands Federatieve Vereniging voor de Groothandel op Elektrotechnisch
Gebied v Commission* [2000] ECR II-4121, 4130.

⁵²⁸ Case 9/81 INT, *Court of Auditors v Williams* [1983] ECR 2859.

⁵²⁹ See Art. 190 and Art.129 et seq. RP ECJ.

⁵³⁰ Case C-181/95, *Biogen* [1996] ECR I-717, paras 3–4, 6.

chemical products, fundamental rights, and many others, by creating a multitude of bodies, offices, and agencies, which are scattered across the Union.

- 10 c) **Any other person.** aa) **Natural and legal persons.** EU law does not provide a definition of the term “legal person”. Thus, every legal entity considered to be a legal person under the law of the Member States or a third State (see cc) below) qualifies.

bb) Territorial entities within the EU

- 11 There is a multitude of territorial entities within each Member State, such as **regions**⁵³¹, **autonomous regions**⁵³², Member States of a Federal State, such as the German or Austrian “**Bundesländer**”⁵³³, **regional authorities** such as a German “**Landkreis**”⁵³⁴ and the – very numerous – **local authorities**, such as local councils⁵³⁵.

cc) Associations

- 12 Representative associations who intend to protect their members in cases concerning principle liable to affect those members may be granted leave to intervene. An association thus qualifies if it represents an appreciable number of e.g. **undertakings** active in the sector concerned; if its objects include that of protecting its members’ interests; if the case may raise questions of principle affecting the functioning of the sector concerned; and of the interests of its members may therefore be affected to an appreciable extent by the forthcoming judgment⁵³⁶.

dd) Third States

- 13 It is clear from its wording that the concept of “any other person” is not confined to the EU. Thus, third States⁵³⁷ and their regional and local authorities may also become interveners, provided they prove an adequate interest in the result of the case.
- 14 **2. Interest in the result of the case.** a) **Requirements.** This concept, which has not in any way been defined in the Rules of Procedure, is more demanding than its somewhat vague wording suggests.

⁵³¹ Such as e.g. the Region of Wallonia (Belgium), Case T-37/97, *Forges de Clabecq v Commission* [1999] ECR II-859.

⁵³² Case T-195/95 *INTV, Area Cova a.o. v Council* [1996] ECR II-591, 596, paras 2, 7.

⁵³³ Case C-447/98 P, *Molkerei Großbraunshain and Bene Nahrungsmittel v Commission* [2000] ECR I-9097.

⁵³⁴ Case T-319/05, *Swiss Confederation v Commission* [2006] ECR II-2073.

⁵³⁵ Case T-138/98, *ACAV a.o. v Council* [2000] ECR II-341.

⁵³⁶ Case T-253/03, *Akzo Nobel Chemicals a.o v Commission* [2004] ECR II-1603, 1613, para. 18 and the case-law cited.

⁵³⁷ Joined Cases 91/82 and 200/82, *Chris International Foods v Commission* [1983] ECR 417, 419.

aa) Interest

According to the case law this term must be defined in light of the precise 15 subject-matter of the dispute and be understood as meaning a **direct, existing interest in the ruling on the forms of order sought**⁵³⁸. It is also settled case-law that it is necessary to distinguish between prospective interveners establishing a **direct interest** in the ruling on the specific act whose annulment is sought and those who can establish only an **indirect interest** in the result of the case by reason of similarities between their situation and that of one of the parties⁵³⁹. An **immaterial interest** may be sufficient to be considered as having pertinent interest⁵⁴⁰.

bb) Result of the case

This requirement is to be understood as meaning the operative part of the final 16 judgment that the parties ask the Court to deliver. It is necessary, in particular, to ascertain whether the intervener is directly affected by the contested measure and whether his interest in the result of the case is established⁵⁴¹.

b) Irrelevant or insufficient elements

Given the yardstick provided by a) above it does **not** matter whether the 17 applicant has any interest with respect to plaintiff or defence's arguments⁵⁴². An interest that is **hypothetical** or might only exist in the future or is merely **indirect** as regards the outcome of the case does not suffice⁵⁴³. An interest in solving contentious **abstract legal question** and/or a **purely academic interest** is equally insufficient⁵⁴⁴. The fact that the person seeking to become an intervener could have lodged an application himself may plead against an interest in the result of the case⁵⁴⁵. The GC has rejected an application to intervene in which the person concerned stated that the forthcoming judgment would have repercussions on a decision to be adopted by the Commission in her respect, which was not part of the object of the contentious proceedings⁵⁴⁶. Also, a person supporting a claim for damages lodged by a competitor is not considered to have an interest in a case⁵⁴⁷.

⁵³⁸ This can include parties whose interest in a case is based upon their questioning the legality of an action which both violates a Commission decision with whose formation they assisted and whose violation harms their financial interests (as seen in Joined Cases T-415/05, T-416/05, and T-423/05, *Greece v Commission*, [2010] (not yet published in the ECR), para. 64.

⁵³⁹ Case T-15/02, *BASF v Commission* [2003] ECR II-215, para. 26 and the case law quoted.

⁵⁴⁰ Joined Cases 197/80 to 200/80, 243/80, 245/80 and 247/80, *Ludwigshafener Walzmühle v Council and Commission* [1981] ECR, 1041, 1043.

⁵⁴¹ Case T-111/08, *Mastercard a.o. v Commission* [2008] (not yet published in the ECR).

⁵⁴² Case T-191/96, *Cas Succhi di Frutta v Commission* [1998] ECR II-573, para. 28.

⁵⁴³ Case T-184/95, *Dorsch Consult Ingenieurgesellschaft v Council and Commission* [1997] ECR II-351, paras 17–21.

⁵⁴⁴ Case T-191/96, *Cas Succhi Di Frutta v Commission* [1998] ECR II-573, para. 28.

⁵⁴⁵ Joined Cases T-97/92 and T-111/92, *Rijnoudt a.o. v Commission* [1993] ECR II-587, para. 18 and p. 594, para. 23.

⁵⁴⁶ Case T-87/92, *Kruidvat v Commission* [1993] II-1375, para. 13.

⁵⁴⁷ Case T-330/94, *Salt Union v Commission* [1995] ECR II-2881, para. 16.

c) Inadmissibility of the main proceedings

- 18 Where the application in the main proceedings is declared inadmissible without going into the substance of the case, a third party could not be considered to be in a position to establish an interest in the result of the case or to intervene in support of the form of order sought by one of the parties⁵⁴⁸.

- 19 **3. Legal areas. a) Competition. aa) Admitted to intervene.** Parties were successfully admitted to intervene in the case of a complaint of an undertaking, which resulted in the opening of an enquiry for breach of competition rules and subsequently the adoption of a Commission decision⁵⁴⁹. Likewise, they were admitted in the case of an application for failure to act the undertaking concerned by a complaint for breach of Art. 102 TFEU⁵⁵⁰. An application to intervene was accepted in the case of an undertaking which was an addressee of the challenged decision in the same way as the applicant and thus would have had an autonomous right of challenge as provided by Art. 263 (2) TFEU. The fact that an entity did not lodge an application does not remove its interest as an intervener⁵⁵¹.

bb) Rejected

- 20 An entity that participated in a cartel⁵⁵², but to which the Commission has granted total immunity since it was the first to provide decisive evidence in an investigation, does not have a direct, existing interest in the case of an action for annulment brought by another participant in that cartel against the same Commission decision, as that decision imposes a fine on that other participant for its participation despite the fact that it claims to have been the first to cooperate. As the provisions of the decision granting total immunity to the intervening applicant are not, in such case, the subject-matter of the main proceedings, a judgment which annuls or varies the decision with regard to the applicant in the main proceedings would not affect the provisions of the decision concerning the intervening applicant⁵⁵³.

b) Anti-Dumping

- 21 An entity which has been imposed a specific anti-dumping regulation must be granted the right to intervene in a case challenging the validity of that regulation, since it is directly and individually concerned and has an independent right of action against the contested regulation under the second paragraph of Art. 263 TFEU. If that entity did not bring an action for annulment, its rights as intervener must be confined to supporting the forms of order sought by the respondents⁵⁵⁴.

⁵⁴⁸ Case C-341/00 P, *Conseil national des professions de l'automobile a.o v Commission* [2001] ECR I-5263, para. 36.

⁵⁴⁹ Case T-35/91, *Eurosport v Commission* [1991] ECR II-1359, paras 5 and 15.

⁵⁵⁰ Case T-74/92, *Ladbroke Racing v Commission* [1993] ECR II-535; Case T-52/00, *Coe Clerici Logistics v Commission* [2002] ECR II-2553, paras 32–34.

⁵⁵¹ Case T-35/91, *Eurosport Consortium v Commission* [1991] ECR II-1359, para. 15 and the case law quoted.

⁵⁵² See also Case T-15/02, *BASF v Commission* [2003] ECR II-213, paras 26–27, 32, 34–36.

⁵⁵³ Case T-410/03, *Höchst v Commission* [2004] ECR II-4451, 2nd heading.

⁵⁵⁴ Case C-245/95 P, *Commission v NTN Corporation a.o.* [1996] ECR I-559, paras 7–10.

c) State aid

It is settled case-law that, in a dispute concerning State aid, the beneficiary of that aid has an interest in the result of the case. The same is true for a competing undertaking concerning that particular aid⁵⁵⁵.

d) Other proceedings

The status as a party in proceedings pending at a **national Court**, the outcome of which is determined by a case pending at the GC, in which that party wishes to intervene, may generate a sufficient interest in the result of the case⁵⁵⁶.

e) Regional and territorial entities. aa) Admitted to intervene. This may be the case of regions and neighbouring regions⁵⁵⁷ which defend the interests of those entities established on their territory⁵⁵⁸, e.g. if a given part of their territory carries the name of the geographical division listed in the contentious regulation⁵⁵⁹, or if it is proved that the economic and social structure of the region concerned is essentially determined by the economic sector concerned by the challenged regulation (e.g. fisheries)⁵⁶⁰. The fact that a Member State intervenes in a given case does not prevent one or several of its territorial entities from intervening in the same proceedings⁵⁶¹.

bb) Rejected

In the case of the autonomous Basque region the GC held that its economic and social structure does not mainly depend upon the activities of the fishing sector and thus it was not admitted to intervene⁵⁶².

f) Associations

It is settled case-law that intervention is permissible by representative associations whose object is, as illustrated e.g. by their statutes⁵⁶³, which is an important piece of evidence⁵⁶⁴, to protect their members in cases raising questions of principle⁵⁶⁵ liable

⁵⁵⁵ Case T-330/94, *Salt Union v Commission* [1995] ECR II-2881, 2886, paras 10 et seq.

⁵⁵⁶ Case T-29/92, *SPO a.o. v Commission* [1993] ECR II-2, paras 8 et seq.

⁵⁵⁷ Case C-186/02 P, *Ramondín and Ramondín Capsulas v Commission* [2003], I-2415, paras 6–7, 9–10, 17.

⁵⁵⁸ Case C-6/92, *Federminería a.o. v Commission* [1993], ECR I-06357.

⁵⁵⁹ Case T-109/97, *Molkerei Großbraunshain and Bene Nahrungsmittel v Commission* [1998], ECR I-03533, para. 11.

⁵⁶⁰ Case T-138/98, *ACAV a.o v Council* [1999] ECR II-1797, para. 15; Case T-37/04 R, *Região autónoma dos Açores* [2004] ECR II-2153, para. 65.

⁵⁶¹ Case T-319/05, *Swiss Confereration v Commission* [2006] ECR II-2073, para. 20.

⁵⁶² Case T-54/00 R, *Federacion de Cofradías de Pescadores de Guipúzcoa a.o. v Council* [2000] ECR II-2875, para. 17.

⁵⁶³ Case T-87/92, *Kruidvat v Commission* [1993] ECR II-1363, para. 10; Case T-330/94, *Salt Unión v Commission* [1995] ECR II-2881, para. 18 and the case law quoted.

⁵⁶⁴ Case T-227/01, *Diputación Foral de Alava a.o. v Commission* [2006] ECR I-0001, para. 28.

⁵⁶⁵ Case T-53/01 R, *Poste Italiane v Commission* [2001] ECR II-1479, para. 51.

to affect those members⁵⁶⁶. For example, a national association may have a sufficient interest to intervene in a case brought by the European federation to which it is a member⁵⁶⁷.

aa) Admitted to intervene

- 27 A European Federation with national associations of the animal-use medicinal product as its members⁵⁶⁸; an international trade union organisation which represents 500.000 members in 109 countries and which seeks to protect and strengthen the rights and freedoms of journalists and related fundamental rights⁵⁶⁹; and a non profit organisation comprising approximately 160 television and media operators⁵⁷⁰ were all admitted to intervene.

bb) Not admitted to intervene

- 28 An association with no statutes and a limited number of members, e.g. 25⁵⁷¹ and an association whose statutes do not mention the protection of the interests of its members and their representation⁵⁷² are not admitted to intervene. Furthermore, those associations which have merely an **indirect interest** in the result of the case⁵⁷³, such as “Seas at Risk” and WWF, if their aims and activities cover large geographic areas and are thus not focused exclusively or mainly on the geographic area at issue in the case⁵⁷⁴, are not eligible to intervene.

g) Trade unions

- 29 In staff cases⁵⁷⁵ that are not in the pre-contentious phase⁵⁷⁶, trade unions are easily admitted as intervening parties if the outcome of the case is likely to affect collective interests⁵⁷⁷, i.e. if the case concerns an area represented by the union⁵⁷⁸. The mere fact, however, that the persons applying for admission as interveners are members of the staff committee does not suffice⁵⁷⁹.

4. Interim proceedings

- 30 Since interim proceedings are ancillary to the main proceedings, a party which has already been granted leave to intervene in support of a defendant institution in

⁵⁶⁶ Case T-253/03 *Akzo Nobel Chemicals a.o. v Commission* [2004] ECR II-1603, paras 21 and the case law quoted; Case T-201/04 R, *Microsoft v Commission* [2004] ECR II-2977, para. 37 and the case law quoted.

⁵⁶⁷ Case T-135/96 *UEAPME v Council* [1997] ECR II-373, paras 8 to 10.

⁵⁶⁸ Case C-151/98 P, *Pharos v Commission* [1998] ECR I-5441, paras 6–8.

⁵⁶⁹ Case T-193/04 R, *Tillack v Commission* [2004] ECR II-3575, paras 24–25, 28–30.

⁵⁷⁰ Case T-410/08, *GEMA v Commission* [2009] (not published in the ECR).

⁵⁷¹ Case T-253/03, *Akzo Nobel Chemicals a.o. v Commission* [2004] ECR II-1603, para. 22.

⁵⁷² Case T-253/03, *Akzo Nobel Chemicals a.o. v Commission* [2004] ECR II-1617, para. 20.

⁵⁷³ Case T-18/97, *Atlantic Container Line a.o. v Commission* [1998] ECR II-589, para. 10, 13–18.

⁵⁷⁴ Case T-37/04 R, *Região autónoma dos Açores v Council* [2004] ECR II-2153, paras 69 to 70.

⁵⁷⁵ Case T-368/94, *Blanchard v Commission* [1996] ECR II-41, para. 24.

⁵⁷⁶ Case 173/73, *Union Syndicale a.o. v Council* [1974] ECR 917.

⁵⁷⁷ Case T-84/91, *Meskens v Parliament* [1992] ECR II-1565, para. 9 and the case law quoted.

⁵⁷⁸ Case T-20/01, *Concetta Cerafogli v ECB* [2001] ECR SC II-675, para. 9 and the case law quoted.

⁵⁷⁹ Case T-108/94, *Candiotte v Council* [1994] ECR II-863, para. 7.

the main action for annulment of a decision adopted by that institution has an interest in supporting the form of order sought by that institution in interim proceedings inasmuch as that institution asks the Court to uphold that decision⁵⁸⁰. However, the intervening party is prevented from seeking an interim measure in its own favour⁵⁸¹.

5. Appeal

Art. 172 RP ECJ applies also to interveners before the GC, which are regarded as 31 parties before that Court and which are therefore not required to submit a fresh application to intervene before the ECJ⁵⁸². Any such application for leave to intervene is thus inadmissible⁵⁸³.

6. Intervention excluded by law. a) Rule. aa) All natural and legal persons. Art. 40 32 (2), 2nd sentence, Statute ECJ, which provides that **natural and legal persons** may not intervene in cases between Member States; between EU institutions; or between Member States and EU institutions, applies also to **third States**⁵⁸⁴. Thus, this provision applies to almost all contentious matters under the jurisdiction of the ECJ, such as **infringement proceedings** initiated by the Commission or a Member State, applications lodged by Member States against an institution, and contentious proceedings amongst institutions⁵⁸⁵.

bb) No matter their status

This rule applies to **all** natural and legal persons, regardless of any particular 33 status or mission they may have, such as e.g. a trade union⁵⁸⁶, since the EU institutions within the meaning of Art. 40 Statute ECJ are those listed in Art. 13 (1) TEU.

b) Exception

The only possibility for natural or legal persons to put forward their pleas in law 34 and arguments in disputes concerning EU institutions or Member States which also concern them is therefore to bring a separate action themselves, in cases which are admissible before the competent Court⁵⁸⁷. Besides, Art. 40 (2) Statute ECJ does not prevent natural or legal persons to intervene in appeals proceedings involving an enterprise and an institution⁵⁸⁸.

⁵⁸⁰ Case T-5/00 R, *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied v Commission* [2000] ECR II-4121, para. 25.

⁵⁸¹ Case C-329/99 P (R), *Pfizer Animal Health v Council* [1999] ECR I-8343, paras 91–94.

⁵⁸² Case C-244/91 P, *Pincherle v Commission* [1993] ECR I-6965, para. 16.

⁵⁸³ Case C-245/95 P, *Commission v NTN Corporation and Koyo Seiko* [1996] ECR I-553, paras 7–8.

⁵⁸⁴ Case T-319/05, *Swiss Confederation v Commission* [2006] ECR II-2073, paras 21–22.

⁵⁸⁵ Case C-40/10, *Commission v Council* [2010] (not published in the ECR).

⁵⁸⁶ Case C-40/10, *Commission v Council* [2010] (not published in the ECR) paras 7 et seq.

⁵⁸⁷ Case T-140/03, *Forum 187 v Commission* [2003] ECR II-2069, para. 7.

⁵⁸⁸ Case C-239/11 P, *Siemens v Commission* [2012] (not published in the ECR) para. 5.

IV. EFTA-States (paragraph 3)

- 35 With respect to proceedings concerning the EEA-Agreement, the EFTA-Member States and the EFTA-Surveillance Authority are privileged since they may intervene without having to show an “interest in the outcome of the case”⁵⁸⁹, provided the contentious proceedings concern a matter covered by the EEA-Agreement⁵⁹⁰. This right does not, however, extend to proceedings between Member States, EU institutions or Member States and EU institutions (Art. 40 (2) Statute ECJ), in which only Member States and EU institutions may intervene⁵⁹¹.

V. No altering of the subject-matter of the dispute (paragraph 4)

- 36 **1. Principle. a) General.** This provision is complemented by the Rules of Procedure, which provide that the intervener must accept the case as he finds it at the time of his intervention⁵⁹².
- 37 **b) Room for new arguments and pleas. aa) General.** Paragraph 4 does not mean that the intervener has no choice other than **repeating** more or less verbatim the arguments by the party on which side he intervenes⁵⁹³. Otherwise an intervention would have little or no *effet utile* at all. On the other hand, “supporting” the form of order sought does not grant full autonomy concerning the choice of arguments and pleas, which the wording seems to suggest. Hence, a careful distinction between new arguments and new pleas of law needs to be drawn. The fact that the intervener may not substitute himself to the main party he supports is one of the major problems facing an intervener.

bb) New arguments

- 38 The intervener is entitled to set out **arguments supporting existing pleas**⁵⁹⁴ and should focus on arguments that the supported party has not yet put forward. That freedom of choice is not limited to the arguments relied on during the administrative procedure⁵⁹⁵, as the intervener may not rely on matters of fact not known to the other party and which it would not have wished to divulge during the administrative procedure⁵⁹⁶. Thus, the intervener may e.g. submit that the defendant has “exceeded its competence” even though the supported party claims an infringement of the right of property.

⁵⁸⁹ Case C-239/11 P, *Siemens v Commission* [2012] (not published in the ECR).

⁵⁹⁰ Case C-124/10 P, *Commission v France* [2010] (not published in the ECR), para. 7.

⁵⁹¹ Case C-493/09, *Commission v Portugal* [2010] (not published in the ECR), paras 8 et seq.

⁵⁹² Art. 129 (3) RP ECJ and Art. 116 (3) RP GC.

⁵⁹³ Case T-114/02, *Babyliiss v Commission* [2003] ECR II-1279, paras 417, 418.

⁵⁹⁴ Case T-459/93, *Siemens v Commission* [1995] ECR II-1675, paras 21–23; Case C-150/94, *United Kingdom v Council* [1998] ECR I-7235, para. 36.

⁵⁹⁵ Case T-37/97, *Forges de Clabecq v Commission* [1999] ECR II-859, paras 92–93.

⁵⁹⁶ Joined Cases C-278/92, C-279/92 and C-280/92 *Spain v Commission* [1994] ECR I-4103, para. 31.

c) New pleas, but only with certain limits

The intervener may also put forward pleas⁵⁹⁷ independently, i.e. pleas not raised 39 by the party supported⁵⁹⁸, **insofar** as they support the form of order sought by one of the main parties **and** are **not entirely unconnected** with the issues underlying the dispute, as established by the applicant and defendant, as that would otherwise change the subject-matter of the dispute⁵⁹⁹. This test leaves enough room for the intervener to define a line of attack or defence of his own, without substituting himself to the main party supported.

c) Inadmissible arguments

An intervener may not raise a formal plea of inadmissibility if the party supported 40 did not raise such plea – which is frequently ignored by interveners. It is thus important to note that the Court is not bound to consider pleas of inadmissibility raised in this way⁶⁰⁰. The intervener is also prevented from putting forward additional arguments that, assuming that they are well founded, would permit a finding that the contested decision is unlawful, if the form of order sought by the supported party is the dismissal of the action for annulment and if this form is not supported by arguments seeking a declaration that the contested decision is unlawful⁶⁰¹.

d) No altering of the form of order sought

An intervener may not go beyond the form of order sought by the party in 41 support of whom it is intervening⁶⁰². If the main party seeks form of order intended to annul a Directive, then the intervening party is prevented from pursuing a partial annulment of that Directive on grounds which are **entirely unconnected** with those relied on by the main party⁶⁰³.

2. Exceptions

While interveners may not raise a plea of inadmissibility if the party has not done 42 so⁶⁰⁴, they may, if need be, raise the question as to whether there is an absolute bar to proceeding, such as the question of the applicant's standing to bring proceedings⁶⁰⁵, since this question can be considered by the Court of its own motion⁶⁰⁶.

⁵⁹⁷ Case T-114/02, *Babyliiss v Commission* [2003] ECR II-1279, paras 417–418.

⁵⁹⁸ Case T-37/97, *Forges de Clabecq v Commission* [1999] ECR II-859, paras 92–93.

⁵⁹⁹ Case T-171/02, *Regione autonoma della Sardegna v Commission* [2005] ECR II-2123, para. 152 and the case-law quoted.

⁶⁰⁰ Case C-313/90 *CIRFS and Others v Commission* [1993] ECR I-1125, para. 22; Case T-253/02 *Ayadi v Council* [2006] ECR II-2139, para. 64, 67–68.

⁶⁰¹ Case T-2/03, *Verein für Konsumenteninformationen v Commission* [2005] ECR II-1121, para. 53.

⁶⁰² Joined Cases T-186/97, T-187/97, T-190/97 to T-192/97, T-210/97, T-211/97, T-216/97 to T-218/97, T-279/97, T-280/97, T-293/97 and T-147/99, *Kaufring a.o. v Commission* [2001] ECR II-1337, para. 137.

⁶⁰³ Case C-155/91 *Commission v Council* [1993] ECR I-939, paras 23–24.

⁶⁰⁴ Case C-313/90 *CIRFS and Others v Commission* [1993] ECR I-1125, para. 22; Case T-253/02 *Ayadi v Council* [2006] ECR II-2139, para. 64, 67–68.

⁶⁰⁵ Case T-88/01, *Sniace v Commission* [2005] ECR II-1165, para. 53.

⁶⁰⁶ Art. 53 (2) RP ECJ; Art. 113 RP GC.

3. Procedural economy

43 However, where it appears that an action with questionable admissibility must in any event be dismissed on the merits, it is open to the Court to rule on this action’s merits at the outset in the interest of procedural economy⁶⁰⁷. Similarly, where it appears that a plea of dubious connection to the subject-matter of the dispute will be dismissed as inadmissible for another reason or because it is unfounded, it is open to the Court to dismiss that plea without ruling on whether the intervener went beyond the parameters of its role in support of the form of order sought by one of the main parties⁶⁰⁸.

Article 41 [Judgment by default]

Where the defending party, after having been duly summoned, fails to file written submissions in defence, judgment shall be given against that party by default. An objection may be lodged against the judgment within one month of it being notified. The objection shall not have the effect of staying enforcement of the judgment by default unless the Court of Justice decides otherwise.

Outline:

I. Introduction	1
1. Relevance	1
2. Intellectual property rights.....	2
II. Failure to file written submissions in defence (1st sentence).....	3
1. General.....	3
2. Application required.....	4
III. The objection (2nd sentence).....	5
1. General.....	5
2. Objection	6
IV. No suspensive effect (3rd sentence)	7

I. Introduction

1. Relevance

1 This provision, which is detailed in the Rules of Procedure⁶⁰⁹, provides an applicant with an opportunity to have those defendants⁶¹⁰ who, despite an appropriate submission of the application, fail to submit their written submissions within the relevant time-limit, “sanctioned” by the Court or Tribunal,. In the vast majority

⁶⁰⁷ See, to that effect, Case C-23/00 P *Council v Boehringer* [2002] ECR I-1873, para. 52, and Case C-233/02 *France v Commission* [2004] ECR I-2759, para. 26.

⁶⁰⁸ See, for example, Joined Cases T-394/08, T-408/08, T-453/08, and T-454/09, *Sardegna v Commission*, [2011] (not yet published in the ECR), paras 42–43; Case C-118/99 *France v Commission* [2002] ECR I-747, paras 64 and 65.

⁶⁰⁹ Art. 152 RP ECJ and Art. 122 RP GC.

⁶¹⁰ The term “defendant” confirms that a judgment by default does not exist in the context of a referral for preliminary ruling, see Case 69/85, *Wünsche v Germany* [1986] ECR 947, 953.

of proceedings the defendant is an institution, body or agency of the EU, which is why judgments by default are **very rare**, when compared to, e.g. the number of applications rejected because they are time-barred. This tends to occur mostly, if at all, as a result of applications in which institutions claim the reimbursement of e.g. subsidies from private companies⁶¹¹ and or EEIGs⁶¹².

2. Intellectual property rights

In the area of intellectual property rights⁶¹³, for which the GC has jurisdiction at 2 first instance, special rules apply.

II. Failure to file written submissions in defence (1st sentence)

1. General

Despite what one may be lead to think from a first look at its wording, this 3 provision does not solely apply if the defending party fails to file a statement of defence. It also applies if that party does not hand in **any submission** within the relevant time-limit, be it a statement of defence or a formal plea of inadmissibility⁶¹⁴, which is when it faces the risk of a judgment by default⁶¹⁵.

2. Application required

Contrary to what the wording seems to provide, such judgments are not handed 4 down *ex officio* but instead as a result of a formal **request** by the applicant. In practice, applicants do not systematically lodge such requests, e.g. in cases of infringement proceedings.

III. The objection (2nd sentence)

1. General

The “objection” is a specific legal remedy limited to judgments of default. It is 5 not a horizontal legal remedy, which would enable parties to challenge a variety of Court decisions, such as a decision on costs, an order of taxation of costs, and other decisions of the EU jurisdictions against which there is currently no legal remedy whatsoever.

⁶¹¹ Case C-277/99, *Commission v Oder-Plan Architektur a.o.* [2001] ECR I-7355.

⁶¹² European Economic Interest Groups.

⁶¹³ Art. 53 (2) Statute ECJ.

⁶¹⁴ Art. 151 RP ECJ, Art. 114 RP GC and Art. 78 RP CST.

⁶¹⁵ Case T-64/99, *RJB Mining v Commission* [1999] (not published in the ECR), paras 11–12.

2. Objection

- 6 A judgment by default is not definitive in that the defendant may lodge, within **one month**, an **objection** at the jurisdiction that handed down the judgment by default⁶¹⁶. Thus, an objection may not be lodged at the next higher instance, quite evidently, since it would otherwise not exist in proceedings before the ECJ. Alternatively, the defendant may lodge an **appeal**, which is, unlike the objection, limited to points of law.

IV. No suspensive effect (3rd sentence)

- 7 The objection does not have any automatic effect of staying the enforcement of a judgment by default, as is the case of all other EU legal remedies. That said, if the defendant is an institution it seems, for political reasons, rather unlikely that it will enforce the judgment despite an objection being lodged.

Article 42 [Third party proceedings]

Member States, institutions, bodies, offices and agencies of the Union and any other natural or legal persons may, in cases and under conditions to be determined by the Rules of Procedure, institute third-party proceedings to contest a judgment rendered without their being heard, where the judgment is prejudicial to their rights.

I. Introduction

1. Exceptional legal remedy

- 1 Third party proceedings⁶¹⁷ are merely one out of several exceptional⁶¹⁸ legal remedies⁶¹⁹, since they provide an *a posteriori* protection of the interests of those persons who for plausible reasons were not in a position to take part in the main proceedings⁶²⁰. In other words, third-party proceedings allow an exception from the definitive character of judgments and orders in favor of third persons concerned.

2. Narrow interpretation

- 2 Like any exception, this one needs to be interpreted narrowly, though it does apply to Member States, institutions of the EU, and natural/legal persons alike.

⁶¹⁶ Case 12/68, *X v Commission de contrôle* [1969] ECR 109, 116.

⁶¹⁷ The case numbers bear the acronym “TO” (“tierce opposition”).

⁶¹⁸ See also Art. 44 Statute ECJ (application for revision).

⁶¹⁹ See Art. 157 RP ECJ, Arts. 123 to 124 RP GC and Art. 117 RP CST.

⁶²⁰ This applies only to contentious proceedings, thus excluding referrals for preliminary rulings.

Thus, Member States and institutions are **not privileged** in this remedy, unlike in other legal remedies such as applications within the meaning of Art. 263 TFEU, where they, unlike third parties, do not need to prove any legal interest in the case.

II. Admissibility

1. Demanding test

If it appears from the object and the plea of an application published by notice in the Official Journal that a third person had an interest in applying for admission as an intervener in those proceedings, that third person must prove the **tangible reasons** which **prevented** it from applying for such admission. A merely subjective assessment as to the outcome of the proceedings does not constitute a valid reason justifying the third party’s non-participation in the original proceeding. Accordingly, a third party may not argue that, given the information as to fact and law known at the time when the action was started, a reasonable person would have been entitled to think that the judgment bringing the proceedings to an end would not prejudice his rights⁶²¹.

2. Notice in the Official Journal

Regarding the publication of the notice in the Official Journal, it needs to be stressed that the Rules of Procedure provide only for voluntary intervention, i.e. not for an intervention ordered by the jurisdiction and thus compulsory⁶²². Consequently, the Rules of Procedure do not require notice of proceedings against any third party who may have an interest, but only require the publication of a notice in the Official Journal in order to enable third parties to learn about actions brought before the EU Courts⁶²³.

Article 43 [Judgment of interpretation]

If the meaning or scope of a judgment is in doubt, the Court of Justice shall construe it on application by any party or any institution of the Union establishing an interest therein.

Outline:

I. Introduction	1
1. Not a classical legal remedy	1
2. Not appropriate for preparing appeals.....	2
II. Doubts regarding the meaning or scope of a judgment	3
1. “Judgment”	3
2. Doubts regarding the meaning or scope.....	4

⁶²¹ Case T-35/89 TO I, *Zubizarreta a.o. v Albani a.o.* [1992] ECR II-1599, para. 33.
⁶²² Case 12/69 *Wonnerth v Commission* [1969] ECR 577, para. 8.
⁶²³ Case T-35/89 TO I, *Zubizarreta a.o. v Albani a.o.* [1992] ECR II-1599, para. 37.

a) General.....	4
b) Operative part.....	5
c) Reasoning.....	6
III. Establishing an interest.....	7

I. Introduction

1. Not a classical legal remedy

- Such application⁶²⁴ is neither designed to amend the substance of an existing judgment, nor to take part in contentious proceedings initiated by third parties. This application may only be used by parties mentioned in the judgment concerned⁶²⁵ who must prove that they have a “legitimate interest” in having the Court interpret the meaning or scope of the judgement. Thus, the interpretation of a judgment differs from a **rectification**⁶²⁶ and procedure aiming to **supplement**⁶²⁷ a judgment.

2. Not appropriate for preparing appeals

- Reflecting on an appeal against a decision of the GC or CST starts with a correct understanding of that decision. But since an appeal needs to be lodged within two months (plus ten days on account of distance) after notification of the challenged judgment or order, there is hardly any time for a procedure on the basis of Art. 43 Statute ECJ.

II. Doubts regarding the meaning or scope of a judgment

1. “Judgment”

- This comprises all Court decisions which close contentious proceedings⁶²⁸, i.e. judgments and orders.
- 2. Doubts regarding the meaning or scope. a) General.** The doubts regarding the meaning or scope must concern the judgement **proper**, not the manner in which it is applied in practice⁶²⁹ or its repercussions on other cases⁶³⁰, i.e. either the operative part and/or, the reasons.

⁶²⁴ Cases bear the acronym “INTP” (“interprétation”).

⁶²⁵ Case 24/66 BIS, *Gesellschaft für Getreidehandel* [1975] ECR 1599.

⁶²⁶ Art. 158 RP ECJ, Art. 84 RP GC and Art. 84 RP CST.

⁶²⁷ Art. 158 RP ECJ, Art. 85 RP GC and Art. 85 RP CST.

⁶²⁸ Thus Art. 43 Statute ECJ does not apply to judgments in referrals for preliminary rulings, see Case 13/67 *Becher* [1968] 289, 290; Case 40/70 *Sirena* [1979] 3169, 3170 et seq.

⁶²⁹ Case 110/63 bis, *Willame v Commission* [1966] ECR 411, 417.

⁶³⁰ Case 70/63 bis, *High Authority v Collotti and ECJ* [1965] 353, 359.

b) Operative part

For many if not most parties the **operative part**, i.e. the part which is almost 5 always self-explanatory and thus requires no interpretation of the judgment or order, is most important.

c) Reasoning

In other cases, however, the exact understanding of the **reasoning** contained in 6 the judgment is most important. One ought to take clear note of this because e.g. an annulling judgment has authority *erga omnes*, which pertains not only to the operative part, but also the *ratio decidendi*⁶³¹. A correct reading of the judgment is particularly important when an EU Court annuls an act of an institution. Pursuant to Art. 266 TFEU, in order to comply with the ECJ's judgments and to implement those judgements fully, the institution is required to implement not only the **operative part** of the judgment, but also to take full account of the **grounds** which led to the judgment and which thus constitute its essential basis, inasmuch as they are necessary to determine the exact meaning and the proper means of implementation of the operative part. It is those grounds that both identify the precise provision held to be unlawful and indicate the specific reasons that underlie the finding of illegality which must inform the institution's replacement of the annulled measure⁶³². This may prove to be difficult, since the EU Judge does not always provide any indication as to how a judgment of annulment should be implemented, and very rarely addresses injunctions concerning implementation to the defendant⁶³³.

III. Establishing an interest

The party lodging a request for interpretation of a judgment, which must 7 necessarily be a direct party to the case, as third persons are not entitled to do so, must establish a **direct interest** in such interpretation and must also be unable to acquire certainty through another legal remedy⁶³⁴.

Article 44 [Application for revision]

(1) An application for revision of a judgment may be made to the Court of Justice only on discovery of a fact which is of such a nature as to be a decisive factor, and which, when the judgment was given, was unknown to the Court and to the party claiming the revision.

⁶³¹ Joined cases C-442/03 P and C-471/03 P, *Pe&O European Ferries (Vizcaya) v Commission* [2006] ECR I-4845, para. 44.

⁶³² Joined Cases 97/86, 99/86, 193/86 and 215/86 *Asteris v Commission* [1988] ECR 2181, para. 27; Case T-224/95 *Tremblay and Others v Commission* [1997] ECR II-2215, para. 72.

⁶³³ Joined Cases T-116/96, T-212/96 and 215/96, *Telchini a.o. v Commission* [1998] ECR II-947, para. 25.

⁶³⁴ Case 5/55 *Assider v High Authority* [1955] ECR 263, 275.

(2) The revision shall be opened by a judgment of the Court expressly recording the existence of a new fact, recognising that it is of such a character as to lay the case open to revision and declaring the application admissible on this ground.

(3) No application for revision may be made after the lapse of 10 years from the date of the judgment.

Outline:

I. Definition	1
II. Two-step procedure	2
1. General.....	2
2. Admissibility	3
a) Criteria	3
b) Challenges	4
aa) Facts already brought forward.....	5
bb) Change of views.....	6
cc) New judgments	7
dd) New arguments	8
c) Inadmissible applications.....	9
3. Substance	10
III. Time-limit.....	11

I. Definition

1 A “revision of a judgment”⁶³⁵ is not an appeal on points of law⁶³⁶ and thus differs fundamentally from a request for correction of a judgment. It is an **exceptional**⁶³⁷ **review procedure** that allows an applicant to call into question the authority of *res judicata* attaching to a final judgment⁶³⁸ or order⁶³⁹ on the basis of the **findings of fact** upon which the Court⁶⁴⁰ relied in making its judgement. The conditions for such review, which are detailed in the Rules of Procedure⁶⁴¹, are **strict**.

II. Two-step procedure

1. General

2 The application for revision triggers a two-step procedure that examines the admissibility and substance of such application. This procedure is different than

⁶³⁵ Case numbers for revisions bear the acronym “REV” (“révision”) after the case number.
⁶³⁶ Case 116/78 REV, *Bellintani v Commission* [1980] ECR 23; Case F-8/05 REV, *Fouwels et al v Commission*, [2011] (not yet published in the ECR), para. 33.
⁶³⁷ See also Art. 42 Statute ECJ (third party proceedings).
⁶³⁸ Thus a revision is excluded with respect to referrals for preliminary proceedings, Case C-116/96 REV, *Reisebüro Binder* [1998] ECR I-1889.
⁶³⁹ Joined Cases C-199/94 P and C-200/94 P, *Inpesca v Commission* [1998] ECR I-831, para. 16.
⁶⁴⁰ Case T-14/89 REV, *Montecatini v Commission* [1992] ECR II-2409, 2413, para. 10; Case T-26/89 (125) *De Compte v Parliament* [1991] ECR SC I-A-305, 307.
⁶⁴¹ Art. 159 RP ECJ; Arts. 125 to 128 RP GC and Art. 119 RP CST.

other, one-step exceptional legal remedies, such as the request for interpretation of a judgment⁶⁴².

2. Admissibility. a) Criteria. First, the competent Court verifies whether or not the application is admissible. Apart from the **ten year** statute of limitations specified in paragraph 3, the admissibility test described in paragraphs 1 and 2 includes **four cumulative conditions**:

- **First**, a revision requires the description of elements of a factual nature which existed **prior** to the judgment in question.
- **Secondly**, these factual elements must have been unknown to the responsible Court as well as to the party applying for the revision at the time of judgement.
- **Thirdly**, the party making the application for revision must prove that it discovered these pertinent factual elements after the first judgement was rendered⁶⁴³.
- **Fourthly**, the applicant needs to establish these facts could have led the Court to render a different judgement in the proceedings⁶⁴⁴. It is worth noting that such motions may be filed against orders as well as against judgements of the Court⁶⁴⁵.

b) Challenges

In practice this list of requirements proves to be a real hurdle⁶⁴⁶ and thus many applications for revision are rejected as inadmissible:

aa) Facts already brought forward

There is no reason to lodge an application for revision founded on a fact that has already been put forward in the context of an unsuccessful request for a reopening of an oral hearing⁶⁴⁷.

bb) Change of views

An application for revision that relies solely on **opinions or personal views** regarding facts that could only subjectively be viewed as new is unlikely to be successful⁶⁴⁸. The same is true for purely legal views, such as contending that the judgments of the ECHR could be reviewed by the GC⁶⁴⁹.

⁶⁴² See Art. 43 Statute ECJ.

⁶⁴³ Case F-29/09 REV, *Lebedef and Jones v Commission* [2011], (not yet published in the ECR), para. 24.

⁶⁴⁴ Case C-185/90 P-REV *Gill v Commission* [1992] ECR I-993; Case T-4/89 REV *BASF v Commission* [1992] ECR II-1591.

⁶⁴⁵ Case F-8/05 REV, *Fouwels et al v Commission*, [2011] (not yet published in the ECR), para. 32.

⁶⁴⁶ Case T-393/04 REV, *Klaas v Parliament* [2007] ECR SC II-.

⁶⁴⁷ Case T-14/89 REV, *Montecatini v Commission* [1992] ECR II-2409, 2414, para. 11.

⁶⁴⁸ Case C-2/98 P, *De Compte v Parliament* [1999] ECR I-1787, 1818.

⁶⁴⁹ Case T-442/09 REV, *de la Torre v Kingdom of Spain* [2010] (not published in the ECR), paras 8 and 9.

cc) New judgments

- 7 The mere fact that a national Court renders a relevant judgment **after** the ECJ judgment forming the object of an application for revision does not make said application inadmissible⁶⁵⁰. The same is true for a legal opinion commissioned **after** the case has been lodged that has nothing to do with the case at hand⁶⁵¹.

dd) New arguments

- 8 A request for revision based on **new arguments** rather than new facts is also inadmissible, since it would be equivalent to an appeal based on points of law⁶⁵².

c) Inadmissible applications

- 9 An application for revision regarding a judgment on appeal is inadmissible since the ECJ is not competent for reviewing the facts. However, an application for revision in a case that the ECJ has referred back to the first instance (i.e., the GC or the CST) may still be admissible.⁶⁵³ Likewise, an application for revision that reveals a pertinent fact that could have been brought to the Court's attention and thus influenced the judgement in question before said judgment was pronounced is also likely to meet with success⁶⁵⁴.

3. Substance

- 10 After the application for revision is deemed admissible, the Court examines the facts included in said application in order to determine if they substantively challenge or change the outcome of the case⁶⁵⁵.

III. Time-limit

- 11 The application for revision needs to be submitted within **3 months** of the date upon which the applicant discovers the new fact and within **ten years** of the date upon which the judgment was handed down.

⁶⁵⁰ Case 36/75 REV, *Elz v Commission* [1977] ECR 1617, 1620 et seq.

⁶⁵¹ See in this respect Case C-130/91 REV II, *ISAE/VP and Interdata v Commission* [1996] ECR I-65, para. 7.

⁶⁵² Case 115/73 REV, *Serio v Commission* [1974] ECR 671, 673; Case F-17/05 REV, *Brito Sequeria Carvalho v Commission*, [2011], (not yet published in the ECR), para. 44; Case F-45/06 REV, *De Buggenoms et al v Commission*, [2011] (not yet published in the ECR), para. 36.

⁶⁵³ Case C-185/90 P-REV, *Gill v Commission* [1992] ECR I-993 et seq.

⁶⁵⁴ Case T-4/89 REV, *BASF v Commission* [1992] ECR II-1591, 1597; Case T-8/89 REV, *DSM v Commission* [1992] II-2399, 2406.

⁶⁵⁵ Case C-64/98 P-REV, *Petrides v Commission* [2010], ECR I-00065, para. 12; Case F-29/09 REV, *Lebedef and Jones v Commission* [2011], (not yet published in the ECR), para. 22.

Article 45 [Periods of grace, unforeseeable circumstances and *force majeure*]

(1) Periods of grace based on considerations of distance shall be determined by the Rules of Procedure.

(2) No right shall be prejudiced in consequence of the expiry of a time-limit if the party concerned proves the existence of unforeseeable circumstances or of *force majeure*.

Outline:

I. Introduction	1
II. Periods of grace (paragraph 1)	2
1. Initial legislative proposal	2
a) Suppression of period of grace	2
b) Comment	3
2. Ten additional days	5
3. Applicable to all legal remedies	6
4. Determining the beginning and the end of the time-limits	7
III. Unforeseeable circumstances and <i>force majeure</i> (paragraph 2)	9
1. Overview	9
a) Three exceptional circumstances	9
b) Ratio legis	10
c) Limits of Art. 11 of the Instructions to the Registrar	12
d) e-Curia	13
2. Definition	14
a) Force majeure and unforeseeable circumstances	14
b) Unforeseeable circumstances	15
c) “Force majeure”	16
d) Cases	17
aa) Accepted	17
bb) Rejected	18
(1) Negligence by the party	19
(a) Telefax	19
(b) Registered mail	20
(c) Express courier	21
(d) Email	22
(e) Other	23
(2) Negligence by a third party	24
(3) Alleged lack of clarity of the law	25
(aa) Case-law	25
(bb) Comment	26
(4) Lack of organisation or logistics	27
IV. Excusable error	28
1. General	28
2. Definition	29
a) Institution concerned	30
b) General Court	31
3. Cases where an error was excusable	32
4. Non excusable error	33
a) Receiving a decision	33
b) Non compliance with a time-limit	34
c) Sending written pleadings	35
d) Misunderstanding of the operation of the RP	36
e) Other	37
aa) Fundamental rights	37
bb) Legal aid	38
V. Procedure	39

I. Introduction

- 1 This important provision complements the Rules of Procedure regarding time-limits for filing applications and motions in the EU courts⁶⁵⁶. Paragraph 2 provides a clear example of the “scattered” nature of procedural rules pertaining to grace periods and application deadlines within Court procedure: for example, “*force majeure*” is only mentioned in paragraph 2 of this Art. and is not mentioned at all in the Rules of Procedure, while the concept of “excusable error” arises from the case law and is not an explicit part of either Statute or the Rules of Procedure.

II. Periods of grace (paragraph 1)

- 2 **1. Initial legislative proposal. a) Suppression of period of grace.** In March 2011, the Court of Justice proposed to delete Art. 45, paragraph 1, i.e. the period of grace due to distance, on the grounds that it is no longer required due to technological innovation⁶⁵⁷. It is true that this additional period of ten days, a fixed extension resulting from the harmonization and enlargement of the EU in 2000, amounts to an extension of the deadline itself, since a party may send its written submission by telefax within these additional 10 days without penalty. Such a faxed submission is still considered an original, provided that the paper version of the original and the certified copies are furnished to the relevant Court or Tribunal within a **further** time-limit of ten days.

b) Comment

- 3 This proposal has **not been adopted**, which does not mean though that it was without any merits. That said, as an alternative to a *complete* abolishment of the grace period, one could reflect on a reduction of this period from ten days to, e.g., three days. This would enable the parties to do whatever necessary to comply with the time-limit by sending the written submission e.g. either by express courier or telefax, while also ensuring that all parties enjoy the *full* benefit of the time-limit proper, e.g. the period of two months in the case of applications for annulment.
- 4 **Alternatively**, the current system, which renders the party concerned liable for any risk related to document submission until the moment that said document arrives at the Registry, could be replaced by one in which timely submission of documents is determined by the *date of sending*, e.g. the postage or time stamp, which would effectively remove parties’ liability for postal error or delay.

⁶⁵⁶ Arts. 49–52 RP ECJ; Arts. 101 to 103 RP GC and Arts. 100 to 101 RP CST.

⁶⁵⁷ “Regulation on Proposed Changes to the Statute and Rules of Procedure of the Courts of Justice of the European Union”, para. 6, www.curia.europa.eu.

2. Ten additional days

“Period of grace” means that the prescribed time-limits is, *de lege*, extended on 5 account of distance by 10 calendar days, as detailed in the Rules of Procedure⁶⁵⁸. In view of the geographical dispersion of the 27 Member States, the various Rules of Procedure grant this additional time to any party to a case in order to transmit its written submissions to the EU Court in question. Thus it is the total sum of the procedural time-limit, e.g. two months for direct challenges plus ten days grace period, which forms the absolute time-limit to which the party is entitled.

3. Applicable to all legal remedies

While in the past the extension of the time-limit on account of distance varied 6 according to the geographical distance between the respective party’s location and Luxembourg, it is now standardized to ten days for all Member States, regardless of the category of legal remedy or the geographical location of the party in question⁶⁵⁹. As a result, many parties benefit from a comparatively longer deadline due to this grace period, even though modern means of communication⁶⁶⁰ have considerably reduced and in many cases erased geographical influences on the time required for the transmission of documents.

4. Determining the beginning and the end of the time-limits

In the case of applications, appeals, and other legal remedies, the party must 7 determine the beginning and the end of the deadline⁶⁶¹, on the basis of the relevant provisions in the Rules of Procedure.

By contrast, in the case of time-limits set by the Registrar on the basis of the 8 Rules of Procedure concerning e.g. a statement of defence or a rejoinder, the time-limit, including the period on account of distance, is defined by the Registrar.

III. Unforeseeable circumstances and force majeure (paragraph 2)

1. **Overview.** a) **Three exceptional circumstances.** The provisions on procedural 9 time-limits⁶⁶² found in the Courts’ Rules of Procedure set clear guidelines that do not allow for significant derogation or reinterpretation. These strict guidelines ensure **legal certainty** and avoid any discrimination or arbitrary treatment in the administration of ECJ justice⁶⁶³. One can thus only derogate from these rules

⁶⁵⁸ See Art. 51 RP ECJ, Art. 102 (2) RP GC and Art. 100 (3) RP CST.

⁶⁵⁹ Thus, the deadline on account of distance does not apply to extra-judicial, e.g. administrative, proceedings.

⁶⁶⁰ Such as express courriers and the e-Curia service which provides for online submission of documents.

⁶⁶¹ See B. Wägenbaur, EuZW 2002, p. 406–407, annotation to Case C-406/01, *Germany v Parliament and Council* [2002] ECR I-4561.

⁶⁶² Arts. 49–52 RP ECJ; Arts. 101 to 103 RP GC and Art. 100 RP CST.

⁶⁶³ Case T-201/04, *Microsoft v Commission* [2005] ECR II-1491, para. 47 and the case law quoted.

governing procedural time-limits under **exceptional** circumstances⁶⁶⁴, i.e. in the case of **unforeseeable circumstances** or **force majeure** (see paragraph 2) or in the event of an **excusable error** (see IV. hereafter)⁶⁶⁵. *De jure*, these three exceptions never influence the determination of the date from which the time-limit is calculated⁶⁶⁶. *De facto*, if the time-limit elapsed long before any attempt to establish an exception takes place, e.g. a time-limit elapses 7 years before any exceptional status is sought⁶⁶⁷, a party may not benefit from any of the following exceptions.

b) Ratio legis

- 10 These exceptions are meant to ensure that procedural time-limits are not so inflexible that they unjustly penalize parties who are unable to fulfil time-limits due to circumstances which are truly unforeseeable or dramatically prejudicial to normal legal operations. Thus, one must both define such dramatic circumstances that would justify exceptions to procedural time-limits while also laying down strict criteria for such exceptions⁶⁶⁸.
- 11 While the general ratio legis of these exceptions arises from the principles of **legal certainty** and **fair trial**, the specific distinction between the two exceptions of force majeure and unforeseeable circumstances arises from the Roman or Continental legal tradition. As the predominant inspiration for EU law and ECJ jurisprudence, Roman law distinguishes between *casus* (cas fortuit, or unforeseeable circumstances) and *vis major* (force majeure, roughly analogous to the common law concept of acts of God). Unforeseeable circumstances are those that are unable to be predicted; however, were they able to be predicted, they could have been prevented (for example, a surprise terrorist attack which destroys a Member State's Court documents). Force majeure, on the other hand, designates circumstances which may or may not be foreseeable, but which in any case could not be prevented (for example, a hurricane or a surprise bombing which destroys all pertinent documents)⁶⁶⁹. It is important to distinguish between these two exceptions when seeking extension of time-limits as part of a case before the ECJ Courts.

c) Limits of Art. 11 of the Instructions to the Registrar

- 12 Pursuant to this provision, the Registrar shall prescribe and, as the case may be, extend the time-limits provided for in the Rules of Procedure. However, he has no competence for extending time-limits set by primary EU law⁶⁷⁰.

⁶⁶⁴ Which makes the proverb "*errare human est*" appear as an irony, since these mistakes are thus *not* an exceptional circumstance, allthewhile being unavoidable.

⁶⁶⁵ Case T-469/10, *Conneely v Commission* [2011] (not published in the ECR), paras 18 to 30.

⁶⁶⁶ Case T-45/08, *Transportes Evaristo Molina v Commission* [2008] (not published in the ECR), para. 30.

⁶⁶⁷ Case T-220/08, *İşçi Partisi v Council and Commission* [2008] (not published in the ECR).

⁶⁶⁸ Case T-468/10, *Doherty v Commission*, [2011] (not yet published in the ECR), paras 18–19.

⁶⁶⁹ See "*Force majeure*" et "*cas fortuit*" en tant que circonstances excluant l'illicéité: pratique des Etats, jurisprudence internationale et doctrine: étude établit par le Secretariat, Annuaire de la Commission du droit internationale, vol II, 1978: Document A/CN.4/315; paras 17–19.

⁶⁷⁰ Case T-319/09, *Pro humanum v Commission* [2010] (not published in the ECR), para. 12.

d) e-Curia

Lodging procedural documents using “e-Curia”⁶⁷¹, i.e. via the internet, excludes 13 the risk inherent to the “normal” procedure, i.e. of the original and certified copies not arriving within the time-limit, or getting lost on their way. However, this new technology is likely to raise new questions concerning interpretations of the conditions of an unforeseeable event, force majeure, or excusable errors, as the case may be (see below).

2. Definition. a) Force majeure and unforeseeable circumstances. Art. 45 (2) 14 Statute ECJ uses the terms “unforeseeable circumstances” and “force majeure”. While the ECJ case law does not explicitly state the clear distinction between these concepts, it does employ both terms; thereby acknowledging the legal distinction between the two found in the Roman legal tradition and ensuring that under even the strictest definition of force majeure, cases of unforeseeable circumstances are still admitted as valid exceptions. Nevertheless, in either case one needs an “**objective element**” of exceptional difficulty that occurs **independently** from the will or actions of the applicant. There must also be a “**subjective element**” that demonstrates that even if the party acted cautiously, this event could not have been avoided⁶⁷². Additionally, it is important to note that while historically continental legal tradition has defined force majeure as events so catastrophic that no time-limit ought to apply, in practice the ECJ has imposed a sort of statute of limitations on the use of force majeure as an excuse for tardy proceedings⁶⁷³.

b) Unforeseeable circumstances

Unforeseeable circumstances, like force majeure, are characterised in particular 15 by their unpredictability⁶⁷⁴. Neither the complexity of procedures nor the slowness of internal communications constitutes unforeseeable circumstances⁶⁷⁵.

c) “Force majeure”

The ECJ **defines** the notion of force majeure as follows: “Even though the 16 concept of force majeure is not limited to absolute impossibility, it nevertheless implies that the non-performance... is due to **abnormal and unforeseeable circumstances** beyond the control of the person invoking force majeure whose consequences could not have been avoided in spite of the exercise of all due care.”⁶⁷⁶ In particular, the person concerned must pay close attention to the course of the procedure set in motion and, in particular, demonstrate diligence in order to

⁶⁷¹ www.curia.europa.eu.

⁶⁷² Case T-125/06, *Centro Studi Antonio Manieri v Council* [2009], ECR II-00069, para. 28 and the case law cited; Case T-283/09 P, *Aayhan v Parliament*, [2009], (not yet published in the ECR), paras 19–20.

⁶⁷³ For example in a case citing the terrorist bombing of the register of the Italian Ministry of Transport as reason for delayed filing of reports; as the bombing occurred four-and-a half years before, this was no longer considered a case of force majeure; Case C-101/84, *Commission v Italy*, [1986] ECR 2629.

⁶⁷⁴ See Case C-97/95 *Pascoal & Filhos* [1997] ECR I-4209, para. 63.

⁶⁷⁵ Case T-194/95 *INTV II, Area Cova a.o v Council* [1996] ECR II-343, paras 2, 6.

⁶⁷⁶ Case C-4/68, *Schwarzwaldmilch v Einfuhr- und Vorratsstelle* [1968] ECR, 377, 385.

comply with the prescribed time-limits⁶⁷⁷. It is also settled case law that the concept of force majeure does not have the same scope in the various spheres of application of Community law and that its meaning must be determined by reference to the legal context in which it is to operate⁶⁷⁸.

- 17 **d) Cases. aa) Accepted.** If the applicant sends the original by post on the same day on which he sent the same document by telefax, but the Luxembourg post required seven days from the day of arrival in Luxembourg in order to forward it to the Court⁶⁷⁹, unforeseeable circumstances may be invoked. The same applies to a party that sent its written submissions by registered post ten days before the end of the deadline, but whose submissions failed to reach the Court due to postal error⁶⁸⁰.

bb) Rejected

- 18 The concepts of force majeure and unforeseeable circumstances do **not** apply to a situation in which, objectively, a diligent and prudent person would have been able to take the necessary steps before the expiry of the period prescribed for instituting proceedings, such as in the following cases⁶⁸¹:
- 19 **(1) Negligence by the party. (a) Telefax.** There is no case of force majeure if the applicant allowed **four days** to elapse after sending the fax before sending the original of the application just seven days before the expiry of the time-limit to an express courier, which itself waited two days before sending that document by registered letter to the Registry of the GC⁶⁸². A party sending a written pleading by fax just **hours** before the time-limit elapses bears the risk of any technical problem occurring and preventing the transmission⁶⁸³.
- 20 **(b) Registered mail.** A party acts negligently if the application has been posted by registered parcel only **five days** before the expiry of the period prescribed for bringing the action⁶⁸⁴.
- 21 **(c) Express courier.** It is grossly negligent to send an application by “express courier” merely **one day** before the time-limit (including the ten-day extension on account of distance) elapses⁶⁸⁵ or, even worse, to send a submission by post that lacks sufficient postage and is subsequently returned to the sender after the time-limit has elapsed⁶⁸⁶. Also, proving that “a written submission” has been sent by express courier does not suffice; the party needs to prove which document was sent⁶⁸⁷.

⁶⁷⁷ Case C-195/91 P, *Bayer v Commission* [1994] ECR I-5619, para. 32.

⁶⁷⁸ Case C-286/88, *Falcolia v Comune di Pavia* [1990] ECR I-191.

⁶⁷⁹ Case T-322/03, *Telefon & Buch Verlagsgesellschaft mbH v OHIM* [2006] ECR II-835, paras 12–20.

⁶⁸⁰ Joined Cases 25/65 and 26/65, *Simet and Feram v High Authority* [1967] ECR 42.

⁶⁸¹ Case 209/83, *Ferriera Valsabbia v Commission* [1984] ECR 3089, para. 22.

⁶⁸² Case C-325/03 P, *Zuazaga Meabe/OHIM* [2005] ECR I-403, para. 26.

⁶⁸³ Case T-469/10, *Conneely v Commission* [2011] (not published in the ECR), paras 18 to 30 and T-470/10, *Oglesby v Commission* [2011] (not published in the ECR), paras 18 to 30.

⁶⁸⁴ Case T-218/01, *Laboratoire Monique Rémy v Commission* [2002] ECR II-2139, para. 19.

⁶⁸⁵ Case C-59/91, *France v Commission* [1991] ECR I-526, para. 10.

⁶⁸⁶ Case T-358/07, *PubliCare Marketing Communications v OHIM* [2008] (not published in the ECR), paras 18–19.

⁶⁸⁷ Case F-107/10, *AP v Court of Justice* [2011] (not published in the ECR), paras 8 et seq.

(d) **Email.** The same is true if the written pleadings are sent on the last day of the time-limit by way of an email at 23.59 h that arrives at 00.00 h., i.e. on the next day⁶⁸⁸ or on 23.39 h., but within the Irish time zone, thus disregarding the fact that it is the time zone of Luxembourg that matters⁶⁸⁹.

(e) **Other.** It is equally negligent to ask a member of the Registry to calculate the exact time-limit, since such calculation does not form part of the Registry's obligation but is instead a matter for the lawyer or agent⁶⁹⁰. A lawyer cannot furthermore validly state that a business trip prevented him from signing the application and thus submitting it within the time-limit⁶⁹¹. A party, rather obviously, does not qualify for any exception by claiming that it possesses neither a telefax nor an email⁶⁹².

(2) **Negligence by a third party.** The postal service's commitment to the sender to deliver any letter within a certain period cannot, by itself, render any delay in its delivery unforeseeable⁶⁹³. The same is true if the party entrusts a third party to make the photocopies and then mixes up the original and the copies, because it signed the original by using black ink⁶⁹⁴.

(3) **Alleged lack of clarity of the law.** (aa) **Case-law.** A party cannot successfully benefit from one of the exceptions provided in Art. 45 (2) Statute ECJ by claiming that e.g. Art. 263 (6) TFEU (ex-Art. 230 (5) EC) is unclear⁶⁹⁵ or that a given procedural rule is **not available** in one official language if it is available in all other official languages⁶⁹⁶. The ECJ held that the rules governing the time-limits do not pose any particular difficulty of interpretation, and thus one cannot claim that ambiguity in the Rules of Procedure made the party's mistake in interpreting those rules an excusable error⁶⁹⁷.

(bb) **Comment.** It is arguable whether those rules are sufficiently clear, as a significant number of applicants have made serious mistakes concerning case applications and time-limits. However, this ruling seems to be inspired by the idea that no party should be allowed to derive rights from its own difficulties in understanding or interpreting a given procedural rule unless that rule's ambiguity is so grievous as to constitute a clear breach of the principle of legal certainty. This principle, which is one of the general principles of EU law, requires that rules of law be clear, precise and predictable in their effects⁶⁹⁸.

⁶⁸⁸ Case F-34/10, *Arango Jaramillo and Others v EIB* [2011], ECR SC II-0000, paras 23–24.

⁶⁸⁹ Case T-472/10, *Cavanee Fishing Co. Ltd. v Commission* [2011] (not published in the ECR), para. 14.

⁶⁹⁰ Case T-456/08, *SGAE v Commission* [2009] (not published in the ECR), para. 21 and the case-law cited.

⁶⁹¹ Case T-37/98, *FTA a.o. v Council* [2000] ECR II-373, para. 31.

⁶⁹² Case C-191/07 P, *Sellier v Commission* [2007] ECR I-00113, para. 9.

⁶⁹³ Case T-218/01, *Laboratoire Monique Rémy v Commission* [2002] ECR II-2139, para. 16.

⁶⁹⁴ Case T-51/10, *Bell & Ross BV v OHIM* [2010] (not published in the ECR), para. 20 et seq.

⁶⁹⁵ Case T-392/05, *MMT v Commission* [2006] (not published in the ECR); Case C-385/02, *Commission v Italy* [2004] ECR I-08121, paras 35, 40, and the case law cited.

⁶⁹⁶ Case 276/85, *Cladakis v Commission* [1987] ECR 00495, 511.

⁶⁹⁷ Case C-406/01, *Germany v Parliament and Council* [2002] ECR I-4561, para. 21.

⁶⁹⁸ Case C-158/07, *Förster* [2008] ECR I-08507, para. 67.

- 27 (4) **Lack of organisation or logistics.** An internal lack of communication, whether due to insufficient organisation⁶⁹⁹ or employee error⁷⁰⁰, is neither an unforeseeable circumstance nor a case of *force majeure*. This standard applies equally to Member States⁷⁰¹, institutions, and undertakings, even if these entities are under Court-controlled management⁷⁰² or are law firms representing e.g. the applicant⁷⁰³.

IV. Excusable error

1. General

- 28 The concept of “excusable error” is distinct from the concepts of “unforeseeable circumstance” and “force majeure” within the meaning of Art. 45 (2) Statute ECJ. This concept⁷⁰⁴ may, in exceptional circumstances, prolong the period within which a party may initiate proceedings. It arises directly out of the duty to respect legal certainty and to protect legitimate expectations⁷⁰⁵.

2. Definition

- 29 As time-limits for initiating proceedings have consistently been considered matter of **public policy** and thus not subject to the discretion either of the Court or of the parties, one must strictly construe the concept of excusable error; i.e., restrict it to those instances in which institutional conduct created significant **confusion** in the mind of a responsible jurist acting in **good faith**⁷⁰⁶:

a) Institution concerned

- 30 An excusable error can concern only exceptional circumstances in which the **conduct of the institution** which adopted the contested measure⁷⁰⁷ has been sufficient to cause pardonable confusion in the mind of a party acting in good faith and exercising all the diligence required of a normally experienced professional⁷⁰⁸. In such an event, the administration may not rely on its own failure to observe the principles of legal certainty and the protection of legitimate expectations out of which the party’s error arose⁷⁰⁹.

⁶⁹⁹ Case 42/85, *Cockerill v Commission* [1987] ECR, 3749 et seq.

⁷⁰⁰ Case C-195/91 P, *Bayer v Commission* [1994] ECR I-5619 et seq.

⁷⁰¹ Case T-5/07, *Belgium v Commission* [2007] (not published in the ECR), paras 16 to 18.

⁷⁰² Case 284/82, *Busseni v Commission* [1984] 557, 567; Case 224/83, *Ferriera Vittoria v Commission* [1984] ECR 2349, 2356.

⁷⁰³ Case T-2/06, *Yusef v Council* [2006] (not published in the ECR), para. 15.

⁷⁰⁴ Which applies also with respect to time-limits applying to the notification of documents to the administration, see Case T-127/07 P, *Bligny v Commission* [2008] (not yet published in the ECR), paras 40–41.

⁷⁰⁵ Case T-12/90, *Bayer v Commission* [1991] ECR II-219, 228, para. 28.

⁷⁰⁶ Case T-392/05, *MMT v Commission* [2006], ECR II-00097, para. 36.

⁷⁰⁷ Case C-112/09 P, *SGAE v Commission* [2010] ECR I-0000, para. 22.

⁷⁰⁸ Case T-5/07, *Belgium v Commission* [2007] (not yet published in the ECR), para. 17 and the case law quoted.

⁷⁰⁹ Case C-195/91 P, *Bayer v Commission* [1995] ECR 1994 I-5691, para. 26; Case T-514/93, *Cobrecraf a.o. v Commission* [1995] ECR II-621, 635, para. 40 and the case law quoted; Case T-68/96, *Polyvios v Commission* [1998] ECR II-155, para. 43.

b) General Court

An excusable error may result from a variety of exceptional circumstances, 31 including the conduct of the GC itself, if such conduct gives rise to confusion in the mind of the party concerned⁷¹⁰.

3. Cases where an error was excusable

An error is **excusable** if e.g. an application has been lodged outside the time-limit 32 due to **erroneous** or **misleading** information that has been provided by the institution concerned and that has triggered confusion on the side of the applicant⁷¹¹.

4. Non excusable error. a) Receiving a decision. The fact that, e.g. the Commission 33 furnished the contested decision to the applicant's registered office despite the fact that it had previously addressed all its communications directly to the applicant's legal department, cannot constitute an exceptional circumstance which would render the applicant's error excusable⁷¹². An error is furthermore non excusable if the addressee committed mistakes, e.g. because its mail office failed to apply internal instructions requiring employees to open any envelope when the identity of the person for whom it is intended is not clearly established⁷¹³, or if its mail service fails to stamp the envelope with the date of its receipt⁷¹⁴. The same applies if the decision was duly furnished to the applicant, who then sent it to his advisers, relying entirely on his advisers' initiative instead of directly contacting them in order to discuss a mutually agreeable course of action in response to the Decision in order to respond within the time period allotted⁷¹⁵. This principle also applies if the party concerned claims but fails to prove that it did contact its lawyer to that effect⁷¹⁶. An entity may not rely on the argument that it is small and that thus it has neither an in-house nor a permanent external counsel who could effectively respond within the time-limit allotted⁷¹⁷. An error committed by the party's external counsel is considered to be an error committed by the party⁷¹⁸. Furthermore, an error committed by an outside service provider (an e.g. an external copy shop) is considered an error committed by the party and is by no means an excusable error⁷¹⁹.

b) Non compliance with a time-limit

If an applicant allows a time-limit to expire and is therefore prevented from 34 bringing an action against an institution's decision that directly affects his interests,

⁷¹⁰ Case C-112/09 P, *SGAE v Commission* [2010] (not yet published in the ECR), para. 29.

⁷¹¹ Case T-29/97, *Libéros v Commission* [2000] ECR SC I-A-43, 45.

⁷¹² Case T-12/90, *Bayer v Commission* [1990] ECR II-219, para. 31.

⁷¹³ Case T-12/90, *Bayer v Commission* [1990] ECR II-219, para. 33.

⁷¹⁴ Case T-12/90, *Bayer v Commission* [1990] ECR II-219, para. 33.

⁷¹⁵ Joined Cases T-148/98 and T-162/98, *Evans o. a. v Commission* [1999] ECR II-2837, para. 35.

⁷¹⁶ Case T-3/00, *Pitsiorlas v Council and ECB* [2001] ECR II-717, para. 23.

⁷¹⁷ Case T-392/05, *MMT v Commission* [2006] ECR II-00097, para. 35.

⁷¹⁸ See to this effect Case C-73/10 P, *Internationale Fruchthandels-Gesellschaft Weichert v Commission* [2010] ECR I-0000, paras 42, 45, 57.

⁷¹⁹ C-426/10 P, *Bell & Ross v OHIM* [2010] (not published in the ECR), para. 27.

he cannot effectively restart the now-expired legal clock by asking the institution in question to reconsider its decision while simultaneously bringing a Court action against the institution's subsequent refusal to reconsider said decision⁷²⁰.

c) Sending written pleadings

- 35 The lawyer of the party concerned must distinguish the original written pleadings from the copies⁷²¹.

d) Misunderstanding of the operation of the RP

- 36 It is not enough to provide a witness statement stating that the lawyer(s) involved considered, in good faith, that according to a reading of Art. 101(1) (a) and (2) together with Art. 102(2) RP GC the time-limit expired on a given, incorrect date, since the rules governing time-limits do not pose any particular difficulty of interpretation.⁷²²
- 37 e) **Other.** aa) **Fundamental rights.** Even where fundamental rights are at stake, rules concerning time-limits for bringing proceedings are mandatory and must be applied by the Court in such a way as to safeguard legal certainty and equality of persons before the law⁷²³.

bb) Legal aid

- 38 The fact that the applicant gave clear notice of his intention to bring an action for annulment by making an application for legal aid before the time-limit does not suffice as a substitute for submitting such an action for annulment before the time-limit. Such a connection between application for legal aid and action for annulment might subsequently link the Court's decision on legal aid and on annulment, thereby perhaps inappropriately pre-judging the admissibility of the action for annulment by way of its decision on the application for legal aid⁷²⁴.

V. Procedure

- 39 Neither Art. 45 nor the case law provide any particular procedure for claiming an exception based on the concepts of "unforeseeable circumstance", "*force majeure*", or "excusable error". Thus, the party concerned can and should address exceptional circumstances in a separate chapter of its (technically tardy) application or written

⁷²⁰ Case T-514/93, *Cobrecap a.o. v Commission* [1995] ECR II-621, para. 44 and the case law quoted; Case T-407/07, *Maschinenbau und Handels GmbH et al v Commission* [2011] (not yet published in the ECR), paras 96 and 99.

⁷²¹ Case C-426/10 P, *Bell & Ross v OHIM* [2010] (not published in the ECR), para. 29.

⁷²² Case T-2/09, *Internationale Fruchtimport Gesellschaft Weichert v Commission* [2009] (not published in the ECR), para. 18, which was confirmed on appeal.

⁷²³ Case T-102/09, *Elosta v Commission* [2011] (not published in the ECR), para. 41 and the case-law cited; Case T-101/09, *Maftah v Commission* [2011] (not published in the ECR), para. 41.

⁷²⁴ Case T-102/09, *Elosta v Commission* [2011] (not published in the ECR), para. 35 and the case-law cited; Case T-70/10 P, *Apostolov v Commission* [2010] (not published in the ECR), para. 26.

submission. It is important to remember that even though the GC verifies parties' compliance with its own time-limits, it will **not** verify cases of unforeseeable circumstance, *force majeure*, or excusable error on its own initiative. Thus the party concerned must substantiate and prove exceptional circumstances within its tardy submission. Alternatively, the party concerned may provide comments concerning exceptional circumstances if the party opponent raises a formal plea of inadmissibility due to tardy submission of documents.

Article 46 [Time bar in case of non-contractual liability]

(1) Proceedings against the Union in matters arising from non-contractual liability shall be barred after a period of five years from the occurrence of the event giving rise thereto. The period of limitation shall be interrupted if proceedings are instituted before the Court of Justice or if prior to such proceedings an application is made by the aggrieved party to the relevant institution of the Union. In the latter event the proceedings must be instituted within the period of two months provided for in Art. 263 of the Treaty on the Functioning of the European Union; the provisions of the second paragraph of Art. 265 of the Treaty on the Functioning of the European Union shall apply where appropriate.

(2) This Article shall also apply to proceedings against the European Central Bank regarding non contractual liability.

Outline:

I. Introduction	1
1. Time-bar	1
2. Five years	2
3. No ex officio assessment	3
II. Beginning of the limitation period (paragraph 1, 1st sentence).....	4
1. General.....	4
a) Relevance	4
b) Not required.....	5
2. Decisions.....	6
3. Legislative acts	7
4. Interest	8
III. Interruption of the limitation period (paragraph 1, 2nd and 3rd sentence).....	9
1. Interruption	9
a) Conditions.....	9
b) No interruption	10
c) Recurrent damage	11
2. Suspension.....	12

I. Introduction

1. Time-bar

- 1 This provision sets out the conditions under which matters arising from non-contractual liability of the Union⁷²⁵ shall be time-barred⁷²⁶. A time-barred application (i.e., one outside the statute of limitations set up in Art 46(1)) is **inadmissible**⁷²⁷ and justifies a formal plea of inadmissibility⁷²⁸. While in other areas of EU law the principle of “reasonable time”⁷²⁹ is used whenever there is no specific legislative rule, such an approach would have lacked legal certainty in the case of EU non-contractual liability. The limitation period is intended to reconcile protection of the rights of the aggrieved person and the principle of legal certainty.

2. Five years

- 2 The length of the limitation period was determined by considering the time that the allegedly aggrieved party needs in order to gather the appropriate information for the purpose of a possible action and to verify the facts likely to provide the basis of that action⁷³⁰.

3. No ex officio assessment

- 3 It is within the spirit of the “general principles common to the laws of the Member States”⁷³¹ that the EU Judge does not ex officio, meaning without any party explicitly raising this, assess whether such proceedings are time barred⁷³².

II. Beginning of the limitation period (paragraph 1, 1st sentence)

- 4 **1. General. a) Relevance.** Determining the exact beginning of the five-year period of admissibility is not only relevant for determining the admissibility of non contractual liability proceedings, but also for ascertaining the duration and thus the extent of the harm in question. The limitation period dates from the point at which the allegedly aggrieved party might be able to cite all the elements required for a case to be considered one of non-contractual liability⁷³³, i.e. the alleged

⁷²⁵ Pursuant to Art. 46 of the Treaty of Lisbon this provision also “applies to matters arising from non-contractual liability of the European Central Bank”.

⁷²⁶ See Art. 268 and 340 (2) TFEU.

⁷²⁷ Joined Cases 256/80, 257/80, 265/80, 267/80 and 5/81, *Birra Wührer* [1982] ECR 85, para. 107.

⁷²⁸ Art. 151 RP ECJ, Art. 114 RP GC and Art. 78 RP CST.

⁷²⁹ Case 15/85, *Consorzio Cooperative d'Abruzzo v Commission* [1987] ECR 1005, para. 12.

⁷³⁰ Case T-140/04, *Ehcon v Commission* [2005] ECR II-3287, para. 57.

⁷³¹ Art. 340 (2) TFEU.

⁷³² Case 20/88, *Roquette frères v Commission* [1989] ECR 1553, para. 12.

⁷³³ Case T-20/94, *Hartmann v Council and Commission* [1997] ECR II-595, para. 107.

existence of unlawful conduct on the part of the EU-institution(s), the alleged damage concerned, and the existence of a causal link between the alleged unlawful conduct and the loss claimed due to the resulting damage⁷³⁴. The requirement concerning the existence of specific damage is satisfied if the damage is **imminent and foreseeable**, even if said damage cannot yet be precisely assessed⁷³⁵.

b) Not required

Thus, the argument that the limitation period cannot begin until the victim has 5 specific and detailed knowledge of the facts of the case is misconceived, since knowledge of the facts is not one of the conditions which must be met in order for the limitation period to begin⁷³⁶. The act responsible for the damage in question need not be declared invalid in order to oblige an institution to make reparations⁷³⁷.

2. Decisions

In the case of an invitation to tender, the five-year limitation period begins the 6 date upon which the bidder knows the reasons for the negative decision⁷³⁸.

3. Legislative acts

In cases where liability stems from a **legislative** measure, the limitation period 7 cannot begin until all the requirements governing the obligation to make good the damage are satisfied and cannot in any circumstance begin before the injurious effects of the measure have been produced⁷³⁹.

4. Interest

Interest is calculated based upon the value of the damage in question at the date 8 upon which it first occurred. The purpose of calculating interest on damages is merely to ensure updated, fair compensation for the damage suffered. The start date of calculation of interest must not be confused with the date of the damaging event that serves as the start date of the five-year limitation period within the meaning of Art. 46 Statute ECJ⁷⁴⁰.

⁷³⁴ Case T-332/99, *Jestädt v Council and Commission* [2001] ECR II-2561, para. 40 and the case law quoted.

⁷³⁵ Case T-369/03 *Arizona Chemical a.o. v Commission* [2005] ECR II-5839, para. 106 and the case-law quoted.

⁷³⁶ Case T-140/04, *Ehcon v Commission* [2005] ECR II-3287, para. 58.

⁷³⁷ Case T-20/94, *Hartmann v Council and Commission* [1997] ECR II-595, para. 126.

⁷³⁸ Case T-140/04, *Ehcon v Commission* [2005] ECR II-3287, para. 44 et seq.

⁷³⁹ Case T-20/94, *Hartmann v Council and Commission* [1997] ECR II-595, para. 107.

⁷⁴⁰ Case T-106/98, *Fratelli Murri v Commission* [1999] ECR II-2553, para. 28.

III. Interruption of the limitation period (paragraph 1, 2nd and 3rd sentence)

9 **1. Interruption. a) Conditions.** The five-year period is interrupted only if the allegedly aggrieved party institutes proceedings before the EU **judicature** or if, prior to such proceedings, the party submits an application to the relevant EU **institution**. In the case of an application directly submitted to an EU institution, however, interruption of the five-year time-limit only occurs if the request submitted to the institution is followed by an application to the ECJ within the time-limits determined by reference to Art. 263 TFEU or Art. 265 TFEU, depending on the case⁷⁴¹.

b) No interruption

10 Thus, neither the commencement of proceedings before the **national Courts**⁷⁴² nor a request for measures of **inquiry** such as a request to appoint an expert to investigate potential harm to the party in question is enough to interrupt the limitation period⁷⁴³.

c) Recurrent damage

11 If the damage was not caused immediately, but recurred on a daily basis over a particular period as a result of an unlawful measure, with respect to the date of the event which interrupted the limitation period, the time bar under Art. 46 Statute ECJ applies to the period preceding that date by more than five years⁷⁴⁴ and does not affect rights which arose during subsequent periods⁷⁴⁵.

2. Suspension

12 Art. 46 Statute ECJ only mentions interruption of the limitation period; it does not refer to **suspension** of such period. The suspension of the limitation period may result from the defendant's unilateral waiver of the right to plead limitation⁷⁴⁶.

TITLE IV GENERAL COURT

Preliminary

The legislature did not provide the GC with a statute of its own, since it, like the CST, is a subsidiary part of the Court of Justice. Instead, the legislature adopted

⁷⁴¹ Case T-76/94, *Jansma v Council and Commission* [2001] ECR II-243, para. 81.

⁷⁴² Case T-246/93 *Bühning v Council and Commission* [1998] ECR II-171, para. 64.

⁷⁴³ Case C-136/01 P, *Autosalone Ispra die Fratelli Rossi v Commission* [2002] ECR I-6565, para. 56.

⁷⁴⁴ Case T-174/00 *Biret International v Council* [2002] ECR II-17, para. 18; Case T-210/00 *Biret & Company v Council* [2002] ECR II-47, para. 41, 44.

⁷⁴⁵ Case T-76/94, *Jansma v Council and Commission* [2001] ECR II-243, para. 79; Case T-369/03, *Arizona Chemical a.o. v Commission* [2005] ECR II-5839, para. 116.

⁷⁴⁶ Case T-246/93, *Bühning v Council and Commission* [1998] ECR II-171, para. 66–70.

Title IV, which includes **Art. 47 to 62 b** of the Statute of the ECJ. These provisions refer, with some exceptions, to those applicable to the ECJ, such as Art. 47 (1), and, more importantly, Art. 53 (1), which refers to the applicability of all of **Title III**, i.e. Art. 19 to 46, the heart of the Statute ECJ, to GC procedure as well.

Article 47 [Applicable rules]

(1) The first paragraph of Art. 9, Article 9 a, Articles 14 and 15, the first, second, fourth and fifth paragraphs of Art. 17 and Art. 18 shall apply to the General Court and its members.

(2) The fourth paragraph of Art. 3 and Articles 10, 11 and 14 shall apply to the Registrar of the General Court *mutatis mutandis*.

I. Applicable provisions (paragraph 1)

The Judges of the GC have the same status as the Judges of the ECJ. The explicit 1 reference to Arts. 2 to 8 of the Statute ECJ has been dropped, since these provisions now explicitly refer also to the GC. A reference to Art. 9 a, which describes the functions of the Vice-President, has been added.

II. Provisions applying to the Registrar of the GC (paragraph 2)

Regarding the Registrar the old Art. 45 has been replaced by Art. 47 paragraph 2. 2

Article 48 [Number of judges]

The General Court shall consist of 27 Judges.

1. Pending legislative proposal

The proposed increase of the number of Judges from the current number of 27 1 (i.e., one per Member State) to 39 in order to reduce the case load and shorten trial times for cases before the GC is, by definition, a politically delicate issue. Legally, any increase is possible because the GC is required to have “at least”⁷⁴⁷ one Judge per Member State (but could conceivably have more than one Judge of certain nationalities)⁷⁴⁸, while the ECJ comprises exactly one Judge per Member State⁷⁴⁹. However, implementing an increase, no matter its magnitude, is bound to be politically controversial, which is why the decision on this proposal has been

⁷⁴⁷ Art. 19 (2) TEU.

⁷⁴⁸ In practice, the Judge will most likely have the citizenship of the Member State concerned, but it remains unclear whether this is compulsory in law. Also, there is no rule regarding a Judge holding dual or multiple citizenship.

⁷⁴⁹ Art. 19 (2) TEU.

postponed to 2013. On the one hand, there is an objective, pressing need to reduce the GC's workload, which has substantially increased the average duration of proceedings⁷⁵⁰, in particular in the area of competition law⁷⁵¹. The creation of the CST, which relieved the then Court of First Instance (now the GC) of about one hundred staff cases per year⁷⁵², did not do much to remedy the situation⁷⁵³. Perhaps due in part to the CST's overall ineffectiveness at substantially reducing GC case load, discussions about the creation of further specialised Courts⁷⁵⁴, e.g. in the area of intellectual property rights, seem to have been put on hold. On the other hand, any increase of the number of Judges at the GC, in particular if it is as substantial as the current proposal, which increases the number of Judges by half again, is bound to trigger both a debate on the ensuing costs and a debate on which Member States should be entitled to two Judges.

2. Rotating Judges?

- 2 One way of resolving the more political issue of which Member States would receive multiple Judges would be to create a system of rotation, similar to the one which existed in the early years of the ECJ in which each of the six Member States appoints its own Judge and the seventh seat, required in order to avoid a tie, rotated between the major three Member States. The system of rotation of the 8 Advocates-General is a further precedent upon which one could draw in creating this system. While this might alleviate the political problem, however, the question of costs still remains, as adding twelve new Judges to the Court will prove rather expensive.

Article 49 [Advocate General]

(1) The members of the General Court may be called upon to perform the task of an Advocate General.

(2) It shall be the duty of the Advocate General, acting with complete impartiality and independence, to make, in open Court, reasoned submissions on certain cases brought before the General Court in order to assist the General Court in the performance of its task.

(3) The criteria for selecting such cases, as well as the procedures for designating the Advocates General, shall be laid down in the Rules of Procedure of the General Court.

(4) A member called upon to perform the task of Advocate General in a case may not take part in the judgment of the case.

⁷⁵⁰ The number of new cases before the GC rose from 469 in 2005 (when the CST was first referred cases in an attempt to relieve the overworked GC) to 722 in 2011; while the GC completed 104 more cases in 2011 (714 completed) than in 2005 (610 completed), it nevertheless had 275 more cases pending (1308 cases pending in 2011 versus 1033 in 2005). See *Annual Report of the European Court of Justice: Statistics of the General Court 2011*, p 19.

⁷⁵¹ c.f. "Draft Amendments to the Statute of the Court of Justice of the European Union and to Annex I Thereto", Introductory Note, p 3–4, www.curia.europa.eu; Case C-385/07 P *Der Grüne Punkt* [2009] ECR I-6155.

⁷⁵² Whilst this effect was somewhat mitigated by an increased number of appeals lodged at the GC.

⁷⁵³ See note 684, *supra*.

⁷⁵⁴ Which replaces the somewhat unfortunate term of "judicial panels".

This Art. implements Art. 254 (1) TFEU, which states that the Statute may 1 contain provisions allowing the GC to be supported by Advocates-Generals. So far, the legislature has not created the **function** of an Advocate General at the GC. It is unlikely that the creation of Advocates General for the GC would become an alternative to the proposed increase of the number of Judges at the GC.

Instead, Art. 49 Statute provides the possibility to designate a Judge to exercise 2 the tasks of an Advocate-General in a given case. Nevertheless, with the exception of some major competition cases during its initial years, the GC has never made use of this provision. This might have to do with the circumstance that the bulk of cases dealt with by the GC are factual, similarly to the cases for which the CST has jurisdiction, by contrast to proceedings at the ECJ, which are predominantly and often exclusively about legal questions.

Article 50 [Chambers, full Court, single Judge and Grand Chamber]

(1) The General Court shall sit in chambers of three or five Judges. The Judges shall elect the Presidents of the chambers from among their number. The Presidents of the chambers of five Judges shall be elected for three years. They may be re-elected once.

(2) The composition of the chambers and the assignment of cases to them shall be governed by the Rules of Procedure. In certain cases governed by the Rules of Procedure, the General Court may sit as a full Court or be constituted by a single Judge.

(3) The Rules of Procedure may also provide that the General Court may sit in a Grand Chamber in cases and under the conditions specified therein.

I. General

This provision is similar to Art. 16 Statute ECJ. Creating chambers of different 1 sizes comprised of an uneven number of Judges in order to avoid a tie, reflects the collegial judgments seen in the judiciaries of most Member States as well as most international Courts. However, in contrast to the ECJ, where chambers of 5 Judges are assigned more than half of all cases, most cases before the GC (approximately 85 % in 2011⁷⁵⁵) are heard by a chamber comprised of three Judges.

II. Duration of the mandate

Only the mandate of the President of the Chamber of Five Judges is defined in 2 Art. 50(1); this three-year mandate is equivalent to that of his counterparts at the ECJ, as compared to the mandate of the President of chamber with three Judges. However, while the ECJ “Grand Chamber” is comprised of 15 Judges⁷⁵⁶, no

⁷⁵⁵ “Statistics of Judicial Activity of the General Court,” *Annual Report of the European Courts of Justice 2011*, www.curia.europa.eu.

⁷⁵⁶ Art. 16 (2) Statute ECJ.

provision in the Statute ECJ defines the number of Judges in the equivalent formation at the GC. Instead, Art. 10 (1) RP GC regulates this “grand chamber” within the GC.

Article 51 [Jurisdictions]

(1) By way of derogation from the rule laid down in Art. 256 (1) of the Treaty on the Functioning of the European Union jurisdiction shall be reserved to the Court of Justice in the actions referred to in Articles 263 and 265 of the Treaty on the Functioning of the European Union when they are brought by a Member State against:

(a) an act of or failure to act by the European Parliament or the Council, or by those institutions acting jointly, except for:

- decisions taken by the Council under the third subparagraph of Art. 108 (2) of the Treaty on the Functioning of the European Union;
- acts of the Council adopted pursuant to a Council regulation concerning measures to protect trade within the meaning of Art. 207 of the Treaty on the Functioning of the European Union;
- acts of the Council by which the Council exercises implementing powers in accordance with the second paragraph of Art. 291 of the Treaty on the Functioning of the European Union;

(b) against an act of or failure to act by the Commission under the first paragraph of Art. 331 of the Treaty on the Functioning of the European Union.

(2) Jurisdiction shall also be reserved to the Court of Justice in the actions referred to in the same Articles when they are brought by an institution of the Union against an act of or failure to act by the European Parliament, the Council, both those institutions acting jointly, or the Commission, or brought by an institution of the Union against an act of or failure to act by the European Central Bank.

Outline:

I. Introduction	1
II. Exclusive jurisdiction of the ECJ.....	2
III. Exclusive jurisdiction of the GC	3
IV. Divided jurisdiction	4
1. General.....	4
2. Actions for annulment and failure to act.....	5
a) GC.....	5
b) ECJ.....	6
aa) Rule	6
bb) Exceptions	7
3. Referral for preliminary rulings	8
V. Specialised Courts	9

I. Introduction

Art. 51 Statute ECJ describes a seemingly complex system of derogations: It reserves jurisdiction to the ECJ for certain cases, while providing a number of exceptions to these derogations, which thus remain within the jurisdiction of the GC. These numerous exceptions presumably justify placing this provision in Title IV Statute ECJ. It seems thus useful to provide an overview on the jurisdiction of the ECJ and the GC:

II. Exclusive jurisdiction of the ECJ

The ECJ has exclusive jurisdiction over all legal remedies referred to in Art. 251 et seq. TFEU⁷⁵⁷, unless the GC or the CST (to date the only specialised Court), has exclusive jurisdiction within the meaning of Art. 256 TFEU, or unless the ECJ and the GC have “divided jurisdictions”. These various jurisdictions will be described further below.

III. Exclusive jurisdiction of the GC

The GC has exclusive jurisdiction over appeals of CST judgements as well as for applications regarding non contractual liability⁷⁵⁸.

IV. Divided jurisdiction

1. General

Both the ECJ and the GC have jurisdiction over actions for annulment and failure to act, as well as over referrals for preliminary rulings, depending upon the **legal status of the applicant** and the **legal subject** concerned on the basis of rules that are far from being a masterpiece of transparency:

2. Actions for annulment and failure to act. a) GC. The GC has jurisdiction at first instance over the actions for annulment and failure to act mentioned in Art. 256 (1) TFEU, **except** for those actions that are a matter for the ECJ by virtue of Art. 51 Statute ECJ, **unless** the case falls under one of the specific exceptions provided for in this provision, in which case the GC has jurisdiction.

⁷⁵⁷ See e.g. Art. 256 (1), sub-para. 2 TFEU – appeal against decisions of the GC; Art. 258 TFEU – infringement proceedings by the Commission, Art. 259 TFEU) – infringement proceedings by a Member State.

⁷⁵⁸ Art. 256 (1) TFEU and Art. 268 in conjunction with Art. 340 TFEU.

- 6 b) ECJ. aa) Rule. The ECJ has jurisdiction⁷⁵⁹ for all actions for annulment and failure to act lodged by EU institutions. Furthermore it is, in principle, responsible for hearing actions for annulment and failure to act lodged by Member States (see Art. 51 paragraph 1 a) and b) Statute ECJ), unless one of the exceptions provided for in litera a) applies. Should such an exception apply, the GC has jurisdiction over said case.

bb) Exceptions

- 7 These include unanimous decisions which the Council adopts on the basis of Art. 108 (2), sub-paragraph 3 TFEU with respect to state aid; decisions which implement a regulation based on Art. 207 TFEU; and those cases in which the Council did not delegate the responsibility to create measures which implement a regulation to the Commission, but instead kept this competence for itself (or, alternatively, executes these measures in the context of a “comitology”- procedure (see Art. 290, 291, (2) to (4) TFEU)).

3. Referral for preliminary rulings

- 8 The ECJ has jurisdiction for referrals for preliminary rulings within the meaning of Art. 267 TFEU, insofar as the Statute ECJ does not specifically attribute such jurisdiction to the GC⁷⁶⁰, which is not the case to date.

V. Specialised Courts

- 9 The “specialised Courts” have exclusive jurisdiction over one or several particular subject(s) or sector(s). Currently the CST is the only specialised Court; it has exclusive jurisdiction for staff matters⁷⁶¹ at first instance. In the vast majority of cases, distinguishing between a staff case under the jurisdiction of the CST and other cases that come under the jurisdiction of the GC, such as a pending request lodged by an official for access to documents on the basis of Regulation 1049/2001, is not difficult⁷⁶².

Article 52 [Staff of the GC]

The President of the Court of Justice and the President of the General Court shall determine, by common accord, the conditions under which officials and other servants attached to the Court of Justice shall render their services to the General Court to enable it to function. Certain officials or other servants shall be responsible to the Registrar of the General Court under the authority of the President of the General Court.

⁷⁵⁹ Art. 51 (2) Statute ECJ.

⁷⁶⁰ Art. 256 (3), sub-para. 3 TFEU.

⁷⁶¹ Art. 270 TFEU.

⁷⁶² Case F-121/07, *Strack v Commission* and T-197/11 P, *Commission v Strack*.

In its institutional capacity, the Court of Justice of the European Union employs officials and “other servants”, meaning essentially temporary and contractual agents. These personnel are assigned to one of the three judicial instances existing to date, i.e. the ECJ, the GC and the CST⁷⁶³. The Presidents of the ECJ and the GC determine the modalities of these assignments. It would seem that departments such “press and information”, “documentation and research”, as well as the interpreters, translators, IT-department, and the library are not assigned to any jurisdiction in particular, and may thus be used by all three judicial instances.

Article 53 [Provisions applicable to the GC]

(1) The procedure before the General Court shall be governed by Title III.

(2) Such further and more detailed provisions as may be necessary shall be laid down in its Rules of Procedure. The Rules of Procedure may derogate from the fourth paragraph of Art. 40 and from Art. 41 in order to take account of the specific features of litigation in the field of intellectual property.

(3) Notwithstanding the fourth paragraph of Art. 20, the Advocate-General may make his reasoned submissions in writing.

Outline:

I. Procedure before the GC (paragraph 1)	1
1. Principle of common rules.....	1
2. Referrals for preliminary ruling	2
II. Rules of Procedure (paragraph 2)	3
1. Rules of Procedure	3
2. Litigation in the field of intellectual property.....	4
III. Opinions of the Advocate General (paragraph 3)	5

I. Procedure before the GC (paragraph 1)

1. Principle of common rules

One would expect that the procedural legal framework applicable to the GC is 1 not totally different from that which applies to the ECJ, which is why Title III, which includes the heart of ECJ procedural rules (i.e., Arts. 19 to 46)⁷⁶⁴, applies equally to the GC.

2. Referrals for preliminary ruling

This evokes the possibility for the GC to hear a referral for preliminary ruling 2 within the meaning of Art. 23. However, the legislature has not yet employed the possibility provided by Art. 256 (3) TFEU to grant the GC jurisdiction to hear and

⁷⁶³ Annex I Art. 6 Statute ECJ.

⁷⁶⁴ By virtue of Art. 7 Annex I to the Statute ECJ Title III applies also to the CST, with the exception of Arts. 22 and 23 Statute ECJ.

determine questions referred for preliminary ruling in specific areas laid down by the Statute.

II. Rules of Procedure (paragraph 2)

1. Rules of Procedure

- 3 The first sentence of paragraph 2 echoes Art. 254 (5) TFEU, i.e. the legal basis for adopting the Rules of Procedure of the GC. Its wording (“further and more detailed provisions”) indicates that the Rules of Procedure of the GC must remain **within** the legal framework set by the Statute ECJ and, ultimately, the TFEU. This does not mean that the Statute ECJ needs to provide an explicit or elaborate legal basis for these rules (c.f. the lack of explicit rules governing taxation of costs), as long as either the Statute ECJ or the TFEU includes an implicit basis for a particular procedure (in the case of taxation of costs, said basis is found in Art. 58 (2) Statute ECJ).

2. Litigation in the field of intellectual property

- 4 The second sentence of paragraph 2 provides a legal basis for Rules of Procedure **derogating** from Art. 40 (4)⁷⁶⁵ and Art. 41 Statute ECJ⁷⁶⁶ concerning intellectual property litigation. That said, the legislature is not prevented from adopting **specific** Rules of Procedure for this category of litigation, which it did in Art. 130 to 136 RP GC.

III. Opinions of the Advocate General (paragraph 3)

- 5 Only during its very early years did the GC make use of the possibility to assign the role of Advocate-General to a Judge in a given case. Ever since, this provision has become practically obsolete but has nevertheless not been abolished.

Article 54 [Referring an action and staying proceedings]

(1) Where an application or other procedural document addressed to the General Court is lodged by mistake with the Registrar of the Court of Justice, it shall be transmitted immediately by that Registrar to the Registrar of the General Court; likewise, where an application or other procedural document addressed to the Court of Justice is lodged by mistake with the Registrar of the General Court, it shall be transmitted immediately by that Registrar to the Registrar of the Court of Justice.

⁷⁶⁵ Which provides that the intervener may not alter the subject-matter of the case.

⁷⁶⁶ Which governs the judgment by default.

(2) Where the General Court finds that it does not have jurisdiction to hear and determine an action in respect of which the Court of Justice has jurisdiction, it shall refer that action to the Court of Justice; likewise, where the Court of Justice finds that an action falls within the jurisdiction of the General Court, it shall refer that action to the General Court, whereupon that Court may not decline jurisdiction.

(3) Where the Court of Justice and the General Court are seised of cases in which the same relief is sought, the same issue of interpretation is raised or the validity of the same act is called in question, the General Court may, after hearing the parties, stay the proceedings before it until such time as the Court of Justice has delivered judgment or, where the action is one brought pursuant to Art. 263 of the Treaty on the Functioning of the European Union, may decline jurisdiction so as to allow the Court of Justice to rule on such actions. In the same circumstances, the Court of Justice may also decide to stay the proceedings before it; in that event, the proceedings before the General Court shall continue.

(4) Where a Member State and an institution of the Union are challenging the same act, the General Court shall decline jurisdiction so that the Court of Justice may rule on those applications.

Outline:

I. Introduction	1
II. Application lodged at the wrong instance (paragraph 1).....	2
III. Referring an action (paragraph 2)	3
1. Little practical relevance.....	3
2. Referring the action	4
a) Mechanism	4
b) Practical consequences for parties	5
3. Total lack of jurisdiction	6
IV. Staying the proceedings (paragraph 3).....	7
1. Introduction.....	7
2. ECJ	8
3. GC	9
4. Hearing the parties.....	10
5. Examples.....	11
6. GC declines jurisdiction.....	12
V. Prevailing competence of the ECJ (paragraph 4)	13

I. Introduction

The creation of several juridical instances automatically requires mechanisms designed to avoid any conflict of jurisdiction. Unfortunately, these mechanisms, designed to ensure legal certainty, also necessitate of the creation rather elaborate and thus seemingly complex rules.

II. Application lodged at the wrong instance (paragraph 1)

- 2 This provision applies to those – very rare – cases of an application or other written submission addressed to the GC but erroneously sent to the Registrar of the ECJ (or *vice versa*). Such cases of manifest error bear no consequences for the party concerned, since the Registrar who received the document will forward it to his counterpart Art.

III. Referring an action (paragraph 2)

1. Little practical relevance

- 3 In contrast to paragraph 1, this provision primarily covers those cases in which the applicant errs on the **jurisdiction** of the judicial instance and thus addresses his application to the wrong judicial instance of the Court. This happened primarily in the early years of the GC⁷⁶⁷, when the exact scope of GC jurisdiction and sometimes even its existence were less known to the public⁷⁶⁸. This provision has gradually lost its relevance⁷⁶⁹ as the GC has gained, little by little, jurisdiction over all direct challenges lodged by natural or legal persons. Only those matters listed in Art. 51 Statute ECJ are a matter for the ECJ⁷⁷⁰.

- 4 **2. Referring the action. a) Mechanism.** If an application is mistakenly lodged at the GC⁷⁷¹ or the ECJ⁷⁷², the application is referred to the appropriate judicial instance. If a case is referred to the GC, the GC may **not decline** jurisdiction – even though the ECJ could, at least very theoretically, be wrong as to the GC's jurisdiction.

b) Practical consequences for parties

- 5 Thus, if the applicant appeals to the “wrong” judicial body his application is not inadmissible and he is not time barred. This also means that there is no need for him to submit a new, i.e., corrected application, since the ECJ will refer his pending application to the GC. However, the decision on the costs of the case remains reserved⁷⁷³.

⁷⁶⁷ See e.g. Case T-78/91, *Moat v Commission* [1991] ECR II-1387, para. 8; Case C-66/90, *PTT v Commission* [1991] ECR I-2723 paras 3 et seq.

⁷⁶⁸ Case T-47/92, *Lenz v Commission* [1992] ECR II-2523, paras 1–2; Case T-101/92, *Stagakis v Parliament* [1993] ECR II-63, para. 1.

⁷⁶⁹ Case T-10/98, *E-Quattro v Commission* [1999] ECR II-1811, 1815, para. 9.

⁷⁷⁰ Case C-269/06, *Commission v Translation Centre of the EU* [2007] (not published in the ECR).

⁷⁷¹ Case T-78/91, *Moat and TAO/AFI v Commission* [1991] ECR II-1387.

⁷⁷² Case C-72/90, *Asia Motor France v Commission* [1990] ECR I-2181.

⁷⁷³ Case C-424/92, *Ladbroke Racing v Commission* [1993] ECR I-2214 et seq.

3. Total lack of jurisdiction

If the ECJ or the GC come to the conclusion that neither of them has jurisdiction 6 to hear an application then the instance in which the case is pending will, quite obviously, reject it as inadmissible⁷⁷⁴.

IV. Staying the proceedings (paragraph 3)

1. Introduction

This provision is based on the hypothesis that the ECJ and the GC are simul- 7 taneously seized of cases which do actually come under their respective jurisdictions, (i.e., not the situation evoked in paragraph 2), which nevertheless raise similar issues of interpretation or concern the validity of a similar legal act, even though the underlying facts of both cases may be different. In such case one of the two proceedings needs to be stayed, for reasons of the “**principle of proper administration of justice**”⁷⁷⁵, in order to avoid the risk of **conflicting judgments** on the same issue.

2. ECJ

Cases in which the ECJ stays a pending case are rather rare⁷⁷⁶. 8

3. GC

According to the wording of paragraph 3, 1st sentence the GC “may” stay the 9 proceedings and is thus under no obligation to do so. In practice its decision will be determined by the respective facts of the particular case in question, the category of legal remedies into which the case falls, and similar procedural considerations. GC decisions are also heavily influenced by the fact that the ECJ is the instance of appeal and thus ultimately has the final say on questions of legal interpretation and application.

4. Hearing the parties

While the instance concerned needs to **hear** the parties beforehand, it is, like in 10 all other instances, not bound by their views.

⁷⁷⁴ This is relevant e.g. with respect to a substantial number of requests for legal aid addressed to the GC.

⁷⁷⁵ Case T-42/91 *PTT v Commission* [1991] ECR II-273 et seq.

⁷⁷⁶ In recent years the only example seems to be Case C-506/09 P, *Portugal v Transnautica* [2010] (not published in the ECR).

5. Examples

- 11 Normally, the GC will stay a pending case if an **appeal** pending at the ECJ relates to the same issue or raises analogous legal questions. It is equally in the interest of the proper administration of justice for the GC to stay a decision until the ECJ delivers a decision on a **referral for preliminary ruling** or an **action for annulment**, if said actions relate to e.g. the legal basis upon which a party's plea relies in a case before the GC. If it has stayed a given case, the GC retains full and exclusive jurisdiction to recommence hearing the case when the relevant ECJ decision is rendered and the stay of proceedings is subsequently ended⁷⁷⁷.

6. GC declines jurisdiction

- 12 In case of two competing actions for annulment within the meaning of Art. 263 TFEU, the GC may decline jurisdiction rather than staying the proceedings, thereby ensuring that the ECJ hears the case in question⁷⁷⁸. Thus, strict delineations of jurisdiction between the two Courts do not always prevail⁷⁷⁹. If the GC decides to decline jurisdiction in the case of a direct challenge, it refers the file on the case to the ECJ; if the GC stays the proceedings in deference to an analogous ECJ case, however, it retains possession of the file and re-opens it once the ECJ case has been decided⁷⁸⁰. However, this provision carries a disadvantage: should the GC refer an applicant's case to the ECJ, the applicant (who initially, appropriately submitted his case to the first-instance GC) loses one instance and is thereby prevented from appealing the GC's judgment to the ECJ, since the ECJ effectively serves as the court of first and last instance for his case. Furthermore, unlike during proceedings before the GC, the applicant may not intervene during the proceedings at the ECJ⁷⁸¹.

V. Prevailing competence of the ECJ (paragraph 4)

- 13 If an action of annulment pending at the ECJ and the GC concerns the same legal act, then the GC declines jurisdiction and refers the case directly to the ECJ.

Article 55 [Notification of decisions]

Final decisions of the General Court, decisions disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility, shall be notified by the Registrar of the General

⁷⁷⁷ Case T-354/99 *Kuweit Petroleum v Commission* [2006] ECR II-01475, para. 37.

⁷⁷⁸ Case T-41/97 *Antillean Rice Mills v Council* [1998] ECR II-4117, paras 5–7.

⁷⁷⁹ Case T-490/93 *Bremer Vulkan Verbund v Commission* [1995] ECR II-477, paras 8 et seq.

⁷⁸⁰ Case T-490/93 *Bremer Vulkan Verbund v Commission* [1995] ECR II-477, para. 15; see also Case T-488/93 *Hanseatische Industrie-Beteiligungs GmbH v Commission* [1995] ECR II-469, para. 15.

⁷⁸¹ See *C. Lenaerts*, CDE 2000, 323, 327/328, para. 10.

Court to all parties as well as all Member States and the institutions of the Union even if they did not intervene in the case before the General Court.

This provision is yet another illustration of the privileged status of the institutions and Member States, since the decisions referred to in this provision are not only furnished to the parties involved but also to all Member States and EU institutions. This enables Member States and institutions to assess whether they ought to appeal a decision, which they may do even if they were not a party to the proceedings at first instance due to the prerogative enshrined in Art. 56 (3) Statute ECJ.

Article 56 [Appeal]

(1) An appeal may be brought before the Court of Justice, within two months of the notification of the decision appealed against, against final decisions of the General Court and decisions of that Court disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility.

(2) Such an appeal may be brought by any party which has been unsuccessful, in whole or in part, in its submissions. However, interveners other than the Member States and the institutions of the Union may bring such an appeal only where the decision of the General Court directly affects them.

(3) With the exception of cases relating to disputes between the Union and its servants, an appeal may also be brought by Member States and institutions of the Union which did not intervene in the proceedings before the General Court. Such Member States and institutions shall be in the same position as Member States or institutions which intervened at first instance.

Outline:

I. Introduction	1
1. Legal basis	1
2. No circumvention of the definitive nature of a decision	2
3. Other legal remedies	3
II. Object of the appeal (paragraph 1)	4
1. Decisions which may be appealed	4
a) General	4
b) Final decisions	5
c) Other decisions	6
aa) Decisions disposing of the substantive issues in part only ...	6
bb) Decisions disposing of a procedural issue concerning a plea of lack of competence or inadmissibility	7
d) No appeal possible	8
aa) Internal measures	8
(1) Of the GC	8
(2) Of the Registrar	9
bb) Costs	10
e) No distinct legal remedy	11
2. Time-limit	12
a) Appeal	12
aa) Two months	12

bb) Comment	13
b) Cross-appeal.....	14
III. The appellants (paragraph 2)	15
1. Main party.....	15
a) Unsuccessful.....	16
b) Not unsuccessful.....	17
2. Intervener.....	18
a) “Normal” interveners	18
b) Member States and EU institutions.....	19
IV. Prerogatives of Member States and institutions (paragraph 3)	20
1. Scope	20
a) Rule.....	20
b) Exception	21
c) Excluded field	22
2. Critical assessment	23
a) Justification of the prerogative	23
b) Justification of the exception with respect to staff cases.....	24
V. Digression: Filter mechanisms for appeals?.....	25
1. Options discussed thus far	25
2. Amending the rules on costs	26
a) General.....	26
b) Costs of the proceedings	27
c) Court costs	28

I. Introduction

1. Legal basis

- 1 Art. 256 (1), 2nd sub-paragraph TFEU, Art. 56 to 61 Statute ECJ, and Art. 167 to 190 RP ECJ provide the legal framework for the “**appeal on points of law**”⁷⁸², which was created at the same time as the Court of First Instance, as the GC was then called⁷⁸³. To date, the procedural rules do not provide any other legal remedy by which parties may lodge appeals at a higher instance (i.e., an appeal on points of law and fact or other appeals as they exist in Member States’ judiciaries). The choice to enable parties to use appeal proceedings to have the ECJ review GC decisions (i.e., orders or judgments)⁷⁸⁴ is in the hands of the First Advocate-General, i.e. not of the parties.

2. No circumvention of the definitive nature of a decision

- 2 A person who did not lodge an appeal within the relevant time-limit cannot contest a decision of the GC by lodging a new application before the GC in which the party requests the GC to reverse its prior decision, as this would enable that party to overcome the definitive nature of the GC decision, which becomes concrete once the time-limit for bringing an appeal has passed⁷⁸⁵.

⁷⁸² See B. Wägenbaur, EuZW 1995, 199 et seq. and EuZW 2003, 517 et seq.

⁷⁸³ Appeals against decisions of the CST are governed by Art. 9 et seq. of Annex I of the Statute ECJ.

⁷⁸⁴ Art. 62 Statute ECJ.

⁷⁸⁵ Case T-223/09, *Işçi Partisi v Commission* [2009] (not published in the ECR), para. 10.

3. Other legal remedies

The GC may not consider whether or not to alter a previous decision unless a party brings an application for revision before it after discovering a fact which is so important or illuminating as to be a decisive factor that could conceivably affect the decision in question, and which, when the decision was made, was unknown to the Court and to the party claiming the revision (Art. 44 Statute ECJ).

II. Object of the appeal (paragraph 1)

1. Decisions which may be appealed. a) General. Paragraph 1 does not provide an exhaustive list of decisions at first instance (i.e., decisions rendered by the GC) which may be appealed. Art. 57 (1) and (2) Statute ECJ provide a further list of such appeal-worthy decisions.

b) Final decisions

The expression “final decisions” must be interpreted **broadly**⁷⁸⁶. It does not only include those decisions which are handed down at the end of a procedure at first instance, but also e.g. the GC’s ruling that there was no need to render a decision concerning an allegation of the Commission’s failure to act pursuant to a given Art. of primary law⁷⁸⁷. Judgements by default, by third opposition, by revision⁷⁸⁸, and by interpretation handed down at first instance should also be open to appeal.

c) Other decisions. aa) Decisions disposing of the substantive issues in part only. This category includes e.g. interlocutory judgments and thus remains quite rare.

bb) Decisions disposing of a procedural issue concerning a plea of lack of competence or inadmissibility

These decisions may only be appealed on points which concern those ways in which these decisions adversely affect the appellants in question. The ECJ thus allowed an appeal concerning the GC’s rejection of a plea of inadmissibility raised by one party against an action even though the GC had later in that same judgment dismissed that action as unfounded⁷⁸⁹. GC orders rejecting applications for due to lack of jurisdiction or inadmissibility may also be appealed.

d) No appeal possible. aa) Internal measures. (1) Of the GC. Purely internal measures of the GC⁷⁹⁰, such as the attribution of a case to a given chamber, an order concerning a change of the language of procedure, an order instructing a party to produce documents so that they can be placed in the case-file and made

⁷⁸⁶ See *Lasok*, The European Court of Justice, 472.

⁷⁸⁷ Joined Cases C-302/99 P and C-308/99 P, *Commission v TFI* [2001] ECR I-5603, para. 25.

⁷⁸⁸ Case C-5/93 P, *DSM v Commission* [1999] ECR I-4695.

⁷⁸⁹ Case C-141/02 P, *Commission v Max.Mobil* [2005] ECR I-1283, paras 50 and the case law quoted.

⁷⁹⁰ And the CST.

available to the other party⁷⁹¹, an order staying the proceedings, an order rejecting an application for an expedited procedure within the meaning of Art. 76 a RP GC, etc. cannot be appealed as such. The legality of internal measures may, however, be assessed in the context of an appeal against a final judgment or order.

- 9 (2) **Of the Registrar.** A letter from the Registrar, e.g. informing a party that its request to be represented at the hearing by a “Trade Mark and Design Litigator” on the grounds that it is not a “lawyer” within the meaning of Art. 19 Statute ECJ, does not fall within any of the categories of decision which may be the subject of an appeal⁷⁹².

bb) Costs

- 10 Decisions regarding costs and orders on taxation of costs⁷⁹³ cannot be appealed.

e) No distinct legal remedy

- 11 There is no distinct and specific legal remedy against such decisions or orders.
- 12 **2. Time-limit. a) Appeal. aa) Two months.** The time-limit for appeals is **two months**. It begins on the date upon which the challenged decision is rendered to the parties⁷⁹⁴ and is necessarily extended by **10 days** on account of distance⁷⁹⁵. As of now, this ten-day extension applies uniformly to all Member States and forms an integral part of the appeal deadline; it will continue to do since legislative proposal suppressing this additional period was **not adopted**⁷⁹⁶. Thus, an appeal which has been lodged some eight months after the decision at first instance is manifestly inadmissible⁷⁹⁷.

bb) Comment

- 13 The time-limit for appeals is thus the same as in the case of actions for annulment at first instance⁷⁹⁸. At first glance one may wonder whether identical time-limits for actions for annulment and appeals is justified, since the appellant is already familiar with the case, is limited to points of law only, and thus probably require less time to prepare an appeal than he did to prepare an action at first instance. The difference between page limits for actions at first instance and appeals illustrates this difference in the amount of time required to prepare the two legal actions: an appeal before the GC, for example, is limited to 15 pages,⁷⁹⁹ while the

⁷⁹¹ Case C-349/99 P, *Commission v ADT Project* [1999] ECR I-6467.

⁷⁹² Case C-59/09 P, *Hasbro* [2009] (not published in the ECR), paragraphs 7 et seq.

⁷⁹³ See Art. 58 (2) Statute ECJ.

⁷⁹⁴ Joined Cases C-442/03 P and C-471/03 P, *P&O European Ferries (Vizcaya) v Commission* [2006] I-04845, para. 27.

⁷⁹⁵ Art. 51 RP ECJ and Art. 102 (2) RP GC.

⁷⁹⁶ “Draft Amendments to the Statute of the Court of Justice of the European Union and to Annex I Thereto”, Art. 1(6), www.curia.europa.eu.

⁷⁹⁷ Case C-525/10 P, *Noko Ngele v Commission* [2011] (not published in the ECR).

⁷⁹⁸ Art. 263 TFEU.

⁷⁹⁹ Para. 10 of the Practice Directions to Parties.

application at first instance before the CST may be up to 30 pages⁸⁰⁰. On the other hand, the particular challenges inherent to appeals, ranging from a proper understanding of the reasoning in the decision at first instance to the necessity of finding appropriate and relevant legal grounds for the pertinent parts of the appealed verdict, takes time and thus may justify the same two-month time-limit.

b) Cross-appeal

A **cross-appeal** needed to be lodged in the context of the response, while today it must be introduced by a document separated from the response.⁸⁰¹ 14

III. The appellants (paragraph 2)

1. Main party

An appeal may be brought by any party which has been **unsuccessful**, in whole or in part, in its **submissions**. 15

a) Unsuccessful

The most obvious case is the one of a party partially or entirely losing the case at first instance. 16

b) Not unsuccessful

A party is not considered to be unsuccessful if it wins its case at first instance, even if the Court does not follow all of its arguments. Moreover, a party cannot lodge an appeal based on the argument that it does not share the reasoning by which the GC rejected its application⁸⁰². 17

2. Intervener. a) “Normal” interveners. Since an intervention at first instance is ancillary to the main proceedings, the intervener does **not** require a further admission or re-admission to appeal proceedings should one of the main parties subsequently lodge an appeal. Furthermore, an intervener may lodge an appeal under the conditions set out in Art. 56 even if one of the main parties does not do so. 18

b) Member States and EU institutions

They may appeal without any further formality⁸⁰³, provided that their submission has been unsuccessful in whole or in part. Other interveners, however, must earn such a right by demonstrating that the GC’s decision “**directly affects**” them. It seems logical to require them to produce more proof of direct interest than the 19

⁸⁰⁰ Para. 25 of the Practice Directions to Parties on Judicial Proceedings before the European Union Civil Service Tribunal.

⁸⁰¹ Art. 176–183 RP ECJ.

⁸⁰² Case C-136/02 P, *Commission v Brazelli Lualdi* [1994] ECR I-1981, 2025.

⁸⁰³ Joined Cases C-359/95 and C-379/95, *Commission A. O. v Ladbroke* [1997] ECR I-6265 et seq.

“legitimate interest” which main parties to proceedings must and have already established at first instance.

IV. Prerogatives of Member States and institutions (paragraph 3)

- 20 **1. Scope. a) Rule.** Normally, someone who is a **third party**, i.e. not in any way formally involved in the proceedings at first instance, not even as an intervener, cannot appeal the GC’s decision.

b) Exception

- 21 Pursuant to Art. 56 (3), Member States and institutions may appeal any decision at first instance⁸⁰⁴ without any further formality (except meeting the time-limit) even if they did not in any way take part in the proceedings at first instance. Should they decide to do so, Member States and institutions then gain the status they would have had if they had **intervened** at first instance. The purpose of this provision is to enable the Member States and institutions to act in the interest of the correct interpretation and application of EU law⁸⁰⁵.

c) Excluded field

- 22 This prerogative for Member States and institutions does not apply, however, to staff cases⁸⁰⁶ and the orders mentioned in Art. 57 (1) and (2) Statute ECJ⁸⁰⁷.
- 23 **2. Critical assessment. a) Justification of the prerogative.** While appeals lodged under Art. 56 (3) Statute ECJ remain rather rare⁸⁰⁸, such far-reaching prerogative for Member States and institutions seems questionable for several reasons⁸⁰⁹. Firstly, it means that even though a Member State or institution chooses not to intervene in the proceedings at first instance, their will or interest could nevertheless prevail over the will of the main parties at first instance. A main party may thus be forced by third parties (i.e., a Member State or institution who brings an appeal despite non-participation in first instance proceedings) to become a party to an appeal procedure it had no desire to initiate. In this respect, one must stress that the right to judicial protection also includes the right not to make use of it, a principle which is not entirely upheld by the provision found in Art. 56 (3). Secondly, since Member States and institutions theoretically possess the same privileged status according to Statute ECJ and the TFEU, it is not clear why the intention of a Member State who declined to intervene at first instance should prevail over that of an institution

⁸⁰⁴ The existence of which they learn via the obligation of notification in Art. 55 Statute ECJ.

⁸⁰⁵ See AG Mischo in Case C-73/97 P, *France v Comafica A. O.* [1999] ECR I-185.

⁸⁰⁶ See the explicit wording of Art. 56 (3) Statute ECJ.

⁸⁰⁷ Orders at first instance rejecting the application for admission as an intervener or concerning interim proceedings.

⁸⁰⁸ The first such appeal was lodged in Case C-73/97 P, *France v Comafica A. O.* [1999] I-185 et seq.

⁸⁰⁹ See also Tizzano in: *Du droit international au droit de l'intégration: Liber Amicorum Pierre Pescatore*, 720, and Heffernan, ICLQ 2003, 913.

which was involved at first instance and decided *not* to appeal the judgment. Thirdly, the current wording of paragraph 3 could, albeit only theoretically, result in the Court of Justice of the European Union in its institutional capacity lodging an appeal, which is then heard by the ECJ, creating a situation in which there is a clear and almost comic conflict of interest⁸¹⁰. It would therefore be advisable to limit the ability to lodge such autonomous appeals to the Commission, in view of its role as the institution that “shall promote the general interest of the Union and take appropriate initiatives to that end”⁸¹¹.

b) Justification of the exception with respect to staff cases

Finally, the exception provided by paragraph 3, subsection 1 with respect to staff 24 cases does not seem entirely coherent: On the one hand this exception precludes Member States and institutions from lodging an autonomous appeal in these cases, as this particular field is deemed very much outside the mainstream of EU law and dominated by the individual interests of the parties rather than the interests of the Member States and institutions which are not a party to the proceedings. On the other hand, however, Art. 62 et seq. of the Statute ECJ enables the First Advocate General to refer an appeal of a judgment handed down in a staff case to the ECJ (rather than to the GC) should he deem that the case calls the coherence of EU law into question. However, despite the fact that autonomous appeals are designed to empower Member States and institutions to defend the integrity of EU law as interpreted by the ECJ, Member States and institutions which feel that a given judgment in a staff case at first instance is not in line with EU law may not lodge an autonomous appeal within the meaning of Art. 56 (3) of the Statute.

V. Digression: Filter mechanisms for appeals?

1. Options discussed thus far

One of the major debates surrounding the Treaty of Nice⁸¹² focused on the future 25 of the European judicial system, including the “if” and “how” of a “filter” for limiting the number of appeals. The forecast at the time was that as a result of the substantial enlargement of the EU in 2004 and the ensuing transition period, the number of cases at the ECJ (and the GC) would increase substantially. This, however, has only proven true to a very limited extent⁸¹³: The annual number of **new cases** at the ECJ increased from 502 in the year 2000 to 679 in the year 2011, an increase of approximately 20 %, after a lengthy period of quasi stagnation. Concurrently, the average duration of **appeals** decreased from 19 months in the year 2000 to 15,4 months in 2011. In view of these facts, the question of legislative

⁸¹⁰ See B. Wägenbaur, EuZW 2007, 321.

⁸¹¹ Art. 17 TEU.

⁸¹² Treaty signed in 2001 and entered into force in 2003 which redesigned parts of the EU governmental system designed by the 1993 Treaty of Maastricht and 1997 Treaty of Amsterdam in order to accommodate the significant 2004 expansion of the EU from 15 member states to 25 member states.

⁸¹³ See the statistical figures of the Court of Justice, *Annual Report of the Courts of Justice 2011*.

mechanisms limiting the number of legal appeals may not currently be a priority. Moreover, the legal questions this issue raises are delicate, to say the least. In theory it might make sense to verify whether a given appeal to the ECJ provides a substantial contribution to EU law or to individual rights. It seems furthermore reasonable to limit appeals to whether the challenged judgment contains a “manifest” error in law. Nevertheless, it is far from certain that the instruments envisaged, whether a mechanism inspired by the American “writ of certiorari” or a system of leave at the level of first instance similar to that which exists in certain Member States and international Courts, could be easily transposed into the EU judicial system. In any event, the practical implementation of such abstract and inevitably subjective criteria ultimately risks threatening the delicate balance between a tangible reduction of ECJ workload and the safeguard of an appropriate level of individual judicial protection.

- 26 **2. Amending the rules on costs. a) General.** It seems thus more realistic to reflect on measures which are less complex and yet also likely to curb the number of appeals.

b) Costs of the proceedings

- 27 One such measure could be the amendment of the rules on costs. One could, e.g., reflect as to whether an appellant should not bear, at least in part, the defendant’s costs generated by his appeal. There is indeed no reason why the EU budget should bear such costs, in so far as they result from – a sometimes appalling – ignorance by some counsels of the conditions of admissibility of appeals. This would be no hardship for the party concerned, as it may then claim damages from its lawyer, who in turn is or should be covered by professional insurance. Since the current legislation does not provide such a rule, it seems appropriate to reflect on an appropriate amendment.

c) Court costs

- 28 Currently, Court proceedings, including appeals, are free of charge, except in a few limited cases (avoidable costs, copying, or translation services). Again, the question arises as to why a party should not contribute, if only symbolically, to the costs generated by an appeal, which are considerable. Arts. 6 and 13 ECHR do not exclude the principle of Court costs, as long as said costs are not prohibitive.

Article 57 [Abbreviated appeal]

(1) Any person whose application to intervene has been dismissed by the General Court may appeal to the Court of Justice within two weeks from the notification of the decision dismissing the application.

(2) The parties to the proceedings may appeal to the Court of Justice against any decision of the General Court made pursuant to Art. 278 or Art. 279 or the fourth paragraph of Art. 299 of the Treaty on the Functioning of the European Union or Art. 157 or the third paragraph of Art. 164 of the EAEC Treaty within two months from their notification.

(3) The appeal referred to in the first two paragraphs of this Art. shall be heard and determined under the procedure referred to in Art. 39.

Outline:

I. Introduction	1
II. Appeal against non admission as intervener (paragraph 1).....	2
III. Appeals against orders in interim proceedings or enforcements (paragraph 2)	3
1. General.....	3
2. Time-limit	4
IV. Procedural rules (paragraph 4).....	6

I. Introduction

This provision provides for an **abbreviated** appeal, which applies in two cases: 1 Firstly, if the applicant challenges an order which rejected his application to **intervene**. Secondly, if a party appeals an order of first instance in **interim proceedings**.

II. Appeal against non admission as intervener (paragraph 1)

This category of appeals is a substantial challenge for any appellant. The difficulty 2 is not so much to act within the time-limit of **two weeks**⁸¹⁴ dating from the notification of the order (instead of the usual period of two months, which also applies to appeals within the meaning of paragraph 2), since this tends to expedite the appeal procedure, which under the given circumstances is ultimately also in the interest of the appellant. The actual hurdle lies elsewhere: The “legitimate interest”⁸¹⁵ which the applicant needs to prove in order to be admitted as an intervener is a question of fact, while the appeal is limited to questions of law⁸¹⁶. Thus, few appeals from this category qualify as legitimate appeals before the ECJ and this category of appeals therefore plays a minor role.

III. Appeals against orders in interim proceedings or enforcements (paragraph 2)

1. General

This legal remedy – not to be confused with a request for interim measures 3 lodged in the context of an appeal – primarily pertains to orders rejecting applications for interim relief and is therefore only marginal when it comes to orders in the area of enforcements.

⁸¹⁴ Plus ten days on account of distance.

⁸¹⁵ See Art. 40 (2) Statute ECJ.

⁸¹⁶ See Art. 58 (1) Statute ECJ.

2. Time-limit

- 4 The time-limit for these measures is defined as **two months** (plus ten days on account of distance, i.e. the same as in the case of appeals against judgments at first instance). This time period takes into consideration both the appellant’s need for effective access to judicial protection and the urgency of the situation. Normally, such an appeal aims at reviewing the *fumus boni juris*, i.e. the *prima facie* perspective of success in the main proceedings, but may also extend to the question of urgency. While the latter is essentially a question of fact, it may also include legal aspects such as the legal standard applied to the urgency test.
- 5 Since orders resulting from interim proceedings are, by definition, adopted under relatively strict time constraints, one could imagine that said proceedings suffer from a higher percentage of errors in law than “normal” proceedings. This, however, is not confirmed by the statistical figures of the ECJ⁸¹⁷.

IV. Procedural rules (paragraph 4)

- 6 Art. 39 Statute ECJ, to which paragraph 3 refers, differs from the normal procedural rules laid down in the Statute, as it gives primary adjudicative power to the President of the ECJ rather than to a collegial body of judges in cases of applications to suspend execution.

Article 58 [Appeal limited to points of law]

(1) An appeal to the Court of Justice shall be limited to points of law. It shall lie on the grounds of lack of competence of the General Court, a breach of procedure before it which adversely affects the interests of the appellant as well as the infringement of Union law by the General Court.

(2) No appeal shall lie regarding only the amount of the costs or the party ordered to pay them.

Outline:

I. Introduction	1
1. General.....	1
2. Specialised Courts	2
a) General.....	2
b) CST	3
c) Community Patent Court	4
d) Towards a specialised Court in trade mark cases?	5
II. Points of law (paragraph 1, 1st sentence)	6
1. Introduction.....	6
2. Points of law	7
a) “Clear-cut cases”	7
b) Border-line cases.....	8
c) Cases of manifest distortion	9

⁸¹⁷ Annual Report of the Courts of Justice of the EU 2011.

d) Comments	17
3. Room for an extensive interpretation of “points of law”?	20
4. Points of fact	21
a) Introduction	21
b) Finding of facts	22
aa) Current case-law	22
bb) Comment	23
c) Appraisal of facts	24
aa) Difference between appraisal and legal assessment of facts ..	24
bb) Fines in competition cases	25
5. Points of law and points of fact in trademark cases	26
a) General	26
b) Points of law (admissible appeal)	27
c) Points of fact (inadmissible appeal)	28
III. Three categories of legal pleas (paragraph 1, 2nd sentence)	29
1. “Lack of competence of the General Court”	30
2. “A breach of procedure adversely affecting the interests of the appellant” ..	31
a) Procedural rules concerned	31
b) Purely internal rules not concerned	32
3. “Infringement of Union law”	33
IV. No appeal limited to decisions on costs and taxation of costs	
(paragraph 2)	34
1. General	34
2. Decision on the allocation on costs	35
3. Taxation of costs	36
a) No appeal admissible	36
b) No other legal remedy	37

I. Introduction

1. General

Since the appeals against decisions, i.e. judgments or orders, of the GC are limited to points of law⁸¹⁸ the role of the ECJ in appeal procedures is limited to a purely legal review, similar to the procedure of cassation or judicial review in certain Member States. One may only speculate as to the reasons for limiting an appeal to legal questions. The primary reason might be that an appeal on points of fact and of law would most certainly have resulted in a multiplication, possibly even a doubling, of cases. This would have weakened, if not totally removed, the caseload-reducing role of the GC, which was the primary reason the GC was founded in the first place. Furthermore, enlarging appeals to points of fact as well as of law would render the GC a sort of preliminary forum with no genuine authority. Finally, limiting appeals to points of law is a further expression of the ECJ’s increasingly constitutional, interpretive role in EU justice. In view of these reasons, there is currently no recourse for an appeal on points of fact and of law concerning decisions of the GC.

⁸¹⁸ See the explicit wording of Art. 256, (1), sub-para. 2 TFEU.

- 2 **2. Specialised Courts. a) General.** In the case of appeals against decisions of specialised Courts the legislator has provided the possibility to extend appeals to questions of fact⁸¹⁹.

b) CST

- 3 However, in the case of the only specialised Court created thus far, the CST, appeals remain limited to points of law⁸²⁰.

c) Community Patent Court

- 4 According to the Commission's proposal, appeals against the decisions of the proposed European and Community Patent Court would have included points of fact, since patent proceedings are predominantly factual. But in March 2011 the ECJ deemed the creation of a Community Patent Court "not compatible with the provisions of European Union law"⁸²¹. Such a Court will not, therefore, be created.

d) Towards a specialised Court in trade mark cases?

- 5 One alternative to increasing Judges at the GC would be creating a Court which specializes in trade mark cases. From a purely quantitative point of view, there were, in 2011, 219 applications to the GC in the area of intellectual property, which is a bit less than a third of the 722 new cases in the same year⁸²². This subject lends itself well to a special tribunal, as it is rather factual and technical and as the judgments in this area reveal that this field of law is not too inextricably linked with EU law to be dealt with by a distinct, i.e. specialised Court.

II. Points of law (paragraph 1, 1st sentence)

1. Introduction

- 6 Distinguishing **points of law** from **points of fact** is a potentially central issue in every appeals procedure. Nevertheless, the legislature did not define what is to be understood by "points of law", as the term does not lend itself for a clear and exhaustive legislative definition. The second sentence of paragraph 1 indicates three categories, which are clearly points of law (see III. hereafter), but this does not draw the required clear line between points of law and points of fact. It was clear from the outset that there would be a "**grey zone**"⁸²³, which needed to be clarified by case law⁸²⁴. This is now to a large extent the case (see paragraphs 2 to 4. hereafter).

⁸¹⁹ Art. 257 (3) TFEU.

⁸²⁰ Art. 11 (1) of annex I to the Statute of the ECJ; Ordinance of 4 April 2011, Case T-239/09 P, *Marcuccio v Commission*, [2001], not yet published in the ECR, para. 62; Ordinance of 21 June 2011, Case T-452/09 P, *Rosenbaum v Commission*, [2011], not yet published in the ECR, para. 46.

⁸²¹ See Opinion 1/09 of the Full Court, [2011] (not yet published in the ECR), paras 79 and 89.

⁸²² "Statistics of Judicial Activity of the General Court", *Annual Report of the European Courts of Justice 2011*, p 3.

⁸²³ See *Lenaerts/Arts, Europees Processrecht*, 1999, p. 399–406.

⁸²⁴ See e.g. the Advocate-General *Jacobs* in Case C-53/92 P, *Hilti v Commission*, [1993] ECR I-669, para. 46; *Brown*, CMLR 1995, 746, *Sonelli*, CMLR 1998, 872.

2. Points of law. a) “Clear-cut cases” The following cases are clearly points of law ⁷ and thus challengeable by way of an appeal:

- (i) Applying a provision which is either void⁸²⁵ or not relevant⁸²⁶, which is very rare in practice.
- (ii) Cases in which the GC infringed any form of **primary EU law**, e.g. the duty to state reasons (Art. 296 TFEU), or **secondary EU law** and/or **general principles of law** due to insufficient⁸²⁷ or contradictory⁸²⁸ reasoning,
- (iii) Those cases in which the GC has **misconstrued** a relevant legal provision⁸²⁹.
- (iv) Those cases in which the GC undertook an **erroneous legal assessment** of the facts⁸³⁰, e.g. by misunderstanding a legal plea⁸³¹ or, worse, by assessing a legal plea other than the one actually put forward⁸³². There are, however, a number of cases in which it is difficult to draw a clear distinction between the **legal** assessments of facts and the **factual** appraisal of facts, the latter being an exclusive matter for the GC (see hereafter d)⁸³³. This distinction is particularly relevant e.g. in competition cases⁸³⁴.

b) Border-line cases

In some cases the difference between points of law and points of fact is so small ⁸ that it can only be distinguished in light of the criteria established by the ECJ. These cases may be categorised as follows⁸³⁵:

- (i) The GC alone has jurisdiction to find facts and is the sole entity responsible for a **factual assessment** of the facts and of the **evidence**⁸³⁶, since these are all considered points of fact (see 4. below).
- (ii) By contrast, the following are **points of law**, which may thus be revised on appeal:
 - An error of law is committed when there is **substantive inaccuracy**⁸³⁷ in GC findings, e.g. with respect to the pleas sought⁸³⁸ or the legal arguments put forward⁸³⁹, which is apparent from the **documents** which the GC published

⁸²⁵ Case C-30/91 P, *Lestelle v Commission*, [1992] ECR I-3755, paras 15, 27.

⁸²⁶ See e.g. the Advocate-General *Tesaro*, Case C-132/90 P, *Schwedler v Commission*, [1991] ECR I-5745.

⁸²⁷ Case C-68/91 P, *Moritz v Commission*, [1992] ECR I-6849, paras 21–25; Case C-188/96 P, *Commission v P*, [1997] ECR I-6575, para. 24.

⁸²⁸ Case C-13/99 P, *Team srl v Commission*, [2000] ECR I-4686, paras 49; Case C-446/00 P, *Cubero Vermurie v Commission*, [2001] ECR I-10315, para. 20.

⁸²⁹ Case C-329/02 P, *SatellitenFernsehen v OHIM* [2004] ECR I-8317, para. 37.

⁸³⁰ This was only explicitly confirmed in 1994, see e.g. Case C-123/03 P, *Commission v Greencore*, [2004] ECR I-11647, para. 36 and the case law cited.

⁸³¹ Case C-298/93 P, *Klinke v Commission*, [1994] ECR I-3009, para. 24.

⁸³² Case C-298/93 P, *Klinke v Commission*, [1994] ECR I-3009, para. 20.

⁸³³ Case C-39/93 P, *SFEI AO v Commission*, [1994] ECR I-2701, para. 26.

⁸³⁴ See *Jacobs* Proposals for Reform in the Organisation and Procedure of the Court of Justice of the European Communities, in *Du droit international au droit de l'intégration: Liber amicorum Pierre Pescatore*, 1987, 295, 297.

⁸³⁵ B. *Wägenbaur*, ZEuS 2007, p. 161, 185–188.

⁸³⁶ Case C-286/04 P, *Eurocarmex v OHIM*, [2005] ECR I-5797, 5815, para. 43 and the case law cited.

⁸³⁷ Case C-265/97 P, *VBA v Florimex AO* [2000] ECR I-2095, para. 139; Case C-266/97 P, *VBA v VBG*, [2000] ECR I-2158, para. 92.

⁸³⁸ Case C-412/92 P, *Parliament v Meskens* [1994] ECR I-3757, paras 7 and 12.

⁸³⁹ Case C-293/95 P, *Odigitria v Council* [1996] ECR I-6129, para. 33.

concerning the case. Such inaccuracy must be obvious from the documents presented to and published by the Court without it being necessary to undertake a fresh assessment of the facts⁸⁴⁰.

- Where the clear sense of the **evidence** has been “**distorted**”⁸⁴¹. Until recently, well-established case law required that such evidentiary distortion must be obvious from the documents on file with the Court without any need to conduct a new assessment of the facts and the evidence⁸⁴². According to the more recent, seemingly less restrictive case law, such distortion exists when, without recourse to new evidence, the assessment of the existing evidence appears to be clearly incorrect⁸⁴³. It remains to be seen whether this nuance amounts to a change in the case law⁸⁴⁴. In any event the appellant needs to indicate precisely the evidence alleged to have been distorted by that Court and show the errors of appraisal which, in his view, led to that distortion⁸⁴⁵. This distortion must be manifest in the evidence already presented before the GC and may not be revealed through the admission of new evidence⁸⁴⁶.

c) Cases of manifest distortion

- 9 Those cases in which the Court of Justice found that the GC committed a manifest distortion, which had an impact on the GC’s decision⁸⁴⁷, may be put into the following **two categories**:
- 10 The **first category** includes cases in which the GC’s reading **alters** the contents or the reasoning of the **challenged legal act** or **disregards** an essential part of that act:
- 11 In cases **DIR International Film**⁸⁴⁸ and **Belgium v. Commission**⁸⁴⁹ the ECJ found that the GC had “distorted the content of the contested decision” or “distorted the scope of the decision”⁸⁵⁰.
- 12 In case **Commission v. Trenker**⁸⁵¹ and seven parallel appeals against orders⁸⁵² handed down in interim proceedings, the President of the ECJ held that the findings

⁸⁴⁰ Case C-136/92 P, *Commission v Brazelli Lualdi* [1994] ECR I-1981, para. 49.

⁸⁴¹ Case C-53/92 P, *Hilti v Commission*, [1994] ECR I-1981, para. 21; Case C-499/03 P, *Biegi Nahrungsmittel und Commonfood v Commission*, [2005] ECR I-1751, 1781, para. 40.

⁸⁴² Case C-551/03 P, *General Motors Nederland and others* [2006], ECR I-3173, para. 54.

⁸⁴³ Case C-229/05 P, *PKK and KVK v Council* [2008] ECR I-00439, para. 37.

⁸⁴⁴ B. Wägenbaur, EuZW 2007, p 99.

⁸⁴⁵ Cases C-204/00 P, C-205/00 P, C -211/00 P, C-213/00 P, C-271/00 P and C-219/00 P, *Aalborg Portland and others v Commission* [2004] ECR I-123, paras 50–51.

⁸⁴⁶ Joined Cases C-71/03 P, C-73/09 P, and C-76/09 P, *Comitato “Venezia vuole vivere” et al v Commission*, [2011] (not yet published in the ECR), paras 152 et 153.

⁸⁴⁷ Which is not always the case, see e.g. C-248/99 P, *France v Monsanto and Commission* [2002], ECR I-46, paras 60–63, C-442/03 P and C-471/03 P, *P&O European Ferries (Vizcaya)v/Commission* [2006], ECR I-04845, paras 67, 133–134.

⁸⁴⁸ Case C-164/98 P, *DIR International Film Srl v Commission* [2000] ECR I-00447 paras 44 and 48.

⁸⁴⁹ Case C-197/99 P, *Belgium v Commission* [2003] ECR I-8461, para. 67.

⁸⁵⁰ Cases C-172/01 P, C-175/01 P, C-176/01 P, C -180/01 P, *International Power and others vNALOO* [2003] ECR I-11421, para. 156 and C-442/03 P and C-471/03 P, *P&O European Ferries (Vizcaya) v Commission and Disputación Foral de Vizcaya v Commission* [2006], ECR I-4845, paras 63 et seq.

⁸⁵¹ Case C-459/00 P (R), *Commission v Trenker* [2001] ECR I-2823, para. 52.

⁸⁵² Cases C-471/00 P (R), *Commission v Cambridge Healthcare Supplies* [2001] ECR I-2865, para. 58, C-474/00 P (R), *Commission v Bruno Farmaceutici and others* [2001], ECR I-2909, para. 50, C-475/00 P (R), *Commission v Hänseler* [2001], ECR I-2953, para. 50, C-476/00 P (R), *Commission v*

“are not based on even a cursory analysis of the statement of reasons for the contested decision as set out in Annex II to the decision”.

The **second category** includes those – comparatively rare – cases where the clear sense of the **evidence** has been **distorted**:

In case **Parliament v. Samper**⁸⁵³, the ECJ held that a given finding of the GC concerning the contents of a particular note was made without reference to the context in which said note was written and thus distorted the interpretation of that note.

In case **PKK and KVK v. Council** it found – after a rather detailed assessment of the evidence – that the findings of fact in paragraphs 35 and 37 of the contested order were incorrect and distorted the clear sense of the evidence available to the GC⁸⁵⁴.

In case **Birkhoff v Commission**, a staff case, the GC held that the CST distorted the contents of the reply to an administrative complaint⁸⁵⁵.

d) Comments

While there is now much less opacity as to the exact difference between points of fact and points of law, the case law never explains why it considers the categories it created (substantive inaccuracy and distortion of evidence) to be points of law⁸⁵⁶. The fact that these categories exist in some Member States is no real substitute for a clear explanation explicitly stated in either the Statute ECJ or the case law, especially since the distinction between points of law and points of fact determines the exact delimitation between the jurisdiction of the ECJ and that of the GC⁸⁵⁷.

Next, there is a certain lack of consistency in delineating between points of law and points of fact, since the case law does not always indicate whether a specific question which it assesses in a specific case pertains to a point of law or a point of fact, as in a question of substantive inaccuracy of finding and manifest distortion of evidence. This to the **detriment of clarity**⁸⁵⁸: for instance, the aforementioned cases *DIR International Film and Belgium v Commission* were both about a distortion of the decision challenged in those cases, but not specifically about a distortion of the evidence. Thus they were not about a “change to the content of the evidence”⁸⁵⁹, since decisions contested by way of actions for annulment are not a piece of evidence in the technical sense of the word. Such decisions instead form the object of the respective proceedings⁸⁶⁰.

Schuck [2001], ECR I-2995, para. 50, C-477/00 P (R), *Commission v Roussel und Roussel Diamant* [2001], ECR I -3037 para. 50, C-478/00 P (R), *Commission v Roussel und roussel Iberica* [2001], ECR I-3079, para. 50 and C-479/00 P (R), *Commission v Gerot* [2001], ECR I-3121, para. 45.

⁸⁵³ Case C-277/01 P, *Parliament v Samper* [2003] ECR I-03019, para. 40.

⁸⁵⁴ Case C-229/05 P, *PKK and KVK v Council* [2008] ECR I-00439.

⁸⁵⁵ Case T-377/08 P, *Birkhoff v Commission* [2009] (not yet published in the ECR), para. 53.

⁸⁵⁶ See e.g. *Topping*, EIPR 1994, 545.

⁸⁵⁷ In his opinion in the case C-53/92 P, *Hilti v Commission* [1994], ECR I-667, para. 46, the Advocate General classified the manifest distortion of evidence as a fact question.

⁸⁵⁸ Also in *Hackspiel: Rengeling/Middeke/Gellermann*, 505 para. 28.

⁸⁵⁹ See e.g. the opinion in C- 57/02 P *Acerinox v Commission* [2005], ECR I-6689, para. 162 as well as *Jung* in: *Von der Gröben/Schwarze*, p.411, para. 195 which described the case C-459/00 P, *Trenker v Commission* as an example of distortion of evidence.

⁸⁶⁰ Therefore, the relevant decision of each application is attached as Appendix, see Art. 43.1 RP GC.

- 19 Thus, it is advisable for parties to opt for a purely practical approach, i.e. to consider that every manifest distortion of either the contents of written submissions proper, of its annexes, or of evidence which has an impact on the operative part of the decision at first instance, is an error in law likely to be successfully challenged by way of an appeal.

3. Room for an extensive interpretation of “points of law”?

- 20 Until now the ECJ has never accepted any category other than the two aforementioned⁸⁶¹. The proposal by the Advocate-General in the **British Airways**⁸⁶² case, by which a “manifest breach of the laws of logic” would be considered a point of law, remains unsuccessful. This question is interesting but bound to remain theoretical, since a breach of logic, insofar as it happens at all, must in all likelihood be considered a breach of the obligation to state reasons, which is clearly already considered a point of law⁸⁶³.

- 21 **4. Points of fact. a) Introduction.** The GC is exclusively competent for the **finding** of the facts, as well as their **appraisal**, which is why pleas which directly or indirectly challenge these findings or assessments are manifestly inadmissible:

- 22 **b) Finding of facts. aa) Current case-law.** The GC’s exclusive competence for establishing the **facts** applies to all proceedings over which it has jurisdiction⁸⁶⁴ and applies also to all written **evidence**⁸⁶⁵, regardless of whether the party concerned which provided this evidence on its own initiative or whether this evidence was produced in response to a request by the Court. Thus a party cannot request the ECJ to e.g. assess whether a given person has suffered a financial prejudice as part of an appeal. It is equally manifestly inadmissible to offer evidence at the stage of an appeal⁸⁶⁶.

bb) Comment

- 23 It might go too far though to **totally** exclude any assessment of evidence at the level of the appeal, since this may become necessary when it comes to determining the GC’s jurisdiction in a given case or verifying whether a procedural error has been committed⁸⁶⁷. Nevertheless, the ECJ remains responsible for assessing whether the evidence has been properly obtained and whether or not the general principles

⁸⁶¹ Similarly *Sonelli*, CMLR 1998, 872.

⁸⁶² See the opinion of the Advocate General Kokott in the Case C-95/04 P, *British Airways v Commission* [2007] ECR I-02331 para. 83.

⁸⁶³ See e.g. Case C-326/91 P, *De Compte v Parlement* [1994] ECR I-2091, para. 64, 96.

⁸⁶⁴ Also including the interim measures, see e.g. Case C-149/95 P, *Commission v Atlantic Container Line and others* [1995] ECR I-2168, paras 17–18.

⁸⁶⁵ Case C-294/91 P, *Sebastiani v Parliament* [1992] ECR I-4998, para. 13; C-190/04 P, *French and others v Council and Commission* [2005], (not yet published in the ECR), para. 13.

⁸⁶⁶ Case C-396/93 P, *Henrichs v Commission* [1995] ECR I-2611, para. 14 and C-199/92 P, *Hüls v Commission* [1999] ECR I-4287, para. 90.

⁸⁶⁷ Case C-480/99 P, *Gerry Plant and Others v Commission* [2002] ECR I-265, para. 20.

of law and the Rules of Procedure in relation to the burden of proof and the taking of evidence have been observed⁸⁶⁸.

c) Appraisal of facts. aa) **Difference between appraisal and legal assessment of facts.** The GC remains also exclusively competent for **appraising the facts** it has found – by contrast to the **legal assessment of the facts**, which may be subject to an appeal. Thus, both a direct⁸⁶⁹ and the – more frequent – indirect⁸⁷⁰ questioning of the GC's appraisal of facts are manifestly inadmissible.

bb) Fines in competition cases

The GC has unlimited jurisdiction when it rules on the amount of fines imposed on entities for infringements of EU law and thus the ECJ may not substitute its own assessment of fair fine amounts for that of the GC when ruling on questions of law in the context of an appeal⁸⁷¹. The ECJ cannot therefore, at the appeal stage, examine whether the amount of the fine fixed by the GC is proportionate to the gravity and duration of the infringement which the GC established due to its appraisal of the facts⁸⁷². In contrast, the ECJ does have jurisdiction to consider whether the GC has sufficiently responded to all the arguments raised by the appellant in order to abolish or reduce said fine⁸⁷³.

5. Points of law and points of fact in trademark cases. a) **General.** As trademark cases are procedurally specific, requiring ten specific Rules of Procedure of the GC⁸⁷⁴, and as they form 27 % of GC appeals brought before the ECJ⁸⁷⁵, it is worth examining the delineation relevant case law between points of law and points of fact regarding appeals of rulings on trademarks. One must remember that all trademark and intellectual property cases are appeals of decisions made by the Office of Harmonization of the Interior Market (OHIM) and reviewed by the GC. As in other cases, parties may appeal a GC decision on an OHIM case to the ECJ on points of law only.

b) Points of law (admissible appeal)

The ECJ has deemed the following questions to be points of law which are therefore admissible as the grounds for an appeal of a trademark case decided by the GC:

⁸⁶⁸ Case C-301/02 P, *Tralli v EZB* [2005] ECR I-4071, 4128, para. 78 and the case law quoted.

⁸⁶⁹ Case C-352/03 P, *Del Vaglio v Commission* [2004], (not yet published in the ECR), paras 35–36.

⁸⁷⁰ Case C-447/02 P, *KWS Saat v HABM* [2004], ECR I-10107, para. 34.

⁸⁷¹ Cases C-310/93 P, *BPB Industries and others v Commission* [1995], ECR I-865, para. 34; C-185/95 P, *Baustahlgewebe v Commission* [1998], ECR I-8417, para. 129; C-248/98 P, *KNP BT v Commission* [2000] ECR I-9641, para. 54; C-359/01 P, *British Sugar v Commission* [2004], ECR I-4933, para. 48 and C-281/04 P, *Leighton and others v Council and Commission* [2005], (not yet published in the ECR), paras 15–16.

⁸⁷² Case C-338/00 P, *Volkswagen v Commission* [2003], ECR I-9189, paras 151 et seq.

⁸⁷³ Case C-219/95 P, *Ferriere Nord v Commission* [1997], ECR I-4411, para. 31.

⁸⁷⁴ Arts 130 to 136 RP GC.

⁸⁷⁵ “Statistics of the Court of Justice”, *Annual Report of the European Courts of Justice 2011*.

- The GC's failure to consider the combined effect of individual elements upon the consumer, instead basing its decision wholly on the separate effect of each individual element upon the average consumer⁸⁷⁶;
- The GC's failure to consider the potential availability of other shapes for a product or a product logo as an element that might affect that product or logo's distinctiveness⁸⁷⁷;
- The GC's use of the wrong test to evaluate a trademark's distinctiveness (i.e., only determining the "exclusively descriptive" nature of a trademark without evaluating its "ability to be used by others")⁸⁷⁸;
- The GC's basing a decision (e.g. determining that a particular family name lacked sufficient specificity to be deemed a trademark) solely on a general overview of case law without considering either the facts of the particular case in question or and the specific consumer group to which the trademark was addressed⁸⁷⁹.

c) Points of fact (inadmissible appeal)

28 The following questions raised by trademark cases were deemed points of fact and thus cannot form the basis of an appeal:

- The evaluation or interpretation of the meaning or grammatical function of certain words in a given language as part of a trademark, as well as the representative nature of said words in said language, is a matter of fact to be determined by the GC⁸⁸⁰;
- So, too, is the determination as to whether or not a composite word is distinct (and therefore a distinctive trademark) from the sum of the two words that make up its parts⁸⁸¹;
- Likewise, the assessment that a product's everyday nature makes it less likely to be noticed by the average consumer and thus less distinctive is neither an error of interpretation nor a judgement of law; it is instead a determination of fact⁸⁸²;
- Furthermore, a determination as to the common, non-distinctive nature of a particular shape or color is not a matter of law but of fact⁸⁸³; barring any gross error of interpretation (such as that seen in the failure to consider overall effect seen in *SATI v. OHIM*, above), this is not a basis for an appeal.

⁸⁷⁶ Case C-329/02 P, *SAT 1 v OHMI* [2004] ECR I-08317, paras 35–37.

⁸⁷⁷ Case C-191/01 P, *OHIM v Wrigley*, [2003] ECR I-12447, paras 35–37.

⁸⁷⁸ Case C-48/09 P, *Lego Juris v OHIM* [2010] (not yet published in the ECR), paras 29–31.

⁸⁷⁹ Case C-51/09 P, *Barbara Becker v Harman International Industries*, [2010] ECR I-05805, para.

40.

⁸⁸⁰ Case C-326/01 P, *Telefon and Buch v OHIM*, [2004], ECR I-01371, paras 30–35.

⁸⁸¹ Case C-408/08 P, *Lancome v OHIM* [2010] ECR I-01347,.

paras 62–64.

⁸⁸² Joined Cases C-456/01 P and C-457/01 P, *Henkel KGaA v OHMI*, [2004] ECR I-05089, paras 35–40.

⁸⁸³ Joined Cases C-473/01 P and C-474/01 P, *Proctor and Gamble v OHIM* [2004] ECR I-05173, paras 44–48 and 53.

III. Three categories of legal pleas (paragraph 1, 2nd sentence)

The three categories of legal pleas⁸⁸⁴ in the 2nd sentence of paragraph 1 are very 29 similar to those in Art. 263 (2) TFEU:

1. “Lack of competence of the General Court”

Despite its wording, this category covers not only cases in which the GC lacks 30 competence, but also those in which the GC erroneously declared that it has no jurisdiction⁸⁸⁵. That said, this category is no longer relevant since the GC has gradually gained jurisdiction for all applications lodged by natural or legal persons, i.e. the so called “non privileged” applicants. Moreover, Art. 54 (2) Statute ECJ provides for the possibility to refer a case to another judicial instance should the application be lodged at the wrong instance or if that instance finds that it has no jurisdiction for the application in question. If the term “lack of competence” is interpreted broadly it pertains also to those cases in which the GC is *de jure* competent, but which may disregard the limits of its judicial review.

2. “A breach of procedure adversely affecting the interests of the appellant” 31

a) **Procedural rules concerned.** This may only occur with respect to Rules of Procedure designed to protect the **interests of the appellant**, e.g. those granting him procedural rights⁸⁸⁶ which have had an impact on the GC’s judgment or order⁸⁸⁷. Thus, the ECJ has jurisdiction over the verification of whether a breach of procedure adversely affecting the appellant’s interests was committed before the GC. In order to verify such a breach of procedure, the ECJ must satisfy itself that the GC has complied with the general principles of EU law and the Rules of Procedure applicable to the burden of proof and the taking of evidence⁸⁸⁸. The ECJ may also assess whether GC has respected the rights of defence⁸⁸⁹, the right to be heard⁸⁹⁰, the principle of legal certainty⁸⁹¹, of legal expectancy⁸⁹² and of fair procedure⁸⁹³, etc.

⁸⁸⁴ Lack of competence of the GC, a breach of procedure adversely affecting the interests of the appellant and infringement of EU law.

⁸⁸⁵ Case C-253/94 P, *Roujansky v Council*, [1995], ECR I-7, paras 5 et seq.

⁸⁸⁶ Cases C-185/95 P, *Baustahlgewebe v Commission*, [1998], ECR I-8417, paras 26 et seq, 33, 55 (right to a fair hearing within a reasonable time); C-119/97 P, *Ufex v Commission*, [1999], ECR I-1341, para. 110 (request to submit a substantial document necessary for the outcome of the case); C-199/92 P, *Hüls v Commission* [1999] ECR I-4287, para. 94 et seq (refusal to reopen the oral hearing and to take certain procedural measures).

⁸⁸⁷ Case C-51/92 P, *Hercules Chemicals v Commission* [1999], ECR I-4250, para. 86.

⁸⁸⁸ Case C-185/95 P, *Baustahlgewebe v Commission* [1998], ECR I-8417, para. 19.

⁸⁸⁹ Case C-480/99 P, *Gerry Plant and Others v Commission* [2002] ECR I-265, para. 20.

⁸⁹⁰ Case C-462/98 P, *Mediocurso v Commission* [2000], ECR I-7183, para. 35.

⁸⁹¹ Case C-242/90 P, *Commission v Albani and others* [1993], ECR I-3839, para. 7.

⁸⁹² Case C-320/92 P, *Finsider v Commission* [1994], ECR I-5697, paras 25 and seq.

⁸⁹³ Case C-310/93 P, *BPB Industries and others v Commission* [1995], ECR I-865, paras 12 et seq.

b) Purely internal rules not concerned

- 32 The Rules of Procedure do not include **purely internal**, organisational measures, such as the GC's decision to make use of an Advocate General, to refer the case to a given chamber, etc; these decisions and rules thus may not form the base of the sort of appeal mentioned above. Furthermore, the appellant may not bring an appeal stating that his interests were affected by a GC action, if said appellant agreed with the procedural measure challenged during the course of the procedure in question.

3. "Infringement of Union law"

- 33 In practice this **general clause** covers every infringement of EU law, whether at the primary and/or secondary level as well as violations of fundamental rights and all general principles of law insofar as the latter do not already come under the category of procedural errors.

IV. No appeal limited to decisions on costs and taxation of costs (paragraph 2)

1. General

- 34 The second paragraph of Art. 58 confirms that partial appeals, i.e. those directed only at particular aspects of a GC decision, are admissible unless such appeals are exclusively directed against a decision on costs or an order in taxation matters.

2. Decision on the allocation on costs

- 35 This exclusion is based on the idea that the decision on the allocation of costs is inextricably linked to the main ruling(s) and can thus not be challenged by an isolated, partial appeal. The ECJ has held that, where all the other pleas put forward in an appeal have been rejected, any plea challenging the decision of the GC on costs must be rejected as inadmissible by virtue of the confirmation of the main decision⁸⁹⁴. The ECJ may, however, review the GC's allocation of costs, if the ECJ considers that at least one of the appellant's legal pleas is well founded and that said plea has at least a partial bearing on the validity of the GC's first-instance ruling⁸⁹⁵.

- 36 **3. Taxation of costs. a) No appeal admissible.** Since every procedure on taxation of costs is based on the first instance's ruling regarding the allocation of costs (see 2. above) and since any taxation of costs by the GC is essentially a matter of the finding and appraisal of facts, it seems justified to exclude an appeal against an order concerning taxation of costs.

⁸⁹⁴ Case C-301/02 P, *Tralli v EZB*, [2005], ECR I-4071, paras 88 et seq.

⁸⁹⁵ Case C-316/97 P, *Parliament v Gaspari* [1998], ECR I-7597.

b) No other legal remedy

While one could reflect on creating a special legal remedy concerning orders on 37
taxation of costs, such an order would require a careful balancing between increasing individual judicial protection and reducing the Courts' work load.

Article 59 [Appeals procedure]

Where an appeal is brought against a decision of the General Court, the procedure before the Court of Justice shall consist of a written part and an oral part. In accordance with conditions laid down in the Rules of Procedure, the Court of Justice, having heard the Advocate-General and the parties, may dispense with the oral procedure.

I. Procedural steps (1st sentence)**1. One exchange of written submissions**

The purpose of the Rules of Procedure concerning appeals within the ECJ (and 1
within the GC in appeals of CST decisions) is to ensure that the written and, as the case may be, oral part of appeals respect procedural economy and efficiency as much as possible while still preserving the right to judicial access and to fair trial. In keeping with these dual duties, the written part of an appeal includes only one exchange of written submissions⁸⁹⁶.

2. Second exchange of written submissions is not automatic

A rejoinder, i.e. the first step of a second exchange of submissions (which would 2
then be followed by a sur-rejoinder, if appropriate) is not automatically granted during appeals. A party must specifically request a rejoinder if they believe it necessary by putting forward appropriate reasons⁸⁹⁷.

3. Oral hearing

The same is true with respect to the oral hearing⁸⁹⁸.

3

II. Absence of oral hearing (2nd sentence)

In particular circumstances the appeals instance may decide that the case does 4
not require an oral hearing⁸⁹⁹. The ECJ (and the GC in appeals against decisions of

⁸⁹⁶ The appeal and the response, see Art. 112, 115 RP CJ and Art. 138, 141 RP GC.

⁸⁹⁷ Art. 117 RP CJ and Art. 143 RP GC.

⁸⁹⁸ Art. 120 RP CJ and Art. 146 RP GC.

⁸⁹⁹ Art. 120 RP CJ; the similar provision of Art. 44 RP CJ is not applicable on appeal, see Art. 118 RP CJ.

the CST) may make use of this possibility if the respective appeal turns out to be **manifestly inadmissible** or **manifestly unfounded**⁹⁰⁰. In either case such a decision may be taken *ex officio*, i.e. without hearing the parties, who cannot prevent or reverse such decision, e.g. by lodging a request for a hearing.

Article 60 [No suspensory effect]

(1) Without prejudice to Articles 278 and 279 of the Treaty on the Functioning of the European Union or Art. 157 of the EAEC Treaty, an appeal shall not have suspensory effect.

(2) By way of derogation from Art. 280 of the Treaty on the Functioning of the European Union, decisions of the General Court declaring a regulation to be void shall take effect only as from the date of expiry of the period referred to in the first paragraph of Art. 56 of this Statute or, if an appeal shall have been brought within that period, as from the date of dismissal of the appeal, without prejudice, however, to the right of a party to apply to the Court of Justice, pursuant to Articles 278 and 279 of the Treaty on the Functioning of the European Union or Art. 157 of the EAEC Treaty, for the suspension of the effects of the regulation which has been declared void or for the prescription of any other interim measure.

I. No suspensory effect (paragraph 1)

- 1 Paragraph 1 merely confirms Art. 278, 1st sentence TFEU, which states that “actions”, including appeals, shall not have an automatic suspensory effect⁹⁰¹. Art. 60 (1) Statute ECJ furthermore echoes the possibility for the appellate court to order a suspensory effect or to prescribe any other interim measures as found in Arts. 278 and 279 TFEU. The intention of these two somewhat contrasting concepts is to prevent parties from lodging appeals for the sole purpose of **delaying** or **blocking** the implementation of the judgment at first instance while the appeal is pending. This appears to be a sensitive concept, given the average duration of appeal proceedings and the absence of any sort of filter regarding the lodging of appeals⁹⁰². In addition, since the legislature rules out an automatic suspensory effect caused by the lodging of any other sort of application or legal remedy at first instance, in the interest of legal certainty it must do the same with respect to appeals.

II. Interim proceedings in the context of an appeal (paragraph 1)

- 2 Given the absence of an automatic suspensory effect due to an appeal, the party wishing to suspend the implementation of the decision at first instance must initiate

⁹⁰⁰ Art. 119 RP CJ and Art. 145 RP GC.

⁹⁰¹ In contrast to, for example, Art. 80.1 of the German Administrative Procedure Code which suspends both opposition and legal challenge.

⁹⁰² Such mechanisms for filtering appeals have been discussed, especially during the negotiations of the Treaty of Nice, but have not been implemented due to a lack of excessive appellate course load.

interim proceedings within the meaning of Art. 278 TFEU, regardless of whether or not he makes an appeal. Such a request must be lodged with the president of the Court of Justice, i.e. not at the GC⁹⁰³. A request for interim proceedings is assessed based on classical criteria of necessity, i.e. the *prima facie* chances of success of the appeal, the urgency, and, as the case may be, the balancing of the interests of the two or more parties to the case.

III. Exception (paragraph 2)

In the – rare – case of a decision at first instance annulling an EU regulation, ³ such annulment does not come into force immediately, i.e. on the date when the judgment is handed down, but at a later date, as indicated in paragraph 2 of this Article. This exception is designed to avoid the state of **legal uncertainty** that would result if a regulation ceased to legally exist only to be reaffirmed after a successful appeal proceeding.

Article 61 [Appeal well founded]

- (1) If the appeal is well founded, the Court of Justice shall quash the decision of the General Court. It may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment.
- (2) Where a case is referred back to the General Court, that Court shall be bound by the decision of the Court of Justice on points of law.
- (3) When an appeal brought by a Member State or an institution of the Union, which did not intervene in the proceedings before the General Court, is well founded, the Court of Justice may, if it considers this necessary, state which of the effects of the decision of the General Court which has been quashed shall be considered as definitive in respect of the parties to the litigation.

Outline:

I. Appeal well founded (paragraph 1)	1
1. Definition.....	1
a) Cumulative conditions.....	1
b) Case law.....	2
2. Giving final judgment or referring the case back to first instance.....	3
a) General.....	3
b) Referring back.....	4
II. The decision of the ECJ is binding (paragraph 2)	5
III. Limiting the effects of the annulment (paragraph 3)	6

⁹⁰³ Case T-77/91 R, *Hochbaum v Commission* [1991], ECR II-1285, para. 21.

I. Appeal well founded (paragraph 1)

- 1 **1. Definition. a) Cumulative conditions.** An appeal is well founded if the first instance committed (1) a legal error, which (2) has an impact on the operative part of the judgment. Thus the mere fact that the first instance infringed EU law does not, as such, automatically result in an appeal being well founded.

b) Case law

- 2 The ECJ will reject outright appeals directed against grounds of a GC judgement which are founded solely on the incompleteness of the GC's grounds for judgement since such an appeal cannot lead to the judgment being set aside and is therefore irrelevant⁹⁰⁴. An appeal is likewise dismissed if the grounds of a GC judgement reveal an infringement of EU law but the **operative part** of said judgement appears well founded on other, valid legal grounds⁹⁰⁵.

- 3 **2. Giving final judgment or referring the case back to first instance. a) General.** If the appellate instance annuls the appealed judgment either partly or wholly, that appellate instance may decide, within the parameters laid down in paragraph 1, whether it gives a final ruling or refers the case back to the first instance in question. The ECJ may also render judgment on parts of original decision while referring the remainder of the decision back to the GC⁹⁰⁶.

b) Referring back

- 4 If the ECJ finds that it does not have all the relevant facts, then it has must refer the matter back to the GC. Such a referral then triggers the proceedings found in Arts. 117 to 121 of the RP GC. Such referrals are likely to happen if the GC e.g. erroneously rejected an application as inadmissible⁹⁰⁷ or declared a legal plea as well founded and thus did not examine other legal pleas⁹⁰⁸.

II. The decision of the ECJ is binding (paragraph 2)

- 5 This provision is designed to guarantee the *effet utile* of the appeals judgment, by providing that the GC is bound by said appellate judgement. Since the appeals procedure is limited to questions of law, the GC remains free concerning the finding and legal interpretation of facts, as long as such finding or interpretation does not contradict the legal view established in the appeal before the ECJ.

⁹⁰⁴ Case C-184/01 P, *Hirschfeldt v European Environmental Agency* [2002], ECR I-10189, paras 48 and the case-law quoted.

⁹⁰⁵ Cases C-30/91 P, *Lestelle v Commission* [1992], ECR I-3755, para. 28; C-226/03 P, *José Martí Peix v Commission* [2004], ECR I-11421, 11460. para. 29 and the case-law quoted and C-396/03 P, *Killinger v Germany and others* [2005], ECR I-4967, 4976, para. 12 et seq.

⁹⁰⁶ Case C-259/96 P, *Council v De Nil and Impens* [1998], ECR I-2915 et seq.

⁹⁰⁷ Case C-404/96 P, *Glencore v Commission* [1998], ECR I-2435, para. 57.

⁹⁰⁸ Case C-316/97 P, *Parliament v Gaspari* [1998], ECR I-7597, para. 37.

III. Limiting the effects of the annulment (paragraph 3)

This provision is closely related to Art. 56 (3) Statute ECJ, which enables Member States and Institution to appeal a judgment at first instance⁹⁰⁹ even if they were not a party to the proceedings at first instance. The purpose of paragraph 3 is to reflect the fact that if a Member State or Institution employs this aforementioned autonomous appeal prerogative, the parties of the proceedings at first instance automatically become parties of an appeals procedure even though this might be against said parties' wills should none of them have attempted to lodge an appeal. This provision thus seeks to limit the negative effects such an autonomously-initiated appeal judgment might have on the individual parties to the case at first instance.

Article 62 [Review by the ECJ]

(1) In the cases provided for in Art. 256 (2) and (3) of the Treaty on the Functioning of the European Union, where the First Advocate-General considers that there is a serious risk of the unity or consistency of Union law being affected, he may propose that the Court of Justice review the decision of the General Court.

(2) The proposal must be made within one month of delivery of the decision by the General Court. Within one month of receiving the proposal made by the First Advocate General, the Court of Justice shall decide whether or not the decision should be reviewed.

Outline:

I. Introduction	1
1. Relevant rules	1
2. When is it likely to apply?	2
II. Proposal by the First Advocate General (paragraph 1)	3
1. No right of initiative of the parties	3
2. Coherence between Art. 62 (1) and Art. 56 (3) Statute ECJ?	4
3. Right of initiative	5
III. Time-limits (paragraph 2).....	6

I. Introduction

1. Relevant rules

Arts. 62 to 62 b Statute ECJ are detailed in Art. 191 to 195 RP ECJ and provide the conditions under which the ECJ may review decisions of the GC. This legal review is intended to assess whether a judgement on appeal affects the unity or

⁹⁰⁹ With the exception of those actions, see Art. 56.3 ECJ Statute.

consistency of EU law. It is a procedure in the **interest of the consistency of the law**⁹¹⁰ and is thus distinct from an appeals procedure within the meaning of Art. 56 to 61 Statute ECJ and is indeed any other legal remedy.

2. When is it likely to apply?

- 2 First, when the GC hears an **appeal** within the meaning of Art. 256 (2) TFEU⁹¹¹, which, to date, only applies to decisions of the CST. On the 17 December 2009 the ECJ handed down its first such judgment⁹¹². **Secondly**, the ECJ may review judgments of the GC pertaining to **referrals for preliminary rulings** within the meaning of Art. 256 (3) TFEU⁹¹³. While this law renders such referral proceedings possible, this possibility has not yet been implemented to date.

II. Proposal by the First Advocate General (paragraph 1)

1. No right of initiative of the parties

- 3 First Advocate General-initiated ECJ review of GC decisions is not a classical legal remedy, since it may only be proposed by the First Advocate General and is thus not entirely outside the hands of the parties to the relevant proceedings. Nevertheless, nothing prevents said parties from contacting the First Advocate General informally and explaining why they believe that he should consider initiating such a review procedure.

2. Coherence between Art. 62 (1) and Art. 56 (3) Statute ECJ?

- 4 Pursuant to Art. 56 (3), Member States' and EU institutions' prerogative to lodge an autonomous appeal in cases to which they were *not* a party at first interest in order to protect the unity of EU law does not apply to staff cases. The legislature considers that in staff cases the unity of EU law is not sufficiently at stake in order to justify such prerogative. By contrast, Art. 62 (1) Statute ECJ seems to be based on the **opposite hypothesis**, i.e. that Judgements in staff cases may well affect the unity or consistency of EU law and thus that the First Advocate General ought to be able to propose such cases to the ECJ for judicial review.

3. Right of initiative

- 5 Moreover, Art. 62 (1) Statute ECJ confers an exclusive right of initiative for this sort of review proceedings upon the First Advocate General, even though he ultimately has no right of decision concerning the outcome of the case under

⁹¹⁰ See e.g. *B. Heffernan*, ICLQ 2003, p 913.

⁹¹¹ See also Art. 140(a) 2 CEEA.

⁹¹² Case C-197/09 RX-II, *M v EMEA* [2009] ECR I-12033.

⁹¹³ See also Art. 140(a) 3 CEEA.

review⁹¹⁴. In any event, it is unclear exactly how this special right of initiative will function in practice, as will only be relevant in very exceptional cases and has not to date been implemented in a case before the Courts.

III. Time-limits (paragraph 2)

The comparatively short deadlines for lodging and deciding upon such a request 6 for review, i.e. one month as of delivery of the decision of the GC, illustrates the urgency of the procedure (see Art. 62 a hereafter).

Article 62a [Urgency procedure]

(1) The Court of Justice shall give a ruling on the questions which are subject to review by means of an urgent procedure on the basis of the file forwarded to it by the General Court.

(2) Those referred to in Art. 23 of this Statute and, in the cases provided for in Art. 256 (2) of the Treaty on the Functioning of the European Union, the parties to the proceedings before the General Court shall be entitled to lodge statements or written observations with the Court of Justice relating to questions which are subject to review within a period prescribed for that purpose.

(3) The Court of Justice may decide to open the oral procedure before giving a ruling.

Outline:

I. Urgency procedure (paragraph 1)	1
II. Parties involved (paragraph 2)	2
1. Written submissions	2
2. Preliminary ruling.....	3
3. No intervention.....	4

I. Urgency procedure (paragraph 1)

Should the ECJ accept the proposal of the First Advocate General and thus 1 confirm his concerns regarding that a GC decision presents a serious risk for the unity or consistency of EU law, it is logical for the ECJ to review the GC's judgments as a matter of **urgency**⁹¹⁵. The procedural details of this procedure have been laid down in Art. 191–195 RP ECJ of the Rules of Procedure of the ECJ.

⁹¹⁴ See Sack, EuZW 2001, p 78–79.
⁹¹⁵ In case C-197/09 RX-II, *M v EMEA*, [2009] ECR I-12033, the Court of Justice adopted the decision to review the GC's judgment on 6 May 2009 and handed down its Judgment on 17 December 2009.

II. Parties involved (paragraph 2)

1. Written submissions

- 2 While the parties to the initial proceedings, the Member States, and the institutions have **no right of initiative** whatsoever regarding this special review procedure⁹¹⁶, they may submit **written submissions** concerning the questions which form the basis of this special review. Any of these entities may also plead at an oral hearing, should one take place.

2. Preliminary ruling

- 3 If the review concerns a preliminary ruling by the GC, a possibility which remains theoretical up to this day, it seems consistent to allow all parties referred to in Art. 23 Statute ECJ to be heard in the proceedings. Should the review concern an appellate judgment, which is much more likely, it seems logical that only the parties to the appeal proceedings should participate in the special review.

3. No intervention

- 4 Since like the preliminary ruling proceedings the special review is not a contentious procedure, it seems consistent to exclude any intervention by third parties, no matter how legitimate their interest in such a review might be⁹¹⁷. This should not, however, prevent parties that already intervened in the proceedings at first instance from intervening during special review proceedings.

Article 62b [No suspensory effect]

(1) In the cases provided for in Art. 258 (2) of the Treaty on the Functioning of the European Union without prejudice to Articles 278 and 279 of the Treaty on the Functioning of the European Union, proposals for review and decisions to open the review procedure shall not have suspensory effect. If the Court of Justice finds that the decision of the General Court affects the unity or consistency of Union law, it shall refer the case back to the General Court which shall be bound by the points of law decided by the Court of Justice; the Court of Justice may state which of the effects of the decision of the General Court are to be considered as definitive in respect of the parties to the litigation. If, however, having regard to the result of the review, the outcome of the proceedings flows from the findings of fact on which the decision of the General Court was based, the Court of Justice shall give final judgment.

(2) In the cases provided for in Art. 256 (3) of the Treaty on the Functioning of the European Union, in the absence of proposals for review or decisions to open

⁹¹⁶ See Art. 62.1 Statute ECJ.

⁹¹⁷ Case C-69/85, *Wünsche v Germany* [1986], ECR 947, paras 13–16.

the review procedure, the answer(s) given by the General Court to the questions submitted to it shall take effect upon expiry of the periods prescribed for that purpose in the second paragraph of Art. 62. Should a review procedure be opened, the answer(s) subject to review shall take effect following that procedure, unless the Court of Justice decides otherwise. If the Court of Justice finds that the decision of the General Court affects the unity or consistency of Union law, the answer given by the Court of Justice to the questions subject to review shall be substituted for that given by the General Court.

I. No suspensory effect (paragraph 1, 1st sentence)

Since appeals, like all other legal remedies, have no automatic suspensory effect⁹¹⁸, it would be hardly consistent if any part of the special review process outlined in Art. 62 Statute ECJ, whether the First Advocate General's proposal and/or the ECJ's decision to accept said proposal, were to have such a suspensory effect. That said, this review procedure does not exclude an application for or implementation of interim measures.

II. ECJ either decides or refers the case back (paragraph 1, 2nd and 3rd sentence)

If the ECJ finds that the GC's decision in appeals proceedings or referrals for 2 preliminary rulings affects the unity or consistency of EU law it may decide to refer the matter back to the GC, which is then bound by the ECJ's views as expressed in said referral.

Alternatively, the ECJ may decide the case itself, if the finding or appraisal of 3 facts conducted by the initial instance (currently the CST) is sufficient enough as to enable the ECJ to do so.

III. Reviewing a preliminary ruling (paragraph 2)

In the interest of legal certainty, the GC's decision concerning to a preliminary 4 ruling – which remains purely theoretical, as the GC has not conducted any such preliminary ruling to date – would only become effective once the time-limits outlined in Art. 62 (2) Statute ECJ had expired, should the First Advocate General fail to bring a request for special review of said decision, or should the ECJ fail to confirm the First Advocate General's request for special review.

Should the ECJ finds that the unity or consistency of EU law is affected by the 5 GC's decision, the ECJ would obviously be unable to refer the matter back to the GC, unlike in the case of an appeal (see Art. 62 b (1)).

⁹¹⁸ Art. 60.1 Statute ECJ.

TITLE IVA SPECIALISED COURTS

Article 62c [Specialised courts]

The provisions relating to the jurisdiction, composition, organisation and procedure of the specialised Courts established under Art. 257 of the Treaty on the Functioning of the European Union are set out in an Annex to this Statute.

The European Parliament and the Council, acting in accordance with Article 257 of the Treaty on the Functioning of the European Union, may attaché temporary Judges to the specialised courts in order to cover the absence of Judges who, while not suffering from disablement deemed to be total, are prevented from participating in the disposal of cases for a lengthy period of time. In that event, the European Parliament and the Council shall lay down the conditions under which the temporary Judges shall be appointed, their rights and duties, the detailed rules governing performance of their duties and the circumstances in which they shall cease to perform those duties.

I. “Specialised Courts” (paragraph 1)

1. Terminology

- 1 The term “Specialised Courts” is more appropriate than the initial term used to refer to these instances, i.e. “judicial panel”, which was bit of an unfortunate expression⁹¹⁹, since the forum of magistrates concerned is not an annex to or part of an existing judicial body, but a full-fledged Tribunal, which has jurisdiction over actions in “specific areas”⁹²⁰.

2. Further specialised Courts?

- 2 It furthermore seems a bit misleading to state that the judicial panels and/or specialised Courts – the only one is currently the Civil Service Tribunal – are “attached”⁹²¹ to the GC.
- 3 Various individuals have proposed specialised Courts in various areas, such as in the area of competition⁹²². The President of the ECJ has seriously considered creating a specialised Court, more specifically an Intellectual Property (IP) Tribunal, to reduce the case load of the GC⁹²³. An IP tribunal would be particularly useful in

⁹¹⁹ *Everling*, EuR 2003, Sonderband I, p 20.

⁹²⁰ Annex 1 Art. 1 Statute ECJ.

⁹²¹ See Art. 220.2 TEC.

⁹²² See *Vesterdorf*, ELR 2003, p.317.

⁹²³ It is worth noting that the Council has also proposed a European and Community Patents Court in order to deal with those IP cases pertaining to patent law. However, the ECJ has ruled that such a Court would pose a threat to the consistency of EU law by creating a third-party tribunal

reducing GC case load, as the percentage of currently pending GC cases pertaining to Intellectual Property has increased from 24 percent in 2006 to 33.6 in 2011⁹²⁴ and the percentage of completed GC cases pertained to Intellectual Property has increased from 20 percent in 2006 to 28 percent in 2011⁹²⁵. This method of reducing GC case load would additionally alleviate the need for the (politically challenging) proposal to add an uneven (i.e., not proportional by Member State) number of Judges to the ECJ and the GC, which will almost certainly render these proposals problematic when presented to the European Parliament.

Nevertheless, the President of the Court has not ultimately proposed an Intellectual Property Tribunal, deciding instead to increase the number of Judges by at least twelve. He has stated the concern that appeals to the GC regarding the IP tribunal's rulings might be so numerous as to neutralize the IP tribunal's initial reduction of GC case load. However, this scenario is somewhat unlikely if appeals of IP decisions, like those of CST and GC decisions are limited to points of law⁹²⁶. Furthermore, appeals of IP cases are currently very infrequent: only 19 % of IP-related cases were appealed to the ECJ, in contrast to an overall average of 30 % of GC cases appealed to the ECJ overall⁹²⁷.

It is worth noting, however, that these IP appeals, like all GC appeals, are limited to points of law. Should appeals from the specialized IP tribunal (often considered to almost exclusively decide points of fact) be subsequently enlarged to include points of fact as well, the President's concern that the GC might be overrun with IP appeals and thus the IP tribunal fail to effectively reduce GC case load might be very relevant.

3. Annex to the Statute ECJ

In contrast to the ECJ and the GC, the provisions governing the specialised Courts are not integrated into the Statute proper, but are instead attached as an **annex**. It would seem that this makes adopting provisions "tailored" to the specificities of the respective specialised Courts easier. That said, the provisions found in this annex are not fundamentally different from those governing the Court of Justice and the GC, since the annex refers extensively to a number of fundamental provisions in the Statute.

II. Temporary Judges (paragraph 2)

The current workload of the CST has steadily increased to approximately 140 cases per year, whilst the number of Judges is currently limited to 7. This has proven somewhat problematic, as one Judge of the CST has been ill and thus absent

outside of the ECJ-Member State enforcement mechanism set in place by Art. 28(11) TFEU. See Opinion 1/09 of the Full Court, [2011] (not yet published in the ECR), paras 79 and 89.

⁹²⁴ "Statistics of Judicial Activity of the General Court" *Annual Report of the European Courts of Justice*, 2011.

⁹²⁵ *Ibid.*

⁹²⁶ Vassilios, op cit, 8.

⁹²⁷ *Annual Report of the European Courts of Justice*, [2011] p 210.

for long periods of time, thereby slowing CST progress with their case load. In view of this situation, the legislator has recently added a paragraph to Art. 62 c and to Art. 2 of Annex I, which provides that the Parliament and the Council may attach “temporary Judges” to the specialised Courts in order to cover the absence of Judges who are prevented from participating in judicial business for an extended period of time.

TITLE V FINAL PROVISIONS

Article 63 [Rules of Procedure]

The Rules of Procedure of the Court of Justice and of the General Court shall contain any provisions necessary for applying and, where required, supplementing this Statute.

1. Interface

- 1 This provision⁹²⁸ outlines the interface between the primary framework-provisions found in the relevant chapter of the TFEU⁹²⁹ and the Statute ECJ as well as in the Rules of Procedure of the ECJ and the GC which **implement** or **supplement** this framework.

2. Rules of Procedure not exhaustive

- 2 This provision does not mean, however, that the Rules of Procedure provide an exhaustive legal framework concerning all procedural matters. A number of important concepts, such as the “legitimate interest” required for an intervention by non-privileged parties⁹³⁰, cases of unforeseeable circumstances or *force majeure* concerning time-limits⁹³¹, and time-limits pertaining to extra-contractual liability⁹³² are exclusively discussed in the Statute ECJ.

3. Analogous provisions

- 3 The RP of the ECJ⁹³³, the GC⁹³⁴, and the CST⁹³⁵ each contain an analogous provision to this one, upon which each jurisdiction adopts detailed internal rules, such as instructions to the Registrar, practice directions for the attention of the

⁹²⁸ See also Art. 253.6 TFEU (Art. 223.6 TEC) and Art. 224.5 TEC (now Art. 254.5 TFEU).

⁹²⁹ Art. 251–281 TFEU (former Art. 220–245 TEC).

⁹³⁰ Art. 40 Statute ECJ.

⁹³¹ Art. 45.2 Statute ECJ.

⁹³² Art. 46 Statute ECJ.

⁹³³ Art. 207–208 RP ECJ.

⁹³⁴ Art. 150 RP GC.

⁹³⁵ Art. 120 RP CST.

parties of the proceedings, notes for the guidance of Counsel, etc., which are equally relevant for each party involved in Court proceedings.

4. Hierarchy of norms

Thus, every given aspect of procedural law should always be considered in the light of the full vertical spectrum of procedural rules as well as in light of the relevant case law, which can be quite abundant depending upon the subject. 4

Article 64 [Language of the procedure]

(1) The rules governing the language arrangements applicable at the Court of Justice of the European Union shall be laid down by a regulation of the Council acting unanimously. This regulation shall be adopted either at the request of the Court of Justice and after consultation of the Commission and the European Parliament, or on a proposal from the Commission and after consultation of the Court of Justice and of the European Parliament.

(2) Until those rules have been adopted, the provisions of the Rules of Procedure of the Court of Justice and of the Rules of Procedure of the General Court governing language arrangements shall continue to apply. By way of derogation from Articles 253 and 254 of the Treaty on the Functioning of the European Union, those provisions may only be amended or repealed with the unanimous consent of the Council.

Both paragraphs illustrate the importance of the language arrangements to provide for the linguistic diversity of the Member States. Linguistic considerations are so important to the ECJ's functioning and to the EU in general that any change in these considerations requires unanimity.

Annex 1

THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Article 1 [Scope of jurisdiction]

The European Union Civil Service Tribunal (hereafter “the Civil Service Tribunal”) shall exercise at first instance jurisdiction in disputes between the Union and its servants referred to in Art. 270 of the Treaty on the Functioning of the European Union, including disputes between any all bodies or agencies and their servants in respect of which jurisdiction is conferred on the Court of Justice of the European Union.

1. Institutions

- 1 By virtue of this provision the CST⁹³⁶, the first “specialised Court” within the meaning of Art. 257 TFEU, has exclusive jurisdiction for “disputes between the Union and its servants”. The term “Union” is slightly misleading in that it is necessarily one (or several) of the EU **institutions**⁹³⁷, e.g. the Commission or the Council, which is actually a party, i.e. defendant, to staff cases. The “**servants**” – a generic, but slightly outdated expression – include not only EU officials, but also temporary agents with contracts of limited or unlimited duration as well as contractual staff, etc.

2. Bodies or agencies

- 2 Apart from the institutions, the EU has also created a broad variety of “**bodies or agencies**”, which come under the jurisdiction of the CST, insofar as they too have legal personality.

3. Retired staff and other persons

- 3 The CST furthermore hears the applications of former members of staff who left active service e.g. due to age limits, termination, or expiry of their contract etc. as well as those persons who e.g. contest a selection procedure and are thus not officials.

Article 2 [Number of Judges and term in office]

(1) The Civil Service Tribunal shall consist of seven Judges. Should the Court of Justice so request, the Council, acting by a qualified majority, may increase the number of Judges. The Judges shall be appointed for a period of six years. Retiring Judges may be reappointed. Any vacancy shall be filled by the appointment of a new Judge for a period of six years.

⁹³⁶ See *H. Kraemer*, CMLR 2009, p. 1873–1913.

⁹³⁷ See Art. 13 TEU (former Art. 7.1 TEC).

(2) Temporary Judges shall be appointed, in addition to the Judges referred to in the first subparagraph of paragraph 1, in order to cover the absence of Judges who, while not suffering from disablement deemed to be total, are prevented from participating in the disposal of cases for a lengthy period of time.

I. Number of Judges (paragraph 1)

1. General

In the case of a specialised Court it would most certainly not be justified to apply ¹ the principle of one Judge per Member State found in the ECJ⁹³⁸, first, because the CST's specialised nature pleads against it and, secondly, because with currently 27 Member States, each Judge at the CST would deal with approximately 4 to 5 cases per year and would be thus hopelessly underemployed. Whether the current total number of seven Judges⁹³⁹, which the legislature may increase by qualified majority⁹⁴⁰, will suffice for the CST's needs depends upon its workload⁹⁴¹. So far the number of new cases peaked in 2007 (157 new cases) and reduced substantially in 2008 (111 new cases) and 2009 (113 new cases), with an upwards trend in 2011 (144 new cases).

2. Term of office

The term of office of the Judges at the CST equals the six-year term of the Judges ² at the Court of Justice and the GC⁹⁴², and, like the ECJ and the GC, includes the possibility of a reappointment.

II. Absences of Judges (paragraph 2)

According to the currently pending proposal a number of temporary Judges shall ³ be appointed in addition to the Judges of the CST in order to temporarily replace those Judges who are prevented in participating in judicial business for an extended period of time.

Article 3 [Appointment of Judges]

(1) The Judges shall be appointed by the Council, acting in accordance with the fourth paragraph of Art. 257 of the Treaty on the Functioning of the European

⁹³⁸ See Art. 19.2.1 TEU (former Art. 221.1 TEC) regarding the ECJ and Art. 19.2.2 TEU (former Art. 224.1 TEC) regarding the GC.

⁹³⁹ This figure is the same as in the case of the Administrative Tribunal of the ILO.

⁹⁴⁰ Annex 1 Art. 2 Statute ECJ.

⁹⁴¹ See the sixth recital of the Council decision of 2 November 2004 establishing the European Union Civil Service Tribunal.

⁹⁴² Art. 253.1 TFEU and Art. 254.2 TFEU.

Union, after consulting the committee provided for by this Article. When appointing Judges, the Council shall ensure a balanced composition of the Civil Service Tribunal on as broad a geographical basis as possible from among nationals of the Member States and with respect to the national legal systems represented.

(2) Any person who is a Union citizen and fulfils the conditions laid down in the fourth paragraph of Art. 257 of the Treaty on the Functioning of the European Union may submit an application. The Council, acting on a recommendation from the Court of Justice, shall determine the conditions and the arrangements governing the submission and processing of such applications.

(3) A committee shall be set up comprising seven persons chosen from among former members of the Court of Justice and the General Court and lawyers of recognised competence. The committee's membership and operating rules shall be determined by the Council, acting on a recommendation by the President of the Court of Justice.

(4) The committee shall give an opinion on candidates' suitability to perform the duties of Judge at the Civil Service Tribunal. The committee shall append to its opinion a list of candidates having the most suitable high-level experience. Such list shall contain the names of at least twice as many candidates as there are Judges to be appointed by the Council.

I. Appointment by the Council (paragraph 1)

- 1 The Judges at the CST are appointed by the Council by **unanimous vote**⁹⁴³, unlike the Judges at the ECJ and the GC, who are appointed by their respective Member State. In the case of CST judicial appointments, the Council hears the view of the committee provided for in paragraphs 3 and 4. The current number of Judges at the CST, i.e. 7, equals only about one quarter of the currently twenty-seven Member States. Thus, the need for representing a broad geographical basis among these seven judges is particularly important, in order for the CST to be considered a *European Union Court*.

II. Conditions of eligibility (paragraph 2)

1. Citizenship

- 2 The requirement of **European Union Citizenship**⁹⁴⁴ applies to the European public service as a whole⁹⁴⁵, but no such provision exists for Judges at the ECJ and the GC. That said, the Member States have to date always appointed their "own" nationals as Judges.

⁹⁴³ Art. 257.4 TFEU and Art. 3 of the Annex Statute ECJ.

⁹⁴⁴ Art. 20 TFEU.

⁹⁴⁵ In any case, with regard to the officials and temporary staff.

2. Other requirements

At first glance, the requirements for being appointed to the CST⁹⁴⁶, which are 3 complemented by the “high level of expertise” required by paragraph 4, remain below those for Judges at the GC⁹⁴⁷, which in turn are below those for Judges at the ECJ⁹⁴⁸. Given these circumstances as well as the degree of specialisation of the CST, it appears to be more difficult for its Judges to subsequently become a Judge at the GC. Nevertheless, one may cite one recent example of a Judge “switching” from the CST to the GC; thus switching between the two tribunals is hardly impossible.

III. Committee (paragraph 3)

The CST judge selection Committee must by definition include former members 4 of the ECJ, which could include former Advocate Generals as well as Judges as well as Judges of the GC. By including “lawyers of recognised competence”⁹⁴⁹ into the Committee, the legislature seems to avoid a composition which might otherwise be perceived as too corporatist or in-house.

IV. Committee’s opinion (paragraph 4)

Even though the Committee’s role is merely an advisory one, in view of the 5 Committee’s high profile composition and the fact that the Council acts unanimously, this Committee’s views are bound to have an important if not decisive weight on the ultimate selection of judges. The criterion of “high level of experience” seems deliberately vague, possibly because there are presumably not many candidates with relevant long-term experience in the area of European public service law.

Article 4 [President and Chambers]

(1) The Judges shall elect the President of the Civil Service Tribunal from among their number for a term of three years. He may be re-elected.

(2) The Civil Service Tribunal shall sit in chambers of three Judges. It may, in certain cases determined by its Rules of Procedure, sit in full Court or in a chamber of five Judges or of a single Judge.

(3) The President of the Civil Service Tribunal shall preside over the full Court and the chamber of five Judges. The Presidents of the chambers of three Judges shall be designated as provided in paragraph 1. If the President of the Civil

⁹⁴⁶ “persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office”.

⁹⁴⁷ Art. 254.2 TFEU.

⁹⁴⁸ Art. 253.1 TFEU.

⁹⁴⁹ This does not seem to be limited to lawyers admitted to the bar in their respective Member State, as is apparent from other linguistic versions (see German text).

Service Tribunal is assigned to a chamber of three Judges, he shall preside over that chamber.

(4) The jurisdiction of and quorum for the full Court as well as the composition of the chambers and the assignment of cases to them shall be governed by the Rules of Procedure.

I. Mandate of the President (paragraph 1)

- 1 The mandate of the President of the CST, i.e. three years, is of the same duration as the one of the Presidents of the ECJ⁹⁵⁰ and the GC⁹⁵¹.

II. Chambers (paragraph 2)

- 2 Currently the CST includes two chambers of three Judges, which hear most cases⁹⁵², and one chamber of five Judges. The CST may also hear cases in a full Court comprised of all seven Judges, which is rather exceptional⁹⁵³. The CST may furthermore consider cases as a single Judge⁹⁵⁴.

III. President (paragraph 3)

- 3 The President of the CST presides over the full Court and the chamber of five Judges, the latter being intended as the equivalent of the “grand chamber” at the ECJ and the GC. In the case of specialised Courts such as the CST, it seems particularly important that the Presidents of the Chambers have relevant practical experience in the specialized area in which the Court specializes.

IV. Details (paragraph 4)

- 4 The details of the jurisdiction, the quorum of the full Court, and other organisational aspects are laid down in the Rules of Procedure, as is the case for the ECJ and the GC.

⁹⁵⁰ Art. 7.1 RP CJ.

⁹⁵¹ Art. 7.1 RP GC.

⁹⁵² From 2006 to 2009, 95,95 % cases have been heard by the Chambers sitting with 3 Judges.

⁹⁵³ The Full Court heard 1,35 % of all cases over four years.

⁹⁵⁴ Over the same period, the Single Judge heard 2,70 % of all completed cases.

Article 5 [Applicable provisions of the Statute]

(1) Articles 2 to 6, 14, 15, the first, second and fifth paragraphs of Art. 17, and Art. 18 of the Statute of the Court of Justice of the European Union shall apply to the Civil Service Tribunal and its members.

(2) The oath referred to in Art. 2 of the Statute shall be taken before the Court of Justice, and the decisions referred to in Articles 3, 4 and 6 thereof shall be adopted by the Court of Justice after consulting the Civil Service Tribunal.

I. Applicable provisions (paragraph 1)

This provision is similar to Art. 47 of the Statute ECJ concerning confirmation of GC judges. It highlights the common denominator of all three jurisdictions with respect to the essential aspects of the judicial and procedural rules, such as the status of the Judges and their obligations. That said, there is no Advocate General at the Civil Service Tribunal.

II. Oath (paragraph 2)

The Judges of the Civil Service Tribunal take their oath before the Court of Justice, as do the Judges of the GC.

Article 6 [Administrative support]

(1) The Civil Service Tribunal shall be supported by the departments of the Court of Justice and of the General Court. The President of the Court of Justice or, in appropriate cases, the President of the General Court, shall determine by common accord with the President of the Civil Service Tribunal the conditions under which officials and other servants attached to the Court of Justice or the General Court shall render their services to the Civil Service Tribunal to enable it to function. Certain officials or other servants shall be responsible to the Registrar of the Civil Service Tribunal under the authority of the President of that Tribunal.

(2) The Civil Service Tribunal shall appoint its Registrar and lay down the rules governing his service. The fourth paragraph of Art. 3 and Articles 10, 11 and 14 of the Statute of the Court of Justice of the European Union shall apply to the Registrar of the Tribunal.

The Civil Service Tribunal has a Registrar but no administrative structure of its own. It therefore relies upon and in fact “borrows” human resources from the ECJ and the GC. The CST Registrar is responsible for organizing and assigning a number of those officials and temporary agents to their respective tasks within the

CST. Regardless of their Court of origin, all officials and temporary agents assigned to the CST act under the authority of the President of the CST.

Article 7 [Applicable rules of the Statute]

(1) The procedure before the Civil Service Tribunal shall be governed by Title III of the Statute of the Court of Justice of the European Union, with the exception of Articles 22 and 23. Such further and more detailed provisions as may be necessary shall be laid down in the Rules of Procedure.

(2) The provisions concerning the General Court's language arrangements shall apply to the Civil Service Tribunal.

(3) The written stage of the procedure shall comprise the presentation of the application and of the statement of defence, unless the Civil Service Tribunal decides that a second exchange of written pleadings is necessary. Where there is such second exchange, the Civil Service Tribunal may, with the agreement of the parties, decide to proceed to judgment without an oral procedure.

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

(5) The Civil Service Tribunal shall rule on the costs of a case. Subject to the specific provisions of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs should the Court so decide.

Outline:

I. The procedure (paragraph 1)	1
II. Language arrangements (paragraph 2).....	4
III. Written and oral procedure (paragraph 3).....	5
1. Written proceedings	5
a) The rule	5
b) The exception	6
c) Request by the applicant	7
2. Absence of oral hearing	8
IV. Amicable settlement (paragraph 4).....	9
1. General.....	9
2. Comments.....	10
a) Preceding administrative complaint	11
b) Interest of the service	12
c) Interest of the applicants	13
V. Costs (paragraph 5)	14

I. The procedure (paragraph 1)

- Chapter III of the Statute is the foundation of the judicial procedure common to all instances of the ECJ. Furthermore, applying Chapter III to the CST is logical since staff cases are not a new area of litigation and were thus covered by Chapter III since the foundation of the ECJ; in fact, staff cases are only category of cases which have been part of all three EU Courts as a matter of first instance.

Nevertheless, it is worth noting that Arts. 22 and 23 Statute ECJ do not apply to 2 the CST, since it has no jurisdiction in the area of referrals for preliminary rulings.

In the absence of procedural rules of its own the CST applied the GC's 3 procedural rules by analogy until November 2007, when its own procedural rules came into force. These Rules of Procedure include a number of specificities, which are further commented in the section on the Rules of Procedure of the GC.

II. Language arrangements (paragraph 2)

This paragraph confirms that the CST has **no linguistic rules of its own**, but 4 shares those applicable to the GC. The working language, i.e. the language in which the Judges conduct their deliberations and other internal matters, is French as is the case for the ECJ and the GC.

III. Written and oral procedure (paragraph 3)

1. Written proceedings. a) The rule. In the case of the ECJ a second exchange of 5 written submissions (rejoinder and sur-rejoinder), complementing the first exchange (application and statement of defence) is the rule⁹⁵⁵. In the case of the GC this second stage is restricted and the applicant needs to submit a reasoned request if he wishes complete a rejoinder⁹⁵⁶. By contrast, the written procedure at the CST includes only one exchange of written submissions, though the Judges may decide whether a second exchange is necessary.

b) The exception

Thus, a second exchange of written submissions is rare. Alternatively, the CST 6 may limit the applicant's written observations to questions of **admissibility** raised in a statement of defence. In this case, the defendant is not entitled to a written reply.

c) Request by the applicant

Even though Art. 7 does not explicitly provide for it, the applicant may still 7 request the right to lodge a full rejoinder even if the written proceedings are already closed. However, said applicant must provide ample reasons for such request. If this request is granted then the other party is entitled to a sur-rejoinder.

2. Absence of oral hearing

If a second exchange of written submissions has taken place then the parties may 8 renounce the possibility of an oral hearing. However, such a consensus does not bind the CST; it may still order an oral hearing if it deems it necessary. This is a

⁹⁵⁵ Art. 41 RP ECJ.

⁹⁵⁶ Art. 47 RP GC.

novel regulation, which does not exist in the Rules of Procedure of the ECJ and the GC. It would be worth considering similar provision for the GC, since this would reduce the GC's workload while still enabling the GC to address remaining questions of fact by way of written questions to the parties.

IV. Amicable settlement (paragraph 4)

1. General

- 9 This provision, which is inspired by the labour law of some Member States⁹⁵⁷, is primarily designed to achieve a consensual, i.e. non contentious, outcome and, as a mere side effect⁹⁵⁸, to reduce the CST's work load.

2. Comments

- 10 While the concept of trying to achieve an amicable, non contentious settlement has obvious merits, there are a number of structural and, indeed, human, hurdles which tend to limit the chances of an amicable solution materializing, even in cases where common sense should prevail:

a) Preceding administrative complaint

- 11 Almost every application in a staff matter⁹⁵⁹ is preceded by an administrative complaint, which is designed to achieve an amicable solution between the parties. While this does not rule out a settlement at a later stage, i.e. in the context of a contentious matter, it may have a bearing on the chances of reaching such settlement.

b) Interest of the service

- 12 In addition, there might be little if no room for an amicable solution should a given case raise questions of principle with either a financial impact and/or a horizontal bearing on multiple analogous cases for which the defendant thus needs guidance through an explicit CST judgement. Additionally, in the absence of a CST judgement financial and auditing services of institutions often do not accept to pay damages pertaining to staff-related injustice.

c) Interest of the applicants

- 13 The Judges furthermore cannot escape the – sometimes fiercely irrational – perceptions and views of *certain* applicants. For some applicants a Court action is a rather emotional matter, the expression and continuity of a broader series of

⁹⁵⁷ See also the seventh recital of the Council Decision of 2 November 2004 on establishing the European Union Civil Service Tribunal, O.J. L 333, 9 November 2004, p 7.

⁹⁵⁸ In 2009, only two cases were settled amicably.

⁹⁵⁹ Regarding the action or review in a competition, the plaintiff can complain directly, without the prior appeal pursuant to Art. 90 and 91 Staff regulations.

conflicts, etc., which they will thus not abandon, even at the risk of an unfavourable judgment. An amicable solution, no matter its contents, may be perceived by some as a defeat which causes them to lose self-respect or image in the eyes of their colleagues. This consideration is particularly pertinent if the applicant has spread the news about his Court case to colleagues, used it for lobbying purposes, etc., and thereby has effectively ensured that said case has reached a point of no return. Additionally, for the small minority of applicants whose pugnacious temperament creates a need for conflict, a judgment provides both publicity and an opportunity to appeal. Moreover, there might be some resistance from one or the other lawyer to settle out of court, due to personal ambition and/or the perceived need to please his client.

V. Costs (paragraph 5)

This provision has replaced the preceding and more generous rule, which only 14 required applicants who lost a staff case to bear their own costs unless their case was considered to be vexatious. This privilege seemed a bit corporatist in that it departed from the standard ECJ cost rules, e.g. those applying to actions for annulment within the meaning of Art. 263 TFEU⁹⁶⁰. In the past this advantage for parties to CST cases was more noticeable due to the fact that the GC was rather surprisingly reluctant to apply the exception to this rule⁹⁶¹, i.e. to order an applicant who had lodged a vexatious, e.g. manifestly inadmissible or simply unnecessary, application, to bear all the costs, i.e. including those of the defendant. That said, the effects of the new provisions on costs are mitigated by an **equity clause**.

The wording of the last half-sentence (“should the Court so decide”) is not only a 15 strange way to refer to the CST, but also more importantly differs from other linguistic versions, which refer to a request by the other party rather than the CST itself.

Article 8 [Transmitting cases, suspension]

(1) Where an application or other procedural document addressed to the Civil Service Tribunal is lodged by mistake with the Registrar of the Court of Justice or General Court, it shall be transmitted immediately by that Registrar to the Registrar of the Civil Service Tribunal. Likewise, where an application or other procedural document addressed to the Court of Justice or to the General Court is lodged by mistake with the Registrar of the Civil Service Tribunal, it shall be transmitted immediately by that Registrar to the Registrar of the Court of Justice or General Court.

(2) Where the Civil Service Tribunal finds that it does not have jurisdiction to hear and determine an action in respect of which the Court of Justice or the General Court has jurisdiction, it shall refer that action to the Court of Justice or to the General Court. Likewise, where the Court of Justice or the General Court

⁹⁶⁰ Art. 87 and 88 RP GC.

⁹⁶¹ Art. 87 (3), 2 and subparagraph RP GC.

finds that an action falls within the jurisdiction of the Civil Service Tribunal, the Court seised shall refer that action to the Civil Service Tribunal, whereupon that Tribunal may not decline jurisdiction.

(3) Where the Civil Service Tribunal and the General Court are seised of cases in which the same issue of interpretation is raised or the validity of the same act is called in question, the Civil Service Tribunal, after hearing the parties, may stay the proceedings until the judgment of the General Court has been delivered.

(4) Where the Civil Service Tribunal and the General Court are seised of cases in which the same relief is sought, the Civil Service Tribunal shall decline jurisdiction so that the General Court may act on those cases.

- 1 This provision is very similar to Art. 54 Statute ECJ. In practice, the need to transmit a case from one jurisdiction to another, as provided by paragraphs 1 and 2 of this Article, should be rather infrequent, especially since the exclusive jurisdiction of the CST leaves little if no room for doubts concerning the jurisdiction of a staff-related case⁹⁶².
- 2 The possibility of a suspension of a CST case provided for in paragraph 3 is by contrast somewhat relevant, especially given the number of appeals against decisions of the CST.

Article 9 [Appeal]

(1) An appeal may be brought before the General Court, within two months of notification of the decision appealed against, against final decisions of the Civil Service Tribunal and decisions of that Tribunal disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of jurisdiction or inadmissibility.

(2) Such an appeal may be brought by any party which has been unsuccessful, in whole or in part, in its submissions. However, interveners other than the Member States and the institutions of the Union may bring such an appeal only where the decision of the Civil Service Tribunal directly affects them.

I. Introduction

- 1 Articles 9 to 13 of Annex I to the Statute ECJ outline the main parameters of an appeal against decisions of the CST, which is heard by the GC. These provisions are essentially the same as those laid down in Art. 56 to 61 Statute ECJ, even concerning the limitation of appeals to points of law. The legislature did not make use of the possibility foreseen in Art. 257 (3) TFEU, i.e. to extend appeals to points of fact.

⁹⁶² Case T-136/10, *M v EMA* [2011] (not published in the ECR).

II. Object of the appeal and time-limits (paragraph 1)

1. Decision which may be appealed against

Paragraph 1 contains the same rules as paragraph 1 of **Art. 56 of the Statute ECJ**,¹ both concerning the decisions at first instance which may be challenged by way of an appeal and the time-limit of two months (plus ten days on account of distance) for lodging an appeal. An order within the meaning of Art. 8 (2) Annexe 1 Statute ECJ by which the CST declines jurisdiction and refers a matter to the GC cannot be challenged by way of an appeal⁹⁶³. The same is true regarding an order adopted on the basis of Art. 114 RP GC⁹⁶⁴.

2. Time-limit

Appeals need to be lodged within the time-limit of two months, which is **not extendable**, to which 10 days on account of distance need to be added. Non compliance with that time-limit for appeals is relatively rare⁹⁶⁵, by contrast to appeals against orders of the CST rejecting applications as inadmissible for reasons of non compliance with the time-limit at first instance⁹⁶⁶.

3. Legal grounds

It is highly important that appeals to the GC concerning CST cases, like appeals to the ECJ concerning GC cases, specify the legal errors, misinterpretations of evidence, and/or other bases for appeal very clearly and succinctly. Failure to do so will often res

ult in rejection of an appeal⁹⁶⁷. An appeal which attempts to substantively modify the fundamental legal question in a case (rather than calling into question the CST's interpretation or application of a particular law to the original question) is furthermore inadmissible⁹⁶⁸. However, an appeal which introduces arguments made during oral proceedings in the original which nevertheless do not appear in the written proceedings and which do not furthermore appear in the CST's decision cannot be considered a substantial modification of a fundamental legal question, as legal certainty requires that a Court consider all arguments presented during the

⁹⁶³ Case T-166/09 P, *Marcuccio v Commission* [2010] (not published in the ECR), para. 26–30.

⁹⁶⁴ Case T-311/07 P, *Nijs v Court of Auditors* [2007] (not published in the ECR), paras 6 et seq.

⁹⁶⁵ See the very detailed order in Case T-272/08 P, *R v Commission* [2009] (not published in the ECR).

⁹⁶⁶ See e.g. Case T-213/11 P (I), *Collège des représentants du personnel de la Banque européenne d'investissement A. O. v EIB* [2011] (not published in the ECR).

⁹⁶⁷ Case T-368/09 P, *Sevenier v Commission* [2010] (not yet published in the ECJ), para. 53; Case T-364/09 P, *Lebedev v Commission* [2010] (not yet published in the ECR), para. 35, and Case T-493/09 P, *Y v Commission* [2011] (not yet published in the ECR), paras 27 and 28.

⁹⁶⁸ Case T-355/08 P, *de Fays v Commission* [2010] (not yet published in the ECR), paras 28–31.

course of a trial in its decision⁹⁶⁹. An appeal which merely restates the facts and legal arguments presented during the first trial without indicating an error of law committed during said trial is likewise inadmissible, as it essentially constitutes a request for a re-trial of the identical case⁹⁷⁰.

III. Appellant (paragraph 2)

- 4 Paragraph 2 is identical to Art. 56 (2) Statute ECJ.

Article 10 [Expedited proceedings]

(1) Any person whose application to intervene has been dismissed by the Civil Service Tribunal may appeal to the General Court within two weeks of notification of the decision dismissing the application.

(2) The parties to the proceedings may appeal to the General Court against any decision of the Civil Service Tribunal made pursuant to Art. 278 or Art. 279 or the fourth paragraph of Art. 299 of the Treaty on the Functioning of the European Union or Art. 157 or the third paragraph of Art. 164 of the EAEC Treaty within two months of its notification.

(3) The President of the General Court may, by way of summary procedure, which may, insofar as necessary, differ from some of the rules contained in this Annex and which shall be laid down in the Rules of Procedure of the General Court, adjudicate upon appeals brought in accordance with paragraphs 1 and 2.

This provision is essentially identical to Art. 57 Statute ECJ.

Article 11 [Appeals limited to points of law]

(1) An appeal to the General Court shall be limited to points of law. It shall lie on the grounds of lack of jurisdiction of the Civil Service Tribunal, a breach of procedure before it which adversely affects the interests of the appellant as well as the infringement of Union law by the Tribunal.

(2) No appeal shall lie regarding only the amount of the costs or the party ordered to pay them.

⁹⁶⁹ Case T-510/09 P, *V v Commission* [2011] (not yet published in the ECR), paras 83–88. While the exclusion of substantive legal arguments which appear in oral proceedings constitutes grounds for an appeal, it is worth noting that the CST is not required to exhaustively list all its reasoning for each point of a decision, but only those reasons most pertinent to its final decision. See Case T-485/08 P, *Lafili v Commission* [2010] (not yet published in the ECR), para. 72.

⁹⁷⁰ Case T-454/09 P, *van Arum v Parliament* [2011] (not yet published in the ECR), para. 26, case T-78/09 P, *Parliament v Collee* [2010] (not yet published in the ECR), paras 20–22.

I. Limitation to points of law (paragraph 1)

Appeals against decisions of the GC are *de lege*⁹⁷¹ limited to points of law. That 1
said, the legislature may always extend the scope of appeals against decisions of
specialized Courts⁹⁷² to an appeal on points of fact. This provision reflects the fact
that certain legal areas (such as intellectual property) tend to be very factually
complex and thus quite prone to fact-based error. In the case of decisions of the
CST, however, the legislature opted for the *status quo*⁹⁷³, as illustrated by paragraph
1.

As in Art. 58 Statute ECJ concerning appeals from the GC to the ECJ, appeals 2
from the CST to the GC must precisely indicate the error(s) of law in question and
must not vaguely refer to violations of general principles⁹⁷⁴. An appeal based on the
CST's misinterpretation of facts presented at trial is admissible as a point of law⁹⁷⁵;
but these misinterpretations must be clearly stated within the text of the appeal⁹⁷⁶
and must be readily apparent without requiring a re-examination of the facts and
arguments⁹⁷⁷. The CST has jurisdiction over the weight which it accords to each
piece of evidence submitted during a trial; giving one piece of evidence more weight
than another does not constitute an appealable legal error⁹⁷⁸. One may appeal as a
point of law the CST's misinterpretation or misapplication of EU non-contractual
liability for unlawful conduct despite its lack of formal written codification⁹⁷⁹.
Likewise, the proportionality of a sanction is an appealable point of law⁹⁸⁰, as is an
error concerning the interpretation of a performance review⁹⁸¹. In certain instances,
a writ of inadmissibility produced by the CST may be appealed as a point of law to
the GC⁹⁸².

The Commission's proposal regarding the creation of a Patent or Tribunal opts 3
for an appeal on points of law and fact⁹⁸³. The facts in this particular area are
undoubtedly particularly complex and might therefore necessitate an appeal on
both law and fact. Nevertheless, appeals in OHIM cases, which generally concern

⁹⁷¹ Art. 256.1.2 TFEU and Art. 58.1 Statute ECJ.

⁹⁷² Art. 257.3 TFEU.

⁹⁷³ Art. 11 Council Decision of 9 November 2004 establishing the European Union Civil Service Tribunal, O.J. L 333, p 4.

⁹⁷⁴ Case T-60/08 P, *Kerelov v Commission* [2010], (not yet published in the ECR), paras 74 and 75; case T-364/09 P, *Lebedev v Commission* [2010] (not yet published in the ECR), para. 32.

⁹⁷⁵ Case T-60/08 P, *Kerelov v Commission*, *op. cit.*, paras 28 and 29.

⁹⁷⁶ Case T-493/09 P, *Y v Commission* [2011] (not yet published in the ECR), paras 34 and 35; case T-274/11 P, *Minoni v Commission* [2011] (not yet published in the ECR), para. 18.

⁹⁷⁷ Case C-399/08 P, *Commission v Deutsche Post* [2010] (not yet published in the ECR), paras 63 and 64.

⁹⁷⁸ Case T-283/08 P, *Longidinis v Cedefop* [2011] (not yet published in the ECR), paras 42, 43, 44, and 59; Case T-452/09 P, *Rosenbaum v Commission* [2011] (not yet published in the ECR), para. 41.

⁹⁷⁹ Case T-80/09 P, *Commission v Q* [2011] (not yet published in the ECR), paras 24, 25, 27, and 28.

⁹⁸⁰ Case T-17/08 P, *Andreasen v Commission* [2010] (not yet published in the ECR), paras 93 and 94.

⁹⁸¹ Case T-498/09 P, *Kerstens v Commission* [2010] (not yet published in the ECR), paras 25 and 26.

⁹⁸² Case T 12/08 P, *M v EMA* [2010] (not yet published in the ECR), paras 37 and 38.

⁹⁸³ Art. 27 Proposal for a Council Decision establishing the Community Patent Court and concerning appeals before the Court of First Instance, COM (2003) 828 final.

other complex areas of intellectual property such as trademarks, currently fall under the GC's jurisdiction and are therefore limited to points of law.

II. Appeals excluded (paragraph 2)

- 4 The exclusion of appeals concerning costs⁹⁸⁴ and orders on taxation of costs echoes Art. 58 (2) Statute ECJ.

Article 12 [No suspensory effect]

(1) Without prejudice to Articles 278 and 279 of the Treaty on the Functioning of the European Union or Art. 157 of the EAEC Treaty, an appeal before the General Court shall not have suspensory effect.

(2) Where an appeal is brought against a decision of the Civil Service Tribunal, the procedure before the General Court shall consist of a written part and an oral p Art. In accordance with conditions laid down in the Rules of Procedure, the General Court, having heard the parties, may dispense with the oral procedure.

This provision applies Art. 60 (1) Statute ECJ to the CST, while paragraph 2 of this provision is equivalent to Art. 59 Statute ECJ.

Article 13 [Annulment and Referring Back]

(1) If the appeal is well founded, the General Court shall quash the decision of the Civil Service Tribunal and itself give judgment in the matter. It shall refer the case back to the Civil Service Tribunal for judgment where the state of the proceedings does not permit a decision by the Court.

(2) Where a case is referred back to the Civil Service Tribunal, the Tribunal shall be bound by the decision of the General Court on points of law.

Apart from purely linguistic changes this provision replicates Art. 61 Statute ECJ concerning GC appeals to the ECJ to CST appeals to the GC⁹⁸⁵.

⁹⁸⁴ Case T-452/09 P, *Rosenbaum v Commission* [2011] (not yet published in the ECR), para. 46; Ordinance of 28 October 2010, Case T-32/09 P, *Marcuccio v Commission* [2010] (not yet published in the ECR), para. 44; Case T-48/10 P, *Meister v OHIM*, not yet published in the ECR, para. 53.

⁹⁸⁵ The GC decided itself an appeal for the first time in the case T-223/06 P, *Parliament v Eistrup* [2007], ECR II-01581, in which the use of a rubber stamp as a substitute for a written signature was deemed inadmissible for ECJ procedures.

RULES OF PROCEDURE OF THE COURT OF JUSTICE (RP 2012)

INTRODUCTION

Outline:

I. Terminology	1
II. Jurisdiction of the ECJ	2
1. Main legal remedies	2
2. Statistics	3
3. Expedited and urgent procedures	4
III. Function of the Rules of procedure	5
1. Rules of Procedure of the ECJ	5
2. Supplementary Rules	7
IV. Contents of the RP ECJ	8
V. Recent recast of the RP ECJ	9
1. Former rules	9
2. The new RP ECJ	10
a) Overview	10
b) Preliminary rulings	12
3. Need for a transitional provision?	13
VI. Derived law and further levels of regulation	14
VII. Interpretation of the RP	17
VIII. Headings and numbering of paragraphs	20

I. Terminology

The 2009 Treaty of Lisbon has brought a number of changes to the terminology referring to the European Union judiciary. Since then, the EU judiciary is called the **Court of Justice of the European Union**, which is the name of the **institution**, and its three judicial instances are now referred to as the **Court of Justice** (hereafter: ECJ), the **General Court** (hereafter: GC, formerly called Court of First Instance) and the **Civil Service Tribunal** (hereafter CST). In this section, one will discover in more depth the Rules of Procedure governing the ECJ, the highest instance of the three instances that make up the Court of Justice of the European Union.

II. Jurisdiction of the ECJ

1. Main legal remedies

- 2 The ECJ's jurisdiction has been gradually focused on mainly three areas, i.e.
- **referrals for preliminary rulings**,
 - institutional matters, meaning direct actions lodged by EU institutions and Member States,
 - **appeals** against decisions of the GC.

2. Statistics

- 3 Over the years, the **average** duration of the main legal remedies (in **months**) has evolved as follows:¹

	Direct actions	Appeals	Preliminary rulings
2006	20.0	17.8	19.8
2007	18.2	17.8	19.3
2008	16.9	18.4	16.8
2009	17.1	15.4	17.1
2010	16.7	14.3	16.1
2011	20.2	15.4	16.4

On the whole, except for preliminary proceedings, the figures are fairly stable, as compared to those of the GC, where the average duration of proceedings is not only much higher, but has increased over the past years, in particular in competition matters. Likewise the increasing number of cases pending at the CST has a bearing on the average duration of the proceedings.

3. Expedited and urgent procedures

- 4 The duration of proceedings at the ECJ is considerably shorter in the case of **expedited** procedures, which may be employed in cases involving **direct challenges**² and **appeals**³; expedited preliminary ruling procedures⁴ and even more frequently in

¹ These figures are published in the annual reports of the ECJ; the GC and the CST publish their own statistics (www.curia.europa.eu).

² Art. 133 RP ECJ.

³ Art. 190 RP ECJ.

⁴ Art. 105 RP ECJ.

urgent preliminary ruling procedures, which may apply to certain categories of referrals for preliminary rulings⁵.

	Expedited procedures	Accelerated procedures	Urgent procedures
2006	/	/	
2007	/	/	
2008	/	4.5	2.1
2009	/	/	2.5
2010	/	6	2.1
2011			2.5

III. Function of the Rules of procedure

1. Rules of Procedure of the ECJ

These rules (hereafter: **RP ECJ**) are derived legislation intended to serve as 5 procedural rules “**implementing and supplementing**”⁶ the legal framework provided by EU primary law, i.e. the “Statute of the Court of Justice” (hereafter: **Statute ECJ**), which itself provides detailed rules implementing and supplementing the Treaty on the Functioning of the European Union (TFEU)⁷ and the Treaty on the European Union (TEU)⁸.

Thus in practice **all** the various layers of the legislative framework need to be 6 taken into account when determining proper procedure during a case before the EU courts. This is all the more necessary since a number of the provisions in the Statute ECJ (such as Art. 45 (2) Statute ECJ, which is relevant in case of failure to comply with a time limit) are neither mentioned in, let alone implemented through, the RP ECJ. It is therefore **very important** to consider both the text of a Rule of Procedure as well as its context within the **vertical hierarchy** of EU legal norms, meaning the Statute ECJ and, when necessary, the relevant provision in the TFEU or TEU.

2. Supplementary Rules

In addition, the ECJ has adopted “Supplementary Rules” of procedure⁹, which 7 contain ancillary provisions governing e.g. legal aid and rogatory letters. Given the current jurisdiction of the ECJ, these Rules are of little practical relevance. Besides, splitting procedural directives into Rules of Procedure and Supplementary Rules is

⁵ Art. 107 RP ECJ.

⁶ See also Article 2 RP ECJ.

⁷ 13 December 2007 (OJ C 115 9 May 2008 p. 47).

⁸ 13 December 2007 (OJ C 115 9 May 2008 p. 13).

⁹ See Art. 207 RP ECJ.

questionable, especially since for the other two EU jurisdictions (the GC and the CST) the topics found in the ECJ Supplementary Rules are integrated into their respective Rules of Procedure.

IV. Contents of the RP ECJ

- 8 The RP ECJ specify both the **institutional** functioning, meaning the inner organisation and regulation, of the ECJ as well as a broad spectrum of procedural rules, some of which apply across all legal remedies and are thus of particular interest for parties bringing a case before this Court. Even though the structure and contents of the RP ECJ are largely similar and sometimes identical to the RP GC, there are a **number of differences** between the two sets of procedural rules, even more so since the recent recast of the RP ECJ. These differences are not only a mechanical consequence of the differences in e.g. numbers of judges and day-to-day Court operation due to the two Courts' differing jurisdictions¹⁰, as one would expect, but also concern certain details of principles common to all EU jurisdictions¹¹.

V. Recent recast of the RP ECJ

1. Former rules

- 9 Since 1991 the RP ECJ were amended nearly twenty times. Many of these changes were driven by the need to reduce the ECJ's steadily-increasing workload while at the same time preparing the ECJ for the successive enlargements of the EU in 1995, 2004, and 2007.
- 10 **2. The new RP ECJ. a) Overview.** In March 2011, the President of the ECJ submitted draft changes to the Statute ECJ as well as draft Rules of Procedure of the ECJ. The latter were intended to **recast** those Rules and to **update them**. This proposal, which increases the number of articles contained within the RP ECJ by about **one hundred**, has been adopted and comes into force on 1st November 2012 (CJEU 265 of 29.9.2012 of 1st seq.). Despite this significant increase, however, these changes do not revolutionize the RP ECJ.
- 11 Firstly, these rules have been **restructured** in order to take account of the gradual evolution of the ECJ's jurisdiction and the importance of the legal remedies, thus starting with what has become the protagonist, i.e. **references for a preliminary ruling**, followed by a title on **direct actions** by Member States and EU institutions, a title on **appeals**, etc.

¹⁰ E.g. regarding preliminary ruling, which remains the sole competence of the ECJ, in the absence of implementation of Art. 256 (3) TFEU which provides specific conditions of the GC according to which the GC can hear preliminary rulings.

¹¹ See regarding for example the stay of proceedings Art. 55 RP ECJ and Art. 77 RP GC.

Secondly, a number of provisions relating to the same subjects or topics, but scattered across the RP ECJ, have been **centralised**, either into one single provision or one chapter.

Thirdly, many provisions have been made clearer by **splitting** them into several provisions, whilst **simplifying** the wording and/or removing certain **inaccuracies**.

b) Preliminary rulings

Thus, the chapter on references for a preliminary ruling has been considerably 12 expanded, e.g. by inserting a provision defining the contents of an order for referral – which was long overdue, since the former Art. 103 RP ECJ was particularly vague in this respect. A further set of amendments is meant to curb the **average duration** of proceedings, bearing in mind the obligation under Art. 47 (2) of the Charter of Fundamental Rights to not only provide a **fair and public hearing**, but to do so within a **reasonable time**. Finally, a number of Rules have been clarified and some wordings improved.

3. Need for a transitional provision?

Pursuant to the case-law, the implementation of new rules of procedure for the 13 ECJ “*affects neither the rights of action accrued before this date nor the extinguishment of rights during the time when the former rules were in force*”¹². Given the magnitude of the legislative changes adopted, it would have been in the interest of **legal certainty** to adopt an **explicit legislative rule** detailing a specific implementation procedure for these new Rules of Procedure. **Art. 122 RP CST** could have been a precedent, as it contains detailed **transitional provisions** relating to legislative changes regarding court costs.

VI. Derived law and further levels of regulation

The RP ECJ are supplemented and detailed by a large amount of legislation 14 adopted by the ECJ, which thus forms a **third legislative level**. A number of these provisions will have to be adapted to the new RP ECJ, not only regarding the numbers of the various articles, most of which have changed, but also as regards the substantive changes:

- “Practice Directions relating to Direct Applications and Appeals”¹³;
- “Notes for the Guidance of Counsel”¹⁴, which are designed to enhance judicial protection and to make proceedings both faster and more efficient;
- “Advice to counsel appearing before the Court”;
- “Instructions to the Registrar of the Court of Justice”¹⁵, which are also relevant for parties;

¹² Case 34–59, *Elz v High Authority* [1960] ECR p. 217.

¹³ See www.curia.europa.eu/15 October 2004 (OJ 2004 L 361, p. 15) and the amendments to those directions adopted on 27 January 2009 (OJ 2009 L 29, p. 51).

¹⁴ Published on February 2009. See www.curia.europa.eu.

¹⁵ Official Journal L 350, 28/12/1974 P. 0033–0038.

- “Information note on references by national courts for preliminary rulings”;
 - “Decision of the ECJ of 13 September 2011 on the lodging and service of procedural documents by means of e-Curia” and the conditions of use applicable to parties’ representatives and assistants.
- 15 The ECJ’s **annual reports** provide a further useful source of information concerning Court operations, including **statistical figures** on e.g. the average duration of the various legal remedies.
 - 16 Given their practical importance, these various rules will be commented when necessary hereafter in the context of the relevant provisions of the RP ECJ.

VII. Interpretation of the RP

- 17 The RP ECJ are a matter of **public policy**¹⁶. This means that parties to a case may only rely on procedural rules **explicitly** contained in a provision¹⁷ and may only make use of those legal remedies **exhaustively** laid down in the TFEU¹⁸. Thus, no party is permitted to circumvent the rules contained in a provision of the Rules of Procedure by creating an artificial hierarchy among the Rules of Procedure and falsely claiming that one rule is thereby subject to other Rules of Procedure¹⁹.
- 18 Furthermore, since the RP ECJ as well as the Statute ECJ are part of EU law, they must be interpreted as much as possible **independently**, i.e., without referring to any one Member State’s national law²⁰. This expectation of independent interpretation requires ECJ judges and lawyers to consider whenever necessary the **written and unwritten general principles of law** as well as provisions of primary EU law (i.e., treaties and statutes)²¹.
- 19 Finally, given the **vertical structure** of EU norms, one must always interpret and apply provisions in the RP ECJ by taking due account of (1) the provisions of the **Statute ECJ** and the various Practice Directions, Notes for Guidance etc. (see VI above) and (2), if need be, analogous provisions of the RP GC, provided they are identical or sufficiently similar. The RP GC can, if applied properly, be a rich source of guidance, as the GC’s case law is, due to the specificities of its jurisdiction, much more abundant than that of the ECJ.

VIII. Headings and numbering of paragraphs

- 20 The new RP ECJ, which are subdivided into “Titles”, “Chapters” and “Sections”, have become much more user-friendly, since all of its articles carry a heading and the paragraphs of the individual articles are numbered.

¹⁶ Case T-422/03 R II, *Enviro Tech Europe and others v Commission* [2004] ECR II-2003, para. 48.

¹⁷ Case T-1/90, *Pérez-Minguez Casariego v. Commission* [1991], ECR II-143, para. 43.

¹⁸ Case T-28/03, *Holcim (Germany) v. Commission* [2005], ECR II-1357, para. 31.

¹⁹ Case T-310/03 R, *Kreuzer Medien v Parliament and Council* [2004], ECR II-03243, para. 18.

²⁰ Case T-79/99, *Euro-lex v OHIM* [1999], ECR II-3555, 3565, para. 26.

²¹ For example, the right to a fair trial (Art. 6 ECHR), that does not preclude, however, the procedural rights defining eligibility requirements for litigation.

INTERPRETATION

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. For the purposes of these Rules:

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

(b) ‘EFTA Surveillance Authority’ means the surveillance authority referred to in the EEA Agreement,

(c) ‘interested persons referred to in Article 23 of the Statute’ means all the parties, States, institutions, bodies, offices and agencies authorised, pursuant to that Article, to submit statements of case or observations in the context of a reference for a preliminary ruling.

I. Paragraph 1

Paragraph 1 contains a list of abbreviations that reflect the terminology **changes** 1 introduced by the Treaty of Lisbon in 2009. It now also incorporates a full reference to Council Regulation No. 1 of 1958 determining the languages to be used by the European Economic Community²².

II. Paragraph 2

Paragraph 2 defines the terms “institution”, which is now complemented by a 2 reference to Article 13 (1) of the TFEU, in which all EU institutions are named. It

²² OJ, English Special Edition 1952–1958, p. 59.

furthermore defines the term “EFTA Surveillance Authority” for the purpose of procedural law and, most importantly, the admittedly rather abstract term of “interested persons referred to in Article 23 of the Statute”.

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 provision is new, but merely recalls the purpose of the RP ECJ, which is to “implement and supplement” the relevant provisions of primary law. “To supplement” means of course, bearing in mind the hierarchy of norms, to remain **within** the parameters set by primary law.

TITLE I ORGANISATION OF THE COURT

CHAPTER 1 JUDGES AND ADVOCATES GENERAL

Introduction

- 1 The provisions in Title I²³ mainly describe the ECJ’s institutional functioning, i.e. its “**internal life**”. Many of these rules leave no discretionary margin; when this is the case, e.g. with respect to certain roles and responsibilities of the President of the ECJ, the Presidents of the Chambers, and the First Advocate General, the **parties** to the proceedings have little if no influence. Likewise, most of these internal procedural regulations have **little direct effect** on parties to a case.
- 2 That said, some provisions, such as the rules governing the **language of the procedure**²⁴ and the **rights and obligations** of agents, advisers and lawyers,²⁵ are directly relevant to parties and their lawyers.

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

The term of office of a Judge or Advocate General shall begin on the date fixed for that purpose in the instrument of appointment. In the absence of any provisions 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*.

²³ Art. 3 to 42 RP ECJ.

²⁴ Art. 36 RP ECJ.

²⁵ Art. 43 to 47 RP ECJ.

I. Overview

In contrast to many national Judges' and Magistrates' appointments, the Judges 1 and Advocates-General of the ECJ²⁶ are not appointed for life but for a **limited** (six-year, renewable) **term**²⁷. Thus, there is no probationary period, age limit, or similar rules typically govern national judges' confirmation and continued functioning in their roles. That said it is customary that a newly-appointed ECJ judge will, for some time, benefit from the **guidance and experience** of his colleagues, in particular from the President of his respective Chamber, in order to familiarize himself with the legal culture at the ECJ.

II. Commencement of the term of office

Art. 3 takes account of the fact that in practice, Judges (and Advocates-General) 2 take up their duties only after taking the oath referred to in Art. 2 Statute ECJ. This swearing-in does not necessarily coincide with the date outlined in the written Appointment, but does constitute the effective start-date of that judge's term.

Article 4 Taking of the oath

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

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

I. Introduction

The Judges of the ECJ may **not choose** between taking the oath and a solemn 1 declaration, unlike the Judges of some international Courts²⁸.

²⁶ Art. 3 RP ECJ.

²⁷ Art. 19(2) TEU and 253(1) TFEU. *Middeke*, in: Rengeling/Middeke/Gellermann, § 3 para. 8 with further references advocated the lengthening of term to 12 years without the possibility of renewal.

²⁸ For example, the judges of the International Court of Justice swear an oath (article 4 RP ICJ); the judges of the European Court of Human Rights may choose between an oath and a solemn declaration (rule 3 of the rules of Court), as do the judges of the Inter-American Court of Human Rights (Article 11 Statute).

II. Wording of the Oath

- 2 The Judge's oath, which also applies to **Advocate Generals**²⁹, reflects and is limited to the “ **essentials** ” of the Judge's mission, i.e., impartiality, conscientiousness, integrity, and discretion³⁰. The Judge is not given the option of adding a religious element (e.g. “so help me God”), unlike Judges' oaths in some Member States, e.g., in Germany and Great Britain. It seems that the current, rather terse wording of the oath reflects a sort of linguistic compromise, as it includes only those terms which serve as the smallest common denominator of agreement amongst Member States. This terseness may in part be due to the rather political nature of judicial power sharing in the ECJ, as each Member State sends its own judicial representative to the ECJ as both a participant in European justice as well as a representative of that Member State's legal reasoning.

Article 5 Solemn undertaking

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

I. Signing a declaration

- 1 Judges need to comply with a number of further important obligations which are not included into the oath but in a written “ **solemn undertaking** ” of the Judge. This provision no longer quotes the contents of the solemn undertaking, but refers to Art. 4 Statute ECJ.

II. Code of conduct

- 2 A **Code of conduct** is also applicable to Judges of the ECJ, GC and CST³¹.

III. Other provisions

- 3 Outside of those provisions and requirements found in the Oath and the Solemn Undertaking, ECJ Judges are not subject to a judicial Statute or Regulation such as that applying to officials or temporary agents of the EU. This differentiates the ECJ judge from his counterpart at the ECHR for example.

²⁹ Art. 4 RP ECJ.

³⁰ Virtually imposing the same terms of Art. 3 RP ECHR.

³¹ OJ C 223, 22 September 2007, page 1 et seq.

Article 6 Depriving a Judge or Advocate General of his office

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

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

I. Implementing Art. 6 Statute ECJ

This provision, which also applies to Advocates-General³², implements Art. 6 1 Statute ECJ³³ and has so far never been applied. This procedure is entirely in the hands of the ECJ; though a Member State nominates the Judge in question, said Member State may not be, at least *de jure*, involved in said Judge's removal, nor may it withdraw its nomination. A Judge may prevent removal proceedings from commencing by forestalling them by handing in his resignation.

II. Rights of defence, but no legal remedy

The Judge or Advocate-General concerned is heard, since they are invited to 2 "make representations". "The Court", meaning the whole Court, no longer takes its decision "in closed session", as the old Art. 4 RP ECJ provided, but it is now specified that it gives a decision in the absence of the Registrar. But this provision does **not**, somewhat surprisingly, provide any **legal remedy** (i.e., an opportunity to appeal this decision at a judicial instance) for the individual Judge or Advocate-General concerned.

Article 7 Order of seniority

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

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

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

³² Art. 6 RP ECJ.

³³ To which Art. 6 RP ECJ explicitly refers, such references from secondary to primary EU law, which have been inserted into a number of provisions in the new RP ECJ, being in the interest of clarity.

I. Overview

- 1 The order of seniority³⁴ of the Judges and of the Advocates-General has no direct bearing on the Judges' daily duties as magistrates. Furthermore, in the context of judicial deliberations, each judge's vote has the **same weight** regardless of seniority.

II. Relevance

- 2 Order of seniority is, however, relevant when determining **functional differences** between Judges, e.g. regarding the selection of the President of the ECJ and the Presidents of the various chambers. In the case of the order of seniority of the Advocates-Generals, certain functions are limited to the First Advocate General³⁵, i.e., the most senior Advocate-General. Thus, the order of seniority provides an objective criterion that serves the purpose of legal certainty and preventing the arbitrary.

CHAPTER 2

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

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

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

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

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

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

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

³⁴ See www.curia.europa.eu and the annual reports of the ECJ.

³⁵ It is the First Advocate-General who appoints an Advocate-General to each case (Art. 16 RP ECJ) and proposes to review a decision of the General Court (Art. 193 RP ECJ).

I. Overview

While each Judge is nominated by his Member State, the internal division of 1
judicial functions and tasks is left to the ECJ, starting with the President, who is
elected by the Judges, unless determined by the RP ECJ. Apart from the usual
objective criteria such as order of seniority, professional qualifications, and nation-
ality³⁶, the election of the President is also determined by less tangible but never-
theless important factors, such as a sense of leadership and demonstrated natural
authority. The presidential term is limited to three years, i.e. 50 % of a Judge's term
in office, but can be renewed.

II. Election of the Vice-President

Art. 8 (4) takes account of amendment to the Statute ECJ establishing the office 2
of **Vice-President** of the Court. As a measure of further transparency and consis-
tency the names of the President and the Vice-President shall be **published** in the
OJ EU, as is already the case with respect to the First Advocate General and the
Presidents of the Chambers.

Article 9 Responsibilities of the President of the Court

1. The President shall represent the Court.
2. The President shall direct the judicial business of the Court. He shall preside
at general meetings of the Members of the Court and at hearings before and
deliberations of the full Court and the Grand Chamber.
3. The President shall ensure the proper functioning of the services of the
Court.

The previous Art. 8 RP ECJ only provided a rather general description of the
President's duties, which were scattered across the RP ECJ in more detail. The new
article 9 RP ECJ indicates in further detail the various duties performed by the
President of the Court, such as representing the Court vis-à-vis other institutions of
the EU.

Article 10 Responsibilities of the Vice-President of the Court

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

³⁶ It is safe to assume that according to an unwritten "rule" the Presidents of the three judicial
instances of the EU should not have the same nationality and that within each judicial instance two
successive Presidents should not be nationals from the same Member State, but this rule is not
absolute.

2. He shall take the President's place, at his request, in performing the duties referred to in Article 9(1) and (3) of these Rules.

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

Pursuant to this new provision, the Vice-President shall assist the President of the Court and takes his place when he is prevented from acting or when the office is vacant. This might become relevant in e.g. interim proceedings which are normally heard by the President.

Article 11 Constitution of Chambers

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

2. The Court shall designate the Chambers of five Judges which, for a period of one year, shall be responsible for cases of the kind referred to in Article 107 and Articles 193 and 194.

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

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

5. The composition of the Chambers and the designation of the Chambers responsible for cases of the kind referred to in Article 107 and Articles 193 and 194 shall be published in the *Official Journal of the European Union*.

Outline:

I. Chambers (paragraph 1).....	1
1. General.....	1
2. No specialised chambers	2
II. Urgent preliminary referral (paragraph 2)	3
III. Terminology (paragraph 3)	4
IV. Powers of the Presidents of chambers (paragraph 4)	5
V. Transparency	6

I. Chambers (paragraph 1)

1. General

- 1 Art. 11 RP ECJ reproduces essentially the old Art. 9 RP ECJ. In the early years of the Court the ECJ heard all cases in full court. As case load and EU membership increased, the ECJ subsequently created two chambers comprised of three Judges each. In 1986, there were six chambers: four with three Judges and two with five Judges. Since 1979, the composition of the chambers has been published in the OJ

EU and, later on, also on the ECJ's website, www.curia.europa.eu. As a result of successive EU enlargements and a subsequent increase of the number of both Judges and cases, the ECJ is currently comprised of **ten chambers**.

2. No specialised chambers

There is a legal basis in EU law for the creation of specialised tribunals (the Civil Service Tribunal is to date the only one of these tribunals). However, there have traditionally not been chambers specializing in or limited to a given subject within the ECJ itself. This has now changed to some extent with the creation of urgent referrals within the meaning of Art. 107 to 114 RP ECJ for which a **designated Chamber** or Chambers shall be responsible.³⁷

II. Urgent preliminary referral (paragraph 2)

Art. 11 (2) provides that a chamber of five Judges will be in charge of urgent preliminary referral, for a period of one year.

III. Terminology (paragraph 3)

The word "Court" is sometimes used when referring to all three institutions as a whole. Other times, it is the expression used when referring to a particular judicial instance, i.e. the ECJ. This paragraph broadens the meaning of the word even further, by providing that each chamber may be referred to as the "Court".

IV. Powers of the Presidents of chambers (paragraph 4)

Most cases are referred to Chambers of either three or five judges, and the respective President of the chamber has then the competences of the President of the ECJ.

V. Transparency

The composition of the chambers within the meaning of Art. 11 (2) is published in the OJ EU.

³⁷ Art. 113 RP ECJ.

Article 12 Election of Presidents of Chambers

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

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

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

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

This provision reproduces in essence the old Art. 10 (1) RP ECJ and takes account of the Vice-President.

Article 13 Where the President and Vice-President of the Court are prevented from acting the functions of President shall be exercised by one of the Presidents of the Chambers of five Judges or, failing that, by one of the Presidents of the Chambers of three Judges or, failing that, by one of the other Judges, according to the order of seniority laid down in Article 7.

I. General

- 1 The rules governing proxies or substitutions of Judges are determined by the order of seniority laid down in Art. 6 RP ECJ. The Judge selected to serve as another Judge's proxy is thus predetermined. This predetermination is likewise **binding**. In the unlikely event of an error regarding judicial substitution, the parties to the proceedings may signal this error to the President of the ECJ based upon this predetermined order.

II. Vice-President

- 2 Art. 13 takes account of the function of **Vice-President**. Cases in which the President and the Vice-President are simultaneously prevented from acting are probably rather rare.

Article 14 Designation of the First Advocate General

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

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

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

I. General

Since 1979, cases are no longer assigned to the Advocates-General by the President of the ECJ but by the First Advocate General, who is appointed for one year³⁸. In doing so, the First Advocate General avoids the need to create “specialized” Advocate Generals.

II. Hearing the Advocates General (paragraph 1)

The practice of hearing all Advocate Generals before the designation of the First Advocate General is now enshrined in paragraph 2.

III. Term (paragraph 2)

The purpose of this provision is to align the end of the term of office of the First Advocate General with the end of the terms of office of the President and Vice-President of the Court.

IV. Transparency (paragraph 3)

The name of the First Advocate General is published in the OJ EU.

4

CHAPTER 3

ASSIGNMENT OF CASES TO JUDGE-RAPPORTEURS AND ADVOCATES GENERAL

Article 15 Designation of the Judge-Rapporteur

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

2. For cases of the kind referred to in Article 107 and Articles 193 and 194, the Judge-Rapporteur shall be selected from among the Judges of the Chamber designated in accordance with Article 11(2), on a proposal from the President of that Chamber. If, pursuant to Article 109, the Chamber decides that the reference

³⁸ See also the exclusive right of initiative provided for in Art. 62 Statute ECJ.

is not to be dealt with under the urgent procedure, the President of the Court may reassign the case to a Judge-Rapporteur attached to another Chamber.

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

I. General (paragraph 1)

- 1 This provision echoes the former Art. 9 (2) RP ECJ. The parties do not know beforehand which chamber and/or which Judges will hear their case, unlike the procedure in some Member States, e.g. Germany³⁹. The President of the ECJ may use his discretionary power to avoid a too high degree of specialization and also spread the work load more or less evenly, as designating the Judge Rapporteur *de facto* pre-determines the future chamber which will hear the case.

II. Urgent referrals (paragraph 2)

- 2 In the case of **urgent referrals** within the meaning of Art. 107 RP ECJ, the President's discretionary power is limited to the chamber designated in this particular area⁴⁰.

III. Judge Rapporteur prevented from acting (paragraph 3)

- 3 While there is an obvious need to act whenever a Judge Rapporteur is prevented from acting it remains unclear what is to be understood by the "necessary steps". It remains unclear whether the President designates a new Judge Rapporteur within the same Chamber than the former Judge Rapporteur.

Article 16 Designation of the Advocate General

1. The First Advocate General shall assign each case to an Advocate General.
2. The First Advocate General shall take the necessary steps if an Advocate General is prevented from acting.

I. Choosing the Advocate General (paragraph 1)

- 1 This provision corresponds to the previous Art. 10 (2) RP ECJ, but the Advocate General may be chosen independently of whether the Judge Rapporteur has already been designated or not.

³⁹ So called "Gesetzlicher Richter". See Case T. 119/11 P, *Strack v Commission* [2012] (not yet published in the ECR).

⁴⁰ Art. 113 RP ECJ.

II. Prevented from acting (paragraph 2)

The role of the First Advocate General is analogous to the role of the President, 2 except that the former is competent with respect to Advocate Generals, while the latter takes the necessary steps with respect to Judges Rapporteur (Art. 15 (3) RP ECJ).

CHAPTER 4 ASSISTANT RAPPORTEURS

Article 17 Assistant Rapporteurs

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

2. Assistant Rapporteurs shall in particular:

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

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

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

I. Little relevance

This provision, which implements Art. 13 Statute ECJ and corresponds in 1 essence to the former Article 24 RP ECJ, is of **little relevance**. It dates back to the days when the ECJ was the only EU jurisdiction and was thus facing the risk of considerable and persistent workload. Since the creation of the GC this risk has decreased substantially, as also illustrated by the decline of the average duration of proceedings at the ECJ.

II. Status

An “Assistant Rapporteur” is not a Judge, by contrast to a Judge Rapporteur, 2 since the ECJ has the right of initiative and given that they are appointed by the Council, whilst Judges at the ECJ are appointed by their respective Member State. For this reason an Assistant Rapporteur is not and cannot be entrusted with the full set of judicial functions. As the name suggests an Assistant Rapporteur assists a Judge Rapporteur in a given case.

CHAPTER 5
REGISTRY

Article 18 Appointment of the Registrar

- 1. The Court shall appoint the Registrar.
- 2. When the post of Registrar is vacant, an advertisement shall be published in the Official Journal of the European Union. Interested persons shall be invited to submit their applications within a time-limit of not less than three weeks, accompanied by full details of their nationality, university degrees, knowledge of languages, present and past occupations, and experience, if any, in judicial and international fields.
- 3. The vote, in which the Judges and the Advocates General shall take part, shall take place in accordance with the procedure laid down in Article 8(3) of these Rules.
- 4. The Registrar shall be appointed for a term of six years. He may be reappointed. The Court may decide to renew the term of office of the incumbent Registrar without availing itself of the procedure laid down in paragraph 2 of this Article.
- 5. The Registrar shall take the oath set out in Article 4 and sign the declaration provided for in Article 5.
- 6. The Registrar may be deprived of his office only if he no longer fulfils the requisite conditions or no longer meets the obligations arising from his office. The Court shall take its decision after giving the Registrar an opportunity to make representations.
- 7. If the office of Registrar falls vacant before the normal date of expiry of the term thereof, the Court shall appoint a new Registrar for a term of six years.
- 8. The name of the Registrar elected in accordance with this Article shall be published in the *Official Journal of the European Union*.

Outline:

I. Appointment (paragraph 1)	1
II. Advertisement of the post (paragraph 2)	2
III. Selection (paragraph 3)	3
IV. Term (paragraph 4)	4
V. Oath (paragraph 5)	5
VI. Depriving the Registrar of his office (paragraph 6)	6
VII. Vacancy (paragraph 7)	7
VIII. Publication (paragraph 8)	8

I. Appointment (paragraph 1)

- 1 The Registrar is appointed by the ECJ, i.e. not the Member States, unlike Judges, or the Council, as is the case with Assistant Rapporteurs (Art. 17 RP ECJ).

II. Advertisement of the post (paragraph 2)

Pursuant to the new paragraph 2, the vacancy notice regarding the post of the Registrar and the name of the successful candidate must be published in the OJ EU. Both measures are indeed in the interest of transparency, even if the first measure may create a presumably impressive number of candidatures, which is bound to burden and delay the selection procedure. The required level of qualifications are in line with the importance of his administrative functions⁴¹.

III. Selection (paragraph 3)

Given the importance of the Registrar's functions and the need for a consensual appointment, the Registrar is not appointed by e.g. a single instance, such as the President of the ECJ, but as a result of a vote in which all Judges and Advocate Generals of the ECJ take part.

IV. Term (paragraph 4)

The term is **six years**, i.e. the same term length as that of Judges, as a result of a secret election. Paragraph 4 is new in that it simplifies the procedure of **renewal** of term in office.

V. Oath (paragraph 5)

Since the Registrar is the head of the Registry and responsible for all written correspondence relating to proceedings at the ECJ he thus takes the same oath than the Judges even though he has no judicial activity or responsibility.

VI. Depriving the Registrar of his office (paragraph 6)

This paragraph corresponds to Article 6, which is applicable to Judges and Advocate Generals. While the Registrar is given the opportunity to make representations, there is no formal clause taking account of his right to judicial protection. It remains thus unclear, as is the case with Judges or Advocate Generals, whether the Registrar concerned has any legal remedy against such decision.

⁴¹ See "Instructions to the Registrar of the Court of Justice".

VII. Vacancy (paragraph 7)

- 7 In case the office of Registrar falls vacant the new Registrar does not accomplish the remaining term, but is appointed for a full term of six years (see above paragraph 2).

VIII. Publication (paragraph 8)

- 8 Since the post of Registrar is advertised in the OJ EU (see the new paragraph 2 above), it is a matter of consistency to publish the name of the Registrar who has been elected.

Article 19 Deputy Registrar

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

I. General

- 1 The appointment of the Registrar is compulsory, while it is within the ECJ's discretion whether or not to appoint one or more Assistant Registrars. These Assistant Registrars, in contrast to the Registrar, are subject to the Statute of the officials of the EU.

II. New title

- 2 The predecessor of this provision, Art. 13 RP ECJ, used the term "Assistant Registrar", which was not entirely accurate, since it does not reflect all the Assistant Registrar's responsibilities. Furthermore, in other linguistic versions, such as in German⁴², the term used to refer to this post even had a slightly negative connotation. The new term, i.e. "Deputy Registrar" thus also allows for a better, more accurate translation of the term in other linguistic versions.

Article 20 Responsibilities of the Registrar

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

⁴² "Hilfskanzler", which means something like "Auxiliary Registrar".

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

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

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

Outline:

I. General	1
II. Tasks relating to documents and effecting service (paragraph 1).....	2
III. Assisting the Members of the Court (paragraph 2)	3
IV. Custody of the seals and publications (paragraph 3).....	4
1. General.....	4
2. European Court Report (ECR)	5
a) General.....	5
b) Outdated concept?.....	6
3. Website of the ECJ	7
4. Digest of the Community Courts	8
a) Precious source of information.....	8
b) Room for improvement	9
V. Registrar as head of administration (paragraph 4)	10

I. General

This provision illustrates one of the purposes of the new RP ECJ, as it **centralises** 1 into a single Article the content of Articles 17, 18, 23 and 68 of the previous RP ECJ, which is indeed in the interest of clarity and besides makes it more user-friendly.

II. Tasks relating to documents and effecting service (paragraph 1)

It follows from this provision that the Registrar will not accept each and every 2 document submitted by a party, but only those that are specifically described in the Rules of Procedure (application, statement of defence, reply, rejoinder, observations on measures of organization, etc.). In this respect, it should be noted that the RP ECJ are substantially stricter than many procedural rules at the level of the Member States. Thus, all documents and/or written submissions, which are not foreseen in the Rules of Procedure, are normally sent back to the party. Under **very** specific circumstances an exception may be granted on a case-by-case basis in order to respect the overriding importance of the principle of rights of defence.

III. Assisting the Members of the Court (paragraph 2)

- 3 The Registrar's obligations, which are further detailed in the "**Instructions to the Registrar**"⁴³, are of a purely administrative nature, since the Registrar does not in any way participate in the judicial activity carried out by the ECJ.

IV. Custody of the seals and publications (paragraph 3)

1. General

- 4 These obligations of the Registrar, which are detailed in the "**Instructions to the Registrar**"⁴⁴ are only indirectly relevant to the public, except publications of the ECJ, including the **European Court Report (ECR)**.

- 5 **2. European Court Report (ECR).** a) **General.** It is inherent to any Court Report that it does not contain every judgement or order handed down. A balance needs to be struck between the relevance of the judicial decision and the costs of publication.

b) Outdated concept?

- 6 The European Court Report, which is the official law report of the ECJ⁴⁵, is, by definition, never up to date, as some versions, such as the French series, are being published earlier than others, such as the English and German series. There is an improvement, however, in that the Court abandoned its – questionable – practice between 1989 and 1992 of publishing judgments which were considered to include no new aspects, *without* the reasoning, as this made one question why they were published at all. Fortunately, this practice was quickly abandoned. A mimeographed version of all published decisions of the Court is available via a subscription, which is delivered shortly after delivery. It comes not only at a cost, but needs to be stored.

3. Website of the ECJ

- 7 The Website of the ECJ⁴⁶, which is available in all official languages, has become a very useful source of information and has been recently further improved. It provides – at no cost – a chronological, updated list of all decisions, i.e. judgments and orders, and of various documents which are not published in the ECR. Since recently, it also provides access to decisions prior to June 1997, which so far were only available on the Eur-lex website⁴⁷.

⁴³ Art. 2 et seq "Instructions to the Registrar".

⁴⁴ Art. 23–25 "Instructions to the Registrar".

⁴⁵ See also Art. 24 "Instructions to the Registrar".

⁴⁶ www.curia.europa.eu.

⁴⁷ <http://eur-lex.europa.eu/en>.

4. Digest of the Community Courts. a) Precious source of information. The Website of the ECJ also includes a “digest of the case law” of the EU Courts. It comprises extracts from the case law, structured according to the Treaties, the respective subject areas and keywords. The digest, which is updated periodically, is a very useful tool, as it provides a quick access to each topic, again at no cost.

b) Room for improvement

It is regrettable though that to date the web-site version of the digest only exists in French, i.e. the working language of the ECJ. For those who do not have a sufficient command of French, it is of little comfort that the extracts of the case law provide links to the Celex database, which provides, in many instances, access to other linguistic versions. It would be both most helpful and feasible to provide the same data-basis in e.g. English, French and German, i.e. the three working languages of the European Commission. It would also be worthwhile to reconsider the current splitting into pre- and post-Lisbon case-law.

V. Registrar as head of administration (paragraph 4)

This provision lays down some of the Registrar’s important administrative responsibilities.

Article 21 Keeping of the register

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

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

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

4. A notice shall be published in the *Official Journal of the European Union* indicating the date of registration of an application initiating proceedings, the names of the parties, the form of order sought by the applicant and a summary of the pleas in law and of the main supporting arguments or, as the case may be, the date of lodging of a request for a preliminary ruling, the identity of the referring court or tribunal and the parties to the main proceedings, and the questions referred to the Court.

I. Documents concerned (paragraphs 1 to 3)

The modalities of the keeping of the Registry, which are laid down in paragraphs 1 to 3 and in the “Instructions to the Registrar”⁴⁸, are relevant to each person

⁴⁸ See Art. 11 to 16, “Instructions to the Registrar”.

“having an **interest**” in a case who may therefore “consult the register” (see Art. 22 RP ECJ).

II. Publication in the OJ of the EU (paragraph 4)

- 2 For each third party it is equally important to know that the Registry publishes a **notice** on each new proceeding in the Official Journal of the EU⁴⁹. This notice is sufficiently detailed in order to enable third parties to decide whether they should **intervene** in a given case. That said, any interested party may find out about the **existence** of a procedure and the name of the parties involved, albeit not necessarily the details of the case, at a much **earlier stage** than the publication in the OJ EU by looking into the **list of new cases** of published on the Court’s website.

Article 22 Consultation of the register and of judgments and orders

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

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

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

I. Right to consult (paragraph 1)

- 1 This provision is new and enhances **transparency** by ensuring that the right to consult the register at the Registry and obtain copies or extracts is no longer reserved to “persons having an interest”, as provided by the previous Art. 16 (5), but to “**anyone**”. This is in line with the idea that public access to documents does not require an interest to act, as illustrated e.g. by Regulation 1049/2001⁵⁰. That said, a “legitimate” interest is required for parties applying for an intervention in a given case⁵¹.

II. Rights of the parties (paragraph 2)

- 2 This provision allows each **party to a case**, i.e. not “anyone”, but contrast to paragraphs 1 and 3, to obtain copies of “procedural documents”, meaning written pleadings etc.

⁴⁹ See <http://eur-lex.europa.eu>.

⁵⁰ See the very instructive Joined Cases C-514/07 P, C-528/07 p. and C-532/07 P, *Sweden A. O. v Commission*, [2010] ECR I-08533, paras. 64 et seq.

⁵¹ See Art. 40 Statute ECJ.

III. Judgments and orders (paragraph 3)

Pursuant to the old Art. 16, paragraph 5, 2nd sub-paragraph, the right to obtain 3 authenticated copies of judgments and orders was limited to the parties, while it is now the right of “anyone”, again in line with the idea of more transparency.

CHAPTER 6
THE WORKING OF THE COURT

Article 23 Location of the sittings of the Court

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

It is unclear whether the Court ever made use of this possibility, which is now limited to “specific” sittings.

Article 24 Calendar of the Court’s judicial business

- 1. The judicial year shall begin on 7 October of each calendar year and end on 6 October of the following year.
- 2. The judicial vacations shall be determined by the Court.
- 3. In a case of urgency, the President may convene the Judges and the Advocates General during the judicial vacations.
- 4. The Court shall observe the official holidays of the place in which it has its seat.
- 5. The Court may, in proper circumstances, grant leave of absence to any Judge or Advocate General.
- 6. The dates of the judicial vacations and the list of official holidays shall be published annually in the *Official Journal of the European Union*.

Outline:

I. Judicial year (paragraph 1).....	1
II. Judicial vacations (paragraphs 2 and 3)	2
1. General.....	2
2. Rule and exceptions.....	3
3. Continuity of the Registry	4
III. Official holidays (paragraph 4).....	5
IV. Granting leave (paragraph 5).....	6
V. Transparency (paragraph 6)	7

I. Judicial year (paragraph 1)

- 1 Paragraph 1 is new in that the RP ECJ now specify the dates of the beginning and end of the judicial year.

II. Judicial vacations (paragraphs 2 and 3)

1. General

- 2 This provision implements Art. 15 Statute ECJ. The dates of the judicial vacations are no longer laid down and thus “frozen” in the RP ECJ, as was the case in the former Art. 28 (1) RP ECJ, but determined by the Court, which is a much more flexible solution.

2. Rule and exceptions

- 3 Normally, there are no oral hearings during the judicial vacations. There are exceptions in case of **interim proceedings**, in so far as they require a hearing. On some occasions the ECJ hands down judgments during the judicial vacations.

3. Continuity of the Registry

- 4 The ECJ’s Registry is open throughout the year to accept applications and other written submissions. This includes requests for an expedited procedure (see Art. 62 a RP ECJ), but if such requests are submitted during the vacations there is then no guarantee that it will be decided upon in an expedited manner. The furnishing of documents is not limited to the Court’s operating hours but may also take place after hours.

III. Official holidays (paragraph 4)

- 5 Observing the official holidays of the place in which it has its seat is a necessity, for practical reasons, but this rule does not apply to all EU institutions.

IV. Granting leave (paragraph 5)

- 6 During the judicial vacations (see paragraph 2) the Judges and Advocates General are, by definition, on holidays, which does not rule out that they may benefit from leave of absence “in proper circumstances”.

V. Transparency (paragraph 6)

Since the dates of the judicial vacations are no longer laid down in the RP ECJ, ⁷ and may thus vary from one year to another, it is an elementary matter of transparency to publish the date in the OJ EU. The same is true for the list of official holidays (see paragraph 4).

Article 25 General meeting

Decisions concerning administrative issues or the action to be taken upon the proposals contained in the preliminary report referred to in Article 59 of these Rules shall be taken by the Court at the general meeting in which all the Judges and Advocates General shall take part and have a vote. The Registrar shall be present, unless the Court decides to the contrary.

This provision is similar to the old Art. 27 (7) RP ECJ. It relates to purely internal matters of the ECJ, i.e. “administrative issues” and proposals of the Judge-Rapporteur made in his preliminary report in a given case. The general public has no access to any of these matters and it is understood that the general meeting takes place in closed session.

Article 26 Drawing-up of minutes

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

This provision relates to the minutes, which are not accessible to the general public.

CHAPTER 7 FORMATIONS OF THE COURT

SECTION 1 – COMPOSITION OF THE FORMATIONS OF THE COURT

Article 27 Composition of the Grand Chamber

1. The Grand Chamber shall, for each case, be composed of the President and the Vice-President of the Court, three Presidents of Chambers of five Judges, the Judge-Rapporteur and the number of Judges necessary to reach 15. The last-mentioned Judges and the three Presidents of Chambers of five Judges shall be designated from the lists referred to in paragraphs 3 and 4 of this Article,

following the order laid down therein. The starting-point on each of those lists, in every case assigned to the Grand Chamber, shall be the name of the Judge immediately following the last Judge designated from the list concerned for the preceding case assigned to that formation of the Court.

2. After the election of the President and the Vice-President of the Court, and then of the Presidents of the Chambers of five Judges, a list of the Presidents of Chambers of five Judges and a list of the other Judges shall be drawn up for the purposes of determining the composition of the Grand Chamber.

3. The list of the Presidents of Chambers of five Judges shall be drawn up according to the order laid down in Article 7 of these Rules.

4. The list of the other Judges shall be drawn up according to the order laid down in Article 7 of these Rules, alternating with the reverse order: the first Judge on that list shall be the first according to the order laid down in that Article, the second Judge shall be the last according to that order, the third Judge shall be the second according to that order, the fourth Judge the penultimate according to that order, and so on.

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

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

7. The substitute Judges shall replace, in the order of the list referred to in paragraph 4, such Judges as are unable to take part in the determination of the case.

I. *Ex officio* members of the Grand Chamber (paragraph 1)

- 1 *De facto* the Grand Chamber has taken over the role the full Court. Many of its currently **fifteen members** are selected because of their special **function** within the ECJ, i.e. the **President** and **Vice-President** of the ECJ and the **Presidents of the Chambers** of five judges, as well as the Judge Rapporteur, all of whom are *ex officio* members of the Grand Chamber due to their positions in the ECJ. The other members are determined on the basis of the order of **seniority** (see paragraph 2).

II. List of the other members (paragraph 2)

- 2 The list of the other Judges sitting in the Grand Chamber, i.e. approximately half of its members, is based on the order of seniority⁵² and assigned according to the somewhat complex system outlined in paragraph 2.

⁵² See Art. 7 RP ECJ. The order of precedence is also published on the ECJ's website.

III. Publication (paragraph 3)

For reasons of transparency, the specific list of Judges assigned to the Grand Chamber and the order in which they are assigned/replaced is published in the OJ EU.

IV. Transitory rules (paragraphs 4 and 5)

This provision, which was added rather recently, is about the “substitute Judges”, who are required in certain transitory situations.

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

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

2. For the composition of the Chambers of five Judges, after the election of the Presidents of those Chambers lists shall be drawn up including all the Judges attached to the Chamber concerned, with the exception of its President. The lists shall be drawn up in the same way as the list referred to in Article 27([4]).

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

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

This provision, like that found in Art 27 RP ECJ, is rather **complex** and illustrates that the **composition** of each Chamber of either five or three Judges, i.e. the names of the magistrates serving in each chamber, is **not predetermined**. Instead, these names must be determined according to the list referred to in paragraph 2, which is based on the order of seniority within the meaning of Art. 6 RP ECJ. For reasons of organization these Judges may belong to a formation which comprises a higher number of Judges (i.e., a member of the Grand Chamber might also be a member of a chamber of three judges)⁵³.

⁵³ Case C-7/94, *GAAL* [1995], ECR I-1031, para. 13.

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

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

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

- 1 It is entirely within the ECJ's **discretion** to determine whether two or more cases must be heard and decided together by the same chamber or formation of judges. Unlike Art. 53 RP ECJ, however, Art 29 RP ECJ does not require that these joined cases have the same subject-matter or be connected to one another. Additionally, it is much more procedurally efficient to keep in place the same formation which was recommended when the preliminary report regarding that case was first examined.
- 2 If a case is reassigned to a larger formation, e.g., if a case is transferred from a Chamber of three to a Chamber of five judges, it is also procedurally efficient to require the members of the initial Chamber to sit in the new formation.

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

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

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

While there is **no special legal remedy** available in case of any infringement of these binding rules, the parties concerned may if necessary raise the issue in the context of a pending procedure.

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

1. When a member of the Grand Chamber is prevented from acting, he shall be replaced by another Judge according to the order of the list referred to in Article 27(4).

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

from acting by a Judge of the same Chamber, the President of that Chamber shall so inform the President of the Court who may designate another Judge to complete the Chamber.

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

The replacement of a Judge who is prevented from attending deliberations⁵⁴ is not a matter of discretionary power, but is instead strictly determined by the lists and order of precedence referred to in Art. 27 and 28 RP ECJ, i.e. on the basis of purely objective elements. This procedure undoubtedly increases transparency and legal certainty and is much clearer than the previously applicable Article.

SECTION 2 – DELIBERATIONS

Article 32 Procedures concerning deliberations

1. The deliberations of the Court shall be and shall remain secret.
2. When a hearing has taken place, only those Judges who participated in that hearing and, where relevant, the Assistant Rapporteur responsible for the consideration of the case shall take part in the deliberations.
3. Every Judge taking part in the deliberations shall state his opinion and the reasons for it.
4. The conclusions reached by the majority of the Judges after final discussion shall determine the decision of the Court.

Outline:

I. Deliberations (paragraph 1)	1
1. Importance	1
2. Attendance	2
II. Taking part in the deliberations (paragraphs 2 and 3)	3
1. General.....	3
2. Role of the Judge-Rapporteur	4
III. Majority vote (paragraph 4)	5
IV. Room for dissenting opinions?.....	6
1. Overview.....	6
2. Pro and contra.....	7

⁵⁴ Joined Cases C-101/07 p. and C-110/07 P, *Coop de France bétail et viande A. O. v Commission* [2008] (not yet published).

I. Deliberations (paragraph 1)

1. Importance

- 1 The judicial deliberations, which take place **after** each oral hearing, are central elements of the ECJ's judicial activity. These deliberations take place in **closed session**, by contrast to the oral hearing which is public, as a rule.⁵⁵ Judicial deliberations thus remain **secret**⁵⁶. It goes without saying that the parties to the proceedings have no influence whatsoever on the deliberations of the ECJ and should thus abstain from any such attempt, e.g. by sending submissions, letters or trying to informally contact Judges and/or members of their staff.

2. Attendance

- 2 Deliberations are neither attended by the Advocates-Generals nor by the Registrar; they may not even sit in on deliberations as observers. The deliberations take place in **French**, i.e. the ECJ's working language. Thus, there are no interpreters for those who might have a lesser command of French, as this would also be incompatible with the secret of the deliberations.

II. Taking part in the deliberations (paragraphs 2 and 3)

1. General

- 3 Attending the oral hearing, if any, is a prerequisite for taking part in the subsequent deliberations. Thus, it may become necessary, under certain circumstances, to reopen the oral hearing in order to have sufficient Judges to meet the quorum requirements who have attended both the oral hearing and the deliberations.

2. Role of the Judge-Rapporteur

- 4 The Judge-Rapporteur drafts the **preliminary report**⁵⁷ of the deliberations, to which neither the parties nor any other interested person have access, be it by virtue of the RP ECJ or by way of public access based on Regulation 1049/2001, the **report for the hearing**⁵⁸, which is notified to the parties prior to the oral hearing and the draft judgment or order. Thus, on the face of it, the Judge-Rapporteur has a leading role in the proceedings concerned. Nevertheless, he does of course not decide the

⁵⁵ Art. 79 RP ECJ.

⁵⁶ See the oath in Art. 4 RP ECJ.

⁵⁷ Art. 59 RP ECJ.

⁵⁸ The report for the hearing is only mentioned in Art. 20 (4) Statute ECJ, i.e. not in the RP ECJ.

case by himself, since every Judge taking part in the deliberations states his opinion and the reasons for it (**paragraph 3**), meaning that their views have equal weight.

III. Majority vote (paragraph 4)

This does not mean, though, that the Judges need to be unanimous. The conclusions reached by the **majority** of the Judges after final discussion determine the decision of the Court.

IV. Room for dissenting opinions?

1. Overview

Dissenting opinions are not recorded in the reports of deliberations or decisions, let alone are they published. This is in contrast to common practice at e.g. the German Federal Constitutional Court, the United States Supreme Court and in a number of inter-, or supranational Courts, such as the European Court of Human Rights.

2. Pro and contra

This point has served as a source of criticism of the ECJ. Arguments in favour of the publication of dissenting opinion cite the concept of transparency and democracy, and also, to a lesser extent, the Judge's individual rights to freedom of conscience and independence. On the other hand, leaving aside the fact that the publication of dissenting opinions does not exist in every national legal systems of the EU and is thus not a *common* tradition of the Member States, it might be detrimental to the ECJ's mission to ensure the **unity** of Union law⁵⁹. Dissenting opinions would inevitably become a means in order to criticize or question such or such judgment. This would have little added value as compared to the political damage it would be bound to create. What would be left of the authority of the ECJ's judgments, if every major judgement e.g. in institutional matters, such as applications of the Commission against the Council or the Parliament and vice versa, were to result in dissenting opinions being published and then extensively commented by politicians, the media, etc.? Next, dissenting opinions in referrals for preliminary rulings would be simply unthinkable, since the national Court or Tribunal expects to be given an answer to its questions, rather than something which might look like a cacophony. Finally, if dissenting opinions were to be published, the **secret of the deliberations**⁶⁰ would be no longer fully protected.

⁵⁹ As illustrated by the review procedure in Art. 62 Statute ECJ.

⁶⁰ See Art. 35 Statute ECJ: "The deliberations of the Court of Justice shall be and shall remain secret."

Article 33 Number of Judges taking part in the deliberations

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

Every chamber needs to attain, under all circumstances, the necessary **quorum** and **uneven** number of Judges required of the respective formation in question. It is clear from this provision that the parties to the proceedings have no influence whatsoever concerning the attendance or substitution of Judges.

Article 34 Quorum of the Grand Chamber

1. If, for a case assigned to the Grand Chamber, it is not possible to attain the quorum referred to in the third paragraph of Article 17 of the Statute, the President of the Court shall designate one or more other Judges according to the order of the list referred to in Article 27(4) of these Rules.

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

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

1. If, for a case assigned to a Chamber of five or of three Judges, it is not possible to attain the quorum referred to in the second paragraph of Article 17 of the Statute, the President of the Court shall designate one or more other Judges according to the order of the list referred to in Article 28(2) or (3), respectively, of these Rules. If it is not possible to replace the Judge prevented from acting by a Judge of the same Chamber, the President of that Chamber shall so inform the President of the Court forthwith who shall designate another Judge to complete the Chamber.

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

The purpose of both Articles 34 and 35 is to set up an objective system in order to guarantee that the necessary quorum is attained, no matter which Chamber is concerned, and under all circumstances.

CHAPTER 8 LANGUAGES

Article 36 Language of a case

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

Outline:

I. Introduction	1
1. Provisional rules	1
2. Reducing the number of languages of procedure?	2
a) The current situation	2
b) Uphill struggle	3
3. Working language of the ECJ	4
II. Languages of procedure	6
1. Numerus clausus	6
2. Special cases	7
3. Specific cases	8

I. Introduction

1. Provisional rules

This rather long and complex provision in Articles 36 to 39 RP ECJ governing the linguistic regime applicable in each case applies as long as the Council has not unanimously adopted rules governing the language arrangements applicable to the Court of Justice of the European Union by way of a regulation (see Art. 64 Statute ECJ). The current provision is based on the principle of **equal treatment** of all languages of procedure.

2. Reducing the number of languages of procedure? a) The current situation. With 23 official languages, a number which will increase in 2013, with the accession of Croatia and might rise within the next years, the constraints in terms of translators, interpreters, and thus costs has risen sharply. This is particularly true in the case of the ECJ, where each Member State uses its own official language(s) and also in the case of the GC. In the case of the CST, however, in 2011 about 55 % of all proceedings were in French, this figure having been substantially higher in previous years, e.g. 75 % in 2010⁶¹.

⁶¹ See the annual statistical report of the CST on www.curia.europa.eu.

b) Uphill struggle

- 3 Nevertheless, any attempt to limit the number of languages of the case, e.g. to English, French, and German, the working languages of the institutions of the EU, would be bound to fail. Whatever the gains may be in terms of costs and duration of the proceedings should such a measure be adopted, such a limitation would not be acceptable from a political point of view, as it would appear to privilege certain perspectives or countries over others. That said, there is some precedent for such limitation: in other instances, such as the Administrative Tribunal of the ILO, the languages of the case are limited to English and French, but this is due to the fact that the Administrative Tribunal, as the United Nations, covers so many nations that it would be totally impractical to provide translations for them all.

3. Working language of the ECJ

- 4 The **languages of procedure**, which are listed exhaustively in paragraph 1, need to be distinguished from the ECJ's **working language**, which includes two levels:
During an oral hearing, i.e. at an "**external level**", the Judges and the Advocate General may if necessary make use of the language of their choice and are thus not bound by the language of the procedure (see Art. 38 (8) RP ECJ). The interpreters of the ECJ will then translate everything into the language of the procedure.
- 5 At an "**internal level**", i.e. for the purposes of the deliberations⁶² and other sittings, the Judges use the **French** language.

II. Languages of procedure

1. Numerus clausus

- 6 The applicant may choose **one** of the languages out of the **catalogue** in paragraph 1. He may thus not opt for languages from third States, regardless of their relation with the EU may be, nor may he use his own native language if it is not part of the catalogue in paragraph 1.

2. Special cases

- 7 A number of Member States have several official languages, such as Belgium, (which has three official languages), Ireland, and Malta. In practice though, some official languages, such as **Irish Gaelic** and **Maltese**⁶³ are rarely used, since in both countries English dominates. **Luxembourgish** is the "national language" of Luxembourg, while French and German are its official languages. Since Luxembourgish does **not** have the status of an official language, it cannot be used as a language of procedure⁶⁴. Barring any significant political changes, regional languages such as **Catalan** also do not qualify as the language of a procedure.

⁶² Art. 32 et seq. RP ECJ.

⁶³ The only Semitic language in the EU, descending from Siculo-Arabic.

⁶⁴ See about the problems associated with the diversity of languages, B. Wägenbaur, EuZW 2003, 705.

3. Specific cases

While every case thus has “its” language of procedure, the **joining of several cases** may result in a coexistence of several languages of procedure for a given case or set of cases⁶⁵. During **appeals** the language of the proceedings at first instance applies, without prejudice to the exceptions provided in Art. 37 (2) and 38 RP ECJ.

Article 37 Determination of the language of a case

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

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

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

(c) at the request of one of the parties, and after the opposite party and the Advocate General have been heard, the use of another of the languages mentioned in Article 36 may be authorised as the language of the case for all or part of the proceedings by way of derogation from subparagraphs (a) and (b); such a request may not be submitted by one of the institutions of the European Union.

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

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

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

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

3. In preliminary ruling proceedings, the language of the case shall be the language of the referring court or tribunal. At the duly substantiated request of one of the parties to the main proceedings, and after the other party to the main proceedings and the Advocate General have been heard, the use of another of the languages mentioned in Article 36 may be authorised for the oral part of the procedure. Where granted, such authorisation shall apply in respect of all the interested persons referred to in Article 23 of the Statute.

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

⁶⁵ Joined cases C-46/93 and C-48/93, *Brasserie du pêcheur et Factortame and others* [1996], ECR I-1029.

Outline:

I. Choice of the language of procedure.....	1
1. Rule.....	1
a) Little relevance in the case of the ECJ.....	1
b) Exercising the right of choice.....	2
aa) Main proceedings.....	2
bb) Ancillary proceedings.....	3
II. Exceptions (paragraph 1).....	4
1. Defendant (lit. a).....	5
2. Request for a change of the language of procedure (lit. b and c).....	6
III. Special legal remedies (paragraph 2).....	7
1. General.....	7
2. Appeals (lit. a).....	8
3. Review of a decision of the GC (lit. b).....	9
4. Other legal remedies (lit. c).....	10
IV. Preliminary ruling proceedings (paragraph 3).....	11
1. Rule.....	11
2. Exceptions.....	12
V. Requests (paragraph 5).....	13

I. Choice of the language of procedure

1 **1. Rule. a) Little relevance in the case of the ECJ.** In the case of the ECJ the free choice of language of a case was very relevant at the time when its jurisdiction also included applications of natural and moral persons at first (and only) instance, which is no longer the case as such applications are now heard primarily by the GC. The **Member States** will normally choose their own official language(s) for a case⁶⁶. The **EU institutions** enjoy a broader linguistic choice should they take another institution to Court, but in practice, it would seem that such proceedings are conducted in either French or English.

2 **b) Exercising the right of choice. aa) Main proceedings.** The applicant chooses the language of procedure simply by using it in his first written submission, i.e. application. Thus, there is no need for any particular declaration, let alone a specific request to that effect. It is not possible, however, to opt for several languages of procedure in the same proceedings, or to use multiple languages for multiple parts of a proceeding, e.g. for the written and oral proceedings, or to allow several lawyers assisting the same party to submit documents in different languages. Thus, once the language is chosen, the choice is **binding**, meaning that it applies not only to all **procedural steps** of the proceedings, i.e. the written and oral phase, but also to all **letters** sent to the Registry, such as cover letters, requests for extensions of time-limits, regardless of any subsequent change of lawyer, etc.

bb) Ancillary proceedings

3 The language chosen is also binding for **ancillary proceedings**, such as requests for interim measures, taxations of costs, revision, interpretation, etc.

⁶⁶ Belgium may opt between French and Dutch ("Flemish" is not a language of procedure).

II. Exceptions (paragraph 1)

The abovementioned rule is considerably limited by the catalogue of exceptions 4 in paragraph 2, sub-paragraph 1, lit a to c.

1. Defendant (lit. a)

Member States and **natural** as well as **legal persons** established in their territory 5 are privileged concerning language choice since their respective official languages become *ipso jure* the languages of procedure, though one may still submit a request for a change of the procedural language within the meaning of paragraph 1, sub-paragraph 1, (b) or (c).

2. Request for a change of the language of procedure (lit. b and c)

The language chosen by the applicant or resulting from lit (a) of paragraph 1 may 6 be changed under the conditions of paragraph 1, sub-paragraph 1, lit. (b) and (c), which state that the language of a case may be changed partly or totally by a **joint** or **unilateral request**. The decisions regarding such requests, which at the ECJ are rare when compared to the number of such requests submitted before the GC, are within the discretionary power of the President of the ECJ, unless he transfers the decision onto the ECJ, either voluntarily or out of necessity. The President will examine primarily, if the change of the language of procedure is necessary for reasons of the **right to be heard**, which may be the case if a Member State has several official languages⁶⁷.

III. Special legal remedies (paragraph 2)

1. General

This provision brings together all provisions relating to the various legal reme- 7 dies, which were hitherto scattered across the RP ECJ.

2. Appeals (lit. a)

It is rather logical that the language which the applicant chooses for the 8 proceedings at **first instance** remains the language during the appeal, even if the appellant is not necessarily the party which chose the language of proceedings at first instance. However, Article 37 (1) RP ECJ provides some flexibility in order to take account of certain changes that occurred between the case at first instance and the appeal, such as the change of lawyer.

⁶⁷ Case C-11/95, *Commission v Belgium* [1996], ECR I-4115, 4159.

3. Review of a decision of the GC (lit. b)

- 9 Since the language of proceedings chosen at first instance determines the language of proceedings applying in a subsequent appeal, it is a matter of mere consistency to apply the same principle to the special review proceedings.

4. Other legal remedies (lit. c)

- 10 This provision addresses the question of the language with respect to ancillary proceedings, such as taxation of costs, or all special remedies existing in EU law.

IV. Preliminary ruling proceedings (paragraph 3)

1. Rule

- 11 As a rule, in the case of a referral for preliminary rulings the language in which the **order of referral** is drafted becomes the language of procedure, (i.e. the official language(s) of the Member State concerned becomes the language of the case).

2. Exceptions

- 12 Requests for an exception are possible for the purposes of the **oral hearing**, especially if some of the parties lack sufficient command of the language or procedure chosen by the national court or tribunal. They need to be “**duly substantiated**”, a wording which on the face of it seems to be a more demanding standard than the simple “request” described in paragraph 1 (b) and (c). But in practice, it is safe to say that a request for an exception must by definition be thoroughly reasoned regardless of the legal remedy concerned.

V. Requests (paragraph 5)

- 13 Requests for an exception from the language of the case, mentioned in paragraph 1, lit b), c) and paragraph 3 are in principle decided by the President.

Article 38 Use of the language of the case

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

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

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

4. Notwithstanding the foregoing provisions, a Member State shall be entitled to use its official language when taking part in preliminary ruling proceedings, when intervening in a case before the Court or when bringing a matter before the Court pursuant to Article 259 TFEU. This provision shall apply both to written documents and to oral statements. The Registrar shall arrange in each instance for translation into the language of the case.

5. The States, other than the Member States, which are parties to the EEA Agreement, and also the EFTA Surveillance Authority, may be authorised to use one of the languages mentioned in Article 36, other than the language of the case, when they take part in preliminary ruling proceedings or intervene in a case before the 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. Non-Member States taking part in preliminary ruling proceedings pursuant to the fourth paragraph of Article 23 of the Statute may be authorised to use one of the languages mentioned in Article 36 other than the language of the case. This provision shall apply both to written documents and to oral statements. The Registrar shall arrange in each instance for translation into the language of the case.

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

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

Outline:

I. Use of the language (paragraphs 1 to 3).....	1
1. Written and oral pleadings	1
2. Annexes	2
II. States (paragraphs 4 to 6)	3
1. Member States	3
2. Other States	4
III. Witnesses and expert witnesses (paragraph 7)	5
IV. Prerogative of Judges and Advocates-General (paragraph 8)	6
1. Judges and Advocate Generals	6
2. Parties	7

I. Use of the language (paragraphs 1 to 3)

1. Written and oral pleadings

The language of procedure shall not only be used in all written submissions and during oral hearing, as the wording of **paragraph 1** (“in particular”) suggests, but shall also be used in all **correspondence** with the Registry of the ECJ.

2. Annexes

- 2 As a rule, **annexes** to written pleadings must also be in the language of procedure, as required by **paragraphs 2 and 3**. But in practice, the Registry does not insist on a translation, provided the document is drafted in a language understood by all parties, e.g. English, and provided there is no request from the other party to comply with the language of the case.

II. States (paragraphs 4 to 6)

1. Member States

- 3 The fact that Member States may use their official language whenever they **intervene** in a given procedure or take part in **referral proceedings** (see **paragraph 4**) highlights the privileged status of the **Member States** (see Art. 37 (1), lit (a) RP ECJ).

2. Other States

- 4 This privilege does not automatically apply to “EFTA-Member States”⁶⁸ (though this “may be authorized”); these States usually need to use one of the official languages listed in Article 36 RP ECJ. Thus, they are not entitled to use their respective official language, such as e.g. Norwegian or Icelandic (see **paragraph 5**). The same is true for **third-party States** involved in referrals for preliminary rulings (see **paragraph 6**).

III. Witnesses and expert witnesses (paragraph 7)

- 5 This provision is practically obsolete, as witnesses or expert witnesses hardly ever play a role in proceedings at the ECJ and since in any event it is highly unlikely that they would be unable to adequately express themselves in one of the 23 languages referred to in paragraph 1.

IV. Prerogative of Judges and Advocates-General (paragraph 8)

1. Judges and Advocate Generals

- 6 Unlike the Registry, Judges and Advocate Generals are **not bound** by the language of procedure during the oral hearing and within the correspondence with the parties. Whenever they address themselves to the parties during **oral proceedings** the Judges may choose any language out of the 23 mentioned in Article 36 RP ECJ and may even alter their choice of language during proceedings if they so

⁶⁸ European Free Trade Association (Liechtenstein, Iceland, Norway and Switzerland).

desire. The same is true regarding the Judge Rapporteur's participation and communication, especially concerning the writing of the **preliminary report** (which is not available to the parties) and the **report for the hearing** (which is available to the parties).

2. Parties

The parties are not in any way disadvantaged or their rights of defence restrained ⁷ by Judges' linguistic prerogatives, since all parties are entitled to translations of documents and interpreters during the oral hearing.

Article 39 Responsibility of the Registrar concerning language arrangements

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

Judges and Advocate Generals as well as the parties to the proceedings have the possibility of having written submissions and oral hearings translated into a different language than the language of procedure, e.g. their mother tongue, within the limits of paragraph 1.

Article 40 Languages of the publications of the Court

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

1. Publications

"**Publications**" of the ECJ comprise not only judgments and orders, but also e.g. ¹ implementing rules of procedure and the annual reports. Such documents are published in **all official languages**.

2. Judgments. a) Published. Judgments are handed down in the language of the ² procedure, which is the authentic or original language. Just after the judgement is made official, a paper version of the respective judgment and a French version are made available for the public in front of the hearing room respectively used. On the same day, normally before midday, the judgment and a translation into all official languages is published on the **website** of the ECJ⁶⁹. Often, depending upon the language, publication in the **European Court Report** is (sometimes considerably) delayed due to translation time.

⁶⁹ www.curia.europa.eu.

b) Unpublished

- 3 Very many judgments of the ECJ are not published in the ECR, but available on the ECJ's website, where they are published in the language of the proceedings and in French.

3. Orders

- 4 Only the most important orders are published in the ECR, the remainder is published on the ECJ's website.

4. Opinions

- 5 Opinions of the Advocate-Generals are not always immediately available in all official languages.

5. Council Regulation No. 1

- 6 "Council Regulation No. 1" refers to the very first regulation the Council ever adopted in 1958, determining the languages to be used by the European Economic Community.

Article 41 Authentic texts

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

Judgments and order are only authentic when consulted in the original language of procedure. This is in contrast to legislative acts at the primary or secondary level, which are equally authentic in all official languages of the EU.

Article 42 Language service of the Court

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

As a result of the still recent enlargements, the number of official languages in the European Union more than doubled, rising from 11 to 23. The tasks of the linguistic service, both in regards to translations of documents and to simultaneous translations during oral hearings, have increased accordingly. The members of the linguistic service are normally trained as both lawyers and linguists and are highly qualified.

TITLE II
COMMON PROCEDURAL PROVISIONS

Introduction

The second title of the recast RP ECJ concentrates in a single title and thus “before the bracket” those provisions which are common to all types of legal remedies, which were previously scattered across the RP ECJ.

CHAPTER 1
RIGHTS AND OBLIGATIONS OF AGENTS, ADVISERS AND LAWYERS

Introduction

The Statute and Rules of Procedure ECJ do not only define the rights and obligations of the Judges and Advocate Generals, but also those of the **agents, advisers and lawyers** (see **Art. 19 Statute ECJ** as implemented and complemented by **Art. 43 to 46 RP ECJ**). These specific rules are intended to supplement and complement the rights and obligations legal officials outlined in the **Statute of EU Officials** or, in the case of lawyers, in their respective **codes of ethics and professional responsibility**.

Article 43 Privileges, immunities and facilities

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

2. Agents, advisers and lawyers shall also enjoy the following privileges and facilities:

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

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

Outline:

I. Introduction	1
II. Immunity (paragraph 1).....	2
1. Beneficiaries	2
a) Member States	2

b) EU institutions.....	3
c) Natural or legal persons.....	4
d) Parties to the main proceedings and their representatives.....	5
2. Definition of immunity.....	6
a) Purpose	6
b) Scope of immunity	7
aa) Procedures concerned.....	7
bb) What exactly is covered by the immunity?	8
III. Privileges and facilities (paragraph 2).....	11

I. Introduction

- 1 In practice the privileges, immunities and “facilities” conferred by this provision are **rarely relevant** during an actual procedure. The irony about what at first appears to be its most important part, i.e. the immunity in respect of words spoken or written, is that in practice parties, agents, advisers, etc. are inherently reluctant to ever test the limits and thus to make use of said immunity. This should and presumably does have a **preventive effect** concerning party representatives’ word choice as well as their choice of tone during oral hearings at the ECJ.

II. Immunity (paragraph 1)

- 2 **1. Beneficiaries.** a) **Member States.** Many if not most Member States are represented in Court by an **agent**, who is normally a member of the legal team of the respective Member State’s public service. Said agent may be assisted by an **adviser**, who does not represent the State but e.g. a Ministry of said State, and/or an external **lawyer**, which tends to be more common in the UK than in other Member States.

b) EU institutions

- 3 An EU institution is represented by one or several **agents**, who are normally but not necessarily a member of that institution’s legal service. Those agents may be assisted by an **adviser**, who is normally an official from a relevant department within the institution and/or by an **external lawyer**.

c) Natural or legal persons

- 4 Thus, apart from exceptional roles as assistants to Member State or EU institution agents, the role of lawyers before the ECJ is essentially limited to cases where they act for natural persons or legal persons, which in proceedings at the ECJ means that lawyers are essentially seen handling referrals for **preliminary proceedings** and **appeals**.

d) Parties to the main proceedings and their representatives

Art. 43 (1) is new in that it broadens the scope of the former Art. 32 by also including the parties to the main proceedings and their representatives, which is quite relevant in referrals for preliminary rulings.

2. Definition of immunity. a) **Purpose.** A party representative has immunity regarding words spoken or written concerning the case or concerning the parties to a case. This is designed to facilitate the “**independent exercise of their duties**”⁷⁰ and, by the same token, their client’s **right to be heard**. Indeed, any fear of suffering consequences or retaliation for words spoken or written in Court is likely to distort or even hinder such free exercise and effective representation by an agent, adviser or lawyer. In practice, cases which require this immunity are very rare because, firstly, the persons concerned normally abstain from any behaviour likely to give rise to such issue and also because it takes a certain level of escalation or “intensity” in order for a spoken or written word to reach the level of e.g. slander or defamation.

b) **Scope of immunity.** aa) **Procedures concerned.** Given its purpose (see a) above), party representatives’ “immunity” should apply regardless of the nature of proceedings and their likelihood to create situations which would trigger words that would need to be covered by immunity. Thus these provisions cover all forms of proceedings before the Court, i.e. be they civil, criminal or disciplinary proceedings.

bb) What exactly is covered by the immunity?

The material scope of the immunity is defined by the following parameters:

It is clear that immunity covers only words spoken or written relating to the case or the parties. Thus, it does of course not cover any contempt of Court within the meaning of Art. 46 RP ECJ.

Next, since Art. 43 RP ECJ implements Art. 19 (5) Statute ECJ, one may define these immunities and privileges as those necessary for the “**independent exercise of their (i.e., party representatives’) duties**”. This wording suggests that immunity applies only to words spoken or written **during** the exercise and **within** the limits of the person’s duties. An independent exercise of duties cannot imply e.g. insulting other persons, since agents, advisers and lawyers (as anybody else) are under a general duty to abstain from such behaviour (which would indeed generally be against their own codes of ethics and professionalism).

The English version merely refers to “immunity”, while other linguistic versions of Art. 43 (1) specify that the immunity is granted solely concerning Court proceedings⁷¹. Given the *ratio legis* it seems appropriate to interpret the term “immunity” broadly. Thus, the immunity granted to lawyers should extend to disciplinary proceedings in the – unlikely – event that a given written or oral statement is in breach of the Court’s code of ethics, conduct, and responsibility⁷². This should also apply to agents or advisers should their employer find that a given

⁷⁰ See Art. 19 (5) Statute ECJ.

⁷¹ In German: “gerichtlich verfolgt”.

⁷² See in the respect Case C-229/05 P, *PKK and KNK v Council* [2007] ECR I-445, para. 119, and annotation by B. Wägenbaur, EuZW 2007, 99.

written or oral statement is incompatible with their duties as officials. At the same time, there is no major risk to such broad interpretation, since the immunity may be waived, if need be (Art. 45 RP ECJ).

III. Privileges and facilities (paragraph 2)

- 11 In contrast to paragraph 1, the privileges and facilities granted by lit. a) and b) are rarely relevant during actual proceedings. Given the level of free movement of persons and information **within** the EU, there is little need for protecting papers and documents (**lit. a**) and ensuring travel without hindrance (**lit. b**). The former provision on the entitlement to the allocation of “foreign currency” has been suppressed, quite rightly, calling it an “anachronism”.

Article 44 Status of the parties’ representatives

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

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

(b) lawyers shall produce a certificate that they are authorised to practise before a court of a Member State or of another State which is a party to the EEA Agreement, and, 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 of the Court shall issue them with a certificate, as required. The validity of this certificate shall be limited to a specified period, which may be extended or curtailed according to the duration of the proceedings.

I. Proving the status (paragraph 1)

1. General

- 1 The burden of proof of necessity and of employment by a party to a case rests, quite obviously, on the person invoking the privileges, immunities, and facilities.

2. Agents

- 2 In the case of agents, it seems that the **power of attorney** issued by the party they represent suffices, which makes their task much easier, since said power of attorney must be sent to the Registrar anyway.

3. Lawyers and advisers

Lawyers need to prove their status and, in addition, submit an authority to act issued by the party represented or assisted by them. The latter applies also to advisers.

II. Certificate issued by the Registrar (paragraph 2)

Agents, lawyers and advisers need to produce a certificate **signed by the Registrar**, which means that they need to request such document in advance. This requirement is cumbersome, especially when considering the relatively **modest practical relevance** of those rights. Besides, it might not necessarily be easy to convince custom officials and/or the police of the existence and scope of those privileges and immunities, since such officials may not be familiar both with this kind of prerogatives and/or means of evidence.

Article 45 Waiver of immunity

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

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

I. No absolute rights (paragraph 1)

Pursuant to this article the various rights granted in Art. 43 are not ends in themselves, but are instead designed to facilitate contentious proceedings, as is also clear from Art. 10 Statute ECJ. The immunity reflects a universal principle, which also applies to e.g. Members of parliament, diplomats, members of the European public service, etc.

II. Waiver of immunity (paragraph 2)

The ECJ may waive the “immunity”, i.e. not the privileges and “facilities”, of party representatives “where it considers that the proper conduct of proceedings will not be hindered thereby”. This means that the immunity may be waived if the ECJ reaches the conclusion that the person concerned **misuses** his or her immunity. A waiver of immunity is a measure of last resort. Thus, it may suffice, depending upon the circumstances, to remind the person concerned of the possibility to waive the immunity, bearing in mind the principle of proportionality.

Article 46 Exclusion from the proceedings

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

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

Outline:

I. Introduction	1
II. Reprehensible conduct (paragraph 1)	3
1. Persons concerned	3
2. Persons protected	4
a) "Before the Court"	4
b) Not the other party	5
3. Conduct incompatible with the dignity of the Court	6
4. Conduct incompatible with the requirements of the proper administration of justice	8
5. Using his rights for purposes other than those for which they were granted	9
III. Measures by the ECJ (paragraphs 1 and 2)	10
1. General	10
2. Informing the person concerned	11
3. Informing the competent authorities	12
4. Excluding the person concerned	13
5. Costs	14
IV. Exclusion (paragraph 3)	15
V. Withdrawal of measures (paragraph 4)	16

I. Introduction

- 1 This provision is designed to protect the **functioning** of the ECJ and to protect the Court, the Judges, the Advocate Generals and the Registrar. In the case of the ECJ, it is of little relevance, since the parties in proceedings before this jurisdiction are predominantly and almost exclusively EU institutions and Member States. In cases with such institutional parties, the risk of contempt of court or similar misbehaving is virtually non-existent, for a number of reasons, the most important being that pursuant to Art. 11 and 12 of the Staff Regulations every EU official *"shall carry out his duties and conduct himself solely with the interests of the*

Communities in mind” and “shall refrain from any action or behaviour which might reflect adversely upon his position”.

Nevertheless, this provision might therefore play a residual role in **referrals for preliminary rulings or appeals**, which involve moral persons and individuals. The ECJ is likely to make a careful use of this provision, since it needs to assess in each case whether or to what extent the given “conduct” of an adviser or lawyer is covered by the right of defence and thus not considered contempt of court.

II. Reprehensible conduct (paragraph 1)

1. Persons concerned

The old Art. 35 (1) RP ECJ mentioned only **advisers and lawyers**, unlike Art. 43 RP ECJ, which also applies to **“agents”**. While it is true that the latter, if acting on behalf of an EU institution, are subject to a number of obligations laid down in the Staff regulations (see Art. 11 and 12 quoted above), the explicit reference to agents which has now been added to this provision renders it consistent with Art. 43 RP ECJ.

2. Persons protected. a) “Before the Court” Unlike the previous Art. 35 (1) RP ECJ, the new Art. 46 no longer refers to “the Court, a Judge, an Advocate General” etc., but to conduct “before the Court”. This more objective wording ensures that reprehensible conduct will be sanctioned regardless of if it is directed at a Court official or Judge or at any person in particular, which might not always be clear.

b) Not the other party

This provision does not apply in the event of reprehensible conduct vis-à-vis the **other party**. Nevertheless, the ECJ may prevent or sanction such behaviour (it may simply not sanction said behaviour under this article).

3. Conduct incompatible with the dignity of the Court

“Conduct incompatible with the dignity of the Court” is to be interpreted in line with the purpose set out in section I of this article:

It concerns **manifestly reprehensible behaviour**, such as **contempt of Court**, or a slanderous or otherwise vexatious written or oral statement regarding either the Court as a whole, a particular chamber, or an individual Judge or Advocate General, regardless of whether or not he is a part of the particular chamber hearing the case in question.

This conduct may also include a broad variety of other forms of lack of respect, such as e.g. obscene or otherwise inappropriate gestures towards members of the Court during oral hearings and even milder forms of disrespect such as the constant use of extremely colloquial and thus untranslatable language and even possibly very

loud and fast pleading, if done repetitively despite the Court's request to slow down and simplify one's pleading.

4. Conduct incompatible with the requirements of the proper administration of justice

- 8 Unlike the first definition (i.e., "conduct incompatible with the dignity of the Court"), this recently-added criterion is not primarily designed to protect the dignity of the Court and/or its officials and Judges, but is rather designed to ensure **the proper functioning of justice**. This provision may thus become relevant e.g. if a party keeps lodging manifestly inadmissible and/or vexatious applications which deliberately ignore preceding orders of the ECJ. Such justice-impeding misconduct is more likely to happen, if at all, in proceedings at the GC or the CST.

5. Using his rights for purposes other than those for which they were granted

- 9 This – rather vaguely worded – category is about cases in which a party misuses his access to justice for other purposes, which are not connected to judicial protection in general and the exercise of the rights of defence in particular. Considering the fact that most cases before the ECJ involve Member States and/or EU institutions, is very unlikely to happen in proceedings at the ECJ. Besides, such misuse, if any, is difficult to prove.

III. Measures by the ECJ (paragraphs 1 and 2)

1. General

- 10 The measures applied by the ECJ, similar to what applies to disciplinary sanctions, are determined by the **principle of proportionality**.

2. Informing the person concerned

- 11 The mildest form of sanction or reaction to misconduct is to inform the person concerned, which provides the addressee with a chance to adapt his conduct, e.g. by withdrawing a contested statement, formally apologizing, etc.

3. Informing the competent authorities

- 12 In case of a more serious misconduct, the ECJ will inform the "competent authorities", i.e. the national law society or bar association in case of lawyer misconduct, and the institution or Member State in case of agents or advisers. This authority will then have the opportunity to reflect on whether the behaviour in question requires disciplinary proceedings.

4. Excluding the person concerned

The ultimate sanction, which is limited to serious or very serious misconduct, is 13 the exclusion of the adviser or lawyer from the proceedings.

5. Costs

Quite apart from the various forms of sanctions that the ECJ may adopt vis-à-vis 14 lawyers and advisers (see paragraphs 1 and 2), one must also consider that a party representative's behaviour may also have a bearing on the costs borne by their party, which seems particularly justified in those cases in which the party has a share of responsibility in that behaviour.

IV. Exclusion (paragraph 3)

Excluding an agent, lawyer or adviser should not penalise the party represented. 15 Thus, in order to protect their rights of defence the proceedings shall be suspended until the excluded person has been replaced.

V. Withdrawal of measures (paragraph 4)

The possibility to rescind measures adopted under paragraph 1 or 2 is a way to 16 continue to allow for the possibility to improve one's conduct.

Article 47 University teachers and parties to the main proceedings

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

2. They shall also apply, in the context of references for a preliminary ruling, to the parties to the main proceedings where, in accordance with the national rules of procedure applicable, those parties are permitted to bring or defend court proceedings without being represented by a lawyer, and to persons authorised under those rules to represent them.

This provision is one of the few examples in EU procedural law in which national rules have a direct bearing on EU law.

CHAPTER 2
SERVICE

Article 48 Methods of service

1. Where these Rules require that a document be served on a person, the Registrar shall ensure that service is effected at that person’s address for service either by the dispatch of a copy of the document by registered post with a form for acknowledgement of receipt or by personal delivery of the copy against a receipt. The Registrar shall prepare and certify the copies of documents to be served, save where the parties themselves supply the copies in accordance with Article 57(2) of these Rules.
2. Where the addressee has agreed that service is to be effected on him by telefax or any other technical means of communication, any procedural document, including a judgment or order of the Court, may be served by the transmission of a copy of the document by such means.
3. Where, for technical reasons or on account of the nature or length of the document, such transmission is impossible or impracticable, the document shall be served, if the addressee has not specified an address for service, at his address in accordance with the procedures laid down in paragraph 1 of this Article. The addressee shall be so informed by telefax or any other technical means of communication. Service shall then be deemed to have been effected on the addressee by registered post on the 10th day following the lodging of the registered letter at the post office of the place in which the Court has its seat, unless it is shown by the acknowledgement of receipt that the letter was received on a different date or the addressee informs the Registrar, within three weeks of being informed by telefax or any other technical means of communication, that the document to be served has not reached him.
4. The Court may, by decision, determine the criteria for a procedural document to be served by electronic means. That decision shall be published in the *Official Journal of the European Union*.

Outline:

I. Introduction	1
II. Documents to be served on a person (paragraph 1)	2
1. General.....	2
2. Modus of delivery	3
III. Service by telefax or E-mail (paragraph 2).....	4
IV. Exception (paragraph 3).....	5
V. “e-Curia” (paragraph 4)	6

I. Introduction

- 1 Registry serves all documents, meaning certified copies of originals, which must be served on a party or another natural or legal person. Neither the parties, nor a bailiff, nor anybody else may do so.

II. Documents to be served on a person (paragraph 1)

1. General

Documents are served on the party's address for service, which is either the address of the party, or the professional address of the parties' lawyer, or an address of a third person.

2. Modus of delivery

The documents are notified either by registered mail or by personal delivery against receipt.

III. Service by telefax or E-mail (paragraph 2)

If the addressee agrees with service via telefax or email, then service will normally take place in this way. The exception which hitherto applied to judgments and orders of the ECJ which used to be sent by registered mail no longer applies.

IV. Exception (paragraph 3)

A document which cannot be notified via telefax or email due to technical reasons or because of the particular volume of said document will be served by conventional means, i.e. by registered mail with a receipt pursuant to paragraph 1, should the lawyer or agent have not indicated an additional address for service. The modalities of service and obligations of the recipient laid down in paragraph 3 are **complex** and the receiver is not necessarily responsible for the technical difficulties which render this mode of service necessary.

V. "e-Curia" (paragraph 4)

Paragraph 4, which was inserted years ago into the former Art. 79 RP ECJ, has finally been implemented in September 2011 through the introduction of "e-Curia"⁷³, an **information technology application** which allows procedural documents to be lodged and served electronically and allows parties to consult such documents on-line⁷⁴. E-Curia, which is common to the ECJ, the GC, and the CST

⁷³ Decision of the Court of Justice of 13 September 2011 on the lodging and service of procedural documents by means of e-Curia, OJEU C 289, 1.10.2011, p. 7.

⁷⁴ See "E-Curia: Conditions of use applicable to parties' representatives" and "E-Curia: Conditions of use applicable to assistants", both published on the website of the Court of Justice.

and which is **free of charge**, allows representatives to lodge procedural documents and their annexes **electronically**.

- 7 This is **advantageous**, as there is no longer a need to send an original paper version and certified copies of said original; one must simply send a PDF of the original via e-Curia. The specific moment counted as the moment of the lodging of a procedural document is the instant at which the representative validates his lodging of that document⁷⁵.
- 8 As in the case of users of more traditional means such as telefax, E-curia users are well advised not to wait until the last minute of the time-limit to submit documents. While the party need not sign the paper version of the original submission prior to transforming it into a PDF document and submitting it via e-Curia, it is nevertheless advisable to sign it, since this reduces the risk of confusing an earlier version with the original or sending a different document altogether.

CHAPTER 3 TIME-LIMITS

Introduction

Pursuant to the ECJ's case law, the principle that every person has a right to a fair trial, established by Art. 6 of the ECHR and recognized in the EU's legal system, does not preclude the setting of a time-limit for the institution of legal proceedings⁷⁶. Thus, time-limits are amongst the vital elements of admissibility, since the best factual and legal arguments become worthless if the party concerned fails to comply with a time-limit and cannot prove unforeseen circumstances, *force majeure*, or an excusable error which might explain this compliance failure (see Art. 45 (2) Statute ECJ). Potential applicants also face another, even though comparatively minor challenge: institutions have no general obligation whatsoever⁷⁷ to provide addressees of individual decisions with information regarding the appropriate legal remedy⁷⁸ for their case or regarding the time-limits within which such an application may be lodged⁷⁹.

Article 49 Calculation of time-limits

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

(a) where a time-limit expressed in days, weeks, months or years is to be calculated from the moment at which an event occurs or an action takes place, the

⁷⁵ Para. 16 of "E-Curia: Conditions of use applicable to parties' representatives".

⁷⁶ See e.g. Case 257/85, *Dufay v Parliament* [1987] ECR p. 1561, paras. 9–10.

⁷⁷ This is also the case of the European Ombudsman, see Case T-33/99, *Méndez Pinedo v ECB* [2000] ECR p. II 273, para. 36.

⁷⁸ Case C-163/07 P, *Diya-Mar Insaat Sanayi v Ticaret and Akar v Commission* [2007] ECR p. I-10125, paragraphs 41.

⁷⁹ Joined Cases F-116/07, F-13/08 and F-31/08, *Tomas v Parliament* [2010] (not yet published in the ECR), para. 87.

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 the official holidays referred to in Article 24(6) of these Rules;

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

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

Outline:

I. General	1
1. Overview.....	1
2. Time-limits imposed by law	2
3. Time-limits set by the ECJ.....	3
II. Beginning of the time-limit (paragraph 1, lit. a).....	4
III. End of the time limit (paragraph 1, lit. b)	5
IV. Other characteristics (lit. c to e)	6
V. Saturdays, Sundays and official holidays (paragraph 2)	7
1. General.....	7
2. End of time-limit	8
3. Example.....	9

I. General

1. Overview

Time-limits, which are either imposed by **primary** or **secondary** law or set by the 1 ECJ based on its RP, arise from EU law, not national law, with the understanding that Art. 49 RP ECJ applies to all legal remedies. An exact calculation of the time-limits is not necessarily easy for a variety of reasons. First, no challengeable act, not even individual decisions, provides any indication concerning time limits, and thus the applicant must determine the exact beginning and end of a time-limit. Parties may not consult the Registry of the ECJ, as it may not calculate time-limits for parties. Secondly, the rules outlined in Art. 49 to 51 RP ECJ are not complex, but they are not exactly easy to apply either.

2. Time-limits imposed by law

- 2 The time-limits for applications, interventions, replies in appeals proceedings, written submissions in referrals for preliminary rulings, etc., including the time-limit on account of distance⁸⁰ are defined either in the TFEU, in the **Statute ECJ**, or in the **RP ECJ**. These time-limits are *ordre public*, which means that they are not at the disposal of the parties and that the ECJ must verify compliance with them *ex officio*. It also means that those deadlines **cannot be extended**.

3. Time-limits set by the ECJ

- 3 These include the specific time limits provided for in the **RP ECJ**, such as the time-limit for lodging the **statement of defence**, which can be **extended** on request, and those deadlines which the ECJ sets by its own discretion, such as the time-limit for a reply to written questions.

II. Beginning of the time-limit (paragraph 1, lit. a)

- 4 The day upon which the event triggering the time-limit, e.g the service of a decision occurs is **excluded** from the calculation (“*dies a quo non compatur in termine*”). This ensures that each party may make full use of its time limit, which is why the time-limit begins on the first day *after* the event referred to in para. 1 lit a). Decisions addressed to Member States are notified to their respective permanent representation in Brussels. If a measure is published in the Official Journal of the EU, Art. 50 **RP ECJ** needs be taken into account.

III. End of the time limit (paragraph 1, lit. b)

- 5 While under lit. a) the date on which an event occurs or an action takes place is not counted for the calculation of the time-limit, that particular day is relevant for calculating the **end** of the time-limit, to which the ten days on account of distance need to be added.

IV. Other characteristics (lit. c to e)

- 6 Parties will not be provided with a period expressed in months and days (see lit. c), but need to be aware that any time period includes **all calendar days**, no matter whether those days are holidays, weekends, or working/weekdays (with the exceptions seen in para. 2 and commented below). The relevant time period shall not be suspended during the judicial vacations (see lit. d) and e), which aims at treating all parties equally.

⁸⁰ Art. 45(1) Statute ECJ.

V. Saturdays, Sundays and official holidays (paragraph 2)

1. General

A party would be disadvantaged if a time limit could end on a day, which is **not a** 7 **working day**, such as a Saturday, a Sunday, or a public holiday. That said, a party cannot invoke national public holidays for this exception, but only those holidays, which are listed in the “**decision on official holidays**”, i.e. the harmonised list which is published in the OJ EU.

2. End of time-limit

This “weekend and holidays” arrangement only applies if the **end** of the time- 8 limit, i.e. *including* the currently applicable 10 additional days on account of distance, coincides with a Saturday, Sunday or public holiday. It would thus be **erroneous** to verify whether the time-limit, e.g. the two-months for a direct challenge, ends on e.g. a Sunday and then add the 10-day period on account of distance. But the RP ECJ somewhat misleadingly suggests this very sequence, since Art. 49 (2) re: weekends and public holidays comes first, followed by the period on account of distance in Art. 51 RP ECJ.

3. Example

Let us presume that an event took place on 2 October. According to § 1, lit (a) 9 and (b), the time-limit of e.g. two months starts on 3 October and ends on 3 December. One needs to add the ten days on account of distance (article 51 RP ECJ) to this date, making the day upon which the time limit expires 13 December, if that date is a working day. Should 13 December be e.g. a Saturday, the time-limit ends on the following working day, i.e. Monday 15 December.

Article 50 Proceedings against a measure adopted by an institution

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

I. General

This provision reflects the difference between the **notification** of a measure and 1 its **publication** in the Official Journal of the EU.

II. Individual decisions

- 2 Certain legal acts, such as individual decisions, will be notified to the addressee, which means that the date of notification is equivalent to the date of receipt of the decision. The **burden of proof** rests with the defendant if he raises an objection of inadmissibility on the grounds of non-compliance with the time limit. Notifying a decision by **registered letter** with acknowledgment of receipt is an accepted means of proof. An individual decision is validly notified if it is notified to the addressee, e.g. in the case of a company at its registered office and if the latter is in a position to take note of it. It does not matter, however, whether the decision has been notified to the competent person within that company. Otherwise, the risk of error in delivering the decision would rest with the author of the decision.

III. Legal act published in the OJ

- 3 In this case, the time-limit for an application is deferred to the fourteenth calendar day following the publication of the legal act in the Official Journal. Thus, if a given measure is published in the OJ e.g. on 18 July, the applicant shall receive an additional 14 calendar days, so that the time-limit starts as of 1 August. For that purpose, the ECJ assumes that the relevant Official Journal is available in all official languages on the day upon which the OJ ECJ is published. If this is not the case, the ECJ will consider the date on which the legal act was adopted as the initial date from which one calculates the time limit. It is worth noting that the Official Journal is published and updated on the internet on a daily basis (and at no cost).

IV. Legal acts which are neither notified nor published

- 4 If a legal act is neither notified nor published the person who learns of that act's existence must request a full copy within a **reasonable period**, while understanding that the time-limit starts only as of the date on which the interested party gained a precise knowledge of the content and the reasoning of the act in question.

Article 51 Extension on account of distance

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

This provision implements Art. 45 (1) Statute ECJ, which provides an additional period of 10 **calendar days** on account of distance. This period, which was due to be suppressed from the Statute ECJ, but was ultimately maintained, applies regardless

of each party's regular place of residence and thus also to those parties which are established in e.g. Luxemburg or somewhere near the ECJ.

Article 52 Setting and extension of time-limits

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

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

I. Extension of time limits (paragraph 1)

1. Not extendable time-limits

Time limits laid down in **primary law**, such as those applying to referrals for 1 preliminary rulings or appeals, are considered "*ordre public*", i.e. they may be extended under no circumstance whatsoever.

2. Extendable time-limits

By contrast, some of the time-limits provided by the RP ECJ may be extended 2 upon a duly reasoned **request**. This is the case e.g. with respect to the time-limits which apply to **replies and rejoinders**.

II. Power of signature of the Registrar (paragraph 2)

The Registrar may extend certain deadlines, such as the one applying to the 3 statement of defence, provided that the requested extension does not exceed one month. It is a matter for the ECJ to decide if the requested extension exceeds one month.

CHAPTER 4 DIFFERENT PROCEDURES FOR DEALING WITH CASES

Article 53 Procedures for dealing with cases

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

2. Where it is clear that the Court has no jurisdiction to hear and determine a case or where a request or an application is manifestly inadmissible, the Court

may, after hearing the Advocate General, at any time decide to give a decision by reasoned order without taking further steps in the proceedings.

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

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

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

Outline:

I. General	1
II. Procedural steps (paragraph 1).....	2
III. Lack of jurisdiction or manifest inadmissibility (paragraph 2)	3
1. Ratio legis.....	3
2. Other provisions.....	4
3. Direct challenges et al.....	5
4. Lex specialis in case of appeal	6
5. Manifest lack of jurisdiction (paragraph 2, first alternative).....	7
a) General lack of jurisdiction of the EU Courts	7
b) Lack of jurisdiction of the ECJ	8
6. Manifest inadmissibility (paragraph 2, second alternative)	9
a) Action for annulment.....	
b) Action for failure to act	10
c) Infringement proceedings	11
d) Referrals for preliminary rulings	12
7. Manifestly lacking any foundation in law?	13
8. Should there be a new provision for applications which are manifestly well-founded?	14
a) Introduction	14
b) Certain infringement proceedings	15
aa) Economies of proceedings.....	15
bb) Counter-arguments.....	16
IV. Giving priority to a case (paragraph 3).....	17
1. Request.....	17
2. Effect	18
V. Expedited and urgent procedures (paragraphs 4 and 5).....	19
1. Art. 23 a (1) Statute ECJ.....	19
2. Art. 53 (4) and (5) RP ECJ.....	20

I. General

- 1 This is a new provision, partly based on existing provisions of the RP ECJ.

II. Procedural steps (paragraph 1)

- 2 The first paragraph echoes Art. 20 (1) Statute ECJ, but makes it clear that while proceedings normally comprise two steps, i.e. the written proceedings, followed by

the oral proceedings, there may be circumstances in which the latter phase does not take place.

III. Lack of jurisdiction or manifest inadmissibility (paragraph 2)

1. Ratio legis

The purpose of this paragraph, which is based on the old Art. 55 (2) RP ECJ, is to 3 achieve **economies of procedure** by “weeding out” those proceedings which suffer from a major flaw regarding admissibility because of **lack of jurisdiction** or **manifest inadmissibility**. In contrast to Art. 111 RP GC this provision does not extend to actions which “obviously lack any legal basis”, i.e. which are manifestly unfounded. This may be due to the fact that institutions or Member States are “privileged” applicants and that in their case manifestly unfounded applications are comparatively rare, so that no such provision is required in the case of the ECJ.

2. Other provisions

The fact that a party raises a preliminary objection or issue not going to the 4 substance within the meaning of Article 151 RP ECJ does not prevent the ECJ from making use of Article 152 (1) RP ECJ if necessary⁸¹.

3. Direct challenges et al.

According to its wording this provision only applies to “**actions**”. But in practice, 5 bearing in mind the *ratio legis*, the ECJ also applies it in referrals for preliminary ruling⁸², applications for legal aid⁸³, applications for revision⁸⁴, and so on.

4. Lex specialis in case of appeal

Regarding appeals, Article 181 RP ECJ is *lex specialis* and thus also applies to 6 **manifestly unfounded appeals**.

5. Manifest lack of jurisdiction (paragraph 2, first alternative). a) General lack of 7 jurisdiction of the EU Courts. If neither the ECJ nor any other EU court has jurisdiction over a given case⁸⁵, then the ECJ hands down an order of inadmissi-

⁸¹ Case C-295/98, *Italy v. Commission* [2000], ECR I-111, 115.

⁸² Case 167/94, *Grau Gomis and others* [1995], ECR I-1023, 1027.

⁸³ Case 233/82, *K v. Germany and Parliament* [1982], ECR 3637, 3638.

⁸⁴ Case C-185/90 P-REV, *Gill v. Commission* [1992], ECR 993, 1000.

⁸⁵ Which is quite frequently disregarded by applicants for legal aid, who go to Court without having consulted a lawyer first, and are not familiar with the various jurisdictions of the EU courts and/or the scope of the various legal remedies.

bility⁸⁶. This is the case e.g. should a natural person lodge an application challenging decisions of a Member State's executive or judicial branches⁸⁷.

b) Lack of jurisdiction of the ECJ

- 8 The ECJ may find that it has no jurisdiction for a given application and that this application is a matter for the GC. This would be e.g. the case in the event of an application lodged at the ECJ by a region of a Member State⁸⁸. In such cases, the Registry of the ECJ will normally **inform the applicant accordingly**⁸⁹, which then normally results in an order **referring** the file to the GC⁹⁰ (see also Art. 54 Statute ECJ). The ECJ furthermore may make use of this provision if it considers that a referral for preliminary ruling does not concern the interpretation of EU law⁹¹.

6. Manifest inadmissibility (paragraph 2, second alternative)

- 9 Cases of manifest inadmissibility are not uncommon at the level of the ECJ, even though they are more frequent at the GC and the CST:

a) Action for annulment

The classical reasons of inadmissibility include: non-compliance with the **time-limit** for lodging an application⁹²; absence of a **challengeable act**, e.g. in case of refusal of the Commission to initiate infringement proceedings⁹³; absence of a **decision** attributable to the defendant⁹⁴; or a lack of a decision **directly** and **individually affecting** the applicant⁹⁵. Requests for an **injunction** against an institution are equally inadmissible⁹⁶.

b) Action for failure to act

- 10 Absence of reaction of the Commission with respect to an alleged breach of EU law⁹⁷ or a claim for financial compensation based on such absence⁹⁸.

c) Infringement proceedings

- 11 In the case of infringement proceedings, manifest inadmissibility may result from a procedural defect during the pre-contentious proceedings⁹⁹.

⁸⁶ Case 276/86, *Belkacem v. Germany* [1986], ECR 3975, 3977.

⁸⁷ Case C-285/90, *Tsitouras and others v Greece*, [1991], ECR I-787 and following.

⁸⁸ Case C-180/97, *Regione Toscana v Commission* [1997], ECR I-5245 et seq.

⁸⁹ Case C-406/06, *Landtag Schleswig-Holstein v Commission* [2007], (not published in the ECR), para. 3.

⁹⁰ Case C-95/97, *Région wallonne v Commission* [1997], ECR I-1787, 1790.

⁹¹ Case C-302/06, *Koval'sky* [2007], ECR I- 00011, paras. 20–21.

⁹² Case C-295/98, *Italy v Commission* [2000], ECR I-111, 115.

⁹³ Case C-29/92, *Asia Motor France v Commission* [1992], ECR I-3935, 3942.

⁹⁴ Case C-514/99, *France v Commission* [2000], ECR I-4707, 4721.

⁹⁵ Joined Cases C-232/91 and C-233/91 *Petridi and others v Commission*, [1991], ECR I-5351, 5355.

⁹⁶ Case C-44/92, *TAO and others v Commission* [1992], ECR I-6387, 6390.

⁹⁷ Case C-371/89, *Emrich v Commission* [1990], ECR I-1555, 1558.

⁹⁸ Case C-72/90, *Asia Motor France v Commission* [1990], ECR I-2181, 2185.

⁹⁹ Case C-266/94, *Commission v Spain* [1995], ECR I-1975, 1983.

d) Referrals for preliminary rulings

In these particular proceedings it is not rare that the ECJ declares either the entire 12 referral or individual questions in the order inadmissible¹⁰⁰.

7. Manifestly lacking any foundation in law?

The current version of Art. 53 (2) RP ECJ does not apply to actions manifestly 13 lacking any foundation in law, by contrast to e.g. Art. 111 RP ECJ and also to Art. 181 RP ECJ, which applies to manifestly unfounded appeals and cross-appeals against decisions of the GC. This may have to do with the fact that a direct action of a Member State or EU institution turning out to be manifestly unfounded is very rare. Besides, inserting a provision to that effect might simply be politically unacceptable.

8. Should there be a new provision for applications which are manifestly well- 14 founded? a) **Introduction.** Since Art. 53 (2) RP ECJ is in the interest of the economy of proceedings when considering manifestly inadmissible cases and those cases in which the ECJ has no jurisdiction, it would be worth considering expanding the same idea on an application which is manifestly well-founded.

b) **Certain infringement proceedings.** aa) **Economies of proceedings.** While this 15 concept might not apply to many if not most legal remedies for which the ECJ has jurisdiction, there could be room for it in **infringement proceedings** regarding one specific constellation: The case of a Member State which fails to implement a directive within the relevant time-limit because it finds that provisions, practices or situations in its domestic legal order prevent it from observing obligations arising under European Union law¹⁰¹ or because it finds that the failure to fulfill its obligations is due to intention, negligence, or technical difficulties encountered by that Member State¹⁰². This is due to the fact that infringement proceedings within the meaning of Art. 258 TFEU presuppose an **objective finding** that a Member State has failed to fulfil its obligations under the Treaty or under secondary legislation¹⁰³. Under such circumstances, it would be appropriate for the ECJ to give its decision through a **reasoned order**.

bb) Counter-arguments

On the other hand, it is certainly easier to insert such innovation into the rules 16 governing **appeals** against decisions of the GC (see the new Art. 182 RP ECJ), than with respect to direct actions, in particular infringement proceedings. The latter may, after all, result in serious consequences for the Member State concerned, as

¹⁰⁰ Case C-157/92, *Banchero* [1993], ECR I-1085, 1090.

¹⁰¹ Consistent case-law, confirmed in countless Judgments, e.g. in Case C-82/10, *Commission v Ireland* [2011] (not yet published in the ECR), para. 58 and the case-law cited.

¹⁰² Consistent case-law, e.g. Case C-297/08, *Commission v Italy* [2010] (not yet published in the ECR), paras. 81 to 85.

¹⁰³ Case 301/81, *Commission v Belgium* [1983] ECR p. 467, para. 8, and Case C-508/03 *Commission v United Kingdom* [2006] ECR p. I-3969, para. 67.

illustrated by Art. 260 TFEU, which enable the ECJ to impose penalty payments in case the Member State concerned has not complied with a given judgment.

IV. Giving priority to a case (paragraph 3)

1. Request

- 17 Whether or not a case is “given priority over others” is decided either *ex officio* or upon request of one of the parties, provided there are “**special circumstances**”. This criterion seems to be both deliberately vague and less demanding than the more or less high degree of urgency required for the accelerated and/or expedited proceedings within the meaning of Art. 23 a Statute ECJ. Such request may be made autonomously or, depending upon the circumstances, subsidiarily, i.e. as a part of an application for an expedited procedure¹⁰⁴.

2. Effect

- 18 In practice, decisions giving a case priority over others remain quite rare. Also, the effect of such decision is that the oral hearing takes place earlier.

V. Expedited and urgent procedures (paragraphs 4 and 5)

1. Art. 23 a (1) Statute ECJ

- 19 This provision refers to an “expedited or accelerated procedure” and an “urgent procedure”. Regarding the former, it would seem that “expedited” and “accelerated” are synonyms, since there is no such dual terminology in other linguistic versions¹⁰⁵ and since the term “accelerated” appears nowhere in the RP ECJ (or the RP GC). Thus it would be worth considering suppressing the word “accelerated” from Art. 23 a Statute ECJ.

2. Art. 53 (4) and (5) RP ECJ

- 20 These paragraphs echo the existence of an “expedited procedure”, which applies to direct actions (Art. 133 to 136 RP ECJ) and referrals for preliminary rulings (Art. 105 and 106 RP ECJ) and the “urgent procedure”, which is limited to referrals for preliminary rulings in areas covered by Title V of Part Three of the TFEU (Art. 107 to 114 RP ECJ). More importantly, they provide that the rules in chapter 4 apply to these proceedings.

¹⁰⁴ See Art. 133 and 105 RP ECJ.

¹⁰⁵ German: “beschleunigtes Verfahren”; French: “procédure accélérée”; Spanish: “procedimiento acelerado”, etc.

Article 54 Joinder

- 1. Two or more cases of the same type concerning the same subject-matter may at any time be joined, on account of the connection between them, for the purposes of the written or oral part of the procedure or of the judgment which closes the proceedings.
- 2. A decision on whether cases should be joined shall be taken by the President after hearing the Judge-Rapporteur and the Advocate General, if the cases concerned have already been assigned, and, save in the case of references for a preliminary ruling, after also hearing the parties. The President may refer the decision on this matter to the Court.
- 3. Joined cases may be disjoined, in accordance with the provisions of paragraph 2.

Outline:

I. Introduction	1
II. Conditions (paragraph 1)	2
1. Cases of the same type	2
2. Connection	3
a) Bearing	3
b) Language	4
3. Stage at which cases are joined	5
III. Procedure (paragraph 2)	7
IV. Disjoining cases (paragraph 3)	8

I. Introduction

In order to promote **economy of procedure**¹⁰⁶, the ECJ may be required to join 1 or combine **two or more** pending cases. This takes place either on the initiative of the ECJ, the Judge-Rapporteur, or following a **proposal** by one or all parties. In this case the ECJ hands down an order¹⁰⁷. The costs remain reserved, meaning that they will be dealt with in the final judgment or order.

II. Conditions (paragraph 1)

1. Cases of the same type

The old Art. 43 RP ECJ merely required two or more cases “concerning the same 2 subject-matter”, while the new Art. 53 (1) clarifies that it needs to be “cases of the same type”. Thus, two or more cases may be joined provided (1) the legal remedies which triggered them belong to the same category, such as actions for annulment¹⁰⁸,

¹⁰⁶ Joined Cases 27/59 and 39/59, *Capolongo v. High Authority ECSC* [1960], ECR 797, 816.
¹⁰⁷ Such orders are not published in the ECR, but on the website of the ECJ.
¹⁰⁸ Joined Cases C-87/03 and C-100/03, *Spain v. Council* [2006]. ECR I-2915.

referrals for preliminary rulings¹⁰⁹, infringement proceedings¹¹⁰, or appeals¹¹¹, and (2) they concern the same subject-matter.

- 3 2. **Connection.** a) **Bearing.** If two or more proceedings concern the **same subject-matter** there is **presumption** that there is a **connection** between them, but not every degree of connection between cases means that they have the same subject-matter.

b) Language

- 4 Differences with respect to the **language** of the procedure are not an obstacle when considering whether or not to join cases¹¹². It is however not possible to join a current and a future case¹¹³, a case which is not yet pending at the ECJ.

3. Stage at which cases are joined

- 5 If all the substantive conditions are met, the cases concerned are normally joined for a common written and oral procedure, as well as for a common judgment¹¹⁴. Depending upon the circumstances, cases may be joined for the sole purpose of the hearing and the judgment¹¹⁵, only for the purpose of the oral hearing, or only with respect to the judgment¹¹⁶. The ECJ may assess the joining for each procedural step individually¹¹⁷.
- 6 Joining the cases, at whichever stage, does not mean that the ECJ is relieved of its duty to assess the legal pleas submitted in each of the cases¹¹⁸.

III. Procedure (paragraph 2)

- 7 This new paragraph clarifies that the decision is taken by the President, i.e. not by “the Court”, as the old Art. 43 RP ECJ indicated. The parties are only heard in the case of direct actions and appeals.

¹⁰⁹ Joined Cases C-208/06 and C-209/06, *Medion and Canon* [2007], ECR I-07963.

¹¹⁰ Joined Cases C-218/96 to C-222/96, *Commission v. Belgium* [1996], ECR I-6817.

¹¹¹ Joined Cases C-439/05 p. and C-454/05 P, *Land Oberösterreich and Republic of Austria v. Commission* [2007], ECR I-07141.

¹¹² Joined Cases C-207/03 and C-252/03, *Novartis and others*, [2005], ECR I-3209 (Languages: English and French).

¹¹³ Cases 42/69 and 49/59, *SNUPAT v. High Authority ECSC* [1961], ECR 101, 143.

¹¹⁴ Joined Cases C-362/07 and C-363/07, *Kip Europe and others* [2007], ECR I-09489.

¹¹⁵ Joined Cases C-329/93, C-62/95 and C-63/95, *Germany and others v. Commission* [1996], ECR I-5151, 5205.

¹¹⁶ Joined Cases C-68/94 and C-30/95, *France, SCPA and EMC v. Commission* [1998], ECR I-1375, 1465.

¹¹⁷ Joined Cases C-241/91 p. and C-242/91 P, *RTE and ITP v. Commission* [1995], ECR I-743, 811.

¹¹⁸ Joined Cases C-106/94 and C-139/94, *Colin and Dupré* [1995], ECR I-4759, 4781 and 4785.

IV. Disjoining cases (paragraph 3)

Cases may be disjoined in the interest of the **proper conduct of procedure** e.g. in the event of a **withdrawal** of an application¹¹⁹ or referral for preliminary ruling¹²⁰, if it turns out that there is **no need to adjudicate** in one of the cases¹²¹, if **differences** between the cases appear after they have been joined¹²² if in proceedings for a preliminary ruling a national Court or Tribunal refers an **additional question** to the ECJ in one of the joined cases¹²³, if the parties in one of the cases joined reach an amicable settlement¹²⁴,

Cases which had been joined e.g. for the purposes of the oral procedure and the judgment they may, if this is in the interest of the proper conduct of the proceedings, be disjoined for the purpose of the judgment¹²⁵.

There is **no legal remedy** against an order joining or disjoining cases.

Article 55 Stay of proceedings

1. The proceedings may be stayed:

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

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

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

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

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

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

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

¹¹⁹ Joined Cases 19/63 and 65/63, *Prakash v. Commission* [1964], ECR 721, 722.

¹²⁰ Joined Cases C-106/11 and C-110/11, *Baker A. O. v Minister van Financien* [2011] (not published in the ECR).

¹²¹ Joined Cases C-312/10 and C-313/10, *Land Nordrhein Westfalen v Klinz A. O.* [2011] (not published in the ECR).

¹²² Case 261/78, *Interquell Stärke-Chemie v. Commission* [1982], ECR 3271, 3279 and Case 262/78, *Diamalt v. Commission* [1982], ECR 3293, 3297.

¹²³ Joined Cases C-137/08 and C-243/08 *VB Pénzügyi Lízing Zrt. A. O.* [2008] (not published in the ECR).

¹²⁴ Joined Cases C-175/08 and C-179/08, *Abdulla* [2008] (not published in the ECR).

¹²⁵ Joined Cases C-322/10 and C-422/10, *Medeva A. O.* [2011] (not published in the ECR).

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

Outline:

I. General	1
II. Similarity between proceedings (paragraph 1 lit. a)	2
III. “All other cases” (paragraph 1 lit. b)	3
1. Cases	3
2. Referrals for preliminary rulings	4
IV. Procedure	5
1. Ex officio or upon request	5
2. Calendar	6
V. Resuming the proceedings (paragraph 2)	7
VI. Effects of the stay (paragraphs 3 to 7)	8

I. General

- 1 Previously, the staying of proceedings would only apply to proceedings pending at both the ECJ and the GC which had a high degree of similarity and to which the current Article 54 (3) Statute ECJ applied. Outside this category (see paragraph (1) (a), proceedings may now also be stayed “in all other cases” (see paragraph (1), (b), which is a general clause providing the ECJ with a high degree of flexibility.

II. Similarity between proceedings (paragraph 1 lit. a)

- 2 The case of proceedings which are pending at **different judicial instances**; which seek very similar relief; which raise the same issue of interpretation or validity of the same act; and which show a close link with each other are not rare. Thus, one needed an explicit provision covering such cases (see Art. 54 (3) Statute ECJ) to which Art. 55 (1) (a) RP ECJ refers. Thus, the ECJ has stayed proceedings initiated by Member States which concern competition law and which had the same object as those which private companies initiated before the GC. The same applies e.g. with respect to requests for preliminary rulings in trademark cases if an action for annulment is pending at the GC which concerns a case with the same object.

III. “All other cases” (paragraph 1 lit. b)

1. Cases

- 3 Typically, proceedings are stayed in order to await the outcome of a “test case”, e.g. a case concerning a series of infringement proceedings. Proceedings may also be stayed in order to await the adoption or implementation of a relevant piece of EU

legislation or of a national measure, such as e.g. the ruling of a Constitutional Court, in so far as such ruling may have an impact on the outcome of the case concerned. Furthermore, the parties may request a stay of proceedings if they have embarked into negotiations for an amicable settlement of the dispute.

2. Referrals for preliminary rulings

In the case of a referral for a preliminary ruling, a stay of proceedings is not 4 excluded but may only take place on the ECJ's own motion, given the non-contentious nature of these proceedings. This may be the case e.g. in order to await a ruling in a very similar case pending at the ECJ. The ECJ may also stay a referral procedure if a party has lodged an appeal against the referral order at national level an appeal has been lodged against the referral order which thus has a suspensive effect or if the national Court of Tribunal requests a stay of proceedings.

IV. Procedure

1. Ex officio or upon request

A decision on the stay or continuation of proceedings shall be made either by the 5 ECJ on its own initiative or at the request of one or possibly all parties. In both cases, the parties and the Advocate-General will be heard beforehand. The novelty it that in cases within the meaning of paragraph 1 lit. b), the **Judge-Rapporteur** is heard.

2. Calendar

Proceedings may be stayed at any point between the notification of the applica- 6 tion and the Judges' deliberations; the stay may also be extended or renewed depending upon the circumstances.

V. Resuming the proceedings (paragraph 2)

For reasons of consistency the same procedure applies to the *actus contrarius* of a 7 stay, i.e. the resuming of the proceedings.

VI. Effects of the stay (paragraphs 3 to 7)

An order staying proceedings, against which there is **no legal remedy**, is served 8 on the parties or interested persons within the meaning of Art. 23 Statute ECJ. As of the date indicated in the order or, alternatively, the date of the order, the time-limits are "frozen", meaning that they stop running, until the date indicated in the order

or until the resumption of the proceedings. The new paragraph 7 protects the parties' rights since it provides for new time limits, and for time limits to restart from the date on which proceedings resume following a stay.

Article 56 Deferment of the determination of a case

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

A case is deferred to be dealt with at a later date if the outcome of another case pending at the ECJ is relevant for the outcome of the case concerned, without both cases being joined.

CHAPTER 5 WRITTEN PART OF THE PROCEDURE

Article 57 Lodging of procedural documents

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

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

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

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

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

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

7. Without prejudice to the provisions of paragraphs 1 to 6, the date on and time at which a copy of the signed original of a procedural document, including the schedule of items and documents referred to in paragraph 4, is received at the Registry by telefax or any other technical means of communication available to the Court shall be deemed to be the date and time of lodgement for the purposes

of compliance with the procedural time-limits, provided that the signed original of the procedural document, accompanied by the annexes and copies referred to in paragraph 2, is lodged at the Registry no later than 10 days thereafter.

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

Outline:

I. Introduction	1
II. Original of procedural documents (paragraph 1).....	2
1. Signature of the party's agent or lawyer	2
a) General.....	2
b) Purpose of the obligation of signature	3
c) One signature required	4
2. Non-compliance	5
III. Certified copies (paragraph 2).....	6
1. Original	6
2. Certified copies	7
IV. Additional obligations of institutions (paragraph 3).....	8
V. Annexed documents (paragraph 4).....	10
1. Annexes.....	10
a) General.....	10
b) Relevant annexes	11
2. List of annexes	12
VI. Lengthy annexes (paragraph 5)	13
VII. Indicating the date (paragraph 6).....	14
VIII. Lodging written pleadings by telefax or Email (paragraph 7)	15
1. General.....	15
2. Making full use of the time-limits	16
a) Telefax.....	17
b) Email	18
c) Time-limit of ten days.....	19
aa) Purpose.....	19
bb) Non-compliance	20
cc) No altering of the original.....	21
dd) e-Curia	22
IX. Procedural documents sent by electronic means (paragraph 8).....	23
1. Overview.....	23
2. Added-value of e-Curia.....	24
3. Precautions.....	25

I. Introduction

This provision applies to all procedural documents and sets standards which are prerequisites for an orderly legal procedure which respects certain general principles of law, such as, more specifically, the principle of legal certainty.

II. Original of procedural documents (paragraph 1)

- 2 1. **Signature of the party's agent or lawyer.** a) **General.** By virtue of Art. 19 Statute ECJ, the parties need to be represented by an **agent** or **lawyer**. As a visible evidence of this representation, the **original**, i.e. the one and only signed version of each **procedural document** (this term replaces the less specific term used in the old Art. 37 (1) RP ECJ, i.e. "every pleading"), needs to be **signed**¹²⁶, meaning a hand-written signature, by the agent or lawyer mandated for the case.

b) Purpose of the obligation of signature

- 3 This enables the ECJ to assess whether the procedural document concerned, including pleas sought and the factual as well as the legal arguments, as the case may be, have been **verified** by an **agent or lawyer** beforehand, as the role of agents and possibly to an even larger extent the role of lawyers is to act as a "filter" between the party they represent and the Court.

c) One signature required

- 4 First, it does not matter whether or not the party concerned has drafted the written pleading as long as the original bears at least **one** signature, i.e. either of the party's **agent or lawyer**¹²⁷. This means that if several agents and/or lawyers assist a party, as the case may be, **one** signature suffices, as long as the signing person's name is mentioned in the power of attorney. Next, a written submission does not need to be signed by the legal representative of the party, e.g. in case of legal persons, nor by the party if it is a natural person. A natural person or the representative of a legal person may add his signature to that of the lawyer, if he wishes.

2. Non-compliance

- 5 A procedural document that is not signed by an agent or lawyer is **inadmissible**¹²⁸. This also applies if a party is not properly represented by an agent or a lawyer, e.g. because the lawyer is not entitled to appear at a Court or Tribunal of a Member State. If the applicant is himself admitted to a bar as fully qualified lawyer he may not represent himself, but needs to be represented by another lawyer, who needs to sign the original¹²⁹.

¹²⁶ A full signature is required; a mere initial does suffice with respect to the certified copies, but not the original.

¹²⁷ Except if a lawyer is not required; see Art. 97 (3) RP ECJ regarding the preliminary rulings.

¹²⁸ Case 73/83, *Stravridis v Parliament* [1983], ECR 3803.

¹²⁹ Case C-174/96 P, *Lopes v ECJ* [1996], ECR I-6401, 6406.

III. Certified copies (paragraph 2)

1. Original

There is, by definition, only one original of every written pleading. This means 6 that if a party sends an original by telefax or email to the Registry in order to meet the time-limit, the original must nevertheless arrive at the Registry within ten days. Under no circumstance may the party send an amended or otherwise altered version of the original which had been submitted via telefax or email, not even in order to remove spelling mistakes or layout errors. Any such modification requires a proper **corrigendum**, which either accompanies the original of the written pleadings or is handed in at a later stage.

2. Certified copies

The purpose of the obligation to hand in a number of certified photocopies of the 7 original is to provide all addressees with exactly the same written pleadings.

IV. Additional obligations of institutions (paragraph 3)

Pursuant to paragraph 3, all EU **institutions**, which are party to proceedings, 8 need to translate their written submissions into the other official languages and submit them to the Court within a given deadline. In practice, it seems that they only need to translate their written submissions into French, i.e. the working language of the Court.

This obligation does not apply to **other parties**, such as natural and legal persons. 9 Their written submissions are translated by the translation department of the ECJ, with no charge for the party concerned.

V. Annexed documents (paragraph 4)

1. **Annexes.** a) **General.** This provision concerns the “documents” which are 10 annexed¹³⁰ to the written pleading, as the case may be. The party concerned is not required to annex the original document. A **copy** suffices, as long as the party concerned is able to provide the ECJ with the original, if requested to do so.

b) Relevant annexes

Only **relevant** documents should be annexed¹³¹ and should be limited to the 11 relevant page(s), where appropriate. The **relevant parts** of these relevant pages should also be marked.

¹³⁰ See paras. 38–42 “Practice directions relating to direct actions and appeals”.

¹³¹ See paras. 38–42 “Practice directions relating to direct actions and appeals”.

2. List of annexes

- 12 In addition, the party needs to attach a “**schedule listing the annexes**”. An infringement of this rule may restrict the other party’s right to be heard and can thus entail the inadmissibility of the written submission concerned¹³².

VI. Lengthy annexes (paragraph 5)

- 13 Voluminous annexes should be avoided whenever possible. Nevertheless, if a party only provides an extract of a document, a full version of that document needs to be lodged at the Registry. Otherwise, the ECJ may request the party concerned to do so.

VII. Indicating the date (paragraph 6)

- 14 All written submissions need to bear “a date”, – which is something one would expect from every official document anyway. This is an obligation despite the fact that this provision has no bearing on the calculation of time-limits. Only the date of notification to the Registry matters when calculating time limits, since this date can be objectively verified. That said, the date indicated in the written submission may become relevant the point at which the party has e.g. learned of a given fact becomes a relevant question.

VIII. Lodging written pleadings by telefax or Email (paragraph 7)

1. General

- 15 The ECJ has – though with some delay in comparison with many Member States – taken account of the technological evolution by accepting, as of November 2000, to furnish via **telefax** and **email**, thus abandoning its previous practice of refusing such notifications¹³³.

2. Making full use of the time-limits

- 16 This provision enables the parties to take full advantage of each time limit by sending the original of the written submission concerned to the Registry on the last day of the deadline on account of distance (i.e., the official deadline plus ten calendar days) by telefax or email¹³⁴.

¹³² Joined cases 95/74, 15/75 and 100/75, *Coopératives agricoles de céréales v Commission and Council* [1975], ECR p. 1615, 1634.

¹³³ Case C-122/90, *Emsland-Stärke v Commission* (not published in the ECR), para. 11.

¹³⁴ See details of paras. 1–4 “Practice directions relating to direct actions and appeals” and the section ‘Submission of procedural documents’.

a) Telefax

If the sender uses a telefax,¹³⁵ the **confirmation sheet** will provide evidence for 17 the date of sending and for the pages sent. However, there is a risk that the telefax line might be busy and/or that the ECJ's telefax machine does not work properly, etc. Thus, any sending by telefax should be undertaken in a **timely manner**, so that the sender may make use of other means of communication if need be.

b) Email

In the case of a sending via email, which is an alternative to telefax and should 18 thus not be used as a cumulative means of transmission, the original needs to be attached to the email as a pdf version. It is advisable to request a confirmation of receipt.

c) Time-limit of ten days. aa) Purpose. The date of transmission by telefax or 19 email shall be deemed the date of lodgement for the purpose of compliance with the time-limits (i.e., the time-limit stated plus ten days on account of distance), provided the original and the certified copies are notified to the Registry within ten calendar days of that transmission by telefax or email.

bb) Non-compliance

The written pleading is inadmissible if it is faxed or emailed within the relevant 20 time-limit, but the original is then not sent within the ten days following that faxed or emailed submission¹³⁶.

cc) No altering of the original

The original furnished to the Registry within those ten calendar days following 21 the faxed or emailed submission needs to be – in **every** respect – identical to the original sent by telefax or email. Any spelling mistakes, erroneous figures, or other typing errors must be left in this hard-copy original and subsequently corrected by way of a corrigendum.

dd) e-Curia

The electronic transmission via e-Curia provides an easy alternative, which 22 avoids all the constraints linked to the sending of documents via telefax or email and the compliance with the time-limit of ten days.

¹³⁵ Using this means of transmission may be hazardous in case of confusion between sending the document face up or face down and thus care must be taken to properly orient all documents sent via telefax.

¹³⁶ Case C-32/02, *Commission v Italy* [2003], ECR I-12063, para. 15.

IX. Procedural documents sent by electronic means (paragraph 8)

1. Overview

- 23 In October 2011, the ECJ published its decision on “e-Curia”¹³⁷, which applies to all three constituent courts of the Court of Justice of the European Union (i.e., the ECJ, the GC, and the CST). The user first needs to obtain a personal user identification and a password. Such **identification** shall constitute the **signature** of the document concerned if the user in question submits this document via e-Curia.

2. Added-value of e-Curia

- 24 The advantages of this means of transmission are obvious: There is no more need to send a paper version of the original plus certified copies to the Registry. Additionally, the procedural document is deemed to be lodged at the time of the representative’s validation of that document’s submission on e-Curia.

3. Precautions

- 25 Since the actual signature on the original sent as a pdf file via e-Curia is no longer required, there might be an even higher risk of confusing the original version of the document with a draft version. Thus, it is advisable to **sign** the original document, i.e. by way of a handwritten signature, before submitting it on e-Curia, as this is a key to reduce the risk of confusing a draft with the final version/original.

Article 58 Length of procedural documents

Without prejudice to any special provisions laid down in these Rules, the Court may, by decision, set the maximum length of written pleadings or observations lodged before it. That decision shall be published in the *Official Journal of the European Union*.

I. Purpose

- 1 The number of pages of written submissions and observations has an obvious bearing on the ECJ’s workload and thus also on the average duration of the proceedings. So far the ECJ has adopted rules on the length of pleadings at the level of the “Practice Directions relating to direct actions and appeals”. Art. 58 is a **new provision** since it provides a legal basis for setting a **binding** maximum number of pages for written pleadings or observations.

¹³⁷ OJEU C 289 of 1.10.2011, p. 7.

II. Need for flexibility

Whether “maximum length” means that the ECJ will ultimately adopt an absolute upper limit of pages, thus a ceiling, remains to be seen. It might be advisable to opt for a **flexible limitation**, meaning that a defined maximum of pages applies as a **rule**, whilst leaving room for **exceptions**, depending upon the particular circumstances of the case, the degree of difficulty and/or novelty of the legal questions, etc. Such flexible approach would be in the interest of reconciling the right to be heard and the economy of the proceedings.

CHAPTER 6

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

Article 59 Preliminary report

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

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

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

I. Purpose of the preliminary report (paragraph 1)

1. Internal document

The preliminary report, drafted by the Judge-Rapporteur, is an **internal working document**, in contrast to the report for the hearing. As its name indicates, this report is addressed to the “general meeting”, i.e. all Judges, before the case is assigned to any specific formation of judges. Thus, it is neither furnished to the parties, nor in any other way made public, meaning that no party or third person has any right whatsoever to access, let alone to comment upon, this document.

2. Fixing a date

The timing for presenting the preliminary report no longer depends upon the evolution of the written proceedings, as provided by the old Art. 44 (1) RP ECJ.

This has been considerably simplified since the timing is a matter for the discretion of the President once the written procedure is closed. The average duration of proceedings at the ECJ indicates that the Judge-Rapporteur normally has several months in order to draft his preliminary report.

II. Contents (paragraph 2)

- 3 In the preliminary report the Judge-Rapporteur presents the case in question and addresses the various issues in terms of **admissibility**, if applicable, and concerning the **substance** of the case taking due account of the references for preliminary rulings. Moreover, the Judge-Rapporteur may suggest a preparatory inquiry or any other preparatory step or measure as indicated in paragraph 2. The report also contains a proposal concerning the formation to which the case should be assigned. This primarily concerns the size of the formation, i.e. whether the case should be attributed to a chamber of three or five judges, the Grand Chamber, or, exceptionally, the full Court.

III. Action to be taken (paragraph 3)

- 4 This provision makes sure that the proposals made by the Judge-Rapporteur get a feedback by the Court.

Article 60 Assignment of cases to formations of the Court

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

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

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

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

Outline:

I. Three or five Judges and Grand Chamber (paragraph 1)	1
1. Introduction.....	1
2. Chambers.....	2
3. Grand Chamber	3
II. Full court (paragraph 2).....	4
III. Renewed attribution (paragraph 3).....	5
IV. Fixing the opening date (paragraph 4)	6

I. Three or five Judges and Grand Chamber (paragraph 1)

1. Introduction

There is no way the parties to the proceedings can predict to which formation of 1
Judges a given case will be assigned, especially since there are **no specialized
chambers** at the ECJ, or a written scheme or abstract criteria determining the
choice of chamber.

2. Chambers

Three-fourths of all ECJ cases are assigned to a chamber comprised of either 2
three or five judges. Currently, there are **ten chambers** of either three or five judges.

3. Grand Chamber

Cases before the ECJ are more likely to be assigned to the Grand Chamber due to 3
the difficulty or importance of the case or the case’s particular circumstances than
are cases on appeal from the GC. This may have to do with the fact that the
Member States and Institutions involved in the proceedings at the ECJ have a **right**
to request that a given case be assigned to the Grand Chamber, which they may
employ by simple request, i.e. without having to provide reasons¹³⁸.

II. Full court (paragraph 2)

In the early years the ECJ always sat in in full Court. While at the time this was 4
feasible, as the Court only had six judges, it has now become the absolute exception,
limited to cases within the meaning of Article 16 (4) Statute ECJ¹³⁹, or in cases of
“**exceptional importance**”.

¹³⁸ See Art. 60 (1) RP ECJ.

¹³⁹ Dismissal of the European Ombudsman (Art. 228 (2) TFEU), decision on an early and compulsory retirement or deprivation of rights of a member of the Commission (Art. 245 (2) and 247 TFEU) or of a Member of the Court of auditors at the request of the Court of Auditors (Art. 286 (6) TFEU).

III. Renewed attribution (paragraph 3)

- 5 An attribution to a particular chamber is never definitive and may be changed at **any stage**, even after the Advocate General has handed down his opinion¹⁴⁰. Such change may take place either *ex officio* or upon request of one of the parties in order to be reassigned to a formation with a **greater number** of Judges¹⁴¹, e.g. the Grand Chamber¹⁴², which might also involve an Advocate-General¹⁴³.

IV. Fixing the opening date (paragraph 4)

- 6 The “oral part of the procedure” consists of more than the oral hearing, as it may also comprise measures of organization of the procedure and of inquiry.

CHAPTER 7

MEASURES OF ORGANISATION OF PROCEDURE AND MEASURES OF INQUIRY

SECTION 1 – MEASURES OF ORGANISATION OF PROCEDURE

Article 61 Measures of organisation prescribed by the Court

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

2. Where a hearing is organised, the Court shall, in so far as possible, invite the participants in that hearing to concentrate in their oral pleadings on one or more specified issues.

I. New provision (paragraph 1)

- 1 This provision is **new**, since prior to this Article there was no specific provision in the RP ECJ governing measures of organization by the Court, since the former Art. 54 a RP ECJ (now Art. 62 RP ECJ) only applied to “preparatory measures”

¹⁴⁰ Case C-227/04 P, *Lindorfer v. Council* [2007], ECR I-06767, paras. 39–40.

¹⁴¹ Case C-227/04 P, *Lindorfer v. Council* [2007], ECR I-06767, paras. 39–40.

¹⁴² Case C-110/05, *Commission v Italy* [2007] (not published in the ECR).

¹⁴³ Case C-382/08, *Neukirchinger v Bezirkshauptmannschaft Grieskirchen* [2010] (not published in the ECR), para. 4.

prescribed by the Judge-Rapporteur and the Advocate General. The term “preparatory measures”, which was a remarkably vague, has been replaced by “**measures of organization**”, thus using the same terminology than the one used in the RP GC and RP CST.

II. Instructions for the oral hearing (paragraph 2)

Inviting the participants in a hearing beforehand to concentrate on one or several 2 aspects of the proceedings is a **new measure**, which does not exist as such in the RP GC and RP CST, even though the latter adopts such measure by virtue of its power to adopt measures of organization of the procedure. It is legitimate that the ECJ seeks to “orient” the oral pleadings in the light of those aspects, which are of particular interest to the Judges and/or still need to be clarified at the stage of the oral hearing. While any addressee of such measure is thus well advised to comply with it, this does not mean, however, that the party concerned may not address any other issue during the oral hearing, since this would be an obvious breach of its rights of defence.

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

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

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

I. General

1. Overview

Art. 62 RP ECJ reproduces in essence the content of the former Art. 54 a RP ECJ, 1 by providing that the **Judge-Rapporteur** and/or the **Advocate General** (in contrast to “the Court”, mentioned in Art. 61 RP ECJ), may prescribe various measures of organization of the procedure.

2. Measures of organisation of the procedure

The former Art. 54 a RP ECJ only implicitly referred to measures of organization 2 within the meaning of Art. 24 Statute ECJ. This has been **clarified** in the new

Art. 62 RP ECJ. Measures of procedural organisation are a much more flexible instrument of fact finding than measures of enquiry (see Art. 63 et seq. below), since the latter require a formal order, whilst the former merely require a letter by the Registrar.

II. Parties and interested persons (paragraph 2)

- 3 By communicating to the parties questions to be answered at the hearing (Art. 62 (2) RP ECJ) this provision seeks to contribute to a “useful and interactive” hearing and, by the same token, to demystify such a hearing for the participants.

SECTION 2 – MEASURES OF INQUIRY

Introduction

This chapter implements Art. 24 et seq. of the Statute ECJ. The catalogue of **measures of inquiry** (see Art. 63 to 76) is in stark contrast to their marginal relevance in practice in proceedings at the EU Courts in general and the ECJ in particular.

Article 63 Decision on measures of inquiry

1. The Court shall decide in its general meeting whether a measure of inquiry is necessary.
2. Where the case has already been assigned to a formation of the Court, the decision shall be taken by that formation.

This provision, for which there was no equivalent to this provision in the old RP ECJ, illustrates that the general meeting is not the only point of time for adopting measures of inquiry, since such need may well arise at a later stage of the proceedings.

Article 64 Determination of measures of inquiry

1. The Court, after hearing the Advocate General, shall prescribe the measures of inquiry that it considers appropriate by means of an order setting out the facts to be proved.
2. Without prejudice to Articles 24 and 25 of the Statute, the following measures of inquiry may be adopted:
 - (a) the personal appearance of the parties;
 - (b) a request for information and production of documents;
 - (c) oral testimony;
 - (d) the commissioning of an expert’s report;
 - (e) an inspection of the place or thing in question.

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

Outline:

I. Introduction	1
II. Procedure (paragraph 1)	3
III. Serving the order (paragraph 2)	4
IV. Measures of inquiry (paragraph 3)	5
1. Introduction.....	5
2. The various measures.....	6
a) Lit. a	6
b) Lit. b.....	7
c) Lit. c to e.....	8

I. Introduction

Formal **measures of inquiry** have always been rare in cases before the ECJ, even 1 when the ECJ had jurisdiction regarding all legal remedies. Now that the GC has jurisdiction over all direct challenges by natural and legal persons, such measures have become extremely rare before the ECJ¹⁴⁴. The jurisdiction of the ECJ has evolved more and more towards a purely legal review, as illustrated by e.g. the referrals for preliminary rulings or the appeals proceedings, which leave little if no space for any measures of inquiry.

Art. 64 RP ECJ essentially corresponds to the old Art. 45 (1) and (2) RP ECJ. It 2 clarifies that it is not “the Court”, i.e. the Court in a general legal sense, but the **formation** of the Court which shall prescribe the measures of inquiry, if any.

II. Procedure (paragraph 1)

Measures of inquiry are adopted either *ex officio* or upon request of a party¹⁴⁵ 3 and are, in any event, a matter for a broad discretionary power of the ECJ. Such a party request is only successful if the fact concerned is relevant to the outcome of the case¹⁴⁶. An order may be handed down either before or after the oral hearing.

III. Serving the order (paragraph 2)

It is clear from this provision that measures of inquiry require the adoption of an 4 **order**, unlike measures of inquiry, which are communicated by way of a letter of the

¹⁴⁴ Case C-273/04, *Poland v. Council* [2006], ECR I-08925.
¹⁴⁵ Joined Cases 121/86 R and 122/86 R, *Epichiriseon v. Council and Commission* [1987], ECR 833, 838.
¹⁴⁶ Case 60/82, *Cowood v Commission* [1982] ECR, 4625, 4631.

Registrar. Any order is served upon the parties and interested persons within the meaning of Art. 23 Statute ECJ.

IV. Measures of inquiry (paragraph 3)

1. Introduction

5 This provision, which is identical to Art. 65 RP GC, does not exclude “preparatory measures” within the meaning of Arts. 24 and 25 of the Statute ECJ. In the case of a request for information and production of documents, it is often easier to proceed either on this basis or by way of measures of organization within the meaning of Art. 62 RP ECJ (i.e., by furnishing information and documents in response to a direct request by the Judge-Rapporteur and/or the Advocate General).

6 **2. The various measures.** a) **Lit. a.** The **personal appearance** of the parties is not the same as an oral testimony by a witness within the meaning of lit. c), since the parties cannot testify under oath, in contrast to the latter¹⁴⁷.

b) Lit. b

7 A **request for information**¹⁴⁸ and **production of documents**¹⁴⁹, which may also be put to the party concerned by way of a more informal measure of organization (Art. 62 RP ECJ), needs to reconcile the need for **fact-finding** with the protection of **business secrets** and other confidential information. Such protection needs to be requested by the party concerned and reasoned accordingly¹⁵⁰.

c) Lit. c to e

8 The hearing of witnesses, the commissioning of an expert’s report, and an inspection of the place or thing in question are extremely rare measures. They imply that the parties are heard beforehand, which may be done in writing.

Article 65 Participation in measures of inquiry

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

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

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

¹⁴⁷ Case 102/75, *Petersen v Commission* [1976], ECR 1777, 1779.

¹⁴⁸ Case C-273/04, *Poland A. O. v Council* [2006] (not published in the ECR).

¹⁴⁹ Case C-338/10, *Grünwald Logistik v Hauptzollamt Hamburg-Stade* [2011] (not published in the ECR).

¹⁵⁰ Case C-338/10, *Grünwald Logistik v Hauptzollamt Hamburg-Stade* [2011] (not published in the ECR).

I. Instance adopting measures of inquiry (paragraph 1)

A measure of inquiry is adopted either by the formation of the Court in charge of 1
the proceedings or the Judge-Rapporteur.

II. Advocate General (paragraph 2)

In case an Advocate General takes part in the proceedings, which nowadays is no 2
longer the rule¹⁵¹, he participates in the measure of inquiry.

III. Parties (paragraph 3)

The parties may, and are thus **not obliged**, to attend the measures of inquiry, in 3
contrast to the Advocate General. Apart from the personal attendance of the parties
this provision only relates to those measures of inquiry which can effectively be
“attended”, as is the case with e.g. the **hearing of witnesses**. In the case of an expert
witness opinion this is limited to the explanations provided by the expert.

Article 66 Oral testimony

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

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

3. The Court shall rule by reasoned order on the request referred to in the
preceding paragraph. If the request is granted, the order shall set out the facts to
be established and state which witnesses are to be heard in respect of each of
those facts.

4. Witnesses shall be summoned by the Court, where appropriate after lodg-
ment of the security provided for in Article 73(1) of these Rules.

I. General

The new RP ECJ have considerably reduced the complexity of the former Art. 47 1
RP ECJ. Given the ECJ’s current jurisdiction (essentially referrals for preliminary

¹⁵¹ See Annual ECJ report 2011, p.11: “About 46 % of the judgments delivered in 2011 were delivered without an opinion [of the Advocate General] (compared with 50 % in 2010)” (in accordance with Art 20 RP ECJ).

rulings, appeals, direct challenges by EU institutions and Member States) this provision has, *de facto*, become largely inapplicable.

II. Witnesses (paragraph 1)

- 2 While the wording of paragraph 1 enables the Court to order “that certain facts be proved by witnesses”¹⁵² it is clear that the burden of proof remains with the party concerned.

III. Request by a party (paragraph 2)

- 3 The requirements laid down in this provision re. the request of a party reflect the burden of proof of the party concerned, who must enable the ECJ to accurately define the contents of the order.

IV. Order of the ECJ (paragraph 3)

- 4 Paragraph 3 is the corollary of paragraph 2.

V. Providing security (paragraph 4)

- 5 This provision relates to witnesses and expert’s costs.

Article 67 Examination of witnesses

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

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

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

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

The various steps undertaken for the purpose of the examination of witnesses are the same as those existing in the Member States.

¹⁵² See the more precise French wording: “vérification de certains faits par témoins”.

Article 68 Witnesses' oath

1. After giving his evidence, the witness shall take the following oath:
'I swear that I have spoken the truth, the whole truth and nothing but the truth.'
2. The Court may, after hearing the parties, exempt a witness from taking the oath.

Again, the oath taken by witnesses is inspired by the Member States' common traditions.

Article 69 Pecuniary penalties

1. Witnesses who have been duly summoned shall obey the summons and attend for examination.
2. If, without good reason, a witness who has been duly summoned fails to appear before the Court, the Court may impose upon him a pecuniary penalty not exceeding EUR 5 000 and may order that a further summons be served on the witness at his own expense.
3. The same penalty may be imposed upon a witness who, without good reason, refuses to give evidence or to take the oath.

I. Obligations of witnesses and sanctions

It is a universal principle that every witness who has been duly summoned shall **obey and attend hearings** in which they are to be questioned. Failure to appear does not automatically result in a fine, if the witness can justify or excuse his absence. The maximum amount of the penalty (5.000 €) used to be considerably lower.

II. Innovation

The new Art. 69 RP ECJ no longer refers to a solemn affirmation equivalent to the oath, which is considered "somewhat anachronistic". It is not clear, though, why a solemn affirmation equivalent to the oath would be anachronistic, since this was meant to be an **alternative** to taking the oath and is thus, presumably, a much younger concept than the oath. The actual reason for the suppression of the solemn affirmation might be due to the fact that the ECJ only very rarely hears witnesses.

Article 70 Expert's report

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

2. After the expert has submitted his report and that report has been served on the parties, the 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.

I. Selecting an expert (paragraph 1)

1. Procedure

- 1 The ECJ designates an expert either *ex officio* or upon **request of the party** concerned, even though the latter procedure is not explicitly provided in Art. 70. The request must be **sufficiently reasoned**¹⁵³ and in practice the expert's mission must be defined (paragraph 1).

2. Discretionary power

- 2 Since the ECJ has no list of “accredited” experts, unlike Courts and Tribunals in a number of Member States, and in order to safeguard the rights of defence, the parties are given the possibility to provide the names of one or several experts relevant to the case at hand. It then depends upon the circumstances whether the parties agree on a common expert¹⁵⁴, or whether each expert designated by the parties is nominated¹⁵⁵.

3. The expert's mission

- 3 The expert's task is to analyse in writing questions which are relevant in light of the **factual** and **legal** aspects of the individual case¹⁵⁶. This was the case concerning e.g. competition¹⁵⁷ and extra-contractual liability cases¹⁵⁸ at the ECJ before the GC was given jurisdiction in all direct challenges of natural and legal persons.

¹⁵³ Joined Cases 19/63 and 65/63, *Prakash Satya v. Commission* [1965], ECR 678, 700.

¹⁵⁴ Case 49/69, *BASF v Commission* [1972], ECR 713, 727.

¹⁵⁵ Case 23/81, *Commission v. Société royale Belge* [1983], ECR 2685, 2690.

¹⁵⁶ Joined Cases 6/73 and 7/73, *Commercial Solvents Corporation v. Commission* [1974], ECR 223, 251.

¹⁵⁷ Joined Cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85, *Ahlström and others v. Commission* [1993], ECR I-1307, 1428 et seq.

¹⁵⁸ Joined Cases C-104/89 and C-37/90, *Mulder and others v. Commission and Council* [2000], ECR I-203, 313.

4. Time-limit

The timeframe within which the expert can deliver his opinion is a matter for the ECJ’s discretion and may be extended¹⁵⁹.

II. Examining the expert’s report (paragraphs 2 to 4)

While it is within the discretionary power of the ECJ to question the expert upon delivery of his opinion, the parties are given the opportunity to comment upon the expert’s opinion in writing, even though this is not explicitly found in this article¹⁶⁰. A further expert’s opinion is not excluded and may be requested if necessary¹⁶¹.

Article 71 Expert’s oath

1. After making his report, the expert shall take the following oath:
‘I swear that I have conscientiously and impartially carried out my task.’
2. The Court may, after hearing the parties, exempt the expert from taking the oath.

This provision reproduces Art. 68 RP ECJ concerning witnesses, even though the expert’s oath is bound to be different from the one taken by a witness.

Article 72 Objection to a witness or expert

1. If one of the parties objects to a witness or an expert on the ground that he is not a competent or proper person to act as a witness or expert or for any other reason, or if a witness or expert refuses to give evidence or to take the oath, the matter shall be resolved by the Court.
2. An objection to a witness or an expert shall be raised within two weeks after service of the order summoning the witness or appointing the expert; the statement of objection must set out the grounds of objection and indicate the nature of any evidence offered.

Outline:

I. Objecting by a party (paragraph 1).....	1
1. General clause.....	1
2. No reason of objection	2
3. Exclusion from the procedure.....	3
4. Refusal by a witness or expert.....	4

¹⁵⁹ Joined Cases 29/63, 31/63, 36/63, 39/63 to 47/63, 50/63 and 51/63, *Société des Laminoirs v High Authority ECSC* [1965], ECR 1124, 1153.

¹⁶⁰ Case C-169/84, *CdF Chimie AZF v Commission* [1990], ECR I-3083, 3085.

¹⁶¹ Case 318/91, *Commission v. CO. DE. MI* [1995], ECR 3693, 3710.

II. Time-limit (paragraph 2).....	5
1. Two weeks.....	5
2. Exceptions?.....	6

I. Objecting by a party (paragraph 1)

1. General clause

- 1 The right of the parties to object to witnesses and experts is not at all limited to the case of perception of **bias**, as is the case vis-à-vis a judge (see Art. 18 Statute ECJ). By creating a **general clause** (“any other reason”) it would seem that the legislature did not want to put any limits to the reasons of objections which may be raised. Reasons could range from fundamental doubts as to the credibility of a witness and the competence of the expert witness to their suitability as means of proof.

2. No reason of objection

- 2 It is clearly inadmissible to object to a witness or expert on the grounds of **nationality**, as is the case with a bias¹⁶² against judges¹⁶³.

3. Exclusion from the procedure

- 3 If the objection is successful the witness or expert concerned is excluded from the proceedings and has **no legal remedy**. Normally the persons excluded will not have incurred any travel costs at the time when they are excluded. Should the witness have incurred any travel and subsistence expenses under these particular circumstances, these expenses are normally not refundable. After excluding this witness, the ECJ will then determine a new expert. For evident reasons, replacing a non-expert witness is not as easy (and in many instances impossible) as replacing an expert.

4. Refusal by a witness or expert

- 4 If a witness or expert refuses to give evidence, to take the oath, or to make a solemn affirmation equivalent thereto, he may be fined up to 5.000 €, if the person concerned cannot provide valid excuses. If a witness or expert breaks the oath the ECJ may file for criminal proceedings.

¹⁶² Case T-47/92, *Lenz and others v Commission* [1992], ECR II-2523.

¹⁶³ See Art. 18 Statute ECJ.

II. Time-limit (paragraph 2)

1. Two weeks

The time-limit of two weeks for objecting to an expert or witness is rather **short** 5 and illustrates, that such objection is a preventive measure. The purpose of this deadline is to prevent the party concerned from any abuse.

2. Exceptions?

This raises the question as to whether no objection is possible **after** the time-limit 6 of two weeks has elapsed, e.g. if it should turn out only at a **later stage** that the witness or expert concerned is “not competent” or unsuitable “for any other reason” or biased? In such a situation a party should, at the very least, remain entitled to suggest to the Court, if need be, to “resolve the matter” within the meaning of Art. 73 (1) RP ECJ.

Article 73 Witnesses’ and experts’ costs

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

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

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

I. Security for the costs (paragraph 1)

The security for the costs of the expert’s report, which the parties may be 1 requested to pay, applies most likely to cases in which the expert was ordered by the ECJ.

II. Travel and subsistence expenses

Witnesses and experts are not parties to the proceedings and are thus entitled to 2 reimbursement of their travel and subsistence expenses, **regardless of the outcome** of the case in general and the ruling regarding the costs in particular. These expenses are part of the expenses that the party bearing the costs needs to pay to the other party and can thus be subject to taxation.

III. Loss of earnings and fees (paragraph 3)

- 3 Unlike travel and subsistence expenses, which may be proved by e.g. flight or train tickets, hotel and restaurant bills, etc., a “loss of earnings”, unless it is clear from the outset that none exists, is probably more difficult to prove. In any event, the ECJ’s cashier determines such losses and the expert’s fees, which is why there is **no taxation** in this respect.

Article 74 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.

This provision, which specifies the Registrar’s duties with respect to the minutes of inquiry hearings, provides the **parties** with an automatic **right of access** to these minutes, since they shall be served on the parties, by contrast to the previously applicable provision. By contrast, there is **no public access** to those documents, which is a matter for Regulation 1049/2001.

Article 75 Opening of the oral part of the procedure after the inquiry

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

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

This provision distinguishes between start dates and deadlines for the preparatory inquiry and for the subsequent oral procedure. In practice though, any witnesses are heard either during the oral hearing or in the context of a subsequent hearing.

CHAPTER 8 ORAL PART OF THE PROCEDURE

Introduction

1. Oral hearing no longer the rule

Normally the proceedings at the ECJ include an oral hearing, which serves as the 1 main part of the oral procedure. There are, however, a number of exceptions:

- should an oral hearing not be part of the proceedings, such as in taxation matters,
- should an application turn out to be manifestly inadmissible¹⁶⁴,
- should, in referrals for preliminary rulings, the ECJ decide without an oral hearing¹⁶⁵ (under certain circumstances),
- should, in an appeal, the ECJ do the same¹⁶⁶.

2. Purpose of the hearing

In all proceedings before the three judicial instances of the EU the centre of 2 gravity lies in the **written part**, where the relevant facts, legal pleas, and orders sought have been submitted, often through two exchanges of written submissions. Thus, on the face of it, the oral hearings seem to play an ancillary role, when compared to proceedings in many Member States' judiciaries. Whenever the ECJ begins the oral procedure it will in many instances already have a rather clear idea concerning its approach in that case. This is due to the fact that the cases falling within its jurisdiction primarily, if not exclusively, concern questions of law, unlike the cases brought before the two other judicial instances. Sometimes the ECJ may even have a draft judgment prepared in advance. The sole purpose of the oral hearing is then to fine-tune certain aspects of the draft judgment or order. Thus, only in a relatively small number of cases will the oral hearing have a *decisive* influence on the contents of the judgment as a whole.

3. Guidance for the parties

The “Practice directions relating to direct actions and appeals” and the “Notes 3 for the guidance of counsel” provide most useful explanations as to the purpose, the structure, the duration and other relevant information of an oral hearing.

4. Statistical figures

The **Annual Report** of the ECJ provides much practical information, such as the 4 average duration of the various types of proceedings, i.e. the time-span between the submission of the application/order of referral/appeal and the ECJ's decision.

¹⁶⁴ Art. 53 (2) RP ECJ and p. 23–24 “Notes for the guidance of the Counsel”.

¹⁶⁵ Art. 20 (5) Statute ECJ and Art. 99 RP ECJ.

¹⁶⁶ Art. 181 and 182 RP ECJ.

Regrettably, it does not and presumably cannot cover all aspects which may interest parties and their lawyers, such as the average period of time between the end of the written proceedings and the oral hearing, if applicable.

Article 76 Hearing

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

2. On a proposal from the Judge-Rapporteur and after hearing the Advocate General, the Court may decide not to hold a hearing if it considers, on reading the written pleadings or observations lodged during the written part of the procedure, that it has sufficient information to give a ruling.

3. The preceding paragraph shall not apply where a request for a hearing, stating reasons, has been submitted by an interested person referred to in Article 23 of the Statute who did not participate in the written part of the procedure.

I. Rule (paragraph 1)

- 1 Pursuant to Art. 20 (1) Statute ECJ a procedure at the ECJ includes a written and oral part, which is confirmed by Art. 77 RP ECJ, except in those cases in which the ECJ may dispense with the oral part of the procedure, unless one of the parties submits a request setting out the reasons why it wishes to be heard.

II. Reasoned request (paragraph 2)

- 2 If none of the parties makes use of its right to be heard by way of a thoroughly **reasoned request**¹⁶⁷ (the previously used word “application”, which was not entirely accurate, has been dropped), which needs to be lodged in a timely manner, i.e. within **three weeks** from notification to the party of the close of the written procedure¹⁶⁸, then the ECJ **may** decide the case without an oral hearing¹⁶⁹. The same applies if a request for a hearing is not reasoned. On the other hand, the ECJ may organise a hearing even though none of the parties applied for it.

III. No hearing (paragraph 3)

- 3 In practice, the ECJ will proceed without an oral hearing if it considers itself to be sufficiently informed about the case, e.g. if sufficiently numerous written observa-

¹⁶⁷ See para. 48 “Practice directions relating to direct actions and appeals”.

¹⁶⁸ Instead of four weeks in the past, OJ L 203, 4 August 2005, p. 20.

¹⁶⁹ Case C-172/97, *SIVU* [2001], ECR I-6699, 6724, para. 24.

tions have been submitted¹⁷⁰. Thus, in practice the parties do not need to reach a consensus on proceeding without an oral hearing, in contrast to the rule previously applicable.

Article 77 Joint hearing

If the similarities between two or more cases of the same type so permit, the Court may decide to organise a joint hearing of those cases.

This provision is new, since it allows for the organization of joint hearings of cases which have similar contents. This provision does not, however, allow a joint hearing if the proceedings concerned involve different legal remedies, such as a referral for preliminary ruling and an infringement action.

Article 78 Conduct of oral proceedings

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

Outline:

I. Introduction	1
II. Preliminary meeting	2
III. Opening of the oral hearing	5
IV. Pleadings of the parties	6
1. No explicit provision in the RP ECJ.....	6
2. Sequence	7
a) Direct challenges and appeals	7
b) Referrals for preliminary rulings	8
3. Contents of the pleadings	9
4. Linguistic aspects	11
5. Duration of pleadings.....	12

I. Introduction

Art. 78 to 82 RP ECJ are rather **minimalistic** since they define only some of the 1 steps or phases of an oral hearing. Many relevant details, such as the purpose and conduct of the hearing are described in the “**Notes for Guidance for Counsel**”¹⁷¹, which thus provides useful indications as to the practical aspects of oral hearings. It is thus appropriate to provide an **overview** of the various phases of a hearing below.

¹⁷⁰ See Advocate General opinion in Case C-440/05, *Commission v. Council* [2007], ECR I-09097, para. 26.

¹⁷¹ See p, 25–27 “Notes for guidance of Counsel”.

II. Preliminary meeting

- 2 Prior to, i. e. minutes before the opening of the oral hearing proper, the agents and/or lawyers of all parties (except the parties or, in the case of legal persons, their legal representatives) are convened to a brief preliminary meeting in the Judge's chambers. This informal gathering, which takes only a few minutes, provides the **President**, in the presence of all Judges of the formation, and the Advocate General, if any, with the opportunity to verify who will be pleading for which party as well as the predefined or agreed duration of the respective pleadings.
- 3 The **Judge-Rapporteur** may also indicate, albeit in a very general manner, whether he will pose questions and/or require a given party to address or concentrate on a specific procedural and/or substantive aspect of the case at issue.
- 4 During this preliminary meeting, the **agents and/or lawyers** are given the opportunity to comment on the report of the hearing, if necessary and in so far as this has not yet been done in writing. They may also address any other aspect they deem relevant for the course of the oral proceedings, e.g. in terms of organization.

III. Opening of the oral hearing

- 5 After the short preliminary meeting (see II.) above) the Registrar or a member of his staff will announce the case, following which the President will declare the oral hearing open.

IV. Pleadings of the parties

1. No explicit provision in the RP ECJ

- 6 The parties then proceed with their pleadings, which Art. 78 et seq. RP ECJ imply, but do not specify explicitly. While it may be clear that an oral hearing comprises, by definition, pleadings of the parties, it would have been nevertheless appropriate to mention this explicitly in the RP ECJ, given the fundamental importance of the rights of defence. Just as it would be in the **interest of clarity** to specify in the RP ECJ that the pleadings take place prior to the questions the members of the formation might put to the agents, advisers or lawyers (see Art. 80 RP ECJ). All of this is explained, but only at the level of the "**Notes for the Guidance of Council**", and, besides, not exhaustively:
- 7 **2. Sequence. a) Direct challenges and appeals.** In the case of direct challenges and appeals the representative(s) of the applicant, who use the lectern located on the right-hand side of the courtroom, plead first, followed by any interveners. Subsequently, the agent(s)/advisers/external lawyers for the defendant and any of their interveners, plead using the lectern on the left-hand side of the courtroom.

b) Referrals for preliminary rulings

In the case of a referral for a preliminary ruling, the applicant in the national 8 proceedings pleads first, followed by the defendant and, if necessary, the Member States and Institutions. The Commission, which has the practice of taking part in all referral proceedings, pleads last.

3. Contents of the pleadings

Every party representative should carefully define the contents of the pleadings 9 beforehand in light of both the arguments already put forward in the written submissions, which the Judges have already read, as well as the purpose of the oral hearing¹⁷² and any written or oral indication which the Judges may have given beforehand.

As a general line every pleading should comprise an “**added value**” in addition to 10 what is already provided in the written proceedings. Thus, mere repetitions and/or paraphrasing of written submissions should be avoided under all circumstances or limited to the minimum. Instead, it is advisable to concentrate on the aspects of the case one deems to be important and/or problematic. This implies taking into account relevant judgments which may have been handed down since the end of the written proceedings, and/or relevant pending legislative proposals, if any. It is also advisable to anticipate potential questions of the Judges and, as the case may be, to address them proactively in the context of the pleadings.

4. Linguistic aspects

The constraints of simultaneous translation¹⁷³ into the Court’s working language, 11 i.e. French, should be kept in mind at all times. Thus, the pleadings should be clearly structured and consist of short and well-articulated sentences. Free speech, adapted to the rhythm of simultaneous translation, is preferable to the mere reading of a prepared text. The same applies, of course, to all answers to judges’ questions.

5. Duration of pleadings

Each party should strictly **comply** with its speaking time limit, which is normally 12 between fifteen and thirty minutes, depending upon the case. This is a matter of equality of arms between the parties and the ECJ is therefore quite strict in upholding these time limits. Parties who do not comply with their speaking time risk being interrupted. After their respective pleadings the parties are not entitled to furnish a copy of their pleadings to the Bench, as is the case in some Member States. This is furthermore unnecessary, since the entire oral hearing is tape recorded.

¹⁷² See p. 23 “Notes for the guidance of Counsel”.

¹⁷³ See p. 24 “Notes for the guidance of Counsel”.

Article 79 Cases heard *in camera*

1. For serious reasons related, in particular, to the security of the Member States or to the protection of minors, the Court may decide to hear a case *in camera*.
2. The oral proceedings in cases heard *in camera* shall not be published.

I. General

- 1 If a case is heard *in camera* only the parties and lawyers have access, whilst the public is excluded.

II. *In camera* (paragraph 1)

1. Reasons

- 2 Given the principles laid down in Art. 6 ECHR, the cases heard *in camera* are bound to remain the **exception**. Thus, only in **exceptional** circumstances – which have now been specified in paragraph 1, whilst the old Art. 56 (2) RP ECJ remained silent on this issue – will the public be excluded from the oral hearing. The “**security of Member States**” is a slightly vague concept, by contrast to the “**protection of minors**”. In any event, the general clause of “**serious reasons**” sets a high threshold.

2. Cases

- 3 In the past the ECJ applied this exception to certain staff cases before they came under the jurisdiction of the CFI and, since 2005, the CST¹⁷⁴. Today, it is applied in certain **urgent preliminary ruling procedures**¹⁷⁵.

III. No publication (paragraph 2)

- 4 This provision seems to state the obvious, and yet its purpose is probably to prevent any public access to such information, as this would clearly circumvent the idea of an *in camera* hearing.

Article 80 Questions

The members of the formation of the Court and the Advocate General may in the course of the hearing put questions to the agents, advisers or lawyers of the parties and, in the circumstances referred to in Article 47(2) of these Rules, to the parties to the main proceedings or to their representatives.

¹⁷⁴ See, for the CST, Art. 1 Annex 1 of Statute ECJ.

¹⁷⁵ Art. 107 RP ECJ.

Outline:

I. Overview.....	1
1. Timing	1
2. Not the rule	2
3. Who puts questions?.....	3
II. Contents.....	4
III. Technique of putting questions	5
1. One question at a time	5
2. Clarity of questions	6
3. Reactions of Judges.....	7
IV. Addressee of the questions.....	8
V. Oral rejoinder and reply.....	9
1. No explicit provision in the RP ECJ.....	9
2. Purpose	10
3. Questions	11

I. Overview

1. Timing

The question time starts **after** the initial round of pleadings. On very rare 1 occasions, the Judges may interrupt parties during their pleadings in order to elaborate on a given point or to put a question to them¹⁷⁶.

2. Not the rule

In cases before the ECJ, oral questions asked during the oral hearing are by far 2 not the rule; sometimes, e.g. when hearing referrals for preliminary rulings, the ECJ poses no questions at all. On the whole, the Judges of the ECJ tend to ask fewer questions than those of the GC or the CST. This is largely due to its jurisdiction, which concerns questions of law, not of fact.

3. Who puts questions?

The wording of the former Art. 57 RP ECJ was misleading since it suggested that 3 questions are first put by the President, followed by the other Judges, Art. 81 RP ECJ more accurately refers to “**members of the formation**”, it being understood that in practice, the **first** member of the Bench putting questions to the parties is always the *Judge Rapporteur* (who might at the same time be the President of the Chamber). Often, he will ask the majority of the questions. The other members of the formation tend to ask fewer questions or none at all, as the case may be, but there is no predefined or otherwise fixed scheme. After all Judges have asked their questions, the Advocate-General, if any, may pose his questions.

¹⁷⁶ See p. 23–24 “Notes for the guidance of Counsel”.

II. Contents

- 4 In the case of the ECJ it is within the nature of its jurisdiction that questions almost always concern primarily procedural or substantive **legal issues**, unlike in proceedings at the GC or the CST, which involve an assessment of the facts. Also, the Judges at the ECJ do not necessarily pose very many questions, unlike in proceedings at the GC or the CST; in some cases there are no questions at all. Normally, the questions focus strictly on law as it pertains to the pending case, i.e. the Judges avoid asking hypothetical questions.

III. Technique of putting questions

1. One question at a time

- 5 Normally, the Judge will pose his questions to the party concerned one by one. A minor number of Judges tend to confront the party with a more or less long series of questions and sometimes even sub-questions, to be answered in succession. The added value of this technique is questionable though, since the agent or lawyer may not be able to make a note or memorize every aspect, and thus may require the Judge to repeat his question(s).

2. Clarity of questions

- 6 Most Judges will phrase their questions so that the addressee is able to understand them and thus can provide the Bench with a helpful and (ideally) an exhaustive answer.

3. Reactions of Judges

- 7 Though this is quite rare, a Judge may sometimes (depending upon personality, legal background and mood of the moment) adopt a less constructive approach, e.g. by phrasing his questions in an unnecessarily complex way, or even showing signs of impatience or irritation, possibly, even though very rarely, by way of sarcastic or ironic comments. In such a case, the addressee should stick to common sense, e.g. by reminding himself that the oral hearing is (1) not an interrogation-like event and (2) that even Judges and Advocate-Generals, no matter how eminent they are, may get things wrong at times.

IV. Addressee of the questions

- 8 So far, **only** agents, advisers or lawyers could answer questions. This has now been extended to experts and witnesses, if any, and, more importantly, the **parties**

themselves. It goes without saying that questions are neither addressed to the public, if any, nor may they be answered from the public, as has happened on some admittedly rare occasions.

V. Oral rejoinder and reply

1. No explicit provision in the RP ECJ

At the **end of the question time**, and even though there is no explicit provision 9 on this in the RP ECJ, the parties are given the possibility to react to each other's initial pleadings by way of an oral **rejoinder** and **reply**, which implies that they may abstain from doing so if they so desire.

2. Purpose

The purpose of these final steps of the oral proceedings is not launch a full- 10 fledged pleading, but to **react briefly**¹⁷⁷ to particular argument(s) put forward by the other party and/or to further elaborate on a reply given to a Judge's question, as the case may be. The person pleading should avoid being carried away or too long, as the President will otherwise intervene, by way of a reminder.

3. Questions

A rejoinder and reply may lead the Judges to pose further questions to the 11 parties, but this remains rather exceptional.

Article 81 Close of the hearing

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

From the perspective of the parties the end of the oral procedure coincides – de facto – with the end of the oral hearing. Formally, however, the oral procedure is closed only once the Advocate-General has delivered his Opinion (see Art. 83 (2) RP ECJ). In the – rather rare – event of a reopening of the oral procedure, the Advocate-General will deliver a new opinion¹⁷⁸.

Article 82 Delivery of the Opinion of the Advocate General

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

¹⁷⁷ Normally, a maximum of four or five minutes should do.

¹⁷⁸ Joined Cases C-267/91 and 268/91, *Keck and Mithouart* [1993], ECR I-6097, 6102.

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

Outline:

I. General	1
II. Delivery of the opinion (paragraph 1)	2
1. Point in time	2
2. Time-span	3
3. Delivering the opinion.....	4
4. No right to comments	5
III. Closure of the oral part of the proceedings (paragraph 2)	6

I. General

- 1 This provision and the preceding Art. 82 RP ECJ highlights the difference between the end of the oral hearing and the end of the oral part.

II. Delivery of the opinion (paragraph 1)

1. Point in time

- 2 The Advocate General, if any¹⁷⁹, shall no longer deliver his Opinion “at the end of the oral procedure”, as provided by the old Art. 59 (1) RP ECJ, but after the close of the oral hearing, which is not the same as the end of the oral part of the procedure.

2. Time-span

- 3 In many instances, the Advocate-General will, at the end of the oral hearing, indicate the **exact date** on which he will hand down his Opinion. This is generally between 3 to 4 months after the oral hearing, but in complex cases this may take much longer.

3. Delivering the opinion

- 4 On the date mentioned, usually just before the oral hearing in another case begins, the Advocate General will read his Opinion, meaning the **operative part** thereof. He does not have to read out his opinion before the chamber which heard the case, since this chamber will be informed of the Opinion as soon as it is transmitted to the Registrar of the ECJ¹⁸⁰. Opinions are normally published on the

¹⁷⁹ See Art. 20 (5) Statute ECJ.

¹⁸⁰ Case C-50/96, *Deutsch Telekom* [2000], ECR I-743, 784, para. 21.

ECJ’s web page on the day they are handed down, but are not necessarily translated into *all* official languages.

4. No right to comments

Neither the parties to the proceedings, let alone third parties, are entitled to 5 comment on the Opinion, whether in writing or orally¹⁸¹, and whether after the oral hearing or in the context of a further oral hearing, since the Advocate-General is not a judicial instance within the meaning of Art. 6 paragraph 1 ECHR¹⁸². This inability to comment needs to be distinguished from a request for a reopening of the oral proceedings¹⁸³, which is based on alleged contradictions in the reasoning¹⁸⁴ or the Opinion proper¹⁸⁵.

III. Closure of the oral part of the proceedings (paragraph 2)

In those cases which are determined without an Advocate General’s opinion (see 6 Art. 20 (5) Statute ECJ), the end of the oral part of the procedure coincides with the end of the oral hearing. In all other cases, the oral part of the procedure is closed after the delivery of the Opinion.

Article 83 Opening or reopening of the oral part of the procedure

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

Outline:

I. Ex officio or on request.....	1
II. Opening the oral part of the procedure	2
III. Reopening the oral part of the procedure.....	3
1. Improved provision	3
2. ECJ not sufficiently informed	4
a) Abstract	4
b) Examples.....	5
3. New facts	6
4. Particular relevance of the case	7

¹⁸¹ Consistent Case law. C-265/97 P, *VBA v Emesa Sugar* [2000], ECR I-2061, 211; C-266/97, *VBA v VGB and others and Commission* [2000], ECR I-2135, 2177.

¹⁸² Case C-17/98, *Emesa Sugar* [2000], ECR I-665, 672.

¹⁸³ See Art. 83 RP ECJ.

¹⁸⁴ Case C-331/05 P, *Internationaler Hilfsfonds v. Commission* [2007], ECR I-05475, para. 16–18.

¹⁸⁵ Case C-306/05, *SGAE* [2006], ECR I-11519, para. 25.

5. Referral of the case to a different chamber	8
6. Prevention of a judge	9
7. No reopening	10
IV. Preparation of the new oral procedure	11

I. Ex officio or on request

- 1 The ECJ may reopen the oral procedure either *ex officio*, on proposal of the Advocate-General, or upon request of a party. In practice such requests are rarely successful¹⁸⁶, because the ECJ will normally consider itself to be sufficiently informed¹⁸⁷ already, in particular if such a request concerns a referral for a preliminary ruling.

II. Opening the oral part of the procedure

- 2 This alternative applies to those cases in which the ECJ initially decided not to open the oral part of the procedure, because it held that there was no justification for doing so and subsequently changed its mind.

III. Reopening the oral part of the procedure

1. Improved provision

- 3 Unlike the previous Art. 61 RP ECJ the new Art. 82 RP ECJ provides more detail about the situations likely to result in the **reopening** of the oral part of the procedure.
- 4 **2. ECJ not sufficiently informed.** a) **Abstract.** The oral part of the procedure is reopened whenever the ECJ considers that despite the written and oral procedure it is still not sufficiently informed on a given point. This may be because this point has not been discussed between the parties¹⁸⁸ while the Judges consider it to be important or decisive for the outcome of the case¹⁸⁹, or because it pertains to the right to a fair trial as outlined in Art. 6 ECHR¹⁹⁰. In practice, a reopening of the oral part of the procedure is quite rare and difficult to obtain.

¹⁸⁶ Example of a successful request: Case 135/80, *Michel v Parliament* [1981], ECR 2861, 2871.

¹⁸⁷ Case 138/78, *Ludwig* [1978], ECR 1645, 1655.

¹⁸⁸ Case C-304/02, *Commission v France* [2005], ECR I-6263, para. 4.

¹⁸⁹ Joined Cases C-270/97 and C-271/97, *Deutsche Post* [2000], ECR I-929, para. 30, C-299/99, *Philips* [2002], ECR I-5475, para. 20.

¹⁹⁰ Case C-50/96, *Deutsche Telecom* [2000], ECR I-743, para. 22.

b) Examples

This is e.g. the case, if the procedure has been suspended in order to await the outcome of another pending case, which may have an impact on the legal matter concerned and which should thus be commented upon by the parties¹⁹¹. This can furthermore be the case if the contents of the Opinion of the Advocate-General is contradictory¹⁹², or if said Opinion is based on facts which are not proven¹⁹³ or which have not been put forward¹⁹⁴, or if said Opinion includes an incorrect legal interpretation.

3. New facts

It is not entirely clear whether “submitting a new fact” which is of such a nature as to be a decisive factor for the decision of the Court means that this fact did not exist at the time when the oral part of the procedure was closed or whether the situation is basically the same as the one required for a revision within the meaning of Art. 161 RP ECJ, meaning that the fact must have existed at the time, but was unknown to the Court and the party concerned.

4. Particular relevance of the case

Even if a given case has already been heard by a larger formation of judges, e.g. the Grand Chamber, and even if an Opinion has already been delivered, the Member States may still request a reopening of the oral procedure, if they consider this to be justified by the particular relevance of the case¹⁹⁵.

5. Referral of the case to a different chamber

The same applies if after the oral hearing and even after the Opinion has been delivered¹⁹⁶, the case is referred to a larger formation of Judges¹⁹⁷, or the full Court¹⁹⁸.

6. Prevention of a judge

In certain cases, the oral hearing needs to be reopened *ex officio*, e.g. if the mandate of a Judge sitting in the formation which heard the case ends between the oral hearing and the deliberations preceding the judgment, or if a Judge passes away¹⁹⁹.

¹⁹¹ Case 26/74, *Roquette v Commission* [1976], ECR 677, 681.

¹⁹² In this sense, C-331/05 P, *Internationaler Hilfsfonds v Commission* [2007], ECR I-05475, para. 16–18.

¹⁹³ See in this sense, C-466/03, *Reiss* [2007], ECR I- 05357, para. 28–31.

¹⁹⁴ See in this sense, Case C-64/06, *Telefónica 02* [2007], ECR I-04887, paras. 12–16.

¹⁹⁵ Case C-475/03, *Banca popolare di Cremona* [2005], ECR I-9373, paras. 4–5.

¹⁹⁶ Case C-227/04 P, *Lindorfer v. Council* [2007], ECR I-06767, paras. 39–40.

¹⁹⁷ Case C-227/04 P, *Lindorfer v. Council* [2007], ECR I-06767, paras. 39–40.

¹⁹⁸ Joined Cases C-267/91 and 268/91, *Keck and Mithouart* [1993], ECR I-6097, 6102.

¹⁹⁹ Case 263/91, *List v Commission* [1993], ECR 103, 111.

7. No reopening

- 10 The ECJ will reject a request for reopening of the oral procedure if the aspect the applicant raises has already been extensively discussed during the written phase of the procedure or the oral hearing²⁰⁰. The same is true concerning all national aspects of a reference for a preliminary ruling which come under the jurisdiction of the national judge²⁰¹, such as the finding of facts²⁰². The ECJ will not hear the case again if the parties renounce a further hearing²⁰³, e.g. by referring to their previous written observations.

IV. Preparation of the new oral procedure

- 11 The new oral hearing may be preceded by a catalogue of written questions, which the parties must answer either in writing, within a given time limit²⁰⁴, or must address in the context of their pleadings²⁰⁵.

Article 84 Minutes of hearings

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

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

I. Minutes (paragraph 1)

- 1 The “minutes” do not summarize let alone reflect verbatim the oral hearing, which is recorded on tape (see Art. 86 RP ECJ), and are thus a rather “arid” documents.

II. Access to the minutes (paragraph 2)

- 2 This provision is new in that it now specifies that it is not only the parties, but also **interested persons** within the meaning of Art. 23 Statute ECJ which may inspect the minutes at the Registry.

²⁰⁰ Case C-140/02, *Anastasiou and others* [2003], ECR I-10635, para. 38.

²⁰¹ Case C-57/01, *Makedoniko Metro and Michaniki* [2003], ECR I-1091, 1125, paras. 36 et seq.

²⁰² Case C-46/08, *Carmen Media Group v Land Schleswig-Holstein* [2010] (not published in the ECR).

²⁰³ Case C-246/95, *Coen* [1997], ECR I-403, 417.

²⁰⁴ Joined Cases C-267/91 and 268/91, *Keck and Mithouart* [1993], ECR I-6097, 6102.

²⁰⁵ Case C-227/04 P, *Lindorfer v. Council* [2007], ECR I-06767, para. 41.

Article 85 Recording of the hearing

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

The previous RP ECJ did not contain any rules on the access to the soundtrack of the hearing, which was a **lack of transparency** as there was never any absolute reason why the parties should not be entitled to listen to the recordings of the oral hearing they attended. At the same time a party which participated in the proceedings had after all a chance to hear the pleadings, with or without the help of the interpreters, which is why Art. 85 requires a “**duly substantiated**” request. This implies that such authorisation is only granted in specific cases and in certain areas of law.

CHAPTER 9 JUDGMENTS AND ORDERS

Article 86 Date of delivery of a judgment

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

I. Point in time of the information

1. General

At the end of the oral hearing or the closure of the oral part of the proceedings the ECJ **never** indicates a date for the delivery of its judgment, unlike the Advocate General, if involved, who will do so, even though not systematically. The ECJ simply cannot anticipate an approximate, let alone an exact date, for a number of reasons having to do with the number of cases pending, the constraints resulting from the translation of judgments or orders, etc.

2. Four to six weeks in advance

Thus, the ECJ will inform the parties or interested persons within the meaning of Art. 23 of the Statute approximately 4 to 6 weeks prior to the date of delivery.

II. Delivery of the judgment

In the age of the internet the delivery of the judgment in open Court has lost much of its practical importance, since the respective decision is usually published

on the web page of the Court of Justice the same day²⁰⁶. Besides, in practice only the respective operative part is read out; a printed version of the judgment is laid out before the respective Court-room. The original of the judgment carries the note mentioned in Art. 6 of the “Instructions to the Registrar of the Court of Justice”²⁰⁷. The parties receive only certified copies, which are notified by post.

Article 87 Content of a judgment

A judgment shall contain:

- (a) a statement that it is the judgment of the Court,
- (b) an indication as to the formation of the Court,
- (c) the date of delivery,
- (d) the names of the President and of the Judges who took part in the deliberations, with an indication as to the name of the Judge- Rapporteur,
- (e) the name of the Advocate General,
- (f) the name of the Registrar,
- (g) a description of the parties or of the interested persons referred to in Article 23 of the Statute who participated in the proceedings,
- (h) the names of their representatives,
- (i) in the case of direct actions and appeals, a statement of the forms of order sought by the parties,
- (j) where applicable, the date of the hearing,
- (k) a statement that the Advocate General has been heard and, where applicable, the date of his Opinion,
- (l) a summary of the facts,
- (m) the grounds for the decision,
- (n) the operative part of the judgment, including, where appropriate, the decision as to costs.

I. General

- 1 This list of “essential” components applies to interlocutory²⁰⁸ and final judgments. Art. 87 adds two additional “*essentialia*” to the already long list, i.e. “an indication as to the formation of the Court” and “where applicable, the date of the hearing”. From the point of view of the parties the most important elements, of course, are the operative part of the judgement, followed by the grounds for the decision and, lastly, the summary of the facts.

²⁰⁶ Normally in the late morning.

²⁰⁷ At the foot of the text “Delivered in open court in ... on ... (date)/(Signature- Registrar) (Signature- President)”.

²⁰⁸ Quoted in Case C-152/88, *Sofrimport v Commission* [1992], ECR I-153, para. 1.

II. Facts, grounds and operative part

1. Summary of the facts

In practice, summaries are limited to the essential minimum. These summaries seem particularly arid ever since the ECJ gave up its practice of publishing the reports for the hearing in 1994.

2. Grounds for the decision

This particular expression of the obligation to state reasons also applies to a legal act of the legislature²⁰⁹. Until 1979 the ECJ worded the grounds in accordance with French tradition, i.e. through “attendus” (consideration reasons), which it then – thankfully – gave up, by opting for a more understandable and better structured style.

On the whole, the way the grounds for the Judgments are worded may appear, in many instances, to be fairly repetitive and sometimes even mantra like. This is, to some extent at least, due to the constraints of translating the judgments into the official languages.

The question of whether the judgments are exhaustively reasoned or, as some critics say, sometimes too laconic, is another matter, which surfaces either as a question of principle²¹⁰, or whenever a given judgment²¹¹ generates questions of judicial activism at the ECJ: i.e., the ECJ substitutes itself to the legislature and/or whether it should apply more judicial restraint in a given matter.

III. Correcting obvious errors and/or the operative part on cost and interpretation of judgments

Under the conditions laid down in Art. 154 the ECJ may correct manifest typing or calculation errors. It may supplement the operative part of the judgment within the limits of Art. 155 and interpret its judgments, upon application, in accordance with Art. 158 RP ECJ.

Article 88 Delivery and service of the judgment

1. The judgment shall be delivered in open court.
2. The original of the judgment, signed by the President, by the Judges who took part in the deliberations and by the Registrar, shall be sealed and deposited at the Registry; certified copies of the judgment shall be served on the parties and,

²⁰⁹ See Art. 296 TFEU.

²¹⁰ See *Everling*, EuR 1994, p. 127 et seq.

²¹¹ See *B. Wägenbaur*, EuZW 1997, p. 205.

where applicable, the referring court or tribunal, the interested persons referred to in Article 23 of the Statute and the General Court.

I. Delivery of the judgment (paragraph 1)

- 1 In the age of the **internet** the delivery of the judgment in open Court has lost much of its practical importance, since the respective decision is usually published on the web page of the Court of Justice the same day. Besides, in practice only the respective operative part is read out; a printed version of the judgment is laid out before the Court room.

II. Original of the judgment (paragraph 2)

- 2 The original of the judgment carries the note mentioned in Art.6 of the “Instructions to the Registrar of the Court of Justice”. The parties receive only certified copies, which are notified by post.

Article 89 Content of an order

1. An order shall contain:

- (a) a statement that it is the order of the Court,
- (b) an indication as to the formation of the Court,
- (c) the date of its adoption,
- (d) 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,
- (g) the name of the Registrar,
- (h) a description of the parties or of the parties to the main proceedings,
- (i) the names of their representatives,
- (j) a statement that the Advocate General has been heard,
- (k) the operative part of the order, including, where appropriate, the decision as to costs.

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

- (a) in the case of direct actions and appeals, a statement of the forms of order sought by the parties,
- (b) a summary of the facts,
- (c) the grounds for the decision.

This new provision closes a **gap**, as it defines the required contents regarding **orders**, thereby mirroring Art. 87 RP ECJ which applies to judgments. It is not likely to have a major impact on the ECJ’s daily practice, since it structures its

orders, e.g. in the area of interim proceedings, as if they were judgments. Amongst the various “*essentialias*”, the ECJ needs to indicate “the legal basis of the order”, which is a specific requirement.

Article 90 Signature and service of the order

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

For reasons of consistency this provision is an echo of Art. 89 (2) RP ECJ, which applies to judgments.

Article 91 Binding nature of judgments and orders

1. A judgment shall be binding from the date of its delivery.
2. An order shall be binding from the date of its service.

Since there is no appeal or any other cassatory legal remedy against judgments and orders of the ECJ, its decisions become definitive as of the date they are delivered.

Article 92 Publication in the Official Journal of the European Union

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

This provision specifies the previous Art. 68 RP ECJ. Even though this notice is published well after the judgment or order becomes available on the ECJ’s website it still is a practical source of information, which does not require a specific means of information since the Official Journal of the EU is published anyway.

TITLE III REFERENCES FOR A PRELIMINARY RULING

CHAPTER 1 GENERAL PROVISIONS

Introduction

Outline:

I. Specific “legal remedy”	1
1. Nature.....	1
a) Non-contentious proceedings	1
aa) Cooperation	1
bb) No room for ancillary legal remedies.....	2
(1) During the referral proceedings.....	2
(2) After the referral proceedings.....	3
b) Purpose	4
aa) Interpretation and validity	4
bb) Not covered.....	5
c) Separation of functions	6
2. The mission of lawyers	7
a) Referral as a last resort	7
b) Architects of a referral.....	8
c) National legislation may not be an obstacle to referrals.....	10
aa) Interim relief	10
bb) Mandatory reference to constitutional court	11
cc) Other	12
3. Weaknesses of the referrals proceedings.....	13
II. Relevant provisions	15
1. Primary and secondary law.....	15
2. Soft law	16
III. Average duration of proceedings	17
1. Classical referral for preliminary ruling.....	17
2. Accelerated procedure	18
3. Urgent procedure.....	19

I. Specific “legal remedy”

- 1 1. Nature. a) Non-contentious proceedings. aa) Cooperation. The referral for preliminary ruling²¹² defined in Art. 267 TFEU, Art. 23 and 23 a Statute ECJ and implemented in Art. 93 to 114 RP ECJ is an indirect way to access the ECJ²¹³, in contrast to classical legal remedies such as the various “direct actions”, whether for annulment, for failure to act, or for actions for damages. Art. 267 TFEU establishes

²¹² See B. Arnulf, ELR 1990, p. 375 et seq. and Barnard/Sharpston, CMLR 1997, p. 1113.

²¹³ Relationship between the types of procedures: Pache, EuZW 1994, p. 615.

“direct cooperation” between the ECJ and the national courts²¹⁴, which thus renders these proceedings **non-contentious**.

bb) No room for ancillary legal remedies. (1) During the referral proceedings. 2

The ECJ may thus neither entertain an application for **interim relief**²¹⁵ nor allow an **intervention** in the context of a referral for a preliminary ruling²¹⁶. Such a request is inadmissible²¹⁷ regardless of the status of the party concerned²¹⁸. The mere fact that a natural or legal person expresses an interest in answers which the ECJ will give in the referral proceedings does not give said person the status of a party within the meaning of Art. 23 Statute ECJ²¹⁹. By contrast, a natural or legal person who has been validly admitted as an intervener in the **national proceedings** is also a party to the referral proceedings²²⁰. In those proceedings that party has the **same** rights as the main parties in the national proceedings.

(2) **After the referral proceedings.** Given the special nature of referral proceedings, 3 an application for **interpretation of the judgment** within the meaning of Art. 158 RP ECJ, whether by a party to the proceedings or a third party, is **inadmissible**²²¹, as now explicitly granted in the new Art. 104 RP ECJ. This does not contradict Art. 47 Charter of Fundamental Rights of the EU²²², which grants a right to an effective legal remedy and to a fair trial. That said, nothing prevents a **national judge** from referring a **new request** for a preliminary ruling, concerning the interpretation of the judgment²²³.

b) Purpose. aa) Interpretation and validity. This particular procedure enables any 4 national Court or Tribunal within the meaning of Art. 267 TFEU to request the ECJ to **interpret** EU law, or to verify the **validity** of secondary legislation²²⁴ (not primary law) without being bound by any time limit applicable in EU law.

bb) Not covered

This special procedure may not, however, be used to point out a Member State’s 5 infringement of EU law or an alleged omission by the Commission²²⁵. Also, this

²¹⁴ Case C-402/98, *ATB A. O.* [2000] ECR p. I-5501, para. 29.

²¹⁵ Case C-186/01 R, *Dory* [2001] ECR p. I-7823, para. 1 of the summary.

²¹⁶ Joined Cases C-92/09 and C-93/09, *Volker and Markus Schecke GbR* [2010] (not published in the ECR), para. 6 and the case-law cited.

²¹⁷ Consistent case law: Case 6/64, *Costa v ENEL* [1964], ECR 1307 and Case C-181/95, *Biogen* [1996], ECR I-717, para. 3.

²¹⁸ Case C-73/07, *Satakunnan Markkinapörssi and Satamedia* [2008], ECR I-09831, was rejected by an application of the European Patent Data Protection.

²¹⁹ Joined Cases C-403/08 and C-429/08, *Football Association Premier League Ltd. A. O.* [2009] (not published in the ECR), para. 10.

²²⁰ Case C-368/06, *Cedilac* [2007], ECR I-, para. 7 with further references.

²²¹ Case C-345/09 INT, *Fokkens* [2011] (not published in the ECR), para. 3 and the case-law cited.

²²² Case C-309/07 INT, *Baumann* [2011] (not published in the ECR), para. 6.

²²³ Case C-262/88 INT, *Guitard* [2010] (not published in the ECR), para. 3 and the case-law cited.

²²⁴ Meaning any reason of invalidity, see Joined Cases 21 to 24–72, *International Fruit Company A. O. v Produktschap voor Groenten en Fruit* [1972] ECR p. 1291.

²²⁵ Case 6–64, *Costa v E.N.E.L.* [1964] ECR p. 1141.

procedure may **not** be used to seek an interpretation of **international law**²²⁶; of an **international convention** if the EU is not party to that convention²²⁷; of **national laws**²²⁸ or **regulations**²²⁹; or of the **compatibility of national law with EU law**²³⁰.

c) Separation of functions

- 6 Many if not all the procedural and substantive aspects of a referral for preliminary ruling are determined by the “**clear separation of functions**” between the national courts or tribunals and the ECJ²³¹. This separation cannot be altered, nor can the exercise of those powers be impeded, e.g. by agreements between private persons which might compel the Courts of a Member State to request a preliminary ruling²³².
- 7 **2. The mission of lawyers. a) Referral as a last resort.** The mere fact that a national judicial procedure involves aspects of EU law, regardless of their extent or complexity, does not, of course, mean that one must seek a referral for a preliminary ruling. In many instances, the national magistrates are perfectly able to identify an aspect of EU law, to apply EU law and, as the case may be, to adequately interpret relevant questions by employing classical methods of interpretation and by taking considering the existing case law. In such cases, a referral is unnecessary. Moreover, in a number of instances, especially if time is of the essence, one or the other party may not wish to have the national proceedings **suspended** for a referral, which takes well over a year on average and involves further costs, etc. In other instances, though, lobbying the national judge in order to have questions referred to the ECJ might be a means to an end, e.g. in order to gain time in the national proceedings. This also means that there is a fine line between a legitimate use of this special procedure and actions that would amount to a misuse.

b) Architects of a referral

- 8 The national Court or Tribunal must determine whether giving judgment in a given national procedure, no matter its nature²³³, requires a referral for a preliminary ruling and, if so, which questions need to be put to the ECJ. Thus parties to the action pending before the national Court or Tribunal are **not entitled** to make a **direct request** to the ECJ for a preliminary ruling²³⁴. Nor may they address **any injunction** to the national Judge to refer a given question to the ECJ²³⁵. National Judges’ exclusive right, which may be exercised on the national Judge’s own

²²⁶ Case 130–73, *Vandeweghe A.O v Berufsgenossenschaft für die chemische Industrie* [1973] ECR p. 1329.

²²⁷ Case C-379/92, *Peralta* [1994] ECR p. I-3453, paras. 15–17.

²²⁸ Case 5–77, *Tedeschi v Denavit* [1977] ECR p. 1555.

²²⁹ Joined Cases 209 to 213/84, *Ministère public v Asjes* [1986] ECR p. 1425, paras. 12–13.

²³⁰ Case 38–77, *Enka BV v Inspecteur der invoerrechten en accijnzen* [1977] ECR po. 2203.

²³¹ Case 28–68, *Caisse régionale de sécurité sociale du Nord v Torrekens* [1969] ECR p. 125 ; Case 155–73, *Sacchi* [1974] ECR p. 409.

²³² Case 93/78, *Mattheus v Doego* [1978] ECR p. 2203.

²³³ Case 82–71, *S.A.I.L.* [1972] ECR p. 119.

²³⁴ Joined Cases 31/62 and 33/62, *Wöhrmann v Commission* [1962] ECR p. 965.

²³⁵ Case 283/81, *CILFIT v Ministero della Sanità* [1982] ECR p. 3415, para. 9.

motion²³⁶, should normally leave enough room for the parties and lawyers involved to actively and constructively participate in this decision-finding process. Indeed, the national Court is free to request the parties to the dispute to suggest suitable wording for the question to be referred²³⁷.

Thus, if a given question of EU law cannot be resolved in the national proceedings and if a reasonable doubt subsists as to the appropriate answer, the parties must convince the national Judge of the need to enter into a dialogue with the ECJ if necessary. This implies that the lawyers involved need to have a clear picture regarding the various conditions of admissibility of a referral for preliminary ruling, while considering the level of experience the national Judge might or might not have²³⁸. Last but not least, the lawyers involved should provide the national Court or Tribunal with their input regarding the contents of the question(s) and the reasoning, whenever required and appropriate.

c) National legislation may not be an obstacle to referrals. aa) Interim relief. 10

During the stay of the national proceedings, there might be a need for interim relief during national proceedings, bearing in mind that effectiveness of the system established by Art. 267 TFEU would be impaired if a national court, having stayed proceedings while waiting for the ECJ's reply to a question concerning a preliminary ruling, were not able to grant interim relief until it delivered its judgment following the ECJ's reply²³⁹.

bb) Mandatory reference to constitutional court

A national court that, in a case concerning EU law, declares a provision of 11 national law unconstitutional does not lose the right or escape the obligation under Art. 267 TFEU to refer questions to the ECJ due to the fact that such a declaration is subject to a mandatory reference to the constitutional court²⁴⁰.

cc) Other

The fact that a national court referred a question for a preliminary ruling on its 12 own motion in order to determine the validity of a Commission decision instead of a legal entity referring such a question after already having had the opportunity to bring proceedings for annulment of that decision but failing to do so within the relevant time-limit, does not render said question inadmissible²⁴¹. The national Judge's power to refer questions relating to the interpretation or the validity of provisions of EU law to the ECJ cannot be removed by a national law requiring a national Judge to be bound on points of law by the rulings of superior Courts²⁴².

²³⁶ Case 126/80, *Salonia v Poidomani e Giglio* [1981] ECR p. 1563, para. 7.

²³⁷ Case C-104/10, *Kelly*, [2011] (not yet published in the ECR), para. 66.

²³⁸ See the survey by O'Keeffe, ELR 1998, p. 509.

²³⁹ Case C-213/89, *The Queen v Secretary of State for Transport, ex parte Factortame* [1990] ECR p. I-2433, paras. 19–22.

²⁴⁰ Case C-348/89, *Mecanarte-Metalurgica da Lagoa/Alfandega do Porto* [1991] ECR p. I-3277, para. 3 of summary.

²⁴¹ Case C-222/04, *Cassa di Risparmio di Firenze A. O.* [2006] ECR p. I-289, para. 1 of summary.

²⁴² Case 166–73, *Rheinmühlen Düsseldorf v Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1974] ECR p. 33.

3. Weaknesses of the referrals proceedings

- 13 The parties, i.e., the parties to the national proceedings, not any third parties²⁴³, need respect the very substantial differences found within the EU and sometimes even within the same Member State concerning Courts' and Tribunals' willingness and manner of making use of this special procedure and thus to enter into a dialogue with the ECJ. The statistical figures regarding all 27 Member States as published in the ECJ's annual report are a useful indicator. That said, it would be too simplistic to conclude that those Member States with comparatively modest figures of referrals, such as Spain and France, are less open or receptive to EU issues than states with relatively higher numbers of referrals. On the contrary, those figures might to some extent indicate that Tribunals and Courts in those Member States do not require the ECJ's help as much as other Member States who have much higher the figures.
- 14 One must recognize that this special procedure does **not** and **cannot** provide the same opportunities to natural and legal persons in the EU as it does to Member States. It seems thus somewhat far from the reality of EU life to argue, as the ECJ does in its consistent case law, that there is no reason to deviate from its restrictive interpretation of Art. 263 TFEU²⁴⁴ since natural and legal persons have the possibility of having preliminary questions referred to the ECJ. In theory, and leaving aside the question of whether there is a need or justification to interpret Art. 263 TFEU extensively, this is true, but due to wide variations between different Member State jurisdictions there simply is no equality of opportunities in this respect across the 27 Member States.

II. Relevant provisions

1. Primary and secondary law

- 15 As mentioned above, the referral for preliminary rulings, which over the years evolved in a manner unlike any other legal remedy²⁴⁵, is governed by Art. 267 TFEU, Art. 23 and 23 a Statute ECJ and Art. 93 to 114 RP ECJ²⁴⁶, which have produced abundant case-law. The few and partly very arid provisions of Art. 103 to 104 b RP ECJ have thus been replaced by over 20 articles, a quantity which, as such, illustrates the importance of this particular cooperation procedure.

2. Soft law

- 16 The “**Information note on references by national Courts for preliminary rulings**” provides useful guidance for both national Courts and Tribunals as well as lawyers, even though its current version still refers to the old Art. 103 to 104 b RP ECJ.

²⁴³ Case 19–68, *De Cicco v Landesversicherungsanstalt Schwaben* [1968] ECR p. 689; Case 62–72, *Bollmann v Hauptzollamt Hamburg Waltershof* [1973] ECR p. 269.

²⁴⁴ Art. 263 (4) TFEU. There is no major difference in the Lisbon treaty except for the new para. 5 which restricts certain actions.

²⁴⁵ In 2011, there were 423 referrals for preliminary ruling, up from 265 in 2007.

²⁴⁶ See also p.15 “Notes for the guidance of Counsel”.

III. Average duration of proceedings

1. Classical referral for preliminary ruling

In 2011, a classical preliminary ruling took an average **16.4 months** between the 17 date of the order of referral and the delivery of the judgment, down from an average of **23,4 months** in 2004²⁴⁷.

2. Expedited procedure

The still rather new and demanding “expedited procedure” in Art. 105 to 106 RP 18 ECJ, which implements Art. 23 a Statute ECJ, took an average of **5.25 months** in 2009.

3. Urgent procedure

On average, the urgent procedure relating to questions in the areas covered by Title 19 V of Part Three of the TFEU (Art. 107 et seq. RP ECJ) takes approximately **2.3 months**.

Article 93 Scope

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

- (a) in the cases covered by Article 23 of the Statute,
- (b) as regards references for interpretation which may be provided for by agreements to which the European Union or the Member States are parties.

Outline:

I. General	1
II. Cases covered by Art. 23 Statute ECJ (paragraph 1)	3
1. Clear and detailed procedural rules at last	3
2. Main proceedings	6
a) Pending case	6
b) Category of legal remedy and stage of proceedings	7
aa) Main proceedings.....	7
bb) Interim proceedings	8
cc) Date of referral.....	9
3. Necessity and relevance	10
a) Introduction	10
b) Exceptions	11
aa) Inadmissible referrals	12
(1) No relation with object of the proceedings.	12
(2) Hypothetical questions.....	13
(3) Insufficient indications.....	14
(4) Other.....	15
bb) Admissible referrals	16
III. References for interpretation regarding agreements (paragraph 2)	17

²⁴⁷ See Press Release of the ECJ 14/07, 7th March 2008.

I. General

- 1 The particular nature and procedural peculiarities²⁴⁸ of this **consultation procedure** is still not entirely part of all national Courts', Tribunals', and lawyers' common knowledge and sometimes far away of their daily life²⁴⁹. This may be due to the fact that there is no analogous provision in Member States and as a result errors occur, especially regarding the national body's capacity to refer preliminary questions to the ECJ; the latter's jurisdiction²⁵⁰; and the particular requirements regarding the contents of the order of referral²⁵¹.
- 2 Such errors may result in some of the questions or the entire referral being found inadmissible, regardless of whether or not the appropriate question(s) are referred, which is a matter of substance.

II. Cases covered by Art. 23 Statute ECJ (paragraph 1)

1. Clear and detailed procedural rules at last

- 3 Given the specificities of the referral for preliminary ruling summarised in I. above, detailed provisions implementing the relevant provision in the TFEU²⁵² and the Statute ECJ are essential, also bearing in mind the particular importance of this procedure²⁵³. The vague contents of the **old Art. 103 RP ECJ**²⁵⁴ was unhelpful at best for the practitioner. For many years, understanding the exact nature of the "adaptations" implied extensive reading of the case law. The on-going abundance of case law regarding the conditions of admissibility in general and the information to be provided in the order of referral in particular had become a recurrent warning-sign for the need to create more explicit provisions, e.g. regarding the contents of orders for referral (see Art. 94 RP ECJ). This has now – finally – been implemented by way of the new RP ECJ, with its extensive chapter on referrals for preliminary rulings.
- 4 The **"Information note on references by national Courts for preliminary rulings"**, which have been updated several times, most recently in 2011²⁵⁵, and the **"Notes for the Guidance of Counsel"** provide precious guidance for practitioners, even though they will have to be updated to the new provision in the RP ECJ. It is

²⁴⁸ In depth *B. Wägenbaur*, EuZW 2000, p. 37 et seq.

²⁴⁹ Occasionally of higher courts, see Case C-116/00, *Laguillaumie* [2000], ECR I- 04979 and Joined Cases C-28/98 and C-29/98, *Charreire* [1999], ECR I-01963.

²⁵⁰ Case C-328/04, *Vajnai* [2005], ECR I- 08577.

²⁵¹ Case C-234/05, *BVBA De Backer* [2005], not published.

²⁵² Which is what the ECJ stressed already some 50 years ago, see Case 13–16, *De Geus en Uitendboger v Bosch* [1962] ECR p. 89.

²⁵³ Bearing in mind that it is on the basis of the information provided in the order for referral that the Member States and institutions make their observations on the case, as rightly stressed in Joined Cases 141 to 143/81, *Holdijk* [1982] ECR p. 1299, paras. 6–7.

²⁵⁴ "the procedure shall be governed by the provisions of these Rules, subject to adaptations necessitated by the nature of the reference for a preliminary ruling".

²⁵⁵ www.curia.europa.eu.

understood that these derived provisions will have to be amended, in order to account of the provisions in the new RP ECJ.

That said, understanding the clear **division of labour** between the national Court 5 or Tribunal and the ECJ²⁵⁶ is and remains the key to the proper understanding of this particular legal remedy:

2. Main proceedings. a) **Pending case.** A national Court or Tribunal is only entitled 6 to seek a preliminary ruling where an interpretation of EU law is necessary to give judgment in cases upon which said Court or Tribunal is called to adjudicate²⁵⁷. Thus, the ECJ may not answer a reference for a preliminary ruling that comes at a time when the proceedings before the national Court or Tribunal have already been completed²⁵⁸.

b) **Category of legal remedy and stage of proceedings.** aa) **Main proceedings.** The 7 case pending at a national Court or Tribunal may consist of the **main proceedings**. A referral may be made at **any stage** of these proceedings²⁵⁹. That said, in the interests of the proper administration of justice, a question should be referred for a preliminary ruling only after both sides have been heard²⁶⁰, without this being a prerequisite for the admissibility of the referral²⁶¹. However, in the context of a procedure where there has been no *inter partes* hearing, it is equally necessary that the national court give the Court a detailed and complete account of the factual and legal context²⁶².

bb) Interim proceedings

The pending case may also consist of interim proceedings²⁶³.

8

cc) Date of referral

Only the national Judge may determine the point in time²⁶⁴ or the exact phase of 9 the main proceedings²⁶⁵ pending at the national Court which is appropriate for referring a matter to the ECJ, as long as the main proceedings are **pending**, i.e. have not yet ended²⁶⁶. The mere fact that the questions referred have already been referred in an **analogous referral procedure** does not make the referral inadmissible²⁶⁷.

²⁵⁶ Case 35–76, *Simmenthal Spa v Ministero delle finanze* [1976] ECR p. 1871.

²⁵⁷ Case C-225/02, *García Blanco* [2005], ECR I-523, 551.

²⁵⁸ Case 338/85, *Pardini* [1988], ECR 2041, para. 11.

²⁵⁹ Case 199/82, *Amministrazione delle finanze dello Stato v San Giorgio* [1983] ECR p. 3595, paras. 8–9.

²⁶⁰ Case 70/77, *Simmenthal SA v Amministrazione delle finanze dello Stato* [1978] ECR p. 1453.

²⁶¹ Case C-10/92, *Balocchi v Ministero delle finanze dello Stato* [1993] ECR p. I-5105, paras. 13–14.

²⁶² Case C-266/96, *Corsica Ferries France v Gruppo Antichi Ormeggiatori del porto di Genova* A. O. [1998] ECR p. I-3949, paras. 23–24.

²⁶³ Case 107–76, *Hoffmann-La Roche* [1977] ECR p. 957; Case C-159/90, *Society for the protection of unborn Children Ireland* [1991], ECR I-4685, para. 12.

²⁶⁴ Case C-348/89, *Mecanarte* [1991], ECR I-3277, para. 48.

²⁶⁵ Case 72/83, *Campus Oil* [1984], ECR 2727, para. 10.

²⁶⁶ Case C-159/90, *Society for the protection of unborn Children Ireland* [1991], ECR I-4685, para. 12.

²⁶⁷ Joined Cases C-332/92, C-333/92 and C-335/92, *Eurico Italia and others v Ente Nazionale Risi* [1994], ECR I-711, para. 15.

- 10 **3. Necessity and relevance. a) Introduction.** Only the **national Court or Tribunal** before which the dispute has been brought, and which must bear the responsibility for the subsequent judicial decision, and thus not for the parties²⁶⁸ may determine in light of the special features of each case the **need** for a preliminary ruling in order to enable said Court or Tribunal to deliver judgment; the **relevance** of the questions which they submit to the Court;²⁶⁹ and the **contents** of these questions²⁷⁰. Thus both the ECJ and the parties are **bound** by the wording of the preliminary questions,²⁷¹ which means that they cannot alter said question's contents at a later stage²⁷².

b) Exceptions

- 11 It follows that there is a **presumption of relevance**²⁷³ attached to questions referred by the national courts for a preliminary ruling²⁷⁴, which may only be rebutted in **exceptional and obvious cases**:
- 12 **aa) Inadmissible referrals. (1) No relation with object of the proceedings.** A request for a preliminary ruling is inadmissible where it is quite obvious that the question of validity of secondary EU law²⁷⁵ or the interpretation of EU law²⁷⁶ sought bears **no relation** to the actual facts of the main action or to said action's purpose. The same is true if it appears that the referral has been **diverted** from its true purpose and that the referrers sought in fact to use a contrived dispute in order to induce the ECJ to give a ruling or that the provision of EU law referred to the Court for interpretation was manifestly incapable of applying²⁷⁷.
- 13 **(2) Hypothetical questions.** The same is true where the problem is of a **general**²⁷⁸ or **hypothetical**²⁷⁹ nature, e.g. because it is only relevant for a case pending at a different Court or Tribunal²⁸⁰; because it predates the Member State joining the EU²⁸¹; because it concerns a national legislation which has no link to EU law²⁸²; because it relates to a purely internal situation²⁸³ or to a situation which is not yet in

²⁶⁸ Case 283/81, *CILFIT v Ministero della Sanità* [1982], ECR 3415, para. 9.

²⁶⁹ Case C-368/89, *Crispoltoni* [1991], ECR I-3715, para. 10 with further references.

²⁷⁰ Case 44-65, *Hessische Knappschaft v Singer et Fils* [1965] ECR p. 1191.

²⁷¹ Case C-466/00, *Kaba* [2003], ECR I-2219, paras. 40-41.

²⁷² Case C-402/98, *ATB and others* [2000], ECR I-5501, para. 29.

²⁷³ Case 26-62, *Van Gend en Loos v Administratie der Belastingen* [1963] ECR p. 3.

²⁷⁴ Explicitly Case C-355/97, *Beck and Bergedorf* [1999], ECR I-4977, para. 22.

²⁷⁵ Case C-138/09, *Todaro Nunziatina & C.* [2010] ECR I-0000-para. 16.

²⁷⁶ Case C-291/96, *Grado and Bashir* [1997], ECR I-5531, para. 14.

²⁷⁷ Joined Cases C-297/88 and T-197/89, *Dzodzi v Etat belge* [1990] ECR p. I-3763, paras. 39-42.

²⁷⁸ Case C-466/04, *Acereda Herrera* [2006], ECR I-05341, paras. 47-49.

²⁷⁹ Case C-17/03, *VEMV and others* [2005], ECR I-4983, para. 34 with further references.

²⁸⁰ Case C-428/93, *Monin Automobiles* [1994], ECR I-1707, para. 16.

²⁸¹ Case C-302/04, *Ynos* [2006], ECR I-371, paras. 36-38.

²⁸² Case C-299/95, *Kremzow v Austria* [1997], ECR I-2629, paras. 16-19; Case C-309/96, *Annibaldi v Sindaco del Comune di Guidonia and Presidente Regione Lazio* [1997], ECR I-7493, para. 13-14 and Case C-328/04, *Vajnai* [2005], ECR I- 08577, paras. 12-13.

²⁸³ See exception in Case C-384/08, *Attanasio Group* [2010] ECR I-0000 paras. 22-24 and Case C-352/08, *Modehuis A. Zwijnenburg* [2010] ECR I-0000, para. 33.

force²⁸⁴ or applicable in the main proceedings²⁸⁵; or if the defendant has already satisfied the applicant's *petitum*²⁸⁶.

(3) **Insufficient indications.** A referral is also inadmissible where the Court does not possess the factual or legal material necessary to give a useful answer to the questions submitted to it²⁸⁷.

(4) **Other.** For reasons of substance, it is furthermore inadmissible to refer a question to the ECJ concerning an area in which the Commission has exclusive jurisdiction, e.g. regarding the compatibility of public aids with the TFEU²⁸⁸.

bb) Admissible referrals

The mere fact that the main proceedings have been initiated or even provoked in order to generate a referral for preliminary ruling is not a reason for inadmissibility, as long as said dispute is **genuine**²⁸⁹. That said, a referral for preliminary ruling is not inadmissible simply because all the facts of the specific case before the national court are confined to a single Member State²⁹⁰, nor if those facts are based on allegedly inaccurate factual findings²⁹¹. The national Court or Tribunal may if it deems it appropriate refer questions of interpretation to the ECJ **again**²⁹², even if they have already formed the subject of a preliminary ruling in a similar case²⁹³. This is a fortiori the case if that national Court's initial referral was rejected as inadmissible. The ECJ may not consider whether the main application lodged at the national Court or Tribunal is admissible and is thus not a prerequisite for a referral²⁹⁴.

III. References for interpretation regarding agreements (paragraph 2)

This provision relates to agreements between the EU and **third States** containing a clause allowing a Court or Tribunal of that third State to refer question on the interpretation of the agreement concerned to the ECJ. In practice, however, this provision is of little significance.

²⁸⁴ Case C-165/03, *Längst* [2006], ECR I-5637, paras. 30–34; regarding an uncertain fact: Case C-415/93, *Union royale belge des sociétés de football association and others v Bosman and others* [1995], ECR I-4921, paras. 59–61 and 64–65.

²⁸⁵ Case C-134/95, *USSL no. 47 di Biella v INAIL* [1997], ECR I-195, para. 12–16.

²⁸⁶ Case C-225/02, *García Blanco* [2005], ECR I-523, paras. 27–28 and 30–31.

²⁸⁷ Consistent case-law, e.g. Case C-160/09, *Nikolaos Tsitsikas* [2010] ECR I-0000, para. 27.

²⁸⁸ Case C-256/97, *DM Transport* [1999], ECR I-3913, paras. 14–16 and Case C-297/01, *Sicilcassa and others* [2003], ECR I-7849, para. 47.

²⁸⁹ Misunderstood the extent: Case C-105/94, *Celestini v Saar-Sektkellerei Faber* [1997], ECR I-2971, paras. 21–23.

²⁹⁰ Case C-71/02, *Karner* [2004], ECR I-3025, paras. 19, 21 and Case C-451/03, *Servizi Ausiliari Dottori Commercialisti* [2006], ECR I-2941, paras. 28–30.

²⁹¹ Case C-364/92, *SAT Fluggesellschaft v Eurocontrol* [1994], ECR I-43, para. 13.

²⁹² See also Art. 104 RP ECJ.

²⁹³ Joined Cases 28 to 30–62, *Da Costa en Schaake NV A.O. v Administratie der Belastingen* [1963] ECR p. 61.

²⁹⁴ Case 19–68, *De Cicco v Landesversicherungsanstalt Schwaben* [1968] ECR p. 689.

Article 94 Content of the request for a preliminary ruling

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

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

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

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

Outline:

I. Contents of the order	1
1. Introduction	1
2. Indicating the relevant facts	2
a) A matter for the national Judge	2
b) Relevant point in time	5
c) Inadmissible referrals	6
d) Explaining the reasons for the referral	8
aa) Principle	8
bb) Quantitative aspects	9
cc) Insufficient explanations	10
e) Question(s) referred	11
aa) Interpretation of EU law	12
bb) Assessing the validity of secondary EU law	13
cc) Interpreting the questions	15
(1) No rewriting of questions	15
(2) Room for interpretation	16
(a) Improperly formulated questions	16
(b) Broad interpretation	17
(c) Detecting the real purpose of a question	18
(3) Economy of proceedings	19
II. Overview on the written and oral proceedings	20
III. Withdrawal of a referral for preliminary ruling	21

I. Contents of the order

1. Introduction

- 1 The procedure of the order or referral is very much determined by the **separation of functions** between the national Courts and Tribunals and the ECJ. The national Judge must determine whether the order of referral follows the national rules of procedure²⁹⁵, just as said magistrate alone **may** determine the facts which are relevant in the context of the national proceedings. Consequently, the **factual and**

²⁹⁵ Case 65/81, *Reina v Landeskreditanstalt Baden-Württemberg* [1982] ECR p. 33, para. 8.

legal information contained in a decision to refer preliminary questions to the ECJ²⁹⁶, regardless of whether it is an order, an interlocutory judgment or any other form of judicial decision²⁹⁷, must enable the ECJ to provide the national Court of Tribunal with useful replies. At the same time, this information should enable the governments of the **Member States** and **other participants** in the proceedings to make useful written and oral observations. Consequently, the contents of the order of referral should be **self-explanatory**, especially since the Member States and the institutions are **only** notified the order of referral, i.e. not the files of the main proceedings, unlike the ECJ²⁹⁸.

2. Indicating the relevant facts. a) **A matter for the national Judge.** Since the national Court or Tribunal is the only instance with direct knowledge of the relevant facts²⁹⁹ it needs to indicate the **factual and legal framework** in which the preliminary questions are raised or at the very least to explain the factual assumptions upon which the preliminary questions are founded³⁰⁰. Otherwise, the ECJ may neither effectively ascertain that the factual basis of the questions referred actually relates to the provision of EU law in question, nor is the ECJ more generally able to provide the national judge with a useful and reliable answer concerning the questions referred³⁰¹. These requirements are particularly important in certain areas, such as competition, which are characterized by complex factual and legal situations³⁰².

In other words, the national Court or Tribunal may not expect the ECJ to distil the relevant facts out of the national files transferred nor out of the written or oral statements of the parties involved, since such investigation is not the ECJ's responsibility, bearing in mind the division of labour in referral proceedings³⁰³.

In practice, though, the ECJ is not excessively formalistic and will in any event try to detect the national case's relevant elements, even if the order only contains a succinct³⁰⁴ or very brief description³⁰⁵. In some instances, the ECJ is already familiar with the legal and factual elements of a case due either to an earlier order referred by the same national Court or Tribunal which concerned the same party³⁰⁶, or because several cases have been joined³⁰⁷. Nevertheless, the referring national Court

²⁹⁶ This is not regulated by EC law; see Case 13/61, *De Geus en Uitdenbogerd v Bosch and others* [1962], ECR 89.

²⁹⁷ There is no need for the ECJ to consider whether the decision of the national Court has acquired the force of res judicata under national law, see e.g. Case 13-61, *De Geus en Uitdenbogerd v Bosch A. O.* [1962] ECR p. 89.

²⁹⁸ Case C-307/95, *Max Mara* [1995], ECR I-5083, 5088.

²⁹⁹ Joined Case C-399/92, C-409/92, C-425/92, C-34/93, C-50/93 and C-78/93, *Hemig and others* [1994], ECR I-5727, para. 8 and the case-law cited.

³⁰⁰ Case C-145/03, *Keller* [2005], ECR I-2529, para. 29 and the case-law cited.

³⁰¹ Case C-441/10, *Anghel* [2010] (not published in the ECR), para. 11.

³⁰² Joined Cases C-320/90, C-321/90 and C-322/90, *Telemarsicabruzzo* [1993], ECR I-393, para. 6 and Case C-116/00, *Laguillaumie* [2000], ECR I- 4979, paras. 8 et seq.

³⁰³ In this sense, Joined Cases C-320/90, C-321/90 and C-322/90, *Telemarsicabruzzo* [1993], ECR I-393, para. 9.

³⁰⁴ Case C-440/10, *SC Semtex SRL* [2010] (not published in the ECR), para. 11.

³⁰⁵ Joined Cases 141 -143/81, *Holdijk* [1982], ECR 1299, paras. 6-7.

³⁰⁶ Joined Cases C-133/93, C-300/93 and C-362/93, *Crispoltoni and others* [1994], ECR I-4863, para. 18.

³⁰⁷ Joined Cases C-421/00, C-426/00 and C-16/01, *Sterbenz and Haug* [2003], ECR I-1065, para. 21.

or Tribunal must not assume such circumstances will exist in their case, and so ought to strive for **maximum clarity** and **conciseness** concerning the facts of the case as well as the legal questions.

b) Relevant point in time

- 5 Since the ECJ may only interpret or assess the validity of an EU legal act based on facts provided by the national Court or Tribunal³⁰⁸, it may not consider facts that have been submitted in the course of the national proceedings. This would alter the nature of the problem which the questions referred indicate³⁰⁹. Any changes occurring in the national legislation after the matter is referred to the ECJ do not affect the ECJ's interpretation of EU law³¹⁰.

c) Inadmissible referrals

- 6 Referrals for preliminary rulings have been rejected as inadmissible in the following cases, sometimes despite the national Court or Tribunal attempting to use said referrals to re-ask preliminary questions before the ECJ³¹¹:
- 7 If the national Court refers to a tobacco monopoly³¹² or a company which is entitled to exclusive exploitation of copyright³¹³ without describing its essential features or by providing too few details³¹⁴; if a national Court refers only to the wording of a national law³¹⁵ or ruling³¹⁶ or conflicting national case-law³¹⁷; if it merely refers to the arguments of the parties in the main proceedings³¹⁸; if the national Court does not specify the reasons for its doubts regarding the interpretation of EU law³¹⁹; or if the national Court does not provide any explanation concerning the origin of a tax which it considers to be a customs duty or charge having equivalent effect within the meaning of Art. 28 TFEU or a restriction within the meaning of Art. 56 TFEU. Likewise, those orders which merely contain referral questions without detailing their legal and factual basis³²⁰ or to which are merely appended documents relating to the proceedings before the national courts³²¹ are deemed inadmissible.

³⁰⁸ Case C-30/93, *AC-ATEL Electronics* [1994], ECR I-2305, para. 16.

³⁰⁹ Case C-352/95, *Phyteron International* [1997], ECR I-1729, para. 12.

³¹⁰ Case C-83/92, *Pierrel and others* [1993], ECR I-6410, para. 12.

³¹¹ Cases C-326/95, *Banco de Fomento e Exterior* [1996], ECR I-1386 and C-66/97, *Banco de Fomento e Exterior* [1997], ECR I-3757 and following.

³¹² Case C-157/92, *Banchero* [1993], ECR I-1085, para. 6.

³¹³ Case C-1001/96, *Italia Testa* [1996], ECR I-3081, para. 6; Case C-191/96, *Modesti* [1996], ECR I-3937, 3942 and Case C-196/96, *Lahlou* [1996], ECR I-3945, para. 6.

³¹⁴ Case C-167/94, *Grau Gomis and others* [1995], ECR I-1023, para. 11.

³¹⁵ Case C-257/95, *Bresle* [1996], ECR I-233, para. 17.

³¹⁶ Joined Cases C-438/03, C-439/03, C-509/03 and C-2/04, *Cannito* [2004], ECR I-1605, paras. 6–8 and 12.

³¹⁷ Case C-432/10, *Chihabi A. O.* [2011] (not published in the ECR), para. 22.

³¹⁸ Case C-318/00, *Bacardi-Martini and Cellier des Dauphins* [2003], ECR I-905, paras. 44–49 and 53–54.

³¹⁹ Case C-2/96, *Sunino and Data* [1996], ECR I-1543, para. 6.

³²⁰ Case C-386/92, *Monin* [1993], ECR I-2049, para. 8 and Case C-9/98, *Agostini v Ligue francophone de judo et disciplines associées and Ligue belge de judo* [1998], ECR I-4261, paras. 4–6 and 9–10 and Case C-422/98, *Colonia Versicherung and others* [1999], ECR I-1279, paras. 4–6 and 8–10.

³²¹ Case C-454/08, *Seaport Investments Limited* [2009] (not published in the ECR), para. 12.

d) **Explaining the reasons for the referral.** aa) **Principle.** In order to show that 8
there is a relationship between the requested interpretation of EU law and the
circumstances and purpose of the main proceedings, it is also **essential**³²² that the
national Court or Tribunal explain the **precise reasons**³²³ which lead it to consider
that a reply to its questions is **necessary** in order to determine the outcome of the
contentious case³²⁴. Thus, the national judge needs to provide a “**minimum of
explanations**” explaining why he finds that the provision(s) of primary and/or
secondary EU law referred to in the questions must be interpreted. This national
judge must also explain the link between those provisions and the provisions of the
national legislation that are applicable to the national judicial proceedings³²⁵.

bb) Quantitative aspects

The requirement to provide clear indications as to the factual and legal context of 9
the questions put to the ECJ is less important in those cases in which the referred
questions relate to a specific aspect of EU law and thus enables the ECJ to provide
the national Court or Tribunal with a pertinent, useful answer³²⁶, or whenever the
referred questions are of a very general nature³²⁷. By contrast, the **number of
questions referred** normally affects the quantity of factual and legal indications
the national Court or Tribunal needs to make in its order of referral³²⁸.

cc) Insufficient explanations

Insufficient explanations include an order that makes no reference to the reasons 10
that have led the national Judge to reflect on the interpretation of e.g. Articles 54
and 59 of the TFEU³²⁹. However, unclear or contradictory indications do not
necessarily make clear indications regarding the legal framework unclear³³⁰.

e) Question(s) referred

Pursuant to Art. 267 TFEU, the national Court or Tribunal must decide whether 11
it requests an interpretation of primary and/or secondary EU law and/or the
verification of the validity of an act of secondary EU law.

aa) Interpretation of EU law

The ECJ has no jurisdiction over assessing the compatibility of national legisla- 12
tion with EU law³³¹, which it may only assess in the context of infringement

³²² Case 251-83, *Haug-Adrion* [1984] ECR p. 4277, para. 9.

³²³ Case C-613/10, *Debiasi* [2011] (not published in the ECR), para. 22 and the case-law cited.

³²⁴ Case C-378/93, *La Pyramide* [1994], ECR I-3999, para. 13 with further reference.

³²⁵ Case C-613/10, *Debiasi* [2011] (not published in the ECR), para. 23 and the case-law cited.

³²⁶ Case C-316/93, *Vaneetveld* [1994], ECR I-763, para. 13.

³²⁷ Joined Cases C-58/95, C-75/95, C-112/95, C-119/95, C-123/95, C-135/95, C-140/95, C-141/95, C-154/95 and C-157/95, *Gallotti* [1996], ECR I- 4345, para. 9.

³²⁸ See Case C-432/10, *Chihabi A. O.* [2011] (not published in the ECR), where the national Judge referred no less than 11 questions without providing sufficient indications as to the factual and legal framework relevant for the national proceedings.

³²⁹ Case C-445/01, *Simoncello and Boerio* [2003], ECR I-1807, para. 25.

³³⁰ Case C-134/03, *Viacom Outdoor* [2005], ECR I-1167, para. 24.

³³¹ Case 172/82, *Fabricants raffineurs d'huile de graissage v Inter-Huiles* [1983], ECR 555, para. 8.

proceedings³³². The ECJ may, however, provide the national Judge with all relevant indications for the interpretation of EU law³³³ and thereby enable said national Judge to assess the question of compatibility within the context of the main proceedings³³⁴. The ECJ only has jurisdiction for interpreting EU law applicable after a Member State joined the Union³³⁵.

bb) Assessing the validity of secondary EU law

- 13 The national Judges have **no jurisdiction** to determine that acts of EU institutions are **invalid**³³⁶. Only the ECJ may do this³³⁷ as it assesses every legal ground provided the parties have put said legal ground forward³³⁸ whether because when it was enacted the secondary EU legislation at issue was in breach of primary law³³⁹; or whether that law is in breach of international law which directly affects the applicant rights³⁴⁰. If the national Judge refers a question in order to determine the validity of secondary legislation of his own motion, such a referral cannot be declared inadmissible simply because one of the parties could have brought proceedings for annulment of that decision within the meaning of Art. 263 TFEU³⁴¹. That said, the ECJ cannot be compelled to evaluate the validity of the act of EU law on the sole ground that one of the parties has already asked that question in its written pleadings³⁴².
- 14 By contrast, the national Courts and Tribunal may examine the validity of secondary EU legislation and **declare them fully valid** if said Court disagrees with the parties' view in the main proceedings, since in doing so, the national Judge does not contest the validity of EU legislation³⁴³.
- 15 cc) **Interpreting the questions. (1) No rewriting of questions.** The questions must be **precise and unambiguous**³⁴⁴. Neither the ECJ³⁴⁵ nor the parties to the national proceedings³⁴⁶ may **alter** the contents, i.e. extend the subject matter of a question referred, should a party have expressly sought that extension before a national Judge

³³² Joined Cases C-332/92, C-333/92 and C-335/92 *Eurico Italia and others* [1994], ECR I-711, para. 19 with further references.

³³³ And therefore not the interpretation of International law, binding the Member States outside the EU law area, See Case 130/73, *Vandeweghe and others v Berufsgenossenschaft für die chemische Industrie* [1973], ECR 1329.

³³⁴ Case C-134/95, *USS L No. 47 Di Biella* [1997], ECR I-195, 210.

³³⁵ Case C-168/06, *Ceramika Paradyz* [2007], ECR I-00029, para. 22 with further references.

³³⁶ Consistent case law: Case C-461/03, *Gaston Schul Douane Expéditeur* [2005], ECR I-10513, paras. 17–19.

³³⁷ Case 314/85, *Foto-Frost* [1987], ECR 4199, para. 15 and Case C-27/95, *Bakers of Nailsea* [1997], ECR I-1857, para. 20.

³³⁸ Joined Cases 21/72 to 24/72, *International Fruit Company and others v Produktschap voor Groenten en Fruite* [1972], ECR 1219.

³³⁹ Joined Cases C-248/95 and C-249/95, *SAM Schiffahrt and others v Federal Republic of Germany* [1997], ECR I-4475, paras. 46–47.

³⁴⁰ Case 9/73, *Schlüter v Hauptzollamt Lörrach* [1973], ECR 1135.

³⁴¹ Case C-222/04, *Cassa di Risparmio di Firenze and others* [2006], ECR I-289, paras. 72–74.

³⁴² Joined Cases C-376/05 and C-377/05, *Brünsteiner* [2006], ECR I-11383, para. 26–28.

³⁴³ Case 314/85, *Foto-Frost* [1987], ECR 4199, para. 14.

³⁴⁴ Case C-185/12, *Ciampaglia* [2012] (not published in the ECR), para. 3.

³⁴⁵ Case C-352/95, *Phyteron International* [1997], ECR I-585, para. 14.

³⁴⁶ Case C-178/95, *Wiljo* [1997], ECR I-1729, para. 30.

and been refused³⁴⁷. The same is true for parties including **additional questions** in their observations³⁴⁸, since this is not compatible with the division of labour in the context of referral proceedings within the meaning of Art. 267 TFEU³⁴⁹.

(2) Room for interpretation. (a) Improperly formulated questions. Should questions be improperly formulated or go beyond the scope of the powers conferred on the ECJ by Art. 267 TFEU³⁵⁰, the ECJ remains entitled to determine, based on all elements provided by the national Judge, especially the contents of the order of referral and the files of the main proceedings, which elements of EU law require interpretation in view of the subject matter of the main proceedings³⁵¹, in order to provide the national Judge with a helpful answer³⁵². 16

(b) Broad interpretation. This does not prevent the ECJ from interpreting provisions of EU law to which the order of referral does not explicitly refer³⁵³ and which are more specific than those rules mentioned in the order, if the ECJ deems it necessary³⁵⁴. This occurs e.g. with respect to specific legislation in the area of the common agricultural policy when compared to the general rules on this policy in the primary law³⁵⁵. 17

(c) Detecting the real purpose of a question. If it appears that the real purpose of the question submitted by a national Court concerns the validity of an EU measure rather than its interpretation, the ECJ may immediately inform the national judge of its view without compelling the national Court to comply with purely formal requirements³⁵⁶. 18

(3) Economy of proceedings. The ECJ is not bound by the order in which the national Judge puts the questions³⁵⁷. Rather, the ECJ's assessment may consider criteria of logic or economy of proceedings³⁵⁸, which may imply that some questions remain unanswered, as the case may be. 19

II. Overview on the written and oral proceedings

Once the matter has been referred to the ECJ, the parties to the main proceedings (and other interested parties) may hand in written observations on the order. 20

³⁴⁷ Case 247/86, *Alsattel v Novasam* [1988] ECR p. 5987, para. 8.

³⁴⁸ Case C-412/96, *Kainuun Liikenne and Pohjolan Liikenne* [1998] ECR p. I-5141, paras. 22 to 24.

³⁴⁹ Case C-178/95, *Wiljo* [1997], ECR I-1729, para. 20.

³⁵⁰ Case 83/78, *Redmond* [1978], ECR 2347.

³⁵¹ Consistent case law: see Case C-168/95, *Arcaro* [1996], ECR I-4705, para. 21 with further references.

³⁵² Case C-57/01, *Makedoniko Metro and Michaniki* [2003], ECR I-1091, para. 35 with further references.

³⁵³ Case C-304/00, *Strawson and Gagg & Sons* [2002], ECR I-10737, paras. 57 and 58 and Case C-439/01, *Cipra and Kvasnicka* [2003], ECR I-745, para. 22.

³⁵⁴ Case C-462/01, *Hammarsten* [2003], ECR I-781, para. 25.

³⁵⁵ Case 177/78, *Pigs and Bacon Commission* [1979], ECR 2161, para. 9.

³⁵⁶ Case 16-65, *Schwarze v Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1965] ECR p. 1081.

³⁵⁷ Case C-265/01, *Pansard and others* [2002], ECR 683, para. 21.

³⁵⁸ Case C-244/02, *Kaupatalo Hansel* [2003], ECR I-12139, para. 24.

Subsequently, the parties may attend the oral hearing, if any³⁵⁹. The ECJ will take account of the **national procedural rules** regarding the attendance and representation of the parties at Court³⁶⁰. Normally, the parties need to use the same language at the ECJ hearing as the one employed at national Court of Tribunal, but may apply for an exception³⁶¹.

III. Withdrawal of a referral for preliminary ruling

- 21 The procedure begun by a referral for preliminary ruling continues as long as the national Judge has not withdrawn his referral³⁶² or has not been quashed on appeal by a superior Court³⁶³. That said, the national Court or Tribunal may withdraw³⁶⁴ its order of referral at any time³⁶⁵; said referral may also lose its object, e.g. as a result of a legal remedy at national level³⁶⁶. In law, such withdrawal may even take place after the Advocate-General handed down his opinion³⁶⁷, but for reasons of good judicial cooperation the national Judge should avoid withdrawing his referral at such a late stage. In any event, the national Judge should provide a brief explanation as to the reasons of the withdrawal³⁶⁸.

Article 95 Anonymity

1. Where anonymity has been granted by the referring court or tribunal, the Court shall respect that anonymity in the proceedings pending before it.

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

I. General

- 1 While the judicial activity is, by definition, public there are exceptions to the rule, e.g. if, for serious reasons, a case is heard *in camera* (see Art. 79 RP ECJ) or if there is a reason to grant anonymity to a party, i.e. not reveal his or her name. Article 95 RP ECJ, which is new, takes account of these needs.

³⁵⁹ Art. 99 RP ECJ.

³⁶⁰ Art. 97 (3) RP ECJ.

³⁶¹ Art. 37 (3) RP ECJ.

³⁶² Case 127-73, *BRT v SABAM* [1974] ECR p. 51.

³⁶³ Case 106/77, *Amministrazione delle finanze dello Stato v Simmenthal* [1978] ECR p. 629.

³⁶⁴ Which is the case in quite a number of referral proceedings.

³⁶⁵ Case C-233/99, *Haugsted Hansen* [2002], ECR I-3107, paras. 1 et seq.

³⁶⁶ Case 106/77, *Amministrazione delle finanze dello Stato v Simmenthal* [1978], ECR 629.

³⁶⁷ See Art. 100 RP ECJ.

³⁶⁸ Case C-317/95, *Canadane Chees Trading and Kouri* [1997], ECR I-4681, 4727.

II. Pre-existing anonymity (paragraph 1)

It is consistent with the purpose of this new provision for the ECJ to accept any 2
anonymity granted by the national Court or Tribunal in the main proceedings, i.e.
prior to referring its questions to the ECJ.

III. Anonymity at the stage of the ECJ (paragraph 2)

Anonymity may be also granted once the request for preliminary ruling has 3
reached the ECJ. It would seem that in the case of a national Tribunal or Court a
simple request suffices, while parties to the proceedings need to make a “duly
reasoned request”, it being understood that the ECJ may grant anonymity of its own
motion. In practice, anonymity has been granted in a number of urgent preliminary
rulings procedures (Art. 107 et seq. RP ECJ).

Article 96 Participation in preliminary ruling proceedings

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

- (a) the parties to the main proceedings,
- (b) the Member States,
- (c) the European Commission,
- (d) the institution which adopted the act the validity or interpretation of which
is in dispute,
- (e) the States, other than the Member States, which are parties to the EEA
Agreement, and also the EFTA Surveillance Authority, where a question concern-
ing one of the fields of application of that Agreement is referred to the Court
for a preliminary ruling,

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

2. Non-participation in the written part of the procedure does not preclude
participation in the oral part of the procedure.

I. Those authorized to submit observations (paragraph 1)

This provision, for which there was so far no equivalent in the RP ECJ, 1
reproduces Art. 23 (2) Statute ECJ, which thus does not imply any substantive
changes, but is in the interest of clarity.

II. Observations at the hearing (paragraph 2)

- 2 Given the non-contentious nature of this particular procedure, a party may participate in the oral part of procedure even if that party or Member State did not participate in the written part of the procedure. There is a risk though that no oral procedure takes place in which case the provision in para. 2 remains without practical effect.

Article 97 Parties to the main proceedings

1. The parties to the main proceedings are those who are determined as such by the referring court or tribunal in accordance with national rules of procedure.
2. Where the referring court or tribunal informs the Court that a new party has been admitted to the main proceedings, when the proceedings before the Court are already pending, that party must accept the case as he finds it at the time when the Court was so informed. That party shall receive a copy of every procedural document already served on the interested persons referred to in Article 23 of the Statute.
3. As regards the representation and attendance of the parties to the main proceedings, the Court shall take account of the rules of procedure in force before the court or tribunal which made the reference. In the event of any doubt as to whether a person may under national law represent a party to the main proceedings, the Court may obtain information from the referring court or tribunal on the rules of procedure applicable.

Outline:

I. General	1
II. Parties of the main proceedings (paragraph 1).....	2
III. New parties to the main proceedings (paragraph 2)	3
1. Dynamic clause.....	3
2. Accepting the case as it stand	4
IV. National rules of procedure (paragraph 3).....	5
1. Binding national rules	5
2. Seeking information.....	7

I. General

- 1 This provision is new, except for paragraph 3, which reproduces the former Art. 104 (2) RP ECJ. On the face of it the concept of “parties to the main proceedings” seems sufficiently clear, but this is not entirely the case, hence the need for an explicit provision i.e. Art. 97 RP ECJ.

II. Parties of the main proceedings (paragraph 1)

It is a matter of consistency that it is for the national Tribunal or Court to decide 2 who is a party to the main proceedings, the ECJ being thus bound to this finding.

III. New parties to the main proceedings (paragraph 2)

1. Dynamic clause

Paragraph 2 contains a dynamic clause, meaning that any change of party to the 3 main proceedings is only relevant in the context of the referral proceedings if the national Court or Tribunal informs the ECJ accordingly. It is thus not for any new party to the national proceedings to inform the ECJ of its own motion.

2. Accepting the case as it stand

The admission of a new party to the national proceedings as a party to the 4 referral proceedings has an *ex nunc* effect, as is the case for e.g. an intervener in a contentious matter.

IV. National rules of procedure (paragraph 3)

1. Binding national rules

This is one of the two cases³⁶⁹ in which the ECJ considers **national procedural** 5 **rules** regarding legal representation or the personal appearance of the parties³⁷⁰. This means that, as an exception from the ECJ's general rule, a party has **no legal obligation** to be represented by a lawyer in the referral proceedings if there is no such obligation in main proceedings under national law³⁷¹.

One may, of course, consider whether it is **opportune** for a party to make use of 6 this right, depending upon the difficulty and importance of the case, which often require an adequate knowledge of EU law in general and of the subjects the referral touches upon in particular. Parties, whether natural or legal persons, may not necessarily have sufficient knowledge or insight into the matter hand, bearing in mind that the referral occurs because the national Court or Tribunal has doubts concerning the interpretation of an given piece of primary or secondary legislation or the validity of a derived piece of legislation despite the existing case law.

³⁶⁹ The other one is Art. 47 RP ECJ, (professor admitted to plead, if admitted under national law).

³⁷⁰ See p. 7 of "Notes for the guidance of Counsel".

³⁷¹ Case 39/75, *Coenen* [1975], ECR 1547, 1554.

2. Seeking information

- 7 Since it is not for the ECJ to have at all times a clear picture of the national rules governing the representation and attendance of the parties to the main proceedings, let alone of all Member States, the ECJ may, pursuant to paragraph 2, 2nd sentence, contact the national Court or Tribunal in order to obtain further information on the issue, if need be. This provision illustrates that the cooperation between both judicial spheres is not only one way, the request for clarification as provided by Art. 101 RP ECJ being a further example.

Article 98 Translation and service of the request for a preliminary ruling

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

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

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

Outline:

I. General	1
II. Communication of the order of referral (paragraph 1).....	2
1. Original version.....	2
2. Translation	3
a) Rule.....	3
b) Exception	4
aa) Lengthy orders	4
bb) Need for limiting the number of pages?	5
III. “EEA countries” and third States (paragraphs 2 and 3).....	6

I. General

This provision sets the main parameters for the written and oral phase of the 1
referral proceedings. It aims at decreasing the workload of the ECJ and thus
reducing the duration of the proceedings.

II. Communication of the order of referral (paragraph 1)

1. Original version

Since the Member States, the Commission, and possibly other institutions of the 2
EU³⁷² only receive a copy of the **order of referral**, i.e. without an extract let alone a
full copy of the files of the main proceedings, it is vitally important that the order of
reference be both **exhaustive** and **self-explanatory**³⁷³.

2. Translation. a) Rule. Normally, the Member States will receive the **original** 3
version of the order of referral together with a **full translation** into the respective
official language of the **addressee**.

b) Exception. aa) Lengthy orders. Since there is no limitation of the number of 4
pages of an order of referral, in contrast to what applies to written submissions such
as e.g. direct challenges³⁷⁴, some orders may be rather voluminous. This does not
render the order of referral inadmissible, but rather means that under such
circumstances the Member States will merely receive a **summary** of the order of
referral. Said summary must be reasonably long, since one must always balance the
economy of procedure and the *effet utile* of the order of referral. Thus, this rather
new rule encourages the national Courts and Tribunals to keep their orders of
referral as short as possible.

bb) Need for limiting the number of pages?

One way to avoid a translation limited to a summary of the order would be 5
limiting the number of pages of such orders, as the Court has done in cases
involving direct challenges. On the other hand, the national Court or Tribunal
needs to provide the ECJ with a self-explanatory and exhaustive order. Thus, rather
than imposing a binding upper-limit of pages, defining a reasonable range of pages,
e.g. between 10 and 20, might be an acceptable start.

³⁷² See Art. 23 (1) ECJ Statute.

³⁷³ Art. 94 RP ECJ.

³⁷⁴ See pages 10 and 11 of the "Practice directions relating to direct applications and appeals".

III. “EEA countries” and third States (paragraphs 2 and 3)

- 6 Third parties to the proceedings are not entitled to a translation into their respective official language, but may choose one of the official languages referred to in Art. 36 RP ECJ, which is usually English.

Article 99 Reply by reasoned order

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

I. Introduction

- 1 The ECJ frequently uses the first two alternatives in this provision and to a lesser extent the third alternative, all of which enable it to decide on a referral for a preliminary ruling through a **reasoned order** rather than through a judgment. So far, i.e. under the old Art. 104 (3) RP ECJ, the procedure applicable varied according to the alternatives, which made this provision unnecessarily complex without their being a need for distinct procedures, which is why Art. 99 RP ECJ simplifies the procedure. In line with this and since the obvious purpose of this provision is the economy and acceleration of proceedings, there is **neither an oral hearing nor an Opinion** of the Advocate General, although the Advocate General will be heard more informally.

II. Three alternatives

1. Identical questions

- 2 The requirement of an “identical question” found in first alternative does not mean that the wording of the question must be verbatim the same as that of a question referred in the past, as this would be very rarely the case. It suffices that according to the ECJ the **spirit of the question** referred is the same as that of a question already answered.

2. Answer clearly resulting from case law

Regarding the second alternative, it is not the degree of resemblance between two questions referred that matters, but whether the answer “may be clearly deduced from existing case-law”. This definition seems broader than the first alternative.

3. No reasonable doubt

This alternative provides even more flexibility than the two other alternatives, ⁴ since it does not formally require any precedents. Here, one must determine whether there is “room for reasonable doubt”. In practice, the two other alternatives do not leave much room for this third alternative, which is a general clause and thus bound to be rather vague.

4. Order at any time

The ECJ may adopt such a reasoned order on its own initiative, i.e. without ⁴ having to hear the parties beforehand, at any time.

Article 100 Circumstances in which the Court remains seised

1. The Court shall remain seised of a request for a preliminary ruling for as long as it is not withdrawn by the court or tribunal which made that request to the Court. The withdrawal of a request may be taken into account until notice of the date of delivery of the judgment has been served on the interested persons referred to in Article 23 of the Statute.

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

I. Remaining seised (paragraph 1, 1st sentence)

Under normal circumstances the main proceedings are **suspended** while the ¹ referral for preliminary ruling is pending at the ECJ, meaning that there should be no changes likely to have an impact on the request for preliminary ruling. That said, an appeal or any other national legal remedy may have an impact on the national proceedings and also on the question(s) referred. Thus it is in the interest of legal certainty and in order to avoid a situation in which a decision of the ECJ could be rendered ineffective that the ECJ remains seised of a request for a preliminary ruling, as long as it is not withdrawn. Consequently, whatever may or may not happen at the level of the main proceedings has no bearing on the referral proceedings for as long as the national Court or Tribunal does not formally withdraw its request.

II. Withdrawal of a request (paragraph 1, 2nd sentence)

The procedure begun by a referral for preliminary ruling continues as long as the ² national Judge has not withdrawn his referral³⁷⁵ or has not been quashed on appeal

³⁷⁵ Case 127–73, *BRT v SABAM* [1974] ECR p. 51.

by a superior Court³⁷⁶. That said, under the previous rules, there was nothing to prevent a national Court or Tribunal to withdraw³⁷⁷ its order of referral at any time³⁷⁸. In law, such withdrawal could even take place after the Advocate-General handed down his opinion, which has happened on some occasions, meaning that the majority of instances taking part in the proceedings, and last but not least the Judges and the Advocate General, will have literally wasted their time.

- 3 Against this background it seems in the most elementary interest of procedural economy and bearing in mind that one procedure may have an impact on other proceedings at the ECJ, which have been stayed, to insert a “point of no return”. Thus, a withdrawal may only take place “until notice of the date of delivery of the judgment has been served on the interested persons”. But it remains nevertheless that for reasons of good judicial cooperation the national Judge should **avoid** withdrawing his referral at such a late stage. In any event, the national Judge should provide a brief explanation as to the reasons of the withdrawal³⁷⁹.

III. Conditions of jurisdiction (paragraph 2)

- 4 The 2nd paragraph is about a major prerequisite for each and every request for a preliminary ruling, i.e. that the ECJ has jurisdiction for giving a reply to the question(s) referred. Since this condition applies at any time as of receiving the request it could have been inserted into a more fundamental provision, such as Art. 94 RP ECJ.

Article 101 Request for clarification

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

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

I. General

- 1 This provision, which reproduces the old Art. 104 (5) RP ECJ, whilst supplementing it, further illustrates **cooperation** between the national Court and Tribunal and the ECJ. The ECJ may now officially request “clarification” from the national Court or Tribunal, if need be.

³⁷⁶ Case 106/77, *Amministrazione delle finanze dello Stato v Simmenthal* [1978] ECR p. 629.

³⁷⁷ Which is the case in quite a number of referral proceedings.

³⁷⁸ Case C-233/99, *Haugsted Hansen* [2002], ECR I-3107, paras. 1 et seq.

³⁷⁹ Case C-317/95, *Canadane Chees Trading and Kouri* [1997], ECR I-4681, 4727.

II. Scope (paragraph 1)

1. Clarification

The division of labour between the national Judge and the EU Judge determines the parameters and the nature of a “request for clarification”, which would otherwise be a vague term: the ECJ may request the national Judge to provide additional information regarding **facts** if the order for referral is either **ambiguous** or **incomplete** on a given point which turns out to be relevant. In practice, this provision enables the ECJ to also enquire with the national Judge whether the referral received has lost its object³⁸⁰, e.g. given the contents of a judgment the ECJ has handed down in the meantime³⁸¹.

2. Limits

However, it is clear that such request does not entitle the ECJ to “rewrite” or otherwise substantially amend the order of referral. Next, while it would be tempting to use a request for clarification in order to prevent the numerous orders rejecting referrals as inadmissible for lack of indications regarding the factual and legal context of the national proceedings, such use of this measure would not promote cooperation between the jurisdictions and would run contrary to the division of labour in such proceedings for the following reasons: First, a request for clarification is not intended to remedy a national Judge’s initial omission to provide the ECJ with the relevant minimum factual and legal context of the judicial proceedings. In other words, the ECJ is not responsible for supervising the national Judge’s homework, let alone doing said “homework” itself. Secondly, (mis)using a request for clarification for such a purpose would in all likelihood be of no benefit given the link between the questions referred and the factual and legal circumstances of the national proceedings. In other words, substantial improvements and/or changes to the description of the factual and legal circumstances in the order of referral might have an impact on the substance of the questions referred. This means that, should a referral substantially fail to indicate the factual and legal circumstances in the national proceedings, this lack is likely to affect the order of referral as a whole. A request for clarification would also be ineffective against this background.

III. Informing the interested persons (paragraph 2)

Informing the interested persons within the meaning of Article 23 Statute ECJ was a practice of the ECJ anyway, which has now been enshrined in the RP ECJ. By the same token, it is clear that any request for clarification only serves a purpose if it

³⁸⁰ Case C-134/94, *Esso Espanola* [1995], ECR I-4223, para. 7.

³⁸¹ Case C-254/06, *Zürich Versicherungsgesellschaft* [2007], (not published in the ECR).

is addressed to the national Court or Tribunal prior to the point in time when the interested persons submit their observations on the request for a preliminary ruling, i.e. at a rather early stage of the proceedings.

Article 102 Costs of the preliminary ruling proceedings

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

Given the **intermediate nature** of the referral proceedings, which do not generate any **judicial costs** at the ECJ, the national Judge may employ national law to determine which party bears the judicial and legal costs generated by the main proceedings, including the referral procedure. According to the EU principle of effectiveness, however, the costs for the referral procedure may not be more stringent than in the case of similar national remedies³⁸². The participating institutions and Member States bear their own costs.

Article 103 Rectification of judgments and orders

1. Clerical mistakes, errors in calculation and obvious inaccuracies affecting judgments or orders may be rectified by the Court, of its own motion or at the request of an interested person referred to in Article 23 of the Statute made within two weeks after delivery of the judgment or service of the order.

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

3. 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.

I. Introduction

- 1 This provision, which is very similar to the rectification of judgments within the meaning of Art. 154 RP ECJ, enables the ECJ to correct typing³⁸³, computing- and other obvious errors “affecting” a judgment or order delivered in the context of requests for preliminary rulings. The wording (“obvious inaccuracies”) seems **deliberately wide** and thus gives the ECJ discretionary power concerning errors that may not be directly comparable to clerical mistakes and errors of calculation. This includes e.g. an erroneous reference to a Regulation³⁸⁴. “Affecting” a judgment or order cannot mean that it must have a substantial bearing on the contents or meaning of the Judgment; it merely means that such error must be in the text of the ECJ’s decision.

³⁸² Case C-472/99, *Clean Car Autoservice* [2001], ECR I-9687, para. 32.

³⁸³ Joined Cases C-502/01 and C-31/02, *Gaumain-Cerri* [2004], ECR I-6483.

³⁸⁴ Joined Cases C-31/02 and C-502/01, *Gaumain-Cerri* [2004], ECR I-6483.

II. Ex officio or upon request (paragraph 1)

1. On the ECJ's own motion

It seems from the wording of paragraph 1 that the ECJ may correct such errors at any time, since it is **not bound** by the time-limit of two weeks applicable to interested parties.

2. Upon request by an interested party. a) Time-limit. Even though such application requires an “obvious” slip in the judgment, the time-limit of **two weeks** as of **delivery** of the judgment or service of the order for submitting a request for rectification seems **quite short**, for the following reasons:

On the one hand, the ECJ may act *ex officio*, which means that even years after the date of a judgement's delivery the Court still has the possibility to rectify said judgement³⁸⁵. On the other hand, the application concerns **errors of the ECJ**, i.e. errors which its translation and revision services did not spot over a period which may, depending upon the circumstances, be considerably longer than two weeks.

That said, in case a party spots a clerical mistake or error of calculation **after the time-limit** has elapsed, it should not be prevented from signalling such mistakes to the Registry *informally*, i.e. without lodging a formal application within the meaning of Art. 103 RP ECJ. The idea is not to circumvent the time-limit of two weeks, but, quite simply, to signal the existence of an error which the ECJ could (and might) have spotted on its own motion.

III. Hearing the Advocate General (paragraph 2)

Whenever the ECJ acts of its own motion and also if a party requests a rectification it hears the Advocate General beforehand. The interested parties are **not heard**, unlike what is provided in Art. 154 (2) RP ECJ. The fact that the interested parties may not submit written observations on errors or obvious inaccuracies in a judgment or order might have to do with the fact that a request for a preliminary ruling is a non-contentious procedure.

IV. Annexing the original (paragraph 3)

In order to guarantee a practical effect the order correcting the clerical mistake etc. is attached to the correct version of the judgment or order.

³⁸⁵ Case C-370/05, *Festersen* [2007], ECR I-1135.

Article 104 Interpretation of preliminary rulings

1. Article 158 of these Rules relating to the interpretation of judgments and orders shall not apply to decisions given in reply to a request for a preliminary ruling.

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

I. General

- 1 This provision is **new** and amounts to something a preventive legal advice, it's paragraph 1 being addressed to potential applicants and paragraph 2 to national Courts and Tribunals.

II. No interpretation of preliminary rulings (paragraph 1)

- 2 Pursuant to the ECJ's consistent case-law an interested may not seek the interpretation of a judgment delivered in a referral for preliminary ruling³⁸⁶. This has to do with the fact that pursuant to Art. 158 RP ECJ, which implements Art. 43 Statute ECJ, only a "party" or "European institution", meaning parties to the case judged by the ECJ, may apply for an interpretation of a judgment or order. In preliminary ruling proceedings the only parties are those to the main proceedings pending at national level. The mere fact that the national Court or Tribunal makes a referral for a preliminary ruling to the ECJ does not alter the status of the parties to the main proceedings. In other words, they are not and do not become parties to a Court case pending at the ECJ. The same is true for the other instances mentioned in Art. 23 Statute ECJ, such as Member States, the Commission, etc. since they are merely entitled to submit observations in proceedings which are bilateral, since they involve the ECJ and the national Court or Tribunal concerned.
- 3 Amending Art. 158 RP ECJ in order to allow for an interpretation would be no option, since this would negate the substantial differences between a reference for a preliminary ruling and contentious proceedings.

III. Renewed referral (paragraph 2)

- 4 This provision reminds national Courts and Tribunals, and indirectly the parties to the main proceedings who are prevented from applying for an interpretation within the meaning of Art. 158 RP ECJ, that a reference for a preliminary ruling is not a "one shot" situation³⁸⁷. Paragraph 2 clarifies that if a preliminary ruling given

³⁸⁶ Case C-262/88 INT, *Barber*, [2010] (not yet published in the ECR), para. 3–4.

³⁸⁷ Which also means that if a request for a preliminary ruling has been rejected as inadmissible for reasons other than a lack of jurisdiction of the ECJ, the national Court or Tribunal may address a new and hopefully improved request to the ECJ in the same matter.

by the ECJ leaves doubts as to its exact meaning or interpretation the national Court or Tribunal may make a further request for a preliminary ruling on that issue. It is understood though that such request needs to comply with the very same procedural and substantive principles than those applying to any request for a preliminary ruling. Thus, the further reference to the ECJ may not e.g. relate to questions on how the initial judgment is to be applied in the context of national law.

CHAPTER 2 EXPEDITED PRELIMINARY RULING PROCEDURE

Article 105 Expedited procedure

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

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

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

4. The statements of case or written observations, if any, shall be communicated to all the interested persons referred to in Article 23 of the Statute prior to the hearing.

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

Outline:

I. Introduction	1
1. History	1
2. Statistics	2
II. Initiating an expedited procedure (paragraph 1)	3
1. Right of initiative	3
a) National Judge	3
b) ECJ's own motion	4
2. "Case to be dealt with within a short time"	6
a) Requirements	6
aa) Less demanding?	6
bb) Well-reasoned application	7
b) Referrals dealt with under the expedited procedure	8
aa) General	8
bb) Cases	9
c) Requests rejected	10
aa) Special features of the national case	10

bb) Economic consequences	11
cc) Non-economic aspects	12
dd) Other cases	13
c) Critical assessment	14
III. Procedural rules (paragraphs 2 to 5)	15

I. Introduction

1. History

- 1 This provision and its “sister provision” which applies to direct actions³⁸⁸ originates in the ECJ’s reflection paper of May 1999³⁸⁹. These provisions reveal the fact that in urgent cases a “normal” reference for preliminary ruling would have no *effet utile* given the average duration of preliminary proceedings and the inadmissibility of interim relief in this particular non-contentious context. This provision was adopted on the basis of Art. 23 a Statute ECJ, which came into force in March 2008. The new Art. 105 RP ECJ refers to an “**expedited procedure**”, called “accelerated procedure” under its predecessor, Art. 104 a RP ECJ.

2. Statistics

- 2 To date, the ECJ has granted **expedited** referrals in only a handful of cases. Expedited referrals have an average duration of proceedings of **4.5 months**, while a “normal” reference procedure would take 16,4 months in 2011.

II. Initiating an expedited procedure (paragraph 1)

- 3 **1. Right of initiative. a) National Judge.** The national Judge – i.e. not the respective parties – may lodge such request at the ECJ³⁹⁰, through a separate document, but this is not an obligation.

b) ECJ’s own motion

- 4 Pursuant to the previously applicable Art. 104 a RP ECJ the President could only initiate proceedings upon request of a national Judge. The President may now “**exceptionally**” act of his own motion³⁹¹, it being for the President to decide whether the conditions for such exception are fulfilled. He might be more sovereign than pursuant to the former Art. 104 a RP ECJ, where the President would decide on a proposal from the Judge Rapporteur, whilst pursuant to Art. 105 (1) RP ECJ the Judge Rapporteur (and the Advocate General) is heard.

³⁸⁸ See Art. 133 RP ECJ.

³⁸⁹ See “The future of the judicial system of the European Union”, May 1999.

³⁹⁰ If the request is rejected, it can be postponed again, see Case C-300/04, *Eman* [2006], ECR I-8055, para. 19.

³⁹¹ As is the case with the urgent proceedings within the meaning of Art. 107 et seq. RP ECJ.

In practice, there is only a need to decide *ex officio*, provided of course the substantive requirements are fulfilled, if the national Court of Tribunal did either *not* request an expedited procedure or if the reasons put forward are not sufficiently convincing, whilst other more pertinent reasons were overlooked.

2. “Case to be dealt with within a short time” a) Requirements. aa) Less demanding? Pursuant to the former Art. 104 a (1) RP ECJ this procedure would only apply if the ruling on the question put to the Court is a matter of “exceptional urgency”, whilst pursuant to Art. 105 (1) RP ECJ, the President will assess whether “the nature of the case requires to be dealt with within a short time”. Thus, on the one hand the wordings are *substantially* different, which seems to suggest that the requirement under the current Art. 105 (1) is somewhat, if not considerably, less demanding than the – dramatic sounding – “exceptional urgency” required by its predecessor. On the other hand, Art. 105 (1) explicitly indicates that expedited procedures derogate from the normal rules governing references for a preliminary ruling, thus repeating what is already expressed in Art. 23 a (2) Statute ECJ. Finally, and even though this is a matter for speculation, the new wording of Art. 105 (1) reduces the risk of confusion with the “urgent preliminary ruling procedure” within the meaning of Art. 107 et seq. RP ECJ, whilst the modalities of transmission of procedural documents are the same for both procedures (see Art. 106 and Art. 114 RP ECJ). Thus, it is safe to assume that the ECJ will continue to require a **high degree of urgency**. Any other reading would tend to blur the difference between the rule and the exception (“exceptionality”).

bb) Well-reasoned application

The need to deal with the referred questions “within a short time” implies that the request must be well reasoned. The national jurisdiction must indicate the “**specific elements**”³⁹² which lead it to find that the referral reaches the required level of urgency. Such reasoning must, at the very least, be included in the description regarding the facts of the main proceedings³⁹³ or, preferably, in a specific chapter.

b) Referrals dealt with under the expedited procedure. aa) General. The number of successful requests is fairly limited, to say the least, which reflects the difficulty that proving the previously applicable requirement, i.e. “exceptional urgency” presents. The ECJ’s case law indicates that **substantial non-economic reasons** are instances in which the Judges are most likely to accept such degree of urgency and thus to deal with the use “within a short time”.

bb) Cases

Such reasons include the urgent protection of **human health or the environment**³⁹⁴, provided the national Court or Tribunal specifies the magnitude of the risk³⁹⁵; the right to **respect for family and private life** within the meaning of Art. 8

³⁹² Case C-456/07, *Mihal* [2007] (not published in the ECR), para. 7.

³⁹³ Case C-351/07, *CEPAV DUE A. O.* [2007] (not published in the ECR), paras. 8 to 9.

³⁹⁴ Case C-189/91, *Jippes and others* [2001], ECR I-5689, 5694.

³⁹⁵ Case C-240/09, *Lesoochránárske zoskupenie VLK* [2009] (not published in the ECR), para. 12.

ECHR³⁹⁶, if there is a risk of being deported to another country³⁹⁷, especially if such risk is imminent³⁹⁸ or if deportation will affect a personal link between siblings³⁹⁹; as well as delicate issues such as the **European arrest warrant**⁴⁰⁰ and the national Court's or Tribunal's subsequent constraint to render a judgment within a **short period of time**⁴⁰¹, e.g. in the area of **criminal law**⁴⁰², in order to prevent the loss of a **parental leave**⁴⁰³, or if the expedited procedure is likely to prevent **illegal imprisonments** or to shorten their duration⁴⁰⁴.

- 10 c) **Requests rejected. aa) Special features of the national case.** The mere fact that the reference for preliminary ruling was made during an **interim relief procedure**⁴⁰⁵ or that there are a substantial number of **analogous national contentious proceedings** which are either already pending⁴⁰⁶ or expected⁴⁰⁷ does not necessarily⁴⁰⁸ generate the required level of urgency, especially if the relevant national legislation is already in force⁴⁰⁹. The ECJ furthermore held that the expedited procedure cannot be used solely to join two or more cases⁴¹⁰.

bb) Economic consequences

- 11 Likewise, should the relevant national legislation disadvantage certain enterprises of a given **sector**⁴¹¹; should it entail a **financial**⁴¹² **prejudice**⁴¹³ or create **economic difficulties**⁴¹⁴ for such companies; should it impact the local **job market**⁴¹⁵ or have a bearing on **fiscal revenue**, e.g. regarding VAT⁴¹⁶; should there be a risk that a party to the main proceedings would lose its rights to a **public subsidy**⁴¹⁷; etc. An economic operator's simple intention to **continue his economic activity** also does not suffice⁴¹⁸. The ECJ will consider to what extent such economic consequences

³⁹⁶ Case C-127/08, *Blaise Baheten Metock A. O.* [2008] (not published in the ECR), para. 13 to 14.

³⁹⁷ Case C-300/11, *ZZ v Secretary of State for the Home Department* [2011] (not published in the ECR), paras. 9 et seq.

³⁹⁸ Case C-256/11, *Murat Dereci* [2011] (not published in the ECR), paras. 14 et seq.

³⁹⁹ Case C-296/10, *Bianca Purruicker* [2010] (not published in the ECR), paras. 7 to 9.

⁴⁰⁰ See the case C-66/08, *Kozłowski* [2008] (not published in the ECR), which in itself would have been a case for the not yet entered into force Art. 104 RP ECJ.

⁴⁰¹ Joined Cases C-188/10 and C-189/10, *Melki and Abdeli* [2010] (not published in the ECR), paras. 14 et seq.

⁴⁰² Case C-550/09, *E, F*, [2010] (not published in the ECR), paras. 10 et seq.

⁴⁰³ Case C-149/10, *Zoi Chatzi* [2010] (not published in the ECR), paras. 11 et seq.

⁴⁰⁴ Case C-329/11, *Alexandre Achughbabian* [2011] (not published in the ECR), paras. 10 et seq.

⁴⁰⁵ Case C-33/07, *Ministerul Administratiei si Internelor* [2008], ECR I-05157, para. 7 with further references.

⁴⁰⁶ Case C-368/06, *Cedilac* [2007], ECR I-12327, para. 7 with further references.

⁴⁰⁷ Case C-283/06, *Köğaz and others* [2007], ECR I-08463, paras. 7–9.

⁴⁰⁸ Case C-439/08, *VZW* [2008] (not published in the ECR), para. 7.

⁴⁰⁹ Case C-385/05, *CGT and others* [2007], ECR I-617, para. 10.

⁴¹⁰ Case C-228/10, *UEFA A. O.* [2010] (not published in the ECR), para. 6.

⁴¹¹ Case C-467/06, *Consel GI Emme Srl.* [2007], ECR I-00044, para. 8.

⁴¹² Case C-115/06, *Radke* [2006], ECR I-, para. 5.

⁴¹³ Case C-12/07, *Autostrada dei Fiori and AISCAT* [2007], ECR I-00162, para. 8.

⁴¹⁴ Case C-201/08, *Plantanol* [2008] (not published in the ECR), para. 9 and the case-law cited.

⁴¹⁵ Case C-341/05, *Laval and Partneri* [2007], ECR I-11767, para. 8.

⁴¹⁶ Case C-456/07, *Mihal* [2007] (not published in the ECR), para. 8.

⁴¹⁷ Case C-375/08, *Pontini A. O.* [2008] (not published in the ECR), para. 11.

⁴¹⁸ Case C-384/08, *Attanasio Group* [2008] (not published in the ECR), para. 10.

were the **foreseeable** consequence of the enactment of a piece of legislation and to what extent the companies therefore were able to adjust to the new situation⁴¹⁹.

cc) Non-economic aspects

A party's pressing interest in learning about the scope of its rights enshrined in a number of **Articles of the TFEU**⁴²⁰ or the **validity** of a piece of **secondary legislation**⁴²¹, e.g. as regards Directive 1999/70/EC relevant for fixed-term contracts⁴²², does not generate an "extraordinary urgency". Likewise, cases involving the **duration** of a criminal procedure⁴²³, a **detention** in prison⁴²⁴, or the lack of a risk of deportation for asylum seekers who are minors do not constitute a case of extreme urgency⁴²⁵.

dd) Other cases

Likewise, there are no grounds to apply an expedited procedure in those cases in which the administration in the national proceedings faces certain **logistical difficulties**, such as the storing of seized heating oil⁴²⁶.

c) Critical assessment

As this provision is a tightly restrictive exception to the general rules on referrals, the criteria for this expedited procedure as well as the practical interpretation of said criteria must be strict. Assuming that the substantive criterion under Art. 105 (1) RP ECJ is not substantially different from the "exceptional urgency" required under the provision it replaces, i.e. Art. 104 a RP ECJ, one may ask whether this degree of urgency should only be determined in view of the importance of the legal issues, i.e. regardless of the number of persons concerned. The fact that a national Judge must determine **validity** of a particularly important EU regulation that concerns a large number of persons in the EU should be considered when assessing the degree of urgency⁴²⁷.

III. Procedural rules (paragraphs 2 to 5)

Despite the exceptional urgency, expedited proceedings include a written part and an oral hearing, i.e. the same steps as in an ordinary procedure. The procedure is accelerated by fixing the date for an early hearing (para. 2) and setting a time-

⁴¹⁹ See Case C-344/04, *International Air Transport Association and others* [2006], ECR I-403, para. 10.

⁴²⁰ For example, Case C-33/07, *Ministerul Administratiei si Internelor* [2007], ECR I-05157, para. 6 with further references.

⁴²¹ For example, Case C-154/04, *Alliance of Natural Health and others* [2005], ECR I- 6451, para. 8.

⁴²² Case 3/10, *Affatato* [2010] (not published in the ECR), para. 13 and the case-law cited.

⁴²³ Case C-375/08, *Pontini A. O.* [2008] (not published in the ECR), paras. 9 to 10.

⁴²⁴ Case C-264/10, *Kita* [2010] (not published in the ECR), paras. 9 et seq.

⁴²⁵ Case C-648/11, *MA, BT and DA v Secretary of State for the Home Department* [2012] (not published in the ECR), para. 11 et seq.

⁴²⁶ Case C-330/05, *Granberg* [2007], ECR I-09871, para. 7.

⁴²⁷ Rejected in case C-344/04, *International Air Transport Association*, [2006] ECR I-403, para. 21.

limit of at least 15 calendar days prescribed by the President, instead of the usual two months, for handing in written observations (para. 3). The oral hearing provides the party with an opportunity to comment on the written observations, and the ECJ then decides the case after having heard the Advocate-General (paras. 4 and 5).

Article 106 Transmission of procedural documents

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

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

- 1 It is within the logic of every expedited or otherwise urgent procedure to gain time wherever possible, i.e. not only by arranging the ECJ's calendar accordingly, but also by shortening and simplifying the modalities of notification of procedural documents whenever possible. It is thus for reasons of consistency that the transmission of procedural documents has been harmonized for both the expedited preliminary ruling procedure (Art. 105 et seq. RP ECJ) and the urgent preliminary ruling procedure (Art. 107 et seq. RP ECJ), which has resulted in Art. 106 RP ECJ, to which Art. 114 RP ECJ refers.
- 2 Art. 106 RP ECJ shortens the transmission of documents by providing that procedural documents may be validly lodged and served to the Court and the interested persons within the meaning of Art. 23 Statute ECJ by way of telefax, email or other technical means of communication. In other words, unlike what is normally required, the validity of lodging and serving documents does not depend upon the lodging of the original of the written submission.

CHAPTER 3 URGENT PRELIMINARY RULING PROCEDURE

Article 107 Scope of the urgent preliminary ruling procedure

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

2. The referring court or tribunal shall set out the matters of fact and law which establish the urgency and justify the application of that exceptional

procedure and shall, in so far as possible, indicate the answer that it proposes to the questions referred.

3. If the referring court or tribunal has not submitted a request for the urgent procedure to be applied, the President of the Court may, if the application of that procedure appears, *prima facie*, to be required, ask the Chamber referred to in Article 108 to consider whether it is necessary to deal with the reference under that procedure.

Outline:

I. General	1
II. Upon request or ex officio (paragraph 1)	4
1. Request.....	4
a) Initiative of the national Judge	4
b) No separate request required	5
aa) De jure	5
bb) De facto	6
2. Upon the ECJ's own motion	7
III. Establishing the urgency (paragraph 2).....	8
1. Setting out the reasons for urgency.....	8
2. Proposing answers	9
3. Cases which were declared to be urgent.....	10
a) Children.....	11
aa) Bearing on relationship	11
bb) Conflicting judgments	12
cc) Detention in a secure care institution	13
b) Detention	14
aa) For the purpose of extradition.....	14
bb) Detention centre	15
cc) Release on parole	17
dd) Custody	18
IV. Rights of initiative of the President (paragraph 3)	19

I. General

The **urgent preliminary ruling procedure**, like the expedited preliminary ruling procedure in Art. 105 et seq. RP ECJ, implements **Art. 23 a Statute ECJ** but applies only to cases in the “**area of Freedom, Security and Justice**”. The initial Art. 104 b RP ECJ which marked the first time in the history of the RP ECJ that a legal remedy has been adapted to the **specificities** of a sector of primary law⁴²⁸, has been replaced by a detailed set of rules comprising **Art. 107 to 114 RP ECJ**⁴²⁹.

Art. 23 a Statute ECJ and Art. 107 to 114 RP ECJ reflect the idea that referral proceedings relating to this particular area **tend** to be **urgent**, thus without being under all circumstances inherently urgent, and that neither the classical referral proceedings as procedurally laid down in Art. 93 et seq. RP ECJ nor the expedited

⁴²⁸ In the case of the GC, current litigation concerning the rights of intellectual property: see Art. 130 to 136 RP GC.

⁴²⁹ Case numbers in such proceedings end with the acronym “PPU” (“procédure préjudicielle urgente”).

proceedings in Art. 105 et seq. RP ECJ can appropriately address this particular situation. The latter comprises the same steps as a classical referral procedure and applies only in **exceptional circumstances**. Thus, the urgent procedure simplifies the classical referral procedure through what was hitherto a rather lengthy and complex provision (Art. 104 b RP ECJ), which has been replaced and complemented by Art. 107 to 114 RP ECJ. Whether this multiplication of provisions will make it easier for national Judges to make use of the urgent preliminary ruling procedure remains to be seen.

- 3 In any event, the ECJ has complemented these rules by its “**Information note on references by national courts for preliminary rulings**” with specific guidance concerning Art. 23 a Statute ECJ and what was then Art. 104 b RP ECJ, which became Art. 107 to 114 RP ECJ. While this Information note is not binding, it is highly advisable for all parties to take due account of it. Given the coming into force of Art. 107 to 114 RP ECJ, the abovementioned information note will have to be amended in the near future, as is the case with most if not all practice directions, notes for guidance, etc. adopted by the ECJ.

II. Upon request or ex officio (paragraph 1)

- 4 **1. Request. a) Initiative of the national Judge.** If a reference for a preliminary ruling raises one or more questions in the “**Area of Freedom, Security and Justice**”, the national Judge may **explicitly request** an urgent procedure within the meaning of Art. 107 et seq. RP ECJ, which is *lex specialis* to Art. 105 RP ECJ. If the national Judge does not lodge such request, the ECJ may nevertheless consider it of its **own motion** (see point 2. below).
- 5 **b) No separate request required. aa) De jure.** In contrast to the expedited procedure concerning direct applications⁴³⁰, the urgent procedure in Art. 107 RP ECJ as well as the expedited procedure in Art. 105 RP ECJ do **not** explicitly require a “separate request”, i.e. a document distinct from the request for a preliminary ruling proper, as such separation would be artificial, by contrast to what applies to direct applications.

bb) De facto

- 6 Nevertheless, for **practical reasons** the national Judge should consider requesting an urgent procedure in a separate written submission, chapter, or in a cover letter⁴³¹. The ECJ may request that the national Judge provides clarification, if necessary⁴³².

⁴³⁰ Art. 133 RP ECJ.

⁴³¹ See the “supplementary information” of the ECJ on Art. 104 b RP ECJ (www.curia.europa.eu).

⁴³² Case C-92/12 PPU, *Health Service Executive v S.C.* [2012] (not yet published in the ECR), paras. 48 et seq.

2. Upon the ECJ's own motion

Unlike the expedited referral in the former Art. 104 a RP ECJ and the expedited 7 procedure within the meaning of the former Art. 62 a RP ECJ, the ECJ may nevertheless act on its own motion and pursue urgent proceedings despite the national Judge not requesting such proceedings. This seems to indicate that neither the national Judge nor the parties of the main proceedings may oppose such action by the ECJ.

III. Establishing the urgency (paragraph 2)

1. Setting out the reasons for urgency

The national Judge must “**establish the urgency**” and thereby **justify** the 8 application of this exceptional procedure, by setting out the relevant matters of **fact** and of **law**. It is thus clear that proceedings are **not ipso jure urgent** simply because they happen to relate or concern questions in the “Area of Freedom, Security and Justice”. Whether there is a certain presumption that they are urgent is and may remain a theoretical question, since it is clear from paragraph 2 that the national Judge has a burden of proof, meaning that even if a certain presumption of urgency should exist, he must nevertheless **prove** that his request is justified. After all, Art. 109 (6) RP ECJ is about those cases where the reference is **not** dealt with under the urgent procedure, thus illustrating that such cases do exist. Besides, the mere fact that cases relating to the Area of Freedom, Security and Justice are often about difficult situations from a human point of view should be a natural incentive to take the burden of proof seriously and to provide the ECJ with **detailed, exhaustive and self-explanatory factual and legal information** to this effect. This includes outlining the risks incurred by applying a “classical” referral procedure⁴³³.

2. Proposing answers

The notion of urgency implies that the national Judge shall, as much as possible, 9 indicate the **answers** he proposes to the questions referred.

3. Cases which were declared to be urgent

The following issues have been dealt with through the urgent procedure provided 10 for in Art. 107 et seq. RP ECJ (formerly Art. 104 b RP ECJ):

a) Children. **aa) Bearing on relationship.** This procedure has been applied to 11 the return without delay of a child who has been removed or retained, should that delay be very unfavourable to the relationship between the child and the parent with whom it does not live⁴³⁴ and thereby increase the risk of the child's psychological

⁴³³ See the “supplementary information” of the ECJ on Art. 104 b RP ECJ (www.curia.europa.eu).

⁴³⁴ Case C-195/08 PPU, *Rinau* [2008] ECR p. I-5271, paras. 43 et seq.

harm⁴³⁵. This procedure has been particularly effective concerning children of a young⁴³⁶ or very young age⁴³⁷, and is also sensitive to issues of geographical distance⁴³⁸.

bb) Conflicting judgments

- 12 This procedure has been successfully applied to a case of two conflicting judicial decisions of two Member States regarding to whom the custody of a child is given⁴³⁹.

cc) Detention in a secure care institution

- 13 Likewise, this procedure has been employed in a case of detention in a secure care institution situated in another Member State⁴⁴⁰.

- 14 **b) Detention. aa) For the purpose of extradition.** This procedure has been applied to a case concerning detention after serving a sentence of imprisonment, on the sole basis of detention for the purpose of extradition ordered in the extradition proceedings in which the reference was made⁴⁴¹.

bb) Detention centre

- 15 This procedure may be invoked should the case pending at the national Tribunal concern whether a person should be detained in a detention centre or released, and should the national proceedings be very time sensitive⁴⁴².

cc) Release on parole

- 17 Likewise, this procedure may be employed should criminal proceedings potentially cause the Court to rule out prosecuting a person already sentenced for various offences, should said ruling out reduce the length of the sentence imposed and bring release on parole forward⁴⁴³.

dd) Custody

- 18 This procedure may also apply if the answers to the questions referred affect an individual's detention in custody as well as his possibility to face prosecution⁴⁴⁴.

⁴³⁵ Case C-211/10 PPU, *Povse v Alpagu* [2010] ECR p. I-6673, paras. 35 et seq.

⁴³⁶ Case C-400/10 PPU, *J. McB* [2010] ECR p. I-8965, para. 26.

⁴³⁷ Case C-497/10 PPU, *Mercredi* [2010] (not yet published in the ECR), paras. 37.

⁴³⁸ Case C-491/10 PPU, *Zarraga* [2010] (not yet published in the ECR), paras. 38 et seq.

⁴³⁹ Case C-403/09 PPU, *Deticek* [2009] ECR p. I-12193, paras. 29 et seq.

⁴⁴⁰ Case C-92/12 PPU, *Health Service Executive v S.C.* [2012] (not yet published in the ECR), paras. 48 et seq.

⁴⁴¹ Case C-296/08 PPU, *Goicoechea* [2008] ECR p. I-6307, paras. 32 et seq.; see also Case C-192/12 PPU, *West* [2012] (not yet published in the ECR), paras. 32 et seq.

⁴⁴² Case C-357/09 PPU *Kadzoev* [2009] ECR p. I-11189, paras. 31 et seq.; see also Case C-61/11 PPU, *El Dridi* [2011] (not yet published in the ECR), paras. 26 et seq., comprising a rather short reasoning.

⁴⁴³ Case C-388/08 PPU, *Leymann, Pustovarov* [2008] ECR p. I-8993, paras. 37 et seq.

⁴⁴⁴ Case C-83/12 PPU, *Minh Khoa Vo* [2012] (not yet published in the ECR), paras. 30 et seq.

IV. Rights of initiative of the President (paragraph 3)

Pursuant to Art. 107 (1) RP ECJ, an urgent preliminary ruling procedure may be the result of a request by the national Judge or of an *ex officio* decision taken by the ECJ. Paragraph 3 of Art. 107 RP ECJ applies whenever there is no request by the national Judge whilst on the face of it the case raises the question whether the urgent preliminary ruling procedure should be applied *ex officio*. This is when the President will refer the matter to the designated Chamber hearing urgent preliminary ruling procedures, since it is that Chamber which takes the final decision on whether to deal with a reference for a preliminary ruling under the urgent procedure (see Art. 108 RP ECJ). 19

Article 108 Decision as to urgency

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

2. If the case is connected with a pending case assigned to a Judge-Rapporteur who is not a member of the designated Chamber, that Chamber may propose to the President of the Court that the case be assigned to that Judge-Rapporteur. Where the case is reassigned to that Judge-Rapporteur, the Chamber of five Judges which includes him shall carry out the duties of the designated Chamber in respect of that case. Article 29(1) shall apply.

I. Designated Chamber (paragraph 1)

There are no “specialized” Chambers within the ECJ (nor do such exist at the GC or CST) and this is also the case for urgent procedures under Art. 107 et seq. RP ECJ which are dealt with by the designated Chamber, i.e. the formation responsible in that year for dealing with cases that may be dealt with under the urgent preliminary ruling procedure. 1

II. Connection with a pending case (paragraph 2)

This provision is new and has been inserted in the interest of the good administration of justice: Basically, a new case is assigned to the designated Chamber. Exceptionally, if the new case is connected to a pending case dealt with 2

by a Judge Rapporteur from a different formation the new case may be reassigned to him. In that case, the Chamber of which that Judge-Rapporteur is a member carries out the duties of the designated Chamber, on an ad hoc basis.

Article 109 Written part of the urgent procedure

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

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

3. Where a request for a preliminary ruling refers to an administrative procedure or judicial proceedings conducted in a Member State other than that from which the reference is made, the Court may invite that first Member State to provide all relevant information in writing or at the hearing.

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

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

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

I. Immediate notification of the referral (paragraph 1)

- 1 Art. 109 RP ECJ provides a sequence of events: The request for a preliminary ruling to be dealt with under the urgent procedure is “served forthwith”, i.e. it would seem prior to any decision on whether or not the urgent procedure should be applied, to those who are **directly concerned**, i.e. the parties to the main proceedings, the Member State where the reference was made, etc.

II. Notification of the decision on the urgency (paragraph 2)

Once the decision on whether or not to apply the urgent procedure is adopted 2 the same addressees as under paragraph 1 are **immediately** informed thereof. The “normal” **time-limit** of two months for submitting the observations does, by definition, not apply to the urgent procedure, the relevant time-limit being prescribed on an *ad hoc* basis. Indicating certain subject the addressees should concentrate on and limiting the maximum length of the written observations are further means to adopt the proceedings to the urgency.

III. Request for information to a Member State (paragraph 3)

This **new** provision takes account of situations in which the facts, raised in the 3 case referred potentially or actually, affect the interests of one or more other Member States. Thus an *ad hoc* fact finding may become necessary and the purpose of this provision is to enable the ECJ to do so, if required, unless this would interfere with the pending proceedings.

IV. Notification to the interested persons (paragraph 4)

Once the request for preliminary ruling has been notified to the addressees 4 directly concerned (paragraph 1) said request is notified to the other interested persons within the meaning of Art. 23 Statute ECJ.

V. Oral hearing (paragraph 5)

In urgent preliminary proceedings the oral hearing is the **rule**, all the more so 5 should the written part of the proceedings be omitted due to extreme urgency (see Art. 111 RP ECJ).

VI. Back to normal proceedings (paragraph 6)

This provision illustrates that referrals for a preliminary ruling are not inherently 6 urgent simply because they concern the “**Area of Freedom, Security and Justice**”. The case then continues as a “normal” reference for a preliminary ruling, which means that there is no case for an expedited procedure within the meaning of Art. 105 RP ECJ.

Article 110 Service and information following the close of the written part of the procedure

1. Where a reference for a preliminary ruling is to be dealt with under the urgent procedure, the request for a preliminary ruling and the statements of case or written observations which have been lodged shall be served on the interested persons referred to in Article 23 of the Statute other than the parties and entities referred to in Article 109(1). The request for a preliminary ruling shall be accompanied by a translation, where appropriate of a summary, in accordance with Article 98.

2. The statements of case or written observations which have been lodged shall also be served on the parties and other interested persons referred to in Article 109(1).

3. The date of the hearing shall be communicated to the interested persons referred to in Article 23 of the Statute at the same time as the documents referred to in the preceding paragraphs are served.

This provision governs the procedure as of the **closure** of the written part of the proceedings and serves the purpose of preparing the **oral hearing**, by providing all interested parties with the written observations lodged and translations of the request for preliminary ruling.

Article 111 Omission of the written part of the procedure

The designated Chamber may, in cases of extreme urgency, decide to omit the written part of the procedure referred to in Article 109(2).

The meaning of the term “extreme urgency” is rather **unclear**, at least when it comes to expressing this in terms of days or weeks, but clearly requires a higher degree of urgency than Art. 107(2) RP ECJ. This most probably implies that an **oral hearing** takes place as soon as possible and that the ECJ is not prevented from adopting measures of organization, e.g. to request the parties to provide a written version of the replies suggested before the oral hearing takes place.

Article 112 Decision on the substance

The designated Chamber shall rule after hearing the Advocate General.

The Advocate-General is always heard in urgent proceedings, meaning that he does not hand down an opinion.

Article 113 Formation of the Court

1. The designated Chamber may decide to sit in a formation of three Judges. In that event, it shall be composed of the President of the designated Chamber, the

Judge-Rapporteur and the first Judge or, as the case may be, the first two Judges designated from the list referred to in Article 28(2) on the date on which the composition of the designated Chamber is determined in accordance with Article 108(1).

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

The designated Chamber normally sits in a formation of five Judges but may decide to sit in a formation of three Judges (paragraph 1) or have the case referred to a formation comprising a greater number of Judges (paragraph 2). The latter might come at the price of having to reopen the oral part of the procedure, which might be necessary as such but might limit the number of such reassignments, bearing in mind the urgency of the case. The referring national Court or Tribunal has no say in this respect.

Article 114 Transmission of procedural documents

Procedural documents shall be transmitted in accordance with Article 106.

The modalities for the transmissions of documents laid down in Art. 106 RP ECJ are the same for both the expedited and the urgent preliminary ruling procedure.

CHAPTER 4 LEGAL AID

Introduction

In the previous RP ECJ the provisions governing legal aid were focused on **direct** 1 **actions** (see Art. 76 of the previous RP ECJ), whilst in the case of referrals for preliminary rulings all there existed was a rather rudimentary provision mentioning the possibility of legal aid (see Art. 104 (6), 2nd sub-paragraph of the previous RP ECJ). Ever since the GC gained jurisdiction for all direct challenges of, inter alia, natural persons, legal aid **plays a minor**, if not insignificant, role in proceedings at the ECJ. At the same time the number of referrals for preliminary rulings and thus proceedings involving natural persons increased over the years and thus the need to **review legal aid** in this respect. It became also necessary to update the **terminology**, e.g. by suppressing the term “lack of means” by the more neutral “financial situation”, taking due account of Art. 47 of the Charta of Fundamental Rights of the EU.

Art. 185 to 189 RP ECJ relates to legal aid in the context of **appeals** against 2 decisions of the GC.

Article 115 Application for legal aid

- 1. A party to the main proceedings who is wholly or in part unable to meet the costs of the proceedings before the Court may at any time apply for legal aid.
- 2. The application shall be accompanied by all information and supporting documents making it possible to assess the applicant’s financial situation, such as a certificate issued by a competent national authority attesting to his financial situation.
- 3. If the applicant has already obtained legal aid before the referring court or tribunal, he shall produce the decision of that court or tribunal and specify what is covered by the sums already granted.

Outline:

I. General	1
II. Admissibility of application (paragraph 1).....	2
1. General.....	2
2. Party.....	3
3. Application at any time	4
III. Supporting documents (paragraph 2).....	5
1. Burden of proof.....	5
2. Assessment of the admissibility of the referral.....	6
3. No assessment of the merits of the proceedings.....	7
IV. Legal aid obtained at national level (paragraph 3).....	8

I. General

- 1 For reasons of consistency, i.e. in order to avoid applying legal standards to the concept of legal aid diverging according to the legal remedy concerned, the new Art.115 RP ECJ is based on Art. 76 of the previous RP ECJ.

II. Admissibility of application (paragraph 1)

1. General

- 2 When making an application for legal aid, a party also has to consider the ECJ’s “**Supplementary Rules**”⁴⁴⁵. Such an application is by definition ancillary and admissible concerning every legal remedy in EU law, including referrals for preliminary ruling, as detailed in Art. 115 et seq. RP ECJ.

2. Party

- 3 While this term is generic and not specified, this clearly means **natural persons**.

⁴⁴⁵ There are no such rules in the case of the GC and the CST.

3. Application at any time

A party may apply for legal aid at any time, i.e. **before or during** the proceedings. 4
If the application for legal aid is filed prior to proceedings, it shall briefly state the subject of said proceedings.

III. Supporting documents (paragraph 2)

1. Burden of proof

The applicant must prove his **need for financial assistance**, e.g. by attaching a 5
confirmation of his income tax or a document from the social welfare authority of his Member State. Subsequently, the ECJ decides on the application without a hearing.

2. Assessment of the admissibility of the referral

Even though the RP ECJ do not contain any explicit provision to this effect it is 6
safe to assume that the ECJ will not assess an application for legal aid in the context of referral proceedings without examining first the admissibility of the referral, in particular whether it has jurisdiction for the question referred, whether the request for a preliminary ruling complies with Art. 95 RP ECJ, etc.

3. No assessment of the merits of the proceedings

By contrast, since the request for a preliminary ruling is a non-contentious 7
procedure between the national Court or Tribunal and the ECJ, there are no “merits of the proceedings” the ECJ would have assessed if the circumstances were different, i.e. if the request for legal aid related to a direct action or an appeal.

IV. Legal aid obtained at national level (paragraph 3)

Pursuant to paragraph 3 the applicant must declare any amount of legal aid 8
already obtained in the context of the national proceedings, since he should, quite obviously, not obtain **two times** legal aid for the same proceedings. That said, the provisions in Art. 115 et seq. RP ECJ leave room for a supplement, should the applicant have obtained legal aid at national level which turns out to be insufficient for the purpose of the referral proceedings.

Article 116 Decision on the application for legal aid

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

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

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

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

The purpose of the new Art. 116 RP ECJ is to accelerate the progress of applications for legal aid by automatically assigning it to the Judge-Rapporteur and by ensuring that the decision on the application is to be taken by the smallest formation of the ECJ to which that Judge belongs.

Article 117 Sums to be advanced as legal aid

Where legal aid is granted, the cashier of the Court shall be responsible, where applicable within the limits set by the formation of the Court, for costs involved in the assistance and representation of the applicant before the Court. At the request of the applicant or his representative, an advance on those costs may be paid.

This provision is about the practical aspects of the actual payment of legal aid to the person entitled to it, including any advance payment.

Article 118 Withdrawal of legal aid

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

If a given set of facts resulted in legal aid being paid to the applicant it is a matter of consistency that any major change regarding those facts, starting with the financial situation of the applicant, has a bearing on the initial decision granting the aid.

TITLE IV DIRECT ACTIONS

CHAPTER 1 REPRESENTATION OF THE PARTIES

Article 119 Obligation to be represented

1. A party may be represented only by his agent or lawyer.
2. Agents and lawyers must lodge at the Registry an official document or an authority to act issued by the party whom they represent.
3. The lawyer acting for a party must also lodge at the Registry a certificate that he is authorised to practise before a court of a Member State or of another State which is a party to the EEA Agreement.
4. If those documents are not lodged, the Registrar shall prescribe a reasonable time-limit within which the party concerned is to produce them. If the applicant fails to produce the required documents within the time-limit prescribed, the Court shall, after hearing the Judge-Rapporteur and the Advocate General, decide whether the non-compliance with that procedural requirement renders the application or written pleading formally inadmissible.

Outline:

I. General	1
II. Agent or lawyer (paragraph 1)	2
1. Agents	2
2. Lawyers	3
3. Advisers	4
4. Scope	5
III. Authority to act (paragraph 2)	6
1. Agents	6
2. Lawyers	7
a) Relevance	7
b) Authority to sign a power of attorney	8
IV. Authority to practice before a Court of a Member State (paragraph 3). ..	9
1. General	9
2. Authorised to practice	10
a) Before a Court of a Member State	10
b) No code of conduct	11
3. Not authorised to practice	12
a) Third States	12
b) Certain categories of lawyers	13
c) Incompatibilities	14
d) Former or suspended lawyers	15
V. Non-compliance (paragraph 4)	16

I. General

- 1 This provision repeats a fundamental obligation of the parties, i.e. to be represented by an agent or lawyer, which is mandatory with respect to direct actions, as provided by **Art. 19 Statute ECJ** and further detailed in Article 38 (3), (5) and (7) of the previous RP ECJ.

II. Agent or lawyer (paragraph 1)

1. Agents

- 2 EU institutions and Member State are represented by an **agent**, who is usually, but not necessarily, a member of their respective legal service.

2. Lawyers

- 3 **Natural and legal persons** as defined by private or public law, need to be represented by a **lawyer**. The requirement to have recourse to a **third party** is based on a conception of the lawyer's role as collaborating in the administration of justice and as being required to provide, in **full independence** and in the overriding interests of justice, such legal assistance as his client needs. Such a conception reflects **legal traditions** common to the Member States and is also to be found in the European Union legal order, as is demonstrated by, precisely, Art. 19 of the Statute ECJ⁴⁴⁶. The obligation to be represented by a lawyer does **not infringe** the parties' right to **judicial protection**, access to an impartial tribunal and fair trial⁴⁴⁷.

3. Advisers

- 4 Art. 119 does not mention advisers, by contrast to Art. 19 Statute ECJ and Art. 43 RP ECJ, which is due to the fact that advisers **assist agents and/or lawyers**, but do not represent autonomously a party.

4. Scope

- 5 This obligation applies to **all** the phases of the proceedings (written, oral, informal meetings, etc.) and is thus an essential procedural requirement and a prerequisite for **admissibility** of the legal remedy concerned.

⁴⁴⁶ Joined Cases T-139/10, T-280/10 to T-285/10 and T-349/10 to T-352/10, *Milux v OHIM* [2011] (not published in the ECR), para. 21.

⁴⁴⁷ Case C-265/11 P, *Campailla v Commission* [2011] (not published in the ECR), para. 9.

III. Authority to act (paragraph 2)

1. Agents

Member States and EU institutions deliver an authority to act to their agents. 6

2. Lawyers. a) Relevance. This provision remains relevant for lawyers acting as 7 external counsel for Member States and EU institutions and in case of **appeals** by private legal persons.

b) Authority to sign a power of attorney

In the case of a legal person, proof of power of attorney results normally from 8 authorization by the instrument regulating the legal person.

IV. Authority to practice before a Court of a Member State (paragraph 3)

1. General

The **lawyer** must be authorised to practice before a Court of a Member State and 9 must provide the ECJ with such **certificate**. Thus, there is no specific or additional authorisation to practice before the EU Courts, nor is there any other form of “*numerus clausus*”, unlike what is the case with respect to the highest judicial instances in some Member States, such as the German Bundesgerichtshof (Federal Supreme Court), or the French Conseil d’Etat (highest administrative court).

2. Authorised to practice. a) Before a Court of a Member State. The requirement 10 in paragraph 3 is based on a conception of the lawyer’s role as collaborating in the Courts’ administration of justice and as being required to provide, in full independence, and in the overriding interests of that cause, such legal assistance as the client needs. The Statute ECJ’s definition of a lawyer, as referred to in Art. 119 (3) RP ECJ, thus reflects the legal traditions which form the basis of Community law and are also common to the Member States⁴⁴⁸. It also reflects the Member States’ jurisdiction over the training, certification, and discipline of lawyers and the legal profession within their territory.

b) No Code of conduct

As lawyers are employed by private parties and, as the case may be, by Institu- 11 tions and Member States, as representatives of those groups, they are, unlike ECJ judges, not under the jurisdiction of the ECJ regarding conduct and thus there is no ECJ code of conduct for lawyers⁴⁴⁹. Instead, lawyers’ roles are clearly defined by the

⁴⁴⁸ Case 155/79, *AM & S v Commission*, [1982] ECR p. 1575, para. 24.

⁴⁴⁹ But there is a code of conduct which applies to the judges of all three EU Courts.

rules of **professional ethics** and **discipline** which are laid down and enforced by national-level bodies endowed with the requisite powers for that purpose⁴⁵⁰, such as the bar to which a lawyer is admitted.

- 12 3. **Not authorised to practice.** a) **Third States.** It is clear from both Art. 19 Statute ECJ and Art. 119 (3) RP ECJ that all lawyers who are only authorised to practice before a court of a **third party State** which is not a State which is party to the EEA Agreement⁴⁵¹, may **not appear** at the EU Courts.

b) Certain categories of lawyers

- 13 Patent- and trademark lawyers⁴⁵², including “Patent Attorney Litigators”, which exist in the UK⁴⁵³, should they not be authorised to practice before a Court of a Member State⁴⁵⁴ (even if this non-authorisation is the direct result of a provision in national law) are also excluded.

c) Incompatibilities

- 14 Furthermore, those persons who are both lawyer and manager of a company may not represent that company before the ECJ⁴⁵⁵. Neither may a lawyer who is also an employee (i.e., not an owner or manager) of a company represent that party before the ECJ⁴⁵⁶. In both cases, the concept of **independence** prevails over the financial benefits such rationalization might generate⁴⁵⁷.

d) Former or suspended lawyers

- 15 This is also the case for those persons who by virtue of national laws are entitled to represent a party before their respective national Courts⁴⁵⁸, but are not, or are no longer⁴⁵⁹, admitted in those Courts as a lawyer⁴⁶⁰. If the admission of a lawyer to the bar is suspended, but not revoked, the question of whether this lawyer can still appear in Court during and/or after suspension is determined by national law⁴⁶¹.

⁴⁵⁰ Such institutions include national lawyers’ or bar associations and their codes of conduct as well as ministries and other government institutions and their codes of conduct or standards of behaviour.

⁴⁵¹ Case T-37/98, *FTA v Council*, [2000] ECR II-373 et seq.

⁴⁵² Except if they appear in the context of referral proceedings and qualify as legal representative under the National rules, see e.g. Case C-246/05, *Häupl v Lidl*, [2007] ECR I-04673.

⁴⁵³ Case T-487/07, *Imperial Chemical Industries v OHIM* [2008] (not published in the ECR), para. 22.

⁴⁵⁴ Case T-14/04, *Alto de Casablanca v OHIM*, [2004] ECR II-3077, para. 11.

⁴⁵⁵ Case T-184/04, *Sulvida v Commission*, [2005] ECR II-85, paras. 10 to 12.

⁴⁵⁶ Case T-226/10, *Prezes Urzedu Komunikacji Elektronicznej v Commission*, [2011] (not yet published in the ECR), paras. 21 and 25.

⁴⁵⁷ Also bearing in mind the proverb “He who is his own lawyer has a fool for a client”.

⁴⁵⁸ Case T-445/04, *ET v OHIM*, [2005] ECR II-677, para. 9.

⁴⁵⁹ Case T-296/10, *Varga and Halio v Council* [2010] (not published in the ECR), para. 9.

⁴⁶⁰ Case T-357/05, *Comunidad Autónoma de Valencia – Generalidad Valenciana v Commission*, [2006] ECR p. II-2015, para. 7, 10 and 12.

⁴⁶¹ Case 18/57, *Nold v High Authority* [1959] ECR, page 91, 132.

V. Non-compliance (paragraph 4)

Non-compliance with the obligations under paragraphs 2 and 3 has a bearing on 16 the serving of the documents (see Art. 123 RP ECJ). This provision enables the party concerned to **remedy** such non-compliance, but makes it also clear that a non-compliance will ultimately result in a case of inadmissibility.

CHAPTER 2 WRITTEN PART OF THE PROCEDURE

Article 120 Content of the application

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

- (a) the name and address of the applicant;
- (b) the name of the party against whom the application is made;
- (c) the subject-matter of the proceedings, the pleas in law and arguments relied on and a summary of those pleas in law;
- (d) the form of order sought by the applicant;
- (e) where appropriate, any evidence produced or offered.

Outline:

I. Introduction	1
1. General.....	1
2. Relevance	2
II. Contents of an application.....	3
1. Overview.....	3
2. Indications concerning the applicant (lit. a).....	4
3. Designation of the defendant(s) (lit. b)	5
a) Details.....	5
b) Errors to be avoided	6
4. The subject-matter, pleas in law and arguments, summary (lit. c)	7
a) Introduction.....	7
aa) Art. 38 (1) (a) of the former RP ECJ	7
bb) Improved wording in Art. 120 (c) RP ECJ	8
b) Subject-matter.....	9
c) Pleas in law and arguments relied on	10
aa) Introduction.....	10
bb) Describing the relevant legal framework.....	11
(1) Separate chapter.....	11
(2) Decentralised.	12
cc) Exact meaning of “pleas in law and arguments relied on”... ..	13
(1) Introduction.	13
(2) Requirements in terms of clarity.	14
(3) Factual particulars	15
(a) Separate chapter.....	15
(b) Relevant facts.	16
(4) Legal particulars	17
(a) General.	17
(b) Structure.....	18

(c) Insufficient.....	19
(d) Infringement proceedings.....	20
(e) Action for damages.....	21
dd) Summary of pleas in law	22
5. Form of order sought (lit. d)	23
a) Requirements.....	23
b) Inadmissible forms of order sought	24
aa) Unclear orders sought	24
bb) Lack of jurisdiction.....	25
c) Adapting order(s) sought	26
d) Unlimited jurisdiction	27
6. Indicating the evidence (lit. e).....	28

I. Introduction

1. General

- 1 This Article implements **Art. 21 Statute ECJ** by listing the necessary “**ingredients**” every application needs to comply with when it is lodged⁴⁶². The ECJ verifies compliance with these⁴⁶³ and a number of other requirements such as time-limits⁴⁶⁴, absence of *lis pendens*⁴⁶⁵, etc. on its **own initiative**. This expectation of compliance and independence applies to every application, meaning that an application is inadmissible if it merely refers to what is being stated in another, very similar application⁴⁶⁶. That said an application in accordance with the requirements in Art. 120 RP ECJ may of course refer in a complementary manner to other cases pending at the ECJ⁴⁶⁷. A **collective application** is admissible if all parties challenge the same decision and rely on the same legal pleas⁴⁶⁸.

2. Relevance

- 2 The requirements laid down in this Article are not only relevant for an application’s **admissibility**, but also, albeit indirectly, for the **substance**, since these requirements force every applicant to separate factual and legal arguments from each other and present both forms of arguments in as clearly and structured a manner as possible.

⁴⁶² Case 50/84, *Bensider A. O. v Commission* [1984] ECR 3991, para. 8.

⁴⁶³ Joined Cases 19–60, 21–60, 2–61 and 3–61, *Société Fives Lille Cail A. O. v High Authority* [1961] ECR p. 561.

⁴⁶⁴ Joined Cases 193/87 and 194/87, *Maurissen and Union Syndicale v Court of Auditors* [1989] ECR, para. 39.

⁴⁶⁵ Joined Cases 45–70 and 4970, *Bode v Commission* [1971] ECR p. 465; see also the definition of *lis pendens* in Joined Cases 358/85 and 51/86, *France v Parliament* [1988] ECR 4821, para. 12.

⁴⁶⁶ Case 9/55, *Société des charbonnages de Beeringen v High Authority* [1956] ECR p. 325.

⁴⁶⁷ Case 4–69, *Lütticke v Commission* [1971] ECR p. 325.

⁴⁶⁸ Case 13–57, *Wirtschaftsvereinigung Eisen- und Stahlindustrie v High Authority* [1958] ECR p. 263.

II. Contents of an application

1. Overview

The content of any application needs to be in line with the **binding requirements** 3 set out in Art. 120 RP ECJ. Thus, errors or omissions in the application cannot be removed and resolved *a posteriori*. The only way to correct such errors is to send a *corrigendum*, which is limited to spelling mistakes and other typing errors.

2. Indications concerning the applicant (lit. a)

The indication of the **name**, and **address** of the applicant⁴⁶⁹ (or, in the case of an 4 application of an EU institution or a Member State, its name and official address) is in fact self-evident. In the case of a collective application, each individual applicant must indicate his name and address⁴⁷⁰.

3. Designation of the defendant(s) (lit. b). a) Details. The applicant must further- 5 more indicate the defendant(s), i.e. either the **EU Institution(s)** concerned⁴⁷¹ or the **Member State** against which the application is directed. One and the same application may be directed against **several** institutions, typically the Parliament and the Council; however, if an application is brought against multiple Member States, it needs to be **individually** addressed to each Member State, even if the underlying reason for the application is the same, in order to comply with the language(s) of the case (as the Member States have the privilege of making their official language the language of proceedings for their part of the case in question)⁴⁷².

b) Errors to be avoided

Applications may neither be directed against “the Community” or “the European 6 Union” but must instead be directed against either one or several specific **EU institutions**. Furthermore, they may not subsequently be extended by including a further institution which was not mentioned in the initial application⁴⁷³. That said, an erroneous designation of the defendant may be corrected at a later stage,⁴⁷⁴ and the applicant is not obliged to indicate the defendant’s address, which is known *ex officio*.

⁴⁶⁹ The wording of this provision dates back to the days when the ECJ also had jurisdiction over pleas from natural and legal persons.

⁴⁷⁰ Case C-229/88, *Cargill and others v Commission* [1990], ECR I-1303, 1315 and Case ECJ 294/83, *les Verts v Parliament* [1986], ECR I-1339, 1363.

⁴⁷¹ Art 13 TEU.

⁴⁷² Art. 37 (1) RP EJC.

⁴⁷³ Case 90/77, *Stimming v Commission* [1977], ECR 2112, 2113.

⁴⁷⁴ Case 44/76, *Milch, Fett- und Eier-Kontor v Council* [1977], ECR 393, 405 and Case 50/74, *Asmussen and others v Commission* [1975], ECR 1003.

- 7 4. **The subject-matter, pleas in law and arguments, summary (lit. c). a) Introduction.** aa) **Art. 38 (1) (a) of the former RP ECJ.** Pursuant to the case-law relating to Art. 38(1) (c) of the old RP ECJ, which is now Art. 120 RP ECJ, it is “clear” that an application must state the **subject-matter** of the proceedings and a **summary of the pleas in law** upon which the application is based. This statement must furthermore be sufficiently **clear** and **precise** to enable the defendant to prepare his defense and to enable the Court to rule on the application. It is therefore necessary for the applicant to indicate **coherently and intelligibly** the essential points of law and of fact on which his case is based.

bb) Improved wording in Art. 120 (c) RP ECJ

- 8 Given the – very – abundant case-law on applications failing to comply with these requirements, it is doubtful whether Art. 38 (1) (c) of the **old** RP ECJ was as “clear” as the case-law states, or whether the agents, advisers or lawyers concerned who fail to draft their applications in a sufficiently clear and precise manner are solely responsible for this compliance failure. Be it as it may, the wording of Art. 120 (c) RP ECJ is **more explicit** than the one of its predecessor.

b) Subject-matter

- 9 This expression, which is not self-explanatory, requires the applicant to provide a **general description** of what the contentious matter is about. This should be indicated in an introductory part of the application, and does not require more than one or two paragraphs.
- 10 c) **Pleas in law and arguments relied on.** aa) **Introduction.** First, no applicant is prevented from presenting a given plea in law in the application on the grounds that it was not mentioned in the preceding administrative proceedings⁴⁷⁵, in contrast to the specific requirement applying to staff cases. That said, one of the major challenges applicants currently face is that their applications must contain **all pleas in law** deemed to be either currently or potentially relevant for their case, since **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 procedure⁴⁷⁶. It is thus advisable to mention all pleas in law which could be relevant to the application and expand on those which seem the most relevant. It is best to keep the others for further elaboration at the next stage of the written proceedings, i.e. during the reply to the statement of defence.
- 11 bb) **Describing the relevant legal framework.** (1) **Separate chapter.** While such description is not expressly required by Art. 120 RP ECJ⁴⁷⁷ it may be appropriate in certain cases to **quote** the relevant primary and/or secondary **legislation** in a separate chapter of the written submission. For obvious reasons such provisions should never be paraphrased. This chapter may either precede or follow the chapter describing the relevant facts and legal particulars, whichever is more appropriate.

⁴⁷⁵ Case 16–61, *Acciaiere ferriere e fonderie di Modena v High Authority* [1962] ECR p. 547.

⁴⁷⁶ Art. 127 (1) RP ECJ.

⁴⁷⁷ See also Joined Cases 7/56, 3/57 to 7/57, *Algera A. O. v High Authority* [1957] ECR p. 81.

This is particularly useful in case of long and/or numerous provisions considered being relevant for the individual case. It may also be useful to indicate if and when a relevant piece of legislation has been amended, or whether any legislative amendment is pending at the time of the application.

(2) **Decentralised.** Alternatively, it may be in the interest of clarity to **quote** the relevant provisions in a more decentralised way, i.e. in the context of each legal plea and its legislative backing.

cc) **Exact meaning of “pleas in law and arguments relied on”** (1) **Introduction.** The old Art. 38 (1) (c) RP ECJ required a “*summary of the pleas in law on which the application is based*”, which the ECJ’s case law considered to be a **minimum requirement**⁴⁷⁸. The pleas in law could be presented as a “summary”, because in proceedings at the ECJ⁴⁷⁹ there is *de lege* a right to a second exchange of written submissions⁴⁸⁰, which enables the parties to provide further arguments, i.e. to elaborate their initial legal pleas, provided no new legal pleas are introduced⁴⁸¹. That said, the wording of Art. 120 (c) RP ECJ is much clearer.

(2) **Requirements in terms of clarity.** The case-law provides that indications of pleas in law must be sufficiently **clear** and **precise** to enable the defendant to prepare its **defence** and the Court to rule on the application, if necessary, without any further information from the applicant. In order to guarantee **legal certainty** and sound administration of justice, in order for an action to be admissible it is necessary for the applicant to **coherently** and **intelligently** indicate in the application the basic “**legal and factual particulars**” he relied on in formulating that application⁴⁸². If an application is incomprehensible it will be dismissed⁴⁸³.

(3) **Factual particulars.** (a) **Separate chapter.** Every application must contain a separate chapter in which all **facts** relevant for the case in **general**, and the subsequent legal pleas and the order(s) sought in **particular**, are described. In other words, the facts should not be scattered all over the application. Likewise, the chapter on facts should not contain any legal grounds; legal grounds should instead be placed in their own, separate chapter. Normally, the facts are presented in **chronological order** inside their respective chapter.

(b) **Relevant facts.** The applicant should only indicate those facts which are directly relevant for the case in general and the legal pleas and arguments in particular, which does not rule out mentioning certain facts which are only indirectly relevant.

(4) **Legal particulars.** (a) **General.** First of all, the applicant has exclusive choice of the **legal basis** of its action; the EU judicature may not itself choose the most appropriate legal basis⁴⁸⁴. According to **early case law** there is no obligation to

⁴⁷⁸ See Case C-543/08, *Commission v Portugal* [2010] (not yet published in the ECR), para. 21, which indicates; “at the very least”.

⁴⁷⁹ In contrast to those at the RP GC.

⁴⁸⁰ Art. 126 RP ECJ.

⁴⁸¹ Art. 127 RP ECJ.

⁴⁸² Case C-178/00, *Italy v. Commission* [2003], ECR I-303, para. 6; Case C-199/03, *Ireland v Commission* [2005] ECR I-8027, para. 50.

⁴⁸³ See, e.g. Case C-178/00, *Italy v Commission* [2003] ECR I-303, para. 7.

⁴⁸⁴ See, to that effect, Case 175/73, *Union syndicale and Others v Council* [1974] ECR 917.

quote the legal provisions relied upon⁴⁸⁵, or to refer expressly to the relevant provision of primary law⁴⁸⁶. It is equally irrelevant to the outcome of the case if the relevant legal provision has been referred to in an erroneous manner⁴⁸⁷ or if the legal principle relied upon is unwritten⁴⁸⁸. But in practice, it is in the interest of clarity to quote the relevant provisions, either in the chapter concerning the legal grounds, or, if these grounds are long or complex, in a preceding chapter describing the relevant legal framework (see bb) above).

- 18 (b) **Structure.** The pleas in law should be presented in a logical and well-structured manner while making a clear distinction between **procedural** pleas and those regarding the **substance** of the case, as the case may be, distinguishing between primary and secondary EU law, as the case may be.
- 19 (c) **Insufficient.** Thus, an **abstract**⁴⁸⁹ enumeration of legal pleas, e.g. by simply stating that the defendant has committed a misuse of power,⁴⁹⁰ **does not suffice**⁴⁹¹. A **general reference** to pleas in law put forward in another case is equally inadmissible⁴⁹².
- 20 (d) **Infringement proceedings.** In these proceedings the Commission must prove the alleged failure in question by placing before the Court all the information needed to enable the Court to establish that the obligation has not been fulfilled. In procedural terms, this means that the Commission's application may not mention its complaints only in the form of a mere reference to the grounds stated in both the formal letter and in the reasoned opinion nor in the part of the application devoted to the legal background⁴⁹³. That said, the Commission is not prevented from setting out its initial complaints in greater detail in its application by providing more explanation⁴⁹⁴, on the condition that this explanation does not alter the subject-matter of the dispute⁴⁹⁵. The Commission is **not**, however, obliged to set out in its reasoned opinion, let alone in its application, the **steps to be taken** to remedy the infringement described⁴⁹⁶.
- 21 (e) **Action for damages.** An application for damages must indicate, in particular, the nature of the harm which the applicant has allegedly suffered and the event giving rise to that harm⁴⁹⁷.

⁴⁸⁵ Joined cases 7/56, 3/57, 7/57, *Algera and others v Common Assembly of the ECSC* [1957], ECR 81.

⁴⁸⁶ Joined Cases 2/63 to 10/63, *San Michele v High Authority of the ECSC* [1963, ECR I- 661, 691.

⁴⁸⁷ Case 12/68, *X v Commission* [1969], ECR 109, 115.

⁴⁸⁸ Case 108-63 R, *Officine Elettroceccaniche Merlini v High Authority* [1965] ECR p. 1.

⁴⁸⁹ Joined Cases 19-60, 21-60, 2-61 and 3-61, *Société Fives Lille Cail A. O. v High Authority* [1961] ECR p. 561.

⁴⁹⁰ Joined Cases 19/60, 21/60, 2/61 and 3/61, *Fibres Lille Cail v High Authority ECSC* [1961], ECR 558, 559.

⁴⁹¹ Case C-330/88, *Grifoni v. EAEC* [1991], ECR I-1045, para. 18.

⁴⁹² Case 9/55, *Charbonnages de Beeringen v High Authority ECSC* [1956], ECR 323, 352.

⁴⁹³ Joined Cases C-189/02 P, C-202/02 P, C-205/02 p. to C-208/02 p. and C-213/02 P, *Dansk Rorindustri and others v. Commission* [2005], ECR I-5425, para. 96.

⁴⁹⁴ Case C-458/08, *Commission v Portugal* [2010] (not yet published in the ECR), para. 47.

⁴⁹⁵ Case C-67/99, *Commission v Ireland* [2001], ECR I-5757, para. 23.

⁴⁹⁶ Case C-535/07, *Commission v Austria* [2010] (not yet published in the ECR), para. 50.

⁴⁹⁷ Case C-322/91, *TAO/AFI v Commission* [1992] ECR I-6373, paras. 13-14.

dd) Summary of pleas in law

Moreover, applications shall contain a summary of the pleas in law, which can 22 then be used to **publish** the notice on the case in the Official Journal⁴⁹⁸.

5. Form of order sought (lit. d). a) Requirements. The form(s) of order sought 23 should be indicated either at the beginning or the end of the application⁴⁹⁹. This indication must express **exactly** the *petitum* of the applicant, so that the ECJ decides neither *ultra*⁵⁰⁰ nor *infra petita*⁵⁰¹. This applies to all categories of applications. **Alternative claims** are equally admissible. Furthermore, the applicant should strictly separate forms of order sought from other applications, such as those aiming for measures of organization.

b) Inadmissible forms of order sought. aa) Unclear orders sought. Thus, **ambig- 24 uous**⁵⁰² or otherwise **unclear**⁵⁰³ orders, as well as **new orders** sought put forward in the course of the proceedings⁵⁰⁴, even if only subsidiarily⁵⁰⁵, are inadmissible. The same is true in the event of a claim for any “financial compensation whatsoever”⁵⁰⁶.

bb) Lack of jurisdiction

It is settled case-law that the ECJ has no jurisdiction to issue **directions** to the 25 Community institutions, to the Member States, or to natural or legal persons.

c) Adapting order(s) sought

However, if in the course of the proceedings the challenged decision has been 26 amended or replaced by another decision⁵⁰⁷, or if its validity has been extended⁵⁰⁸, the applicant may adapt his orders sought and legal pleas accordingly⁵⁰⁹, provided that they are in line with the requirement of clarity⁵¹⁰.

⁴⁹⁸ See para. 12 “Practice directions relating to direct actions and appeals”. OJ L 361, 8 December 2004, p. 15 et seq.

⁴⁹⁹ See para. 13 “Practice directions relating to direct actions and appeals”. OJ L 361, 8 December 2004, p. 15 et seq.

⁵⁰⁰ Case C-296/01, *Commission v France* [2003] ECR I-13909, para. 121.

⁵⁰¹ Joined Cases, 46/59 and 47/59, *Meroni A. O. v High Authority of ECSC* [1962], ECR 783, 801.

⁵⁰² Case C-195/04, *Commission v Finland* [2007], ECR I-03351, para. 22.

⁵⁰³ Joined Cases 46/59 and 47/59, *Meroni A. O. v High Authority of ECSC* [1962], ECR 783, 801.

⁵⁰⁴ See Art. 42 (2) RP ECJ.

⁵⁰⁵ Case 17–57, *De gezamenlijke Steenkolenmijnen in Limburg v High Authority* [1959] ECR p. 9.

⁵⁰⁶ Case 5–71, *Zuckerfabrik Schoeppestedt v Council* [1971] ECR p. 975.

⁵⁰⁷ Case 14/81, *Alpha Steel v. Commission* [1982], ECR 749, 763.

⁵⁰⁸ Joined Cases 351/85 and 360/85, *Fabrique de fer de Charleroi v. Commission* [1987], ECR 3639, 3672.

⁵⁰⁹ Joined Cases C-104/89 and C-37/90, *Mulder and others v. Council and Commission* [2000], ECR I-203, 302.

⁵¹⁰ Case 33/59, *Compagnie des hauts fourneaux de Chasse v. High Authority* [1962] ECR p. 719.

d) Unlimited jurisdiction

- 27 In proceedings in which the ECJ has unlimited jurisdiction, it has the power even in the absence of a specific order sought to not only annul but also to order of its own motion the payment of compensation⁵¹¹.

6. Indicating the evidence (lit. e)

- 28 There are a number of differences between this provision and the other provisions in paragraph 1: Whether or not there is a need to indicate evidence depends upon the circumstances of the individual case (and is of course determined by the burden of the proof). Also, in the reply or rejoinder a party may offer further evidence. The party must, however, give reasons for the delay in offering it⁵¹², e.g. that it only just found out that a third party possesses such relevant evidence.

Article 121 Information relating to service

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

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

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

I. Introduction

- 1 This **binding provision**⁵¹³ makes it easier for the Registry of the ECJ to deliver the written submissions and documents of the ECJ to the parties concerned and

⁵¹¹ Consistent case-law, see e.g. Case 44–59, *Fiddelaar v Commission* [1960] ECR p. 1077; Case 23–69, *Fiehn v Commission* [1970] ECR p. 547.

⁵¹² Art. 128 RP ECJ.

⁵¹³ See also para. 10.4 ‘Practice directions relating to direct actions and appeals’, OJ L 361, 8 December 2004, p. 15 et seq and p. 11–12 “Notes for the guidance of Counsel”.

thus affects the starting point of the time-limits of the proceedings. Since the creation of **e-Curia**, which is increasingly popular and truly recommendable, this provision has become less important in practice.

II. Stating an address for service (paragraphs 1 and 2)

Today, every party may choose between having an **address for service** in 2 Luxembourg (paragraph 1), i.e. the local representation in the case of EU institutions, the respective Embassy in the case of the Member States and the address of a legal or natural person established in Luxembourg, or, either in addition to or instead of this address, entrusting the **agent or lawyer** with this function (paragraph 2). In practice, the latter option tends to be less costly and more time saving, and is mainly used in proceedings involving natural or legal persons, i.e. referral proceedings and appeals.

III. Non-compliance (paragraph 3)

Non-compliance with the requirements set out in paragraph 1 and 2 does not 3 result in the application being rejected as inadmissible, but has a bearing on the modus by which the service is effected to the parties for as long as the defects have not been cured.

Article 122 Annexes to the application

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

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

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

I. Complying with Art. 21 (2) Statute ECJ (paragraph 1)

Art. 21 (2) Statute ECJ concerns the **challenged decision**⁵¹⁴ which needs to be 1 annexed to every action for annulment. In the case of an action for failure to act, the

⁵¹⁴ See para. 11 “Practice directions relating to direct actions and appeals”, OJ L 361, 8 December 2004, p. 15.

date of the **letter** by which the institution has been called upon to act must also be included.

II. Special agreement between Member States (paragraph 2)

- 2 This provision takes account of the ECJ's jurisdiction for applications based on Art. 273 TFEU concerning special agreements concluded between Member States.

III. Putting the application in order (paragraph 3)

1. Introduction

- 3 This provision enables the party concerned to remedy infringements of paragraphs 1 and 2. It only applies to an **application**, since there is no equivalent statement in Art. 124 RP ECJ concerning the **statement of defence**. It needs to be distinguished between those cases of noncompliance which cannot be remedied and those which may be remedied subsequently.

2. Non-compliances that cannot be remedied

- 4 As long as the application has not been put in order it is **not notified** to the other party (see Art. 123 RP ECJ). In the end, the ECJ decides on the admissibility of an application in view of the individual circumstances of each case.

Article 123 Service of the application

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

The **Registrar** of the ECJ, i.e. not the applicant, is responsible for furnishing the application to the other party in a case⁵¹⁵. In case of a remedy of errors on the basis of Art. 119 (4) and Art. 122 (3) RP ECJ, the furnishing of the application takes place as soon as the process is accomplished (i.e., the errors are remedied), provided that the ECJ has declared the application admissible.

Article 124 Content of the defence

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

⁵¹⁵ Art. 3(2)(3) "Instructions to the Registrar of the Court of Justice".

- (a) the name and address of the defendant;
 - (b) the pleas in law and arguments relied on;
 - (c) the form of order sought by the defendant;
 - (d) where appropriate, any evidence produced or offered.
2. Article 121 shall apply to the defence.
3. The time-limit laid down in paragraph 1 may exceptionally be extended by the President at the duly reasoned request of the defendant.

Outline:

I. Introduction	1
II. Time-limit and contents of a statement of defence (paragraph 1).....	2
1. New time-limit.....	2
2. Contents of the defence	3
a) General.....	3
b) Name and address of the defendant (lit. a).....	4
c) Pleas in law and arguments relied upon (lit. b).....	5
aa) New wording.....	5
bb) Requirement of clarity and exhaustiveness	6
d) Form of order sought by the defendant (lit. c).....	7
e) Evidence (lit. d)	8
III. Information relating to service (paragraph 2).....	9
IV. Extension of time-limit (paragraph 3)	10

I. Introduction

The wording of paragraph 1⁵¹⁶ (“shall lodge...”) seems slightly misleading in that the defendant actually has a **choice** (apart from the further option of not lodging any submission) between a statement of defence and a preliminary objection not going to the substance of the case within the meaning of Article 151 RP ECJ.

II. Time-limit and contents of a statement of defence (paragraph 1)

1. New time-limit

Art. 124 (1) RP ECJ replaces the time limit of one month for lodging a statement of defence provided by Art. 40 (1) of the old RP ECJ by a time-limit of **two months**. The old time-limit would regularly trigger requests for extension, due to the need of fact-finding which often implies consulting various bodies and departments. This new time-limit creates a consistency with the time-limits applicable to statements of defence in proceedings at the GC⁵¹⁷ and the CST⁵¹⁸. Under the current rules⁵¹⁹, a

⁵¹⁶ See also Paras. 16–20 “Practice directions relating to direct actions and appeals” and p. 15 “Notes for the guidance of Counsel”.

⁵¹⁷ See Art. 46 (1) RP GC.

⁵¹⁸ See Art. 39 (1) RP CST.

⁵¹⁹ Art. 45 (1) Statute ECJ.

period of **10 calendar days** on account of distance is added to this time-limit. The same time-limit of 2 months (plus ten days) applies in the event of a preliminary objection within the meaning of **Article 151 RP ECJ**.

- 3 **2. Contents of the defence. a) General.** The requirements laid down in paragraph 1, (a) to (d) are **essentially** the same as those laid down in Art. 120 (1) (a) to (d) RP ECJ and equally binding.

b) Name and address of the defendant (lit. a)

- 4 Institutions and Member States comply by using letter-head paper. There is no need for the defendant to indicate either the object of the application or the applicant's identity, since both are obvious from the application.
- 5 **c) Pleas in law and arguments relied upon (lit. b). aa) New wording.** The wording of the previously applicable Art. 40 (1) (b) RP ECJ ("the arguments of fact and law relied on") did not draw a proper distinction between pleas of law and arguments of fact and law supporting each plea. This has now been clarified by the improved wording in Art. 124(1) (b).

bb) Requirement of clarity and exhaustiveness

- 6 Ideally, the statement of defence should be **self-explanatory** in the sense that it summarises accurately the respective parts of the application it addresses so that the reader does not need to systematically read both documents in parallel. Moreover, the defendant needs to state all relevant pleas in law and arguments at the stage of the statement of defence, since no new plea in law may be introduced in the course of the proceedings (see Art. 127 RP ECJ). Besides, the defendant has no guarantee that there will be a second exchange of written submissions, since the applicant is under no legal obligation to submit a rejoinder (even though this will be the case in most instances), the prerequisite for a reply by the defendant. In other words, if the applicant waives his right to a rejoinder, the defendant is bound by this choice and may not lodge a reply.

d) Form of order sought by the defendant (lit. c)

- 7 In the case of a statement of defence the form of order sought is often less complex than in the case of an application. In most instances the defendant will request the ECJ to reject the application, either in total or at least partly followed by a petition on the costs of the proceedings. There is no need to specify whether it should be rejected for reasons of inadmissibility and/or as unfounded.

e) Evidence (lit. d)

- 8 This is an option, as is the case for applications (Art. 120 (d) RP ECJ, bearing in mind that producing or offering evidence at the stage of a rejoinder is subject to the limits laid down in Art. 128 RP ECJ).

III. Information relating to service (paragraph 2)

The reference to Art. 121 RP ECJ means that the same requirements in terms of address of service etc. apply to both an application and a statement of defence. 9

IV. Extension of time-limit (paragraph 3)

Since the previously applicable time-limit of one month has now been replaced by a time-limit of two months (see Art. 124 (1) RP ECJ), the conditions for obtaining an extension are stricter than in the past (“**exceptionally be extended.**”). It is the same standard as the “exceptional circumstances” required under the RP GC⁵²⁰ and the RP CST⁵²¹. 10

An extension requires a “**duly reasoned request**”, as is the case in proceedings at the GC and the CST. 11

Normally, an extension of up to 2 weeks is granted, provided the request is well reasoned. By contrast, a request for an additional full month (resulting in a total deadline of three months plus ten days on account of distance) is more difficult and only granted in very exceptional circumstances. 12

Article 125 Transmission of documents

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

The *ex officio* communication of applications and statements of defence to the Council, to the Commission and, as the case may be, to the European Parliament, enables these institutions, in so far as they are not already a party to the proceedings, to assess whether the proceedings at issue raise the question of validity of a legal act, thus enabling them to assess whether they wish to formally intervene in the proceedings.

Article 126 Reply and rejoinder

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

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

⁵²⁰ Art. 46 (3) RP GC.

⁵²¹ Art 39 RP CST.

Outline:

I. Second exchange of written submissions (paragraph 1)	1
1. General	1
2. Purpose	3
3. No further written submissions	4
II. Time-limits and injunction (paragraph 2)	5
1. Time-limit	5
a) No provision	5
b) Extension	6
2. Specifying matters of law	7

I. Second exchange of written submissions (paragraph 1)

1. General

- 1 In proceedings before the ECJ the applicant is **entitled** to supplement his application by a “reply”, unlike in proceedings before the GC, where this is a rule, i.e. not a subjective right⁵²², and the CST, where it is the exception⁵²³. This variation with respect to the **rights of defence** has to do with the nature of proceedings, but presumably also with politics. It seems difficult to limit the written proceedings in e.g. infringement proceedings against Member States or contentious proceedings between EU institutions to a single exchange of submissions, while there is more room for a flexible approach in proceedings at the GC and, even more so, the CST.
- 2 Obviously, the defendant’s right to a “rejoinder” depends upon whether the applicant lodges a reply; in the absence of such a reply the written proceedings are closed. Also, the party concerned is given the **possibility** to lodge a reply (and the other party thus a rejoinder), meaning that a reply is not compulsory.

2. Purpose

- 3 The purpose of the reply and rejoinder is **not to merely repeat or paraphrase** factual and legal arguments already put forward during the previous exchange of written submissions⁵²⁴, but to either contest factual assertions and/or to refine legal arguments previously submitted. A reply may furthermore provide an opportunity to comment on grounds of inadmissibility raised in the defence. This second exchange of written submission also provides a chance to put forward new pleas in law within the conditions and limits laid down in Art. 127 RP ECJ.

3. No further written submissions

- 4 No further written submissions are admissible beyond this second exchange. This limitation seeks to reconcile the rights of defence of each party and the need to limit both the duration of proceedings and the ECJ’s workload. In any event, the **oral**

⁵²² Art. 47 (1) RP GC.

⁵²³ Art. 41 RP CST.

⁵²⁴ See Para. 21 “Practice directions relating to direct actions and appeals”.

hearing provides a further opportunity for each party to elaborate its views, if need be. All oral hearings begin with the applicant, who thus gets the opportunity to react to the defendant's rejoinder.

II. Time-limits and injunction (paragraph 2)

1. Time-limit. a) No provision. Unlike the laws governing the statement of defence⁵²⁵, the time-limits for lodging the reply and, as the case may be, the rejoinder are **not** laid down by the rules of procedure, but are instead prescribed by the President of the chamber in charge of the case. Normally, the time-limit prescribed is **one month**.

b) Extension

Art. 126 (2) RP ECJ does **not explicitly** provide for the possibility of an extension⁵²⁶ of this time-limit⁵²⁶, which is probably not an omission, since one could argue that such possibility is **inherent** to the President's power to prescribe a time-limit for replies and rejoinders. In any event, there is the need to safeguard the rights of defence of the party concerned.

2. Specifying matters of law

The President has now the explicit right to "*specify the matters of law to which the reply or the rejoinder must relate*". This amounts to a measure of organization of the procedure in the interest of the economy of proceedings which at the same time does not restrict the parties' rights of defence, bearing in mind that the party may address any case-related issue at the oral hearing. Thus, a **reply** might be limited to the aspects of **inadmissibility** raised in the statement of defence. Just as both parties may be asked to concentrate on a given substantive issue.

CHAPTER 3 PLEAS IN LAW AND EVIDENCE

Article 127 New pleas in law

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

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

⁵²⁵ Art. 124 RP ECJ.

⁵²⁶ By contrast to Art. 124 (3) RP ECJ.

Outline:

I. Introduction	1
II. No new pleas in law (paragraph 1)	3
1. Rule.....	3
2. Exception	4
a) Exception successfully applied.....	5
b) Exception rejected	6
3. Elaborating and strengthening pleas of law already submitted.....	7
4. Legal aspects which need to be taken into account <i>ex officio</i>	8
III. Rights of defence (paragraph 2).....	9

I. Introduction

- 1 This provision protects the **rights of defence** of each party involved in contentious proceedings. It illustrates how important it is to include **all** relevant pleas in law and offers of evidence from the outset, i.e. in the application and statement of defence. The time-limits for applications and statements of defence would indeed serve little purpose if the parties could add new legal pleas at will in the course of the proceedings.
- 2 In practice, three different scenarios need to be distinguished:
 - Firstly, **no new pleas in law** may be introduced in the course of proceedings (see paragraph 2 below).
 - Secondly, the introduction of **new arguments** is **admissible** in so far as they are intended to elaborate in more detail the pleas in law **already** put forward in the application or the statement of defence⁵²⁷ (see paragraph 3 below).
 - Thirdly, the ECJ needs to assess certain specific **legal aspects** *ex officio*, i.e. even if none of the parties addressed them, such as e.g. the compliance with binding time-limits⁵²⁸ (see para. 4 below).

II. No new pleas in law (paragraph 1)

1. Rule

- 3 As a rule it is inadmissible to introduce **new pleas in law** in a **reply** or a **rejoinder**⁵²⁹ which are not already contained in the application or the statement of defence. The same is *a fortiori*, true for subsequent submissions or procedural steps, such as e.g. a **reply to a written question** of the ECJ and/or an **oral hearing**⁵³⁰.

⁵²⁷ On the difference between legal argument and legal complaint Case 2/57, *Compagnie des hauts fourneaux de Chasse v. High Authority* [1958], ECR 131.

⁵²⁸ Joined Cases 19/60, 21/60, 2/61 and 3/61, *Société Fives Lille Cail and others v High Authority* [1961] ECR 561.

⁵²⁹ Case C-299/98 p., *Imperial 2 and Unifrigo Gadus v. Commission* [1999], ECR I-8683, 8703.

⁵³⁰ Joined Cases 361/87 and 362/87, *Caturla Poch and others v. Parliament* [1989], ECR 2471, 2486 and C-274/97, *Commission v. Coal products* [2000], ECR I-3175, para. 25.

2. Exception

Para. 1 provides an exception which needs to be interpreted **narrowly**. The 4 matters of law or of fact mentioned here need to come to light in the course of the “procedure”⁵³¹, meaning the **written** and the **oral procedure**⁵³². Facts which **existed** already at the time of the lodging of the application and/or which were not known to the applicant may thus **not** be relied upon⁵³³.

a) Exception successfully applied

The applicant may rely on the exception in paragraph 1 if in the course of the 5 proceedings the contentious **decision** is e.g. **amended**⁵³⁴, **withdrawn**, or its validity **extended**⁵³⁵. In these cases, he may adapt the **legal pleas** and **order(s) sought**⁵³⁶ accordingly, as any obligation to lodge a new application would be contrary to the principle of good administration and of economy of proceedings⁵³⁷.

b) Exception rejected

The applicant cannot validly rely on any “unwritten” exceptions⁵³⁸ or misuse the 6 exception provided in paragraph 1, by putting forward new orders sought⁵³⁹. A judgment handed down in another case is not a fact coming to light in the course of the proceedings⁵⁴⁰.

3. Elaborating and strengthening pleas of law already submitted

While it is, as a rule, inadmissible to introduce **new pleas of law** in the course of 7 the proceedings⁵⁴¹, it is not only **admissible** but in line with the very purpose of a second round of written submissions as well as the purpose of the oral hearing to **elaborate**⁵⁴² or **furthermore detail**⁵⁴³ pleas of law which were put forward explicitly or implicitly⁵⁴⁴ in the application or the statement of defence. One may do this by way of **new legal arguments**⁵⁴⁵.

⁵³¹ Case 125/78, *GEMA v. Commission* [1979], ECR 3173, 3191.

⁵³² Case T-71/96, *Berlingieri Vinzek v Commission* [1997], ECR II-921, para. 22; Case F-17/05, *de Brito Sequeira Carvalho v Commission* [2006], ECR II-A-1-577, para. 31.

⁵³³ Case 11/81, *Dürbeck v Commission* [1982] ECR p. 1251, para. 17.

⁵³⁴ Case 14/81, *Alpha Steel v. Commission* [1982], ECR 749, 763.

⁵³⁵ Joined Cases 351/85 and 360/85, *Fabrique de fer de Charleroi v. Commission* [2000], ECR I-3639, 3672.

⁵³⁶ Case 83–63, *Krawczynski v Commission of the EAE* [1965] ECR p. 773.

⁵³⁷ Case 14/81, *Alpha Steel v. Commission* [1982], ECR 749, 763.

⁵³⁸ Case C-104/97 P, *Atlanta v. Commission*, [1999], ECR I 6983, 7026.

⁵³⁹ Case 125/78, *GEMA v. Commission* [1979], ECR 3173, 3191.

⁵⁴⁰ Case 11/81, *Dürbeck v Commission* [1982] ECR p. 1251, para. 17.

⁵⁴¹ Art. 127(1) RP ECJ.

⁵⁴² Case 280/81. *Hoffmann v. Commission* [1983], ECR 889, 900.

⁵⁴³ Case 306/81, *Verros v. Parliament* [1983], ECR 1758, 1764.

⁵⁴⁴ Case 306/81, *Verros v. Parliament* [1983], ECR 1755, para. 9.

⁵⁴⁵ Case 2–57, *Compagnie des hauts fournaux de Chasse v High Authority* [1958] ECR p. 131.

4. Legal aspects which need to be taken into account *ex officio*

- 8 Certain procedural issues, e.g. the question whether the ECJ has jurisdiction, compliance with time-limits, and/or with the obligation to give reasons etc. are **binding** and need thus to be examined *ex officio*, i.e. even if none of the parties addressed these issues in their pleadings. This means that a party may raise such issues at any stage of the proceedings, without being bound by Art. 127(1) RP ECJ.

III. Rights of defence (paragraph 2)

- 9 This provision safeguards the rights of defence of the other party, which needs to be heard prior to any decision by the ECJ on the admissibility of the new plea. The point in time is optional though, meaning that the President may decide to prescribe a time-limit in the course of the proceedings or require the other party to address the question of admissibility at the oral hearing.

Article 128 Evidence produced or offered

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

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

I. Producing or offering further evidence (paragraph 1)

1. Purpose

- 1 This provision reflects the fact that in practice it is not always possible to include all evidence in the application⁵⁴⁶ or the statement of defence⁵⁴⁷, because e.g. even though the party might know about the existence of further evidence, it may be prevented from locating it or determining its details, for reasons of time or otherwise.

2. New wording

- 2 Pursuant to the revised wording of the first sentence of paragraph 1 a party may not only “**offer further evidence**”, as provided by Art. 42 (1) of the old RP ECJ, but

⁵⁴⁶ Art. 120 (e) RP ECJ.

⁵⁴⁷ Art. 124 (1) (d) RP ECJ.

also **produce evidence**, whilst specifying that both may only be done if it is “in support of his arguments”. For **natural** and **legal persons** this provision has been of **little practical relevance** ever since the GC was given jurisdiction for all direct challenges lodged by those persons.

3. Giving reasons

The party concerned must “give reasons” for the delay in offering further 3 evidence. Since paragraph 1 is an exception to the rule, such “reasons” must be **substantial**, meaning that in practice the party needs to provide the ECJ with an **exhaustive justification**. This exception must not, quite obviously, be misused, e.g. for adding new pleas in law⁵⁴⁸, unless the exception within the meaning of Art. 127 RP ECJ applies.

II. Paragraph 2

The new Art. 128 (2) RP ECJ is intended to cover situations in which “*evidence 4 produced or offered is put forward after the close of the written part of the procedure*”, which is only possible in **exceptional circumstances**. It would thus seem that the legislature takes account of the difficulty a party may have in offering or putting forward evidence.

CHAPTER 4 INTERVENTION

Introduction

I. New provisions

Art. 40 Statute ECJ was, until now, implemented by a single provision, i.e. 1 Art. 93 of the previously applicable RP ECJ⁵⁴⁹, which was thus bound to be rather long and complex. This triggered a need for simpler and clearer provisions, which have now been adopted as **Art. 129 to 132 RP ECJ** and which comprise certain changes. Apart from these general provisions **special rules** apply in exceptional cases, such as Article 47 paragraph 1(i) of Regulation No 45/2001 (data protection), which provides that the Supervisor may intervene in the delegated tasks of cases before the Court.⁵⁵⁰

⁵⁴⁸ Case 260/80, *Andersen v. Council* [1984], ECR 177, 188.

⁵⁴⁹ See p. 19–20 of “Notes for the guidance of Counsel”.

⁵⁵⁰ Case C-317/04, *Parliament v Council* [2005] ECR I-2457, paras. 14–18.

II. Relevance

1. Only for EU institutions and Member States

- 2 The more the GC gained jurisdiction over direct actions of natural and legal persons, the more intervention within the meaning of Articles 129 et seq. RP ECJ lost its relevance for these categories of applicants. This is especially true since **natural and legal persons may not intervene** in contentious matters between Member States, between EU institutions, or between Member States and institutions (see Art. 40 (2) Statute ECJ)⁵⁵¹. Today, Art. 129 et seq. RP ECJ apply to “**privileged**” **interveners** only, i.e. Member States and institutions of the EU, with all privileged interveners being equal and thus having the same rights⁵⁵². The intervener must be either the institution or the Member State concerned, not a person acting on its behalf⁵⁵³.

2. Appeals

- 3 The intervention in **appeals** is laid down in Art. 190 (1) RP ECJ, which refers to, *inter alia*, Art. 129 to 132 RP ECJ.

3. No interventions in referral proceedings

- 4 An intervention is possible in **all** legal remedies, including more marginal ones such as an interpretation⁵⁵⁴, but one may **not** intervene in referrals for preliminary rulings⁵⁵⁵, since these are not contentious proceedings⁵⁵⁶, **nor** in infringement proceedings.

4. Two steps

- 5 The procedure includes two steps:
First the ECJ grants leave to intervene – which in the case of Member States and institutions is a mere **formality** since they do not need to prove an “interest in the result of a case submitted to the Court” for intervening in the main proceedings, in contrast to natural and legal persons. The next phase is the proper.

⁵⁵¹ Case C-39/07, *Commission v Spain* [2008], ECR I-03435.

⁵⁵² Case 138/79, *Roquette v Council* [1980] ECR p. 3333, paras. 19–21; Case 139/79, *Maizena v Council* [1980] ECR p. 3393, paras. 19–21.

⁵⁵³ Case 358/85, *France v Parliament* [1986] ECR p. 2149, para. 9.

⁵⁵⁴ Case 9/81, *Court of Auditors v Williams* [1983] ECR po. 2859, para. 7.

⁵⁵⁵ Case C-73/07, *Satakunnan Markkinapörssi and Satamedia* [2007] ECR po. I-7075, paras. 8–13.

⁵⁵⁶ Case C-181/95, *Biogen/Smithkline Beecham Biologicals* [1996] ECR p. I-717, paras. 3–4, 6.

5. Alternatives

Those who were unable to intervene in the main proceedings may, as the case 6 may be, initiate third-party proceedings⁵⁵⁷.

Article 129 Object and effects of the intervention

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

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

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

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

I. Supporting a party (paragraph 1)

This provision reproduces and complements Art. 40 (4) Statute ECJ and it is 1 clear from the latter Article that even though an intervener becomes a party to the proceedings, he does **not** have the **same status** as a party in the main proceedings.

II. Ancillary nature (paragraph 2)

The intervention is, by definition, **not an autonomous procedure**, similarly to 2 e.g. interim proceedings. Thus, any form of non-continuity of the main proceedings is bound to have a bearing on the intervention.

III. State of the case (paragraph 3)

An intervention does **not** have a **retroactive effect**, meaning that it has an effect 3 only as of the moment the entity concerned is admitted to intervene, which is due to the ancillary nature of the intervention (see paragraph 2). Thus, after his admission, the intervener must not only accept the case as he finds it at the time

⁵⁵⁷ Art. 157 RP ECJ.

of his intervention, which is evident, but must also employ the **language** of the proceedings, with the exception of the Member States, who may make use of their official language(s).

IV. Missing the time-limit (paragraph 4)

- 4 Significantly shortening the time-limit for applications for leave to intervene to a **mere six weeks** as of the publication of the notice in the OJ EU (see Art. 130(1) RP ECJ) may in some cases result in parties missing this time-limit, even though access to the EU Official Journal has never been as easy as today due to its timely publication on the Internet. The difficulty, however, is that the potential intervener may never be entirely sure that an oral hearing will actually take place in the case in which he intervenes. In any event, the applicant must find out whether the ECJ has already adopted a decision to open the oral procedure by asking the Registrar, in which case it would be too late for any application for intervention. If the applicant is admitted to intervene at the hearing, he shall receive a copy of every document served on the parties.

Article 130 Application to intervene

1. An application to intervene must be submitted within six weeks of the publication of the notice referred to in Article 21(4).
2. The application to intervene shall contain:
 - (a) a description of the case;
 - (b) a description of the main parties;
 - (c) the name and address of the intervener;
 - (d) the form of order sought, in support of which the intervener is applying for leave to intervene;
 - (e) 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 intervener shall be represented in accordance with Article 19 of the Statute.
4. Articles 119, 121 and 122 of these Rules shall apply.

Outline:

I. Time-limit for the application (paragraph 1).....	1
II. Contents of the application (paragraph 2)	2
1. Description of the case (lit. a)	2
2. Description of the main parties (lit. b).....	3
3. The name and address of the intervener (lit. c)	4
4. The form of order sought and pleas in law submitted (lit. d)	5
5. Establishing the right to intervene (lit. e).....	6
a) "Born interveners"	6
b) Definition.....	7
III. Representation and applicable rules (paragraphs 3 and 4).....	8

I. Time-limit for the application (paragraph 1)

The time-limits for lodging an application for intervention vary according to the 1 nature of the legal remedy:

- **Time-limit in the case of applications.** Some years ago the time-limit for lodging an application for intervention was shortened from three months to **six weeks**⁵⁵⁸; this new time limit applies to all potential interveners, regardless of their status. This time limit is “**ordre public**”, i.e. it **cannot be extended**, but for those who **missed** it Art. 129 (4) RP ECJ may be helpful, as it provides a possibility to intervene at the **oral hearing**, if necessary. The time-limit **starts** as of the publication of the notice on the case in the Official Journal⁵⁵⁹.
- **Time-limits in the case of appeals.** In the case of an appeal, the time-limit for submitting the application is **one month**⁵⁶⁰.

II. Contents of the application (paragraph 2)

1. Description of the case (lit. a)

The description of the case may take place on the basis of the notice published in 2 the OJ EU.

2. Description of the main parties (lit. b)

Again, the identity of the main parties is known via the notice published in the 3 OJ EU.

3. The name and address of the intervener (lit. c)

This is a further obvious formality. 4

4. The form of order sought and pleas in law submitted (lit. d)

This is, again, a mere formality in the case of Member States and EU institutions. 5

5. **Establishing the right to intervene (lit. e).** a) “**Born interveners**” Pursuant to 6 lit. e, the application needs to state the circumstances “establishing the right to intervene”, i.e. the applicant’s “interest in the result of the case”, as required by Art. 40 (2) and (3) Statute ECJ. **Member States and EU institutions** have such interest by virtue of the law, which means that they are “born interveners” and must not, unlike natural and legal persons, prove that they have such “interest”.

⁵⁵⁸ Plus the standard 10 days on account of distance.

⁵⁵⁹ The Official Journal is available at no costs on the www.europa.eu website.

⁵⁶⁰ Art. 190 (2) RP ECJ.

b) Definition

- 7 According to settled case-law, the concept of “an interest in the result of the case” within the meaning of the second paragraph of Article 40 Statute ECJ, must be defined in the light of the precise **subject-matter** of the dispute and be understood as referring to a **direct, existing interest in the ruling** on the forms of order sought. In that regard, one must ascertain in particular whether the contested measure directly affects the intervener and whether his interest in the result of the case is established⁵⁶¹.

III. Representation and applicable rules (paragraphs 3 and 4)

- 8 Paragraph 3 is a mere reminder of the obligation to be represented by an agent or lawyer, enshrined in Art. 19 Statute ECJ, which also applies to interveners. This is why paragraph 4 refers to Art. 119 RP ECJ, which details the obligation to be represented. Art. 121 and 122 RP ECJ are about providing information relating to service and the annexes to the application.

Article 131 Decision on applications to intervene

1. The application to intervene shall be served on the parties in order to obtain any written or oral observations they may wish to make on that application.
2. Where the application is submitted pursuant to the first or third paragraph of Article 40 of the Statute, the intervention shall be allowed by decision of the President and the intervener shall receive a copy of every procedural document served on the parties, provided that those parties have not, within 10 days after the service referred to in paragraph 1 has been effected, put forward observations on the application to intervene or identified secret or confidential items or documents which, if communicated to the intervener, the parties claim would be prejudicial to them.
3. In any other case, the President shall decide on the application to intervene by order or shall refer the application to the Court.
4. If the application to intervene is granted, the intervener shall receive a copy of every procedural document served on the parties, save, where applicable, for the secret or confidential items or documents excluded from such communication pursuant to paragraph 3.

Outline:

I. Right to be heard (paragraph 1)	1
II. Allowing intervention and protecting confidentiality (paragraph 2)	4
1. Admission as intervener	4

⁵⁶¹ Joined Cases C-151/97 P(I) and C-157/97 P(I), *National Power and PowerGen* [1997] ECR I-3491, para. 53.

2. Secret or confidential documents	5
a) Application	5
b) Cases	6
III. Decision by order (paragraphs 3 and 4)	7

I. Right to be heard (paragraph 1)

The parties may give their **written** comments concerning whether the applicant 1 should be admitted to intervene. There is never any separate oral hearing on the question of admitting an intervener. Such written observations are a **mere formality** regarding Member States and institutions, since they are all “born” interveners. Thus, they cannot “veto” an intervention by other Member States and/or EU institutions, as long as the application has been lodged within the relevant time-limit of **six weeks**, which the ECJ needs to examine *ex officio*.

Such written observations provide the parties with an opportunity to indicate, if 2 need be, those documents which they deem secret or confidential within the meaning of § 2.

The President of the ECJ, not the Court itself, decides the vast majority of 3 applications for intervention.

II. Allowing intervention and protecting confidentiality (paragraph 2)

1. Admission as intervener

If the applicant is a “born” intervener, as are in particular all **Member States** and 4 **EU institutions** (Art. 40 (2) Statute ECJ), he receives an order which cannot be challenged, providing him *ipso jure* with the status of a party in that proceeding. Thus, that party will in principle receive copies of **every document** served on the parties, with the exception of secret or confidential documents, as the case may be.

2. Secret or confidential documents. a) Application. Each party may indicate those 5 documents which in its view are either secret or confidential⁵⁶² and therefore are not to be given to the intervener. By contrast to the previous provision the parties concerned may identify **secret or confidential items** within a time-limit of **10 days** as of notification of the application to intervene. It would seem that this rather short time-limit cannot be extended.

b) Cases

Requests for confidential treatment are frequently used in proceedings at the GC, 6 in contrast to proceedings at the ECJ. Such confidential documents include those

⁵⁶² See Art. 346 TFEU.

relating to e.g. **national security**⁵⁶³. Parties are free to disclose their own written submissions to third parties, unless this interferes with the proper administration of justice⁵⁶⁴.

III. Decision by order (paragraphs 3 and 4)

- 7 “In any other case” meaning in those cases where the applicant needs to **establish** an interest in the result of a case submitted to the Court (see Art. 40 (2) Statute ECJ), because he is neither a Member State, nor an EU institution (see Art. 40 (1) Statute ECJ), nor a Member State of the EEA-Agreement (see Art. 40 (3), the President shall decide by way of an order whether to grant the application to intervene or not.

Article 132 Submission of statements

1. The intervener may submit a statement in intervention within one month after communication of the procedural documents referred to in the preceding Article. That time-limit may be extended by the President at the duly reasoned request of the intervener.
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 parties;
 - (b) the pleas in law and arguments relied on by the intervener;
 - (c) where appropriate, any evidence produced or offered.
3. After the statement in intervention has been lodged, the President shall, where necessary, prescribe a time-limit within which the parties may reply to that statement.

Outline:

I. Statement in intervention (paragraph 1)	1
1. General.....	1
2. Time-limit	2
II. Contents of the statement in intervention (paragraph 2)	3
1. Statement of the form of order sought (lit. a).....	3
a) Principle	3
b) Examples.....	4
2. Pleas in law and arguments (lit. b)	5
3. Offering evidence (lit. c).....	6
III. Reply to the statement in intervention (paragraph 3)	7

⁵⁶³ Case C-284/05, *Commission v Finland* [2009], ECR I-0000, paras. 9 et seq.

⁵⁶⁴ Case C-376/98, *Germany v Parliament and Council* [2000], ECR I-2247, para. 10.

I. Statement in intervention (paragraph 1)

1. General

Since an intervention is an **ancillary procedure** the intervener is limited to 1 supporting the main party. Just as there is no necessary link between the right to intervene and the right to lodge an application⁵⁶⁵.

2. Time-limit

The rule which applied so far and which provided that the period within which 2 the intervener may submit a statement of intervention is at the President's discretion, has been replaced by a time-limit of **1 month** (while the main parties, i.e. applicant and defendant, have 2 months for the application and the statement of defense). In order to keep the practical application of this provision flexible, bearing in mind the varying number of documents served on the parties and thus communicated to the intervener, the President may **extend this time-period** upon duly reasoned request of the intervener.

II. Contents of the statement in intervention (paragraph 2)

1. Statement of the form of order sought (lit. a). a) Principle. The intervention 3 and thus the statement of intervention⁵⁶⁶ is **ancillary**, since the intervening party may only support the form of order sought by one or several of the **main parties**. Thus, the intervener may not pursue a *petitum* of his own⁵⁶⁷.

b) Examples

For instance, the intervener may not apply for a decision on a preliminary 4 objection within the meaning of Art. 151 RP ECJ if the supported party has not done so⁵⁶⁸, even if this is an omission based on either an erroneous legal assessment or even ignorance. That said, the ECJ will assess of its own motion whether any absolute bar to proceeding exists (see Art. 150 RP ECJ).

2. Pleas in law and arguments (lit. b)

The interveners should present arguments **other** than those presented by the 5 main party, so long as they are in support of the form of order which the main

⁵⁶⁵ Case 302/87, *Parliament v Council* [1988] ECR po. 5615, paras. 15 and 18.

⁵⁶⁶ Para. 37 of "Practice directions for direct actions and appeals".

⁵⁶⁷ Case C-155/91, *Commission v Council* [1993] ECR p. I-939, paras. 23–24.

⁵⁶⁸ Case C-313/90, *CIRFS and others v Commission* [1995], ECR I-1177, paras. 21 et seq.; Case C-107/99, *Italy v Commission* [2001] ECR p. I-1091, paras. 27 to 29.

party seeks⁵⁶⁹. This is where the actual “added value” and thus the challenge of any intervention lies: one must not merely paraphrase, let alone repeat verbatim the arguments which the supported main party has put forward. Apart from being sterile, such exercise also affects the costs in the context of taxation proceedings.

3. Offering evidence (lit. c)

- 6 There is hardly any room for offering evidence in proceedings which come under the jurisdiction of the ECJ.

III. Reply to the statement in intervention (paragraph 3)

- 7 The opportunity to reply to the statement in intervention is primarily a matter for the party opponent(s) that the intervener supports. The party on the side of which the intervener intervenes will normally have no particular comments. Formally, such reply may relate only to each statement in intervention, even if this amounts to implicitly making comments regarding arguments that the supported party has already put forward.

CHAPTER 5
EXPEDITED PROCEDURE

Introduction

Outline:

I. Introduction	1
1. History	1
2. Recent changes.....	2
3. Similar and yet very distinct procedures.....	3
a) Expedited and urgent preliminary ruling procedures.....	3
b) Giving priority to a case.....	4
II. Statistical figures	5
1. Direct challenges	6
2. Appeals.....	7

I. Introduction

1. History

- 1 As a result of its reflection paper on the future of the judicial system of the European Union in November 2000 the legislature created the “**expedited procedure**”⁵⁷⁰. It is **not** a legal remedy proper, but a specific procedure designed to

⁵⁶⁹ Case C-58/94, *Netherlands v Council* [1996], ECR I-2169, paras. 19 et seq.

⁵⁷⁰ See also Art. 23 a Statute ECJ, which explicitly mentions the “expedited” procedure.

substantially reduce the average duration of **direct applications** and **appeals**⁵⁷¹, and is thus ancillary to such proceedings. Art. 76 a RP GC contains a “sister provision”, which is more relevant in practice.

2. Recent changes

So far, the conditions for an “expedited procedure” – a term which is now in the singular, the erroneous use of the plural in the heading having now finally been dropped – were governed by a single provision, i.e. Art. 62 a of the old RP ECJ. The legislator has now turned Art. 62 a into four provisions, i.e. **Art. 133 to 136 RP ECJ**, which comprise certain substantive changes and improvements as regards the terminology used.

3. Similar and yet very distinct procedures. a) Expedited and urgent preliminary ruling procedures. The expedited preliminary ruling procedure (Art. 105 et seq. RP ECJ) and the urgent preliminary ruling procedure (Art. 107 et seq. RP ECJ) are each governed by a distinct set of rules, which take account of the non-contentious nature of those proceedings.

b) Giving priority to a case

Regarding the timing of the oral hearing the President may, pursuant to Art. 53 (3) 4 RP ECJ, “in special circumstances decide that a case be given priority over others”.

II. Statistical figures

In line with its purpose the expedited procedure considerably reduces the average duration of the procedure, depending upon the nature of the legal remedy.

1. Direct challenges

On average an action for annulment took 20.2 months in 2004, while in the same year it took the ECJ a mere **6 months** to hand down its judgement in an expedited action for annulment⁵⁷².

2. Appeals

Expedited proceedings in appeals are comparatively rare. While in 2003, appeals took 28.7 months on average⁵⁷³, it took the ECJ a mere **5 ½ months** to hand down its judgment in an expedited appeal⁵⁷⁴.

⁵⁷¹ See Art. 190 in conjunction with Art. 133 RP ECJ. A successful example is e.g. C-39/03 P, *Commission v Argedon* [2003], ECR I-07885, whilst Case C-69/09 P, *Makhteshim-Agan Holding BV A. O. v Commission* [2009] (not published in the ECR), remained unsuccessful.

⁵⁷² Case C-27/04, *Commission v Council* [2004], ECR I-6649.

⁵⁷³ In 2011, average of 15.4 months.

⁵⁷⁴ Case C-39/03 P, *Commission v Argedon and others* [2003], ECR I-7885.

Article 133 Decision relating to the expedited procedure

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

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

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

Outline:

I. Request (paragraph 1)	1
1. Improved terminology.....	1
a) Room for a common request	2
b) “Case to be dealt with within a short time”	3
aa) Successful applications	4
bb) Unsuccessful applications	5
2. Expedited procedure granted <i>de facto</i>	6
II. Separate written submission (paragraph 2)	7
1. Timing	7
2. Length.....	8
III. <i>Ex officio</i> decision (paragraph 3).....	9

I. Request (paragraph 1)

1. Improved terminology

- 1 The previously used term “application” was misleading as it is also used in the context of legal remedies proper (see e.g. Art. 120 RP ECJ) and has since been replaced by the more accurate word “**request**”, as is the case with a number of other provisions of the RP ECJ.

a) Room for a common request

- 2 Since such request may be lodged by either party, it may also be submitted as a common request, in which case there is no need to “hear the other party”, which should save time. At the same time, it is clear that the ECJ is **not bound** by the view of the parties, meaning also that they may not “veto” such request, let alone a decision of the President taken of his own motion (Art. 133 (3) RP ECJ).

b) “Case to be dealt with within a short time”

- 3 This criterion, which is the same as the one applying to the expedited preliminary ruling procedure (Art. 105 et seq. RP ECJ), is **new**, at least when it comes to its – rather vague – **wording**. But the expedited procedure is and remains an **exception**.

It is thus safe to assume that the substantive requirements under the previously applicable Art. 62 a RP ECJ, i.e. a “**particular urgency**”⁵⁷⁵, remain valid or, at least, did not change fundamentally. From the rather few cases in which an application for expedited procedure has been successful, it seems that, like in the interim proceedings, the applicant needs to demonstrate that he would suffer a **considerable and irreparable prejudice** if the case were to be heard without an expedited procedure. The ECJ has also clarified that there is no correlation between the difficulty of a case and the urgency⁵⁷⁶.

aa) Successful applications

It appears from the case law that applications for expedited procedures are likely 4 to be successful if the case concerns **outstanding public interests**, e.g. in the area of **public health protection**⁵⁷⁷ and the **stability and growth pact**⁵⁷⁸. In case of purely financial consequences, the applicant needs to prove that in the absence of an expedited procedure they would be irreparable or, at least, difficult to repair⁵⁷⁹.

bb) Unsuccessful applications

Given the strict conditions many applications remain unsuccessful⁵⁸⁰. Even major 5 economic reasons, such as the risk of a **financial loss**, regardless of its magnitude⁵⁸¹, do not automatically mean that there is a particular urgency⁵⁸². Thus, e.g. the regional effects of the suspension of the construction of a by-pass road did not justify an expedited procedure⁵⁸³. The mere fact that the issue of the contentious proceedings is likely to affect a **large number of persons**, which might thus result in a large number of contentious matters, does not generate a “particular urgency” either⁵⁸⁴. The same is done in case of a mere interest of parties to determine as quickly as possible the scope of EU rights applicable to them does not generate a “particular interest”⁵⁸⁵.

2. Expedited procedure granted *de facto*

While in Case C-40/10, *Commission v Council*, the ECJ rejected the application 6 for an expedited procedure, it handed down the judgment some 10 months later, which is clearly below the average duration for direction application, which was 20.2 months at that time.

⁵⁷⁵ See Survey by *Sladic*, EuZW 2005, p. 712 et seq.

⁵⁷⁶ Case C-40/10, *Commission v Council* [2010] (not published in the ECR), para. 14.

⁵⁷⁷ Case C-39/03 P-R, *Commission v Artegoda and others* [2003], ECR I-4485 and C-39/03 P, *Commission v. Artegoda and others* [2003], ECR I-7885.

⁵⁷⁸ Case C-27/04, *Commission v Council* [2004], ECR I-6649.

⁵⁷⁹ Case C-40/10, *Commission v Council* [2010] (not published in the ECR), para. 11.

⁵⁸⁰ Case C-317/04, *Commission v Council* [2004], ECR I-4721.

⁵⁸¹ Case C-69/09 P, *Makhteshim-Agan Holding BV A. O. v Commission* [2009] (not published in the ECR), para. 10 and the case-law cited.

⁵⁸² Case C-341/04, *Eurofood* [2004], ECR I-3813, para. 12.

⁵⁸³ Case C-193/07, *Commission v Poland* [2007], (not yet published in the ECR), para. 13.

⁵⁸⁴ Case C-40/10, *Commission v Council* [2010] (not published in the ECR), para. 12 and the case-law cited.

⁵⁸⁵ Joined Cases C-478/11 p. to C-482/11 P, *Gbagbo A. O. v Council* [2011] (not published in the ECR), para. 7 and the case-law cited.

II. Separate written submission (paragraph 2)

1. Timing

- 7 Even though an expedited procedure is not a distinct legal remedy, such request needs to be lodged by a **separate written submission**, i.e. not integrated into the application⁵⁸⁶. It may be lodged by either party to the proceedings **at the same time** as the application initiating the proceedings or the statement of defence. This is in major contrast to e.g. interim proceedings, where, *de jure*, there is nothing to prevent the applicant from lodging his request after the application.

2. Length

- 8 The request should not be longer than 5 pages⁵⁸⁷ and needs to contain detailed indications and evidence.

III. *Ex officio* decision (paragraph 3)

- 9 The purpose of this paragraph, which enables the President to apply the expedited procedure of his own motion, is to create consistency with the expedited preliminary ruling procedure (Art. 105 et seq. RP ECJ). That said, the parties need to be **heard**, which does not imply though that they have the final and binding say on whether to apply the expedited procedure or not.

Article 134 Written part of the procedure

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

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

I. General

- 1 Art. 133 et seq. RP ECJ, as its predecessor (Art. 62 a RP ECJ) are the result of a **compromise** between the need to speed up the proceedings in cases of particular urgency, to take account of the right to be heard, and to have sufficient elements on

⁵⁸⁶ This is a horizontal principle applying to all ancillary requests, such as e.g. interim proceedings and cross-appeals.

⁵⁸⁷ See para. 45 “Practice directions relating to direct actions and appeals”.

the file in order to be able to adopt an adequate ruling. This is bound to have a bearing on both the written (Art. 134 RP ECJ) and the oral part of the procedure (Art. 135 RP ECJ).

II. Length and number of written submissions (paragraph 1)

1. Application and statement of defence

The parties are well advised to keep their written submissions as “**short and concise as possible**”⁵⁸⁸. That said, if the expedited procedure is granted upon request of the *defendant*, the application cannot, be definition, have been drafted concisely, i.e. in anticipation of an unknown future event.

2. Reply and rejoinder

A second written round, i.e. a **reply and rejoinder** is not, as one would assume, 3 excluded from the outset, but is only admissible if the President deems it to be necessary. The Judge-Rapporteur and Advocate General need to be **heard**, which is a new requirement.

III. Interveners (paragraph 2)

An expedited procedure does not exclude the admission of interveners, but they 4 do not have an automatic right to submit written observations. This needs to be authorized by the President, who will assess whether this is “**necessary**”. The **exact meaning** of this criterion does not seem clear though: It is certainly appropriate to assess whether it is “necessary” that the parties supplement their initial written submissions by a reply and rejoinder (Art. 134 (1) RP ECJ). In the case of an intervener the situation is different. The intervener has been admitted, ipso jure, i.e. either because he is a Member State or institution, or because he has proven an interest in the result of the case. In both instances, interveners are entitled to be heard. If this is common ground, then the question of “necessity” of submitting a statement of intervention should not arise. The question is rather whether it is appropriate that the intervener is heard by way of a statement of intervention, or whether it is not more appropriate, in terms of time constraints, to hear him at the oral hearing.

Article 135 Oral part of the procedure

1. Once the defence has been submitted or, if the decision to determine the case pursuant to an expedited procedure is not made until after that pleading has

⁵⁸⁸ See p. 17–18 “Notes for the guidance of Counsel”.

been lodged, once that decision has been taken, the President shall fix a date for the hearing, which shall be communicated forthwith to the parties. He may postpone the date of the hearing where it is necessary to undertake measures of inquiry or where measures of organisation of procedure so require.

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

I. Oral hearing (paragraph 1)

- 1 The expedited procedure also includes an oral hearing and does not exclude the adoption of preparatory measures or measures of enquiry.

II. Supplementing arguments (paragraph 2)

- 2 As an exception to the rule the parties may supplement their arguments and produce or offer evidence during the oral part of the procedure. This derogation takes account of the expedited nature of the proceedings, provided the party concerned gives reasons for the delay.

Article 136 Decision on the substance

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

The Advocate-General is merely heard in accelerated proceedings, i.e. he does not hand down an opinion.

CHAPTER 6 COSTS

1. General

- 1 The rules on costs⁵⁸⁹ are inspired by those applicable in the Member States. Normally, the party which initiates legal proceedings and thereby forces the other party to defend itself bears all costs if it loses the case. In other words, the party who was right in the first place should not have to pay for being right.

⁵⁸⁹ At least as regards Art. 137–138 RP ECJ.

2. Costs of the proceedings

The “costs of the proceedings” include mainly the **extrajudicial** costs, i.e. those 2 costs relating to legal representation and advice, travel costs, including certain office costs, as well as other reimbursable costs within the meaning of Art. 146 RP ECJ.

3. Judicial costs

Unlike many national legal systems the ECJ does **not**, in principle, charge **judicial** 3 costs, i.e. costs for making use of the ECJ⁵⁹⁰.

4. Special rules

Special rules on costs apply to **appeals**⁵⁹¹ and referrals for **preliminary rulings**⁵⁹². 4

Article 137 Decision as to costs

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

Only judgments or orders closing a case contain a ruling regarding the costs. Thus, the costs which occur in the context of decisions adopted in the course of the proceedings, such as interlocutory judgments or orders in interim proceedings or objections of inadmissibility, remain reserved for the final decisions.

Article 138 General rules as to allocation of costs

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

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

3. Where each party succeeds on some and fails on other heads, the parties shall bear their own costs. However, if it appears justified in the circumstances of the case, the Court may order that one party, in addition to bearing its own costs, pay a proportion of the costs of the other party.

I. General rule (paragraph 1)

In principle the **unsuccessful** party bears **all costs** of the procedure, i.e. its own as 1 well as those of the other party, unless one of the exceptions or special rules provided

⁵⁹⁰ See Art. 143 RP ECJ and p. 8 “Notes for the guidance of Counsel”.

⁵⁹¹ See Art. 184 RP ECJ.

⁵⁹² See Art. 102 RP ECJ.

in Art. 141 et seq. RP ECJ apply. Such ruling on costs, however, requires an explicit **order sought** by the winning party⁵⁹³. It is admissible, however, to put forward such plea at the oral hearing⁵⁹⁴ or implicitly in the written submission⁵⁹⁵, even though an explicit plea⁵⁹⁶ is of course the normal thing to do. A party is also considered as “unsuccessful” if the means of attack or defence remained **mainly unsuccessful**⁵⁹⁷.

II. Several parties (paragraph 2)

- 2 If several parties are unsuccessful then they bear total liability the entire costs of the proceedings⁵⁹⁸.

III. Special cases (paragraph 3)

1. No clear winner and loser

- 3 The Judges **may** derogate from the principle laid down in paragraph 1, whenever it turns out that there is no clear “winner” and “loser” in a given case, because both parties lose and win partly. In such case it is for the Judges to decide whether to divide the costs or rule that each party bears its own costs.

2. Exceptional circumstances

- 4 The Judges have the same options in the event of an “exceptional circumstance”, i.e. in situations in which it appears appropriate that one of the parties, usually the applicant, should not bear the entire costs, although he was either completely or predominantly unsuccessful. The Judges tend to make use of this possibility, which leaves room for equity e.g. if it turns out that an erroneous piece of legislation has triggered the case⁵⁹⁹. Likewise the ECJ can take account, in infringement proceedings, of an “exemplary behaviour” of a Member State, which has voluntarily suspended the application of the legislation contested by the Commission⁶⁰⁰.

Article 139 Unreasonable or vexatious costs

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

⁵⁹³ See Art. 120 (d) RP ECJ and Art. 124 (c) RP ECJ.

⁵⁹⁴ Case 113/77, *NTN Tokyo Bearing v Council* [1979], ECR 1185, 1210–1211.

⁵⁹⁵ Joined Cases 40/73 to 48/73, 50/73, 54/73 to 56/73, 111/73, 113/73 and 114/73, *Suiker Unie and others v Commission* [1975], ECR 1663, 2029.

⁵⁹⁶ Joined Cases 23, 24 and 52–63, *Usines Emile Henricot v High Authority* [1963] ECR P. 441.

⁵⁹⁷ Case C-40/98, *Commission v TVR* [2001], ECR I-307, 338.

⁵⁹⁸ Case C-229/88, *Cargill and others v Commission* [1990], ECR I-1303, 1327.

⁵⁹⁹ Case 14/63, *Forges de Clabecq v High Authority ECSC* [1963], ECR 719, 751.

⁶⁰⁰ Case C-146/89, *Commission v United Kingdom* [1992], ECR I-3533, 3584.

I. General

This provision comprises a further **exception** to the rule provided in Art. 138 (1) 1 RP ECJ, where costs have been “unreasonably” or “vexatiously” caused. In practice, these alternatives play **little role**, in particular ever since staff cases are no longer part of the ECJ’s jurisdiction⁶⁰¹.

II. “Unreasonably”

1. Lack of objective reason

This category covers those cases which were brought before the Judge without 2 any objective reason. The ECJ, as the other EU jurisdictions, however, is rather reluctant to make an abundant use of this alternative, as it should be limited to the clear cases of **misuse** of judicial protection.

2. Examples

If an institution adopts a **misleading attitude**, so that the applicant lodges two 3 applications when one would have sufficed for addressing the contentious question⁶⁰²; if the contentious decision includes **misleading**⁶⁰³ or **ambiguous**⁶⁰⁴ **reasoning**; if a contentious case could have been avoided by providing more or better information prior to the decision being challenged⁶⁰⁵; if the silence of a given legislative provision has resulted in **legal uncertainty**⁶⁰⁶ for the applicant as to the applicable rules⁶⁰⁷.

III. “Vexatiously”

This alternative, i.e. costs caused vexatiously, is perhaps more defined, but rarely 4 used in practice at least in proceedings before the ECJ. The ECJ held that it is vexatious if a party claims compensation for an alleged financial prejudice, or for having been compelled to consult a lawyer prior to initiating a pre-contentious, i.e. administrative, procedure⁶⁰⁸.

⁶⁰¹ Except for the revision proceedings, which remain very exceptional.

⁶⁰² Joined Cases 15–59 and 29–59, *Société métallurgique de Knutange v High Authority* [1960] ECR, p. 11.

⁶⁰³ Joined Cases 16–59, 17–59 and 18–59, *Geitling Ruhrkohlen-Verkaufsgesellschaft A. O. v High Authority* [1960] ECR p. 47.

⁶⁰⁴ Case 49–64, *Stipberger v High Authority* [1965] ECR p. 661.

⁶⁰⁵ Case 18–62, *Leroy v High Authority* [1963] ECR p. 531.

⁶⁰⁶ Case 18–70, *X v Council* [1972] ECR p. 1205.

⁶⁰⁷ Case 26–67, *Danvin v Commission* [1968] ECR p. 463.

⁶⁰⁸ Case 54/77, *Herpels v Commission* [1978] ECR p. 585.

Article 140 Costs of interveners

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

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

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

I. Member States and/or institutions (paragraphs 1 and 2)

- 1 If a Member States and/or an institution of the EU (paragraph 1), or a Contracting State of the EEA-Agreement (paragraph 2) intervenes in a case, the decision regarding the costs is not determined by the outcome in the main proceedings, since those interveners **always** bear their own costs, regardless of whether the party supported wins or loses. This solution stands in conformity with the fact that these are “born” interveners since they do not have to prove an “interest in the result of a case submitted to the Court”⁶⁰⁹ in order to be admitted as interveners.

II. Other interveners (paragraph 3)

- 2 If a **natural** and/or **legal person** intervenes, the general rule in Art. 140 (1) RP ECJ applies, unless a specific regulation states otherwise. Thus, the costs awarded to the main parties determine the costs borne by those interveners: If the supported party loses, then the intervener will, as a principle, bear his own costs⁶¹⁰ and, as the case may be, the costs it generated for the other party⁶¹¹. If the supported party wins, then the unsuccessful party bears normally not only the cost of the winning party, but also those of the intervener⁶¹², in so far as the latter requests so⁶¹³. The ECJ may derogate from this rule in accordance with paragraph 3, by deciding that the intervener should bear his own costs⁶¹⁴.

Article 141 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.

⁶⁰⁹ Art. 40 (2) Statute ECJ.

⁶¹⁰ Joined Cases 260/85 and 106/86, *TEC and others v Council* [1988], ECR 5855, 5925.

⁶¹¹ Joined Cases C-241/91 and C-242/91 P, *RTE and ITP v Commission* [1995], ECR I-743, 837.

⁶¹² Case C-310/93, *BPR Industries and British Gypsum v Commission* [1995], ECR I-865.

⁶¹³ Case C-69/89, *Nakajima v Council* [1991], ECR I-2069, 2204.

⁶¹⁴ Joined Cases C-68/94 and C-30/95, *France, SCPA and EMC v Commission* [1998], ECR I-1375, 1529.

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.

I. Rule (paragraph 1)

A party, i.e. the applicant, who discontinues or withdraws a case (Art. 148 RP ECJ) 1 is normally treated as if it had lost the case, if the other party requests such decision.

II. Exception (paragraph 2)

Under certain circumstances the **defendant** bears the costs, if the applicant 2 requests so, e.g. if in the case of an **infringement procedure** both the Commission's introduction and its withdrawal of its application on certain legal grounds⁶¹⁵ has been caused by the **Member State**⁶¹⁶, e.g. because it decided to comply with its obligations only once the Commission has lodged the application⁶¹⁷, or if it does not comment on the costs⁶¹⁸. That said, discontinuance might of course be caused by other phenomena than an alleged behaviour of the defendant⁶¹⁹.

Both the principle (paragraph 1) and its exception (paragraph 2) require an 3 appropriate **request** regarding costs. This is not the case if the winning party e.g. requested to decide on the costs "according to the law" or "according to the relevant provisions in the rules of procedure"⁶²⁰. If no party lodges a plea on costs, then the ECJ may decide that each party bears its own cost.

III. Agreement (paragraph 3)

The rule and exception in paragraphs 1 and 2 do **not apply** if the parties find an 4 agreement on costs.

IV. Absence of claims (paragraph 4)

This is a **default rule**, meaning that in the absence of a claim each party bear its 5 own costs.

⁶¹⁵ Case C-17/95, *Commission v France* [1995], ECR I-4895, para. 10.

⁶¹⁶ Case C-249/91, *Commission v France* [1994], ECR I-787, para. 4; Case C-23/96, *Commission v France* [1997], ECR I-1221, 1226.

⁶¹⁷ Case C-95/94, *Commission v Spain* [1995], ECR I-1967, para. 4.

⁶¹⁸ Case C-354/96, *Commission v Italy* [1997], ECR I-6007, para. 2.

⁶¹⁹ Case C-120/94, *Commission v Greece* [1996] ECR I-1513.

⁶²⁰ Case C-255/90 P, *Burban v Parliament* [1992], ECR I-2253, 2276; Case C-30/91 P, *Lestelle v Commission* [1992], ECR I-3755, 3788.

Article 142 Costs where a case does not proceed to judgment

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

A case does not proceed to judgment if it **loses its object**, e.g. because the defendant withdraws or substantially modifies the contentious decision or replaces it by another legal act, which takes account of the expectations of the applicant. Then, in accordance with the causer pays principle, the defendant bears the costs of the procedure if this party withdraws, e.g. in the context of an action for annulment, the contentious decision.

Article 143 Costs of proceedings

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

- (a) where a party has caused the Court to incur avoidable costs the Court may, after hearing the Advocate General, order that party to refund them;
- (b) where copying or translation work is carried out at the request of a party, the cost shall, in so far as the Registrar considers it excessive, be paid for by that party on the Registry's scale of charges referred to in Article 22.

I. Principle

- 1 In principle, proceedings before the ECJ are free of charge, in contrast to the judicial costs charged by Courts and Tribunals in most Member States.

II. Exceptions**1. General**

- 2 Lit. a) and b) provide exceptions which in practice are hardly ever applied. In the meantime, this provision has become obsolete, especially regarding the exception in lit a), ever since proceedings initiated by natural or legal persons are no longer covered by the jurisdiction of the ECJ but by the GC.
- 3 **2. Avoidable costs.** a) **Current provision.** The phrase "incur avoidable costs" includes costs which are not incurred as part of normal court proceedings. The wording as it stands does thus not apply to e.g. manifestly inadmissible applications and appeals.

b) Need for extending the provision?

The rule of proceedings being free of charge with two narrow exceptions dates 4 back to the days when access to the then single judicial instance, the ECJ, was to be as unrestricted as possible. While this concept is still valid in principle, it is doubtful whether it should extend to the two tier system which has been created since. In any event, the considerable number of **appeals** against decisions of the GC which subsequently turn out to be inadmissible makes one query why the unnecessary waste of time and resources should be charged to the budget of the EU, meaning mainly the European tax payer? This question arises all the more in case of **abusive appeals**⁶²¹. Amending the wording of Art. 143 RP ECJ accordingly seems appropriate and might become a deterrent against manifestly inadmissible appeals.

3. Copying or translation work

In practice, copying or translation work carried out at the request of a party is 5 also free of charge, except if it is considered to be “**excessive**”. It remains unclear when this might be considered the case, but this provision has, in any event, little significance in practice.

Article 144 Recoverable costs

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

- (a) sums payable to witnesses and experts under Article 73 of these Rules;
- (b) expenses necessarily incurred by the parties for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration of agents, advisers or lawyers.

Outline:

I. General	1
1. Limited practical relevance.....	1
2. Operative part on costs.....	3
II. Witnesses and experts (lit. a)	4
III. Expenses necessarily incurred (lit. b).....	5
1. General.....	5
2. “Proceedings”	6
a) Only proceedings before the ECJ	6
b) Proceedings before a national Court or Tribunal	7
3. Necessary expenses.....	8
a) Remuneration	9
aa) Lawyer.....	9
bb) Amount of work.....	11
cc) Remuneration of officials not recoverable	12
b) Experts	13
c) Travel and subsistence costs	14
aa) Agents, advisers, and lawyers	14

⁶²¹ The CST may charge up to 2000 € “where the action is manifestly an abuse of process”, see Art. 94 (a) RP CST and has made use of this provision a number of times.

bb) Other persons	15
d) Other expenses.....	16
aa) Recoverable	16
bb) Not recoverable	17
e) Expenses relating to taxation proceedings	18

I. General

1. Limited practical relevance

- 1 This provision, which needs to be seen in the context of Art. 145 RP ECJ, has lost much if not most of its relevance, ever since the GC gained jurisdiction for applications of natural and legal persons, but remains relevant with respect to **appeals** against decisions of the GC. Even in litigation between Member States and/or institutions, its significance remains limited, given the specific agreements regarding costs the institutional parties and Member States have reached amongst themselves, at least in the area of infringement proceedings.
- 2 Art. 144 does **not apply** to referrals for preliminary rulings, where costs are determined by the relevant national law.

2. Operative part on costs

- 3 The decision on costs contained in a judgment or order does not, as its wording suggest, mean that the party concerned needs to pay **all costs** incurred by the other party. They must only reimburse those amounts considered to be “reimbursable”, meaning those which have been “*necessarily incurred ... for the purpose of the proceedings*”. The parties either agree on an amount from the outset, or embark into more or less lengthy informal negotiations on the matter, bearing in mind the possibility of a **taxation procedure**⁶²². Since the criteria in this provision, in particular its lit (b), are bound to be vague, parties can find detailed guidance in the ECJ’s **case-law** concerning taxation matters, and should also take account the comments (including the various **critical remarks** on a number of aspects, which are not repeated below) regarding the **GC’s relevant case law**, which is both abundant and rather detailed.

II. Witnesses and experts (lit. a)

- 4 Nowadays, proceedings before the ECJ hardly ever involve witnesses or experts. Should there be any witnesses, however, the debtor needs to reimburse **travel costs** and **subsistence costs** of the respective witnesses and experts, and compensate for any **loss of earnings or remuneration**. The fact that the ECJ may grant an advance payment to witnesses and experts does not alter this principle; it only means that the debtor is required to refund these amounts to the ECJ. The mere fact that the

⁶²² Art. 145 RP ECJ.

Registrar requests e.g. proof of earnings and e.g. an invoice for the fees for their work from witnesses and expert witnesses does not mean that these expenses are automatically recoverable, since the possibility of a taxation procedure within the meaning of Art. 145 RP ECJ remains.

III. Expenses necessarily incurred (lit. b)

1. General

Under Article 145 RP ECJ, the Court does not determine the amount a party 5 needs to pay to its lawyer(s)⁶²³, but fixes the amount which one party needs to pay to the other party as a result of a judgment or order in a given procedure.

2. “Proceedings” a) **Only proceedings before the ECJ.** This refers to the proceed- 6 ings before the ECJ, which begin with an application to and end with a decision, i.e. judgment or order, by the ECJ. Thus, any expenses incurred **prior to, outside, or after the end** of the Court proceedings, no matter how linked they may be to the contentious proceedings, meaning e.g. the pre-contentious phase⁶²⁴, settlement negotiations, costs for e.g. bank guarantees, costs for an analysis of the Advocate-General’s opinion and/or the ECJ’s judgment, etc., are **not recoverable**. However, this is different in the event of a subsequent reopening of the hearing, and in cases of negotiations which parties conducted following a request from the Court in order to determine e.g. the amounts payable as damages by mutual agreement.

b) Proceedings before a national Court or Tribunal

It follows from Art. 102 RP ECJ, that any question relating to expenses incurred 7 in the national proceedings, including taxation, is not a matter for the ECJ⁶²⁵.

3. Necessary expenses

“Necessary” shall mean those **financial expenses** which are objectively justified 8 for the purposes of the proceedings, both concerning the kind of expense and the amount spent. This is why the provision in lit (b) merely enumerates classical expenses, such as the remuneration of agents, advisers and lawyers, as well as travel and subsistence costs, but is by no means exhaustive (“**particularly**”).

a) **Remuneration.** aa) **Lawyer.** Lawyer’s fees are, as such, *ipso jure* recoverable, in so 9 far as the **amount** spent is considered “**necessary**” for the purpose of the proceedings. Normally, only the fees of one lawyer are reimbursable, unless the case is particularly complex, which might then justify reimbursement of fees of several

⁶²³ Case C-294/90-DEPE, *British Aerospace v Commission* [1994] ECR I-5423, paras. 10–14.

⁶²⁴ Case C-294/90-DEPE, *British Aerospace v Commission* [1994] ECR I-5423, paras. 10–14.

⁶²⁵ Case C-472/99, *Clean Car Service v Commission* [2001] ECR I-9687, para. 32.

lawyers⁶²⁶. In the absence of any EU rules defining such amounts, the ECJ takes into consideration the **circumstances** of each case, in particular the purpose and nature of the proceedings, their significance regarding EU law, and their degree of difficulty, (the amount of work of the agents and advisers in connection with the proceedings and the economic interest which the parties had in the proceedings)⁶²⁷.

- 10 The number of criteria and their sometimes very abstract nature are sure to result in an **approximate** evaluation of what and how much may be deemed necessary, rather than anything coming even close to an exact science.

bb) Amount of work

- 11 The amount of work is a comparatively objective criterion, but only *prima facie*, since the ECJ will not automatically accept any total number of hours claimed by the party concerned. Furthermore, much depends on the legal remedy concerned, i.e. if it is a direct challenge or ancillary proceedings, such as an intervention, or subsequent proceedings, such as an appeal. In the end, the number of hours of work deemed to be “necessary” is bound to be, at best, an approximation. Lawyer’s fees are not reimbursable if they relate to periods of contentious proceedings during which **no** written submission occurred, or to extra-judicial negotiations regarding a possible settlement, unless explicitly requested by the ECJ⁶²⁸.

cc) Remuneration of officials not recoverable

- 12 Pursuant to the current case law, Member States and institutions may claim reimbursement of their relevant **travel** and **subsistence costs**, plus any costs for **photocopies**. The **salary** paid to the official is **not recoverable**, since the ECJ considers that “*the performance of his duties as a whole finds its counterpart in the remuneration allotted to him under the staff regulations, so that expenses in connection with the work of the official cannot be considered as expenses incurred for the purpose of the proceedings and therefore as recoverable*”⁶²⁹. It is safe to assume that the same principle applies to officials representing Member States in proceedings at the ECJ. By contrast, fees paid to an **external lawyer** are recoverable⁶³⁰ in so far as they are considered to be necessary.

b) Experts

- 13 If a party involves an expert on its **own initiative**, e.g. a university professor, the fees will be reimbursed if said expert is deemed to be objectively necessary in the light of the complexity of the case. The ECJ will in particular assess whether the expert has been hired for assessing legal questions, which is more of a matter for the respective counsel, or for providing an opinion on technical, economic or scientific aspects of the case, which are typically matters reserved for an expert.

⁶²⁶ Case C-104/89 DEP, *Mulder A. O. v Council and Commission* [2004] ECR I-1, paras. 62 et seq.

⁶²⁷ Case C-222/92 – DEPE, *SFEI A. O. v Commission* [1994] ECR I-5431, paras. 10–14.

⁶²⁸ Case C-104/89 DEP, *Mulder A. O. v Council and Commission* [2004] ECR I-1, paras. 41 et seq.

⁶²⁹ C-409/96 P-DEP, *Sveriges Betodlares Centralförening A. O. v. Commission* [1999] ECR I-4939, para. 12 and the case law cited.

⁶³⁰ Case 126/76-Dépens, *Dietz v Commission* [1979] ECR p. 2131 in so far as they are considered to be necessary.

c) **Travel and subsistence costs.** aa) **Agents, advisers, and lawyers.** The travel and subsistence expenses of agents, advisers, and lawyers are recoverable as long as they were made in **direct connection** with the proceedings, e.g. the hearing, and appear **necessary**, i.e. not exorbitant, concerning their amount. 14

bb) **Other persons**

Travel and subsistence costs of **parties** or party **employees** may only be recoverable if the ECJ has ordered their personal appearance. Exorbitant travel and accommodation costs are, by definition, not necessary and thus not recoverable. 15

d) **Other expenses.** aa) **Recoverable.** Expenses for an address for service and for consultants, as the case may be, are reimbursable. VAT paid on legal advice, unless the creditor must not ultimately bear the tax because it is reimbursed; translations, if deemed necessary; photocopies, etc. are equally, in principle, recoverable. 16

bb) **Not recoverable**

Late payment interest may only be claimed as of the date of the judgment or order, but not for periods prior to that date⁶³¹. 17

e) **Expenses relating to taxation proceedings**

Such costs are not recoverable, since the Court determines the recoverable costs by taking account of all the circumstances of the case up to the date of delivery of the taxation order⁶³². 18

Article 145 Dispute concerning the costs to be recovered

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

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

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

⁶³¹ Case C-104/89 DEP, *Mulder A. O. v Council and Commission* [2004] ECR I-1, para. 86.

⁶³² Case C-294/90-DEPE, *British Aerospace v Commission* [1994] ECR I-5423, paras. 10–14.

Outline:

I. General	1
II. Application for taxation of costs (paragraph 1)	2
1. Dispute	2
2. No time-limit	3
a) Request vis-à-vis the other party	3
b) No time-limit for application for taxation	4
c) Need for a time-limit	5
3. Providing the ECJ with precise information	6
III. Assessment by the ECJ	7
1. Overview	7
2. Economic interest of the party	8
3. Subject-matter of the proceedings	9
4. Significance in the light of EU law	10
5. Difficulty	11
6. Amount of work entailed	12
a) Main party	12
b) Intervener	13
IV. Statistics	14
V. Taxation order	15
1. Costs of taxation proceedings included	15
2. Final order	16
VI. Formation (paragraph 2)	17
VII. Authenticated copy (paragraph 3)	18

I. General

- 1 Since the ECJ does not assess the recoverable amount *ex officio*, the parties need first to solve any dissenting views on the recoverable amounts by way of **negotiation**. If these negotiations fail and none of the parties gives in then and only then there is a dispute and parties may have recourse to the taxation proceedings. Fees relating to the taxation proceedings are not recoverable. These orders are published on the Court website⁶³³.

II. Application for taxation of costs (paragraph 1)

1. Dispute

- 2 An application for taxation of costs is admissible if there is a “**dispute**” between the parties concerning the amount of recoverable costs. This is not the case if the parties merely disagree about the contents of a ruling on costs, i.e. in the operative part of a judgment or order.

⁶³³ See for example, C-39/03 P-DEP, *Cambridge Healthcare Supplies Ltd v Commission* [2007], ECR I-0001.

2. **No time-limit.** a) **Request vis-à-vis the other party.** It follows from the ECJ's case-law that a claim for recovery of costs must be submitted to the party ordered to pay the costs within a **reasonable period**⁶³⁴.

b) No time-limit for application for taxation

Art. 145 RP ECJ does not prescribe a time-limit for submission to the Court of a claim for taxation of costs. This is a **unique case** amongst all legal remedies within the EU judicial system. Likewise, neither the RP ECJ nor the Court's case-law prescribe a time-limit for the intermediate steps in the taxation of costs proceedings, taken after the time when a claim for recovery of costs has been communicated to the party ordered to pay the costs⁶³⁵.

c) Need for a time-limit

It is debatable whether there is a need for a formal time-limit and, if so, how long it should be. It is undoubtedly in the interest of **legal certainty** to provide a time-limit for legal remedies, as a rule, unless an exception is justified due to overriding reasons or interests. Regarding taxation, one might argue that a dispute concerning which amounts of fees and costs are recoverable is in essence a civil law matter, which does thus not require a formal time-limit. On the other hand, a time-limit, provided it is reasonably long, e.g. two years, could be in the interest of the parties, as it forces them to sort out any cost-related disputes rather than conducting lengthy negotiations. Whether a time-limit would ultimately help resolving debates on recoverable costs amicably or would turn out to push parties towards taxation remains to be seen.

3. Providing the ECJ with precise information

The possibility for the Courts of the European Union to assess the value of the work carried out by a lawyer depends on the degree of precision of the information supplied⁶³⁶. This threshold is not met e.g. merely by setting out the overall amounts invoiced for work carried out by the three law firms which assisted the party, which fails to state the total number of hours of work claimed⁶³⁷.

III. Assessment by the ECJ

1. Overview

The ECJ is authorised not to tax the fees payable by the parties to their own lawyers, but to determine the amount up to which that remuneration may be

⁶³⁴ Case 126/76-Dépens, *Dietz v Commission* [1979] ECR p. 2131.

⁶³⁵ Joined Cases C-12/03 P-DEP and C-13/03 P-DEP, *Tetra Laval BV v Commission* [2010] (not published in the ECR), paras. 21–22.

⁶³⁶ Joined Cases C-105/04 P-DEP and C-113/04 P-DEP *CEF City Electrical Factors and CEF Holdings v Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied and Technische Unie* [2008] (not published in the ECR), para. 39.

⁶³⁷ Joined Cases C-12/03 P-DEP and C-13/03 P-DEP, *Tetra Laval BV v Commission* [2010] (not published in the ECR), para. 58.

recovered from the party ordered to pay the costs⁶³⁸. It has also consistently been held that, in the absence of any provisions of EU law relating to tariffs or to the necessary working time, the Court must **freely assess** the details of the case, taking account of the subject-matter and the nature of the dispute, its importance from the point of view of EU law and also the difficulties presented by the case, the amount of work which the contentious proceedings generated for the agents or counsel involved and the economic interests which the dispute presented for the parties⁶³⁹. In practice there is an inevitable overlap between these criteria.

2. Economic interest of the party

- 8 Cases relating to **merger control** are, by definition, important from an economic point of view regardless, as it would seem, of the amounts at issue, i.e. whether the price of the acquisition is 1,7 billion €⁶⁴⁰ or 22,5 billion €⁶⁴¹. In **trade-mark cases**, the ECJ stressed the importance of trade marks in trade and commerce⁶⁴², whilst taking account of whether the applicant seeks to protect a community trade-mark or not⁶⁴³. In internal market cases, the economic interest is important if the outcome of the case has a major bearing on the turnover of the applicant⁶⁴⁴.

3. Subject-matter of the proceedings

- 9 Regarding **appeals** the ECJ takes account of the circumstance that this legal remedy is limited to the review of legal questions⁶⁴⁵ and does thus not encompass the finding of facts⁶⁴⁶. In trade-mark cases, the ECJ also takes account of the preceding administrative proceedings at the OHIM.

4. Significance in the light of EU law

- 10 The ECJ takes account of the fact whether it raises any new⁶⁴⁷ or complex points of law which were important in the sphere of the legal area concerned⁶⁴⁸, such as a

⁶³⁸ Case C-204/07 P-DEP, *C.A.S. v Commission* [2009] (not published in the ECR), para. 13.

⁶³⁹ Case C-448/09 P-DEP, *BSH Bosch and Siemens Hausgeräte GmbH v Royal Appliance International GmbH* [2011] (not published in the ECR), para. 16 and the case-law cited.

⁶⁴⁰ Joined Cases C-12/03 P-DEP and C-13/03 P-DEP, *Tetra Laval BV v Commission* [2010] (not published in the ECR) para. 51.

⁶⁴¹ Case C-122/06 p. (R)-DEP, *Gas Natural SDG SA v ENDESA SA* [2009] (not published in the ECR) para. 22.

⁶⁴² Case C-448/09 P-DEP, *BSH Bosch and Siemens Hausgeräte GmbH v Royal Appliance International GmbH* [2011] (not published in the ECR), para. 18.

⁶⁴³ C-512/04 P-DEP, *Krafft SA v Vitakraft-Werke* [2007] (not published in the ECR), para. 21.

⁶⁴⁴ Case C-326/05 P-DEP, *Industrias Químicas del Vallés SA v Commission* [2009] (not published in the ECR) para. 45.

⁶⁴⁵ Case C-206/04 P-DEP, *Zirh International Corp. v Mülhens* [2008] (not published in the ECR), para. 17.

⁶⁴⁶ Case C-448/09 P-DEP, *BSH Bosch and Siemens Hausgeräte GmbH v Royal Appliance International GmbH* [2011] (not published in the ECR), para. 19.

⁶⁴⁷ C-512/04 P-DEP, *Krafft SA v Vitakraft-Werke* [2007] (not published in the ECR), para. 24.

⁶⁴⁸ Joined Cases C-12/03 P-DEP and C-13/03 P-DEP, *Tetra Laval BV v Commission* [2010] (not published in the ECR) para. 49.

question relating to a reasonable period⁶⁴⁹ or a distortion of evidence⁶⁵⁰. The ECJ has also held that the protection of human health and the environment is a sensitive issue⁶⁵¹.

5. Difficulty

The degree of difficulty is normally closely linked to the significance in the light 11 of EU law. A case is obviously not difficult if an appeal has been rejected as manifestly inadmissible and/or manifestly unfounded⁶⁵², whilst it may well be difficult if it raises very technical or complex legal questions⁶⁵³.

6. Amount of work entailed. a) Main party. The ECJ takes account of a broad 12 variety of elements, such as: the subject-matter of the proceedings and the significance of the case in the light of EU law⁶⁵⁴; the length of the written submission, e.g. a reply of only 7 pages⁶⁵⁵, the number of lawyers involved, bearing in mind that normally, only the fees paid to one lawyer are recoverable⁶⁵⁶, the fact that the appeal concerns an order in interim proceedings, which limits the number of legal pleas⁶⁵⁷, etc.

b) Intervener

The ECJ takes into account whether the applicant is an intervener in the 13 proceedings⁶⁵⁸, since the amount of work is normally considerably lower than the one of the main party supported⁶⁵⁹; whether the party only intervened at the stage of the oral hearing, i.e. without submitting a written reply or rejoinder⁶⁶⁰.

⁶⁴⁹ Joined Cases C-105/04 P-DEP and C-113/04 P-DEP, *CEF City Electrical Factors BV* [2008] (not published in the ECR), para. 29.

⁶⁵⁰ Case C-326/05 P-DEP, *Industrias Químicas del Vallés SA v Commission* [2009] (not published in the ECR) para. 39.

⁶⁵¹ Case C-326/05 P-DEP, *Industrias Químicas del Vallés SA v Commission* [2009] (not published in the ECR) para. 40.

⁶⁵² Case C-448/09 P-DEP, *BSH Bosch and Siemens Hausgeräte GmbH v Royal Appliance International GmbH* [2011] (not published in the ECR), para. 20.

⁶⁵³ Case C-326/05 P-DEP, *Industrias Químicas del Vallés SA v Commission* [2009] (not published in the ECR) para. 42.

⁶⁵⁴ Case C-448/09 P-DEP, *BSH Bosch and Siemens Hausgeräte GmbH v Royal Appliance International GmbH* [2011] (not published in the ECR), para. 21.

⁶⁵⁵ Case C-104/05 P-DEP, *Pucci v El Corte Inglés SA* [2008] (not published in the ECR), para. 17.

⁶⁵⁶ Case C-104/05 P-DEP, *Pucci v El Corte Inglés SA* [2008] (not published in the ECR) para. 18 and the case-law cited.

⁶⁵⁷ Case C-122/06 p. (R)-DEP, *Gas Natural SDG SA v ENDESA SA* [2009] (not published in the ECR) para. 20.

⁶⁵⁸ Case C-206/04 P-DEP, *Zirh International Corp. v Mühlens* [2008] (not published in the ECR) para. 20.

⁶⁵⁹ Joined Cases C-105/04 P-DEP and C-113/04 P-DEP, *CEF City Electrical Factors BV* [2008] (not published in the ECR), para. 33 and the case-law cited.

⁶⁶⁰ Case C-206/04 P-DEP, *Zirh International Corp. v Mühlens* [2008] (not published in the ECR) para. 21.

IV. Statistics

14	Subject	Claimed	Proposed	Taxed	Ratio
	C-122/06 P(R)-DEP ⁶⁶¹	33,568.61	3,600.00	6,150.00	18 %
	C-12/03 P-DEP and				
	C-13/03 P-DEP ⁶⁶²	924,703.90	70,000.00	124,000.00	13 %
	C-105/04 P-DEP and				
	C-113/04 P-DEP ⁶⁶³	179,406.00	–	15,000.00	8 %
	Internal market				
	C-326/05 P-DEP ⁶⁶⁴	452,028.94	80,000.00	255,000.00	56 %
	C-204/07 P-DEP ⁶⁶⁵	66,950.20	25,046.20	29,568.00	44 %
	OHIM				
	C-448/09 P-DEP ⁶⁶⁶	3,303.20	–	3,303.20	100 %
	C-300/08 P-DEP ⁶⁶⁷	6,709.43	–	6,709.43	100 %
	C-512/04 P-DEP ⁶⁶⁸	6,695.44 USD	–	6,125.44 USD	91 %
	C-206/04 P-DEP ⁶⁶⁹	15,626.95	2,626.95	5,126.95	33 %
	C-104/05 P-DEP ⁶⁷⁰	25873,70	–	7000,00	27 %

⁶⁶¹ Case C-122/06 p. (R)-DEP, *Gas Natural SDG SA v ENDESA SA* [2009] (not published in the ECR).

⁶⁶² Joined Cases C-12/03 P-DEP and C-13/03 P-DEP, *Tetra Laval BV v Commission* [2010] (not published in the ECR).

⁶⁶³ Joined Cases C-105/04 P-DEP and C-113/04 P-DEP, *CEF City Electrical Factors BV* [2008] (not published in the ECR).

⁶⁶⁴ Case C-326/05 P-DEP, *Industrias Químicas del Vallés SA v Commission* [2009] (not published in the ECR).

⁶⁶⁵ Case C-204/07 P-DEP, *C.A.S. v Commission* [2009] (not published in the ECR).

⁶⁶⁶ Case C-448/09 P-DEP, *BSH Bosch and Siemens Hausgeräte GmbH v Royal Appliance International GmbH* [2011] (not published in the ECR).

⁶⁶⁷ Case C-300/08 P-DEP, *Celia v Leche* [2010] (not published in the ECR).

⁶⁶⁸ Case C-512/04 P-DEP, *Kraft SA v Vitakraft-Werke* [2007] (not published in the ECR).

⁶⁶⁹ Case C-206/04 P-DEP, *Zirh International Corp. v Mülhens* [2008] (not published in the ECR).

⁶⁷⁰ Case C-104/05 P-DEP, *Pucci v El Corte Inglés SA* [2008] (not published in the ECR).

V. Taxation order

1. Costs of taxation proceedings included

In fixing the recoverable costs, the Court takes account of all the circumstances of 15 the case up to the making of the order on taxation of the costs, including the expenses necessarily incurred in relation to the taxation of costs proceedings⁶⁷¹.

2. Final order

The taxation order⁶⁷² is a final decision since it cannot be challenged by way of 16 appeal or other legal remedies. As of the adoption of the taxation order the debtor needs to pay interest.

VI. Formation (paragraph 2)

Firstly, it provides that applications for taxation are to be examined by the 17 smallest formation of the Court, i.e. a chamber of three or of five Judges, depending upon the circumstances. It would be manifestly out of proportion to have the Grand Chamber, let alone the Plenary session, look at taxation matters. Secondly, the Advocate-General is not required to deliver an Opinion; his views are simply sought before the Chamber hands down its order.

VII. Authenticated copy (paragraph 3)

In practice, there is either no or only very rarely a need to enforce a taxation 18 order vis-à-vis a Member State or EU institution.

Article 146 Procedure for payment

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

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

⁶⁷¹ Joined Cases C-12/03 P-DEP and C-13/03 P-DEP, *Tetra Laval BV v Commission* [2010] (not published in the ECR) para. 42.

⁶⁷² The case number bears the acronym "DEP" (dépens).

De facto, this provision extends the “Euro Zone” to those Member States which are not part of the Euro.

CHAPTER 7

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

Article 147 Amicable settlement

1. If, before the Court has given its decision, the parties reach a settlement of their dispute and inform the Court of the abandonment of their claims, the President shall order the case to be removed from the register and shall give a decision as to costs in accordance with Article 141, 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.

I. General

- 1 Unlike the withdrawal of an application, which by definition is unilateral, any settlement requires a **consensus** between the parties at least concerning the settlement and ideally also concerning the question of costs. If the parties do not reach an agreement on costs, the ECJ will give a decision in this respect.

II. Court settlement (paragraph 1)

- 2 It is implied that any settlement needs to be put in writing; this settlement may also include a consensus regarding the costs, even though the latter is not a prerequisite for a settlement. The ECJ then hands down an order removing the case from the docket and rendering a decision on the costs.

III. Exceptions (paragraph 2)

- 3 Neither an action for annulment nor a failure to act requires the defendant’s consent. Thus, only a withdrawal of the application may be considered an exception to this rule. Since a referral for a preliminary ruling is not a contentious procedure, there is no room for any settlement at the ECJ, except in the main proceedings at the national level which is a matter for the national Court or Tribunal. Infringement proceedings are not suitable for settlements, but may be withdrawn, as the case may be.

Article 148 Discontinuance

If the applicant informs the Court in writing or at the hearing that he wishes to discontinue the proceedings, the President shall order the case to be removed from the register and shall give a decision as to costs in accordance with Article 141.

Outline:

I. General	1
1. Unilateral act.....	1
2. Scope	2
II. Procedural requirements	3
1. Scope	3
2. Written act	4
3. Timing	5

I. General

1. Unilateral act

This rule governs the conditions, consequences, and costs of a withdrawal of an application. Unlike the settlement within the meaning of Art. 147, this is the applicant’s **autonomous decision** which does not require the other party’s consent.

2. Scope

It is clear from this Article’s reference to Art. 141 RP ECJ that the applicant must withdraw the **entire** application. Art. 148 RP ECJ does not apply should the applicant only renounce a given order sought and/or legal ground, as is sometimes the case, especially during oral hearings.

II. Procedural requirements

1. Scope

Although Article 148 RP ECJ only mentions discontinuing “proceedings”, this provision also applies to other legal remedies, such as a request for interim proceedings, an appeal, an intervention, or an application for leave to intervene.

2. Written act

A written and unconditional withdrawal is sufficient and results in the removal of the case. The defendant cannot prevent the removal, not even on the grounds that it wishes to obtain a ruling in the case.

3. Timing

- 5 A withdrawal can take place any time before the adoption of the ruling or decision, i.e. during the written phase of the proceedings; before or during the hearing; and even after the Advocate-General has handed down his Opinion. That said, the party concerned should make up its mind in a **timely manner** so as to avoid as much as possible unnecessary work for Judges and Avocate-Generals.
- 6 In case of a withdrawal, the other party may submit its written observations. In practice, the defendant has little choice but to take note of the withdrawal of the application and will comment on costs. The ECJ will then decide on the basis of Article 143 RP ECJ.

Article 149 Cases that do not proceed to judgment

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

1. Action for annulment

- 1 It becomes devoid of purpose if the **defendant** e.g. withdraws⁶⁷³ or revokes⁶⁷⁴ the challenged legal act, or if it amends its contents to such extent that the amendments amount to a withdrawal⁶⁷⁵, or if it replaces the contested decision by a legal act sought by the applicant.

2. Action for failure to act

- 2 It becomes devoid of purpose if the **defendant** adopts the legal act sought by the applicant.

Article 150 Absolute bar to proceeding with a case

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

An “absolute bar” covers those requirements of admissibility which are **mandatory** and therefore need to be assessed *ex officio*, such as compliance with the rules on time-limits; whether infringement proceedings go beyond the reasoned opi-

⁶⁷³ Case C-46/96, *Germany v Commission* [1997], ECR I-1189, 1192.

⁶⁷⁴ Case 19/85, *Grégoire-Foulon v Parliament* [1985], ECR 3771, 3774.

⁶⁷⁵ Case C-123/92, *Lezzi Pietro v Commission* [1993], ECR I-809, 813.

nion⁶⁷⁶; or whether a plea in law has not been brought in time within the meaning of Article 127(1) RP ECJ. If a preliminary objection within the meaning of Art. 151 RP ECJ turns out to be either incomplete⁶⁷⁷ or inadequate,⁶⁷⁸ it may still have an added value if it led the ECJ to making use of Art. 150 RP ECJ.

Article 151 Preliminary objections and issues

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

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

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

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

5. The Court shall, after hearing the Advocate General, decide on the application as soon as possible or, where special circumstances so justify, reserve its decision until it rules on the substance of the case.

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

Outline:

I. General	1
1. Purpose	1
2. Excluded legal remedies	2
II. Applying for a decision on a preliminary objection or issue (paragraph 1)	3
1. Decision on a preliminary objection	3
a) General	3
b) Requirements as to its contents	4
c) Time-limit	5
d) Examples	6
2. Other preliminary issues	7
a) Examples	7
b) Timing	8
III. Contents of the application (paragraph 2)	9
IV. Reply of the other party (paragraph 3)	10
V. Hearing (paragraph 4)	11
VI. Decisions of the Court (paragraphs 5 and 6)	12

⁶⁷⁶ Case C-206/96, *Commission v Luxembourg* [1998], ECR I-3401, 3414.

⁶⁷⁷ Case C-313/90, *CIRFS and others v Commission* [1993], ECR I-1125, 1184.

⁶⁷⁸ Case 78/85, *Groupe des droites européennes v Parliament* [1986], ECR 1753, 1757.

I. General

1. Purpose

- 1 Applying for a decision on a “preliminary objection or issue not going to the substance of the case” is **not an autonomous legal remedy**. This is instead a generic terms for procedural instruments enabling the **defendant** to address the question of admissibility of a given application, e.g. an action for a annulment, without addressing the substance and enables **all parties** to raise certain other procedural issues not related to the substance of the proceedings, such as bias of a judge. Thus, the possibility to apply for a decision on a preliminary objection is in the interest of the economy of proceedings.

2. Excluded legal remedies

- 2 Preliminary issues within the meaning of Article 151 RP ECJ do not apply to either **appeals**⁶⁷⁹ or **referrals for preliminary rulings**.

II. Applying for a decision on a preliminary objection or issue (paragraph 1)

- 3 **1. Decision on a preliminary objection. a) General.** If the **defendant** finds that an application is **inadmissible**, than he may apply for a decision on a preliminary objection by way of a **separate written submission** which is lodged in lieu of a statement of defence. This **specific procedure** should only be used if there are **genuine reasons** pointing at the inadmissibility of the application. Too light-hearted a recourse to this procedure might otherwise have the opposite effect of the **economies of proceedings** it is designed to achieve. Thus, it may in a number if not in most cases be more appropriate to raise questions of admissibility in the statement of defence, whether in a preliminary comment or in a separate chapter to that effect.

b) Requirements as to its contents

- 4 The preliminary objection is, by definition, limited to questions of **admissibility** of the application as a whole; under no circumstance may it deal with questions of substance. This procedure should not be used if e.g. a single legal plea is considered to be inadmissible; such a matter should be addressed in the Statement of defence.

c) Time-limit

- 5 In the absence of a specific time-limit for lodging a plea of inadmissibility⁶⁸⁰, the same time-limit as the one which applies to a statement of defence, i.e. **two months** (see Art. 124 (1) RP ECJ), applies, unless it has been extended.

⁶⁷⁹ See Art. 190(1) RP ECJ.

⁶⁸⁰ Such specific rule exists in the RP CST (see Art. 78).

d) Examples

In an action for annulment, the defendant may if necessary object e.g. that the action is **time-barred** even if the Judges have to consider this question on their own initiative, or state the absence of a **challengeable act**. Furthermore, a preliminary objection may be used to raise the objection of *lis pendens*, etc.

2. Other preliminary issues. a) Examples. This legal term, which is particularly **vague**, covers a variety of situations, such as an application for a declaration of **loss of object** of the proceedings; the admission or **exclusion** of certain internal **documents** of certain bodies, such as a legal opinion of a Member State or EU institution, provided that such documents are not already published or the presentation of which was ordered by the Court; the change of the **language** of procedure, the **exclusion** of the **public** from the oral hearing; the **suspension** of the proceedings; the rejection of a judge because of **alleged bias**, etc.

b) Timing

Unlike the preliminary objection, which needs to be raised, as the term suggests, at a preliminary stage, i.e. as a reply to the application, the preliminary plea may be raised **anytime** during the proceedings and thus presumably even in the context of the second exchange of written submissions. Raising a preliminary issue regarding e.g. an alleged lack of objectivity of a Judge would have obviously little if no sense if the party concerned could only raise it at a given stage of the proceedings.

III. Contents of the application (paragraph 2)

An application for a preliminary objection or issue needs to be articulated in a **separate document**, which needs to comprise all the indications listed in Art. 151 (2) RP ECJ, which are similar to the contents of an application, as defined in Art. 120 RP ECJ.

IV. Reply of the other party (paragraph 3)

By way of being notified of the application for a decision on a preliminary objection or issue the other party is given the opportunity to hand in its **comments in writing**, within the time-limit set by the President. This does not trigger a right to any further written submission by any of the parties, i.e. there is no second exchange of written submission.

V. Hearing (paragraph 4)

Contrary to what is suggested by the wording of this provision, an oral hearing in these proceedings is the **absolute exception** rather than the rule.

VI. Decisions of the Court (paragraphs 5 and 6)

- 12 Either the ECJ declares the application for a preliminary objection or issue well founded, or the Judges reject it, or they reserve their decision. Each of these decisions is handed down by way of an **order**.

CHAPTER 8
JUDGMENTS BY DEFAULT

Article 152 Judgments by default

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

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

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

4. A judgment by default shall be enforceable. The Court may, however, grant a stay of execution until the Court has given its decision on any application under Article 156 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.

Outline:

I. Introduction	1
II. Failure to respond (paragraph 1)	2
1. Duly served application	2
2. Failure to respond	3
3. Application for judgment of default	4
III. Serving the application (paragraph 2)	5
IV. Assessment of the application (paragraph 3)	6
1. Ratio legis	6
2. Limited assessment	7
a) Admissibility	7
b) Assessment regarding the substance	8
V. Enforceability (paragraph 4)	9

I. Introduction

This provision implements **Art. 41 Statute ECJ**, by defining the procedural requirements of a default judgment and is complemented by **Art. 156 RP ECJ**, i.e. the application to set aside a judgment delivered by default. Such judgments are **rare**, all the more so at the level of the ECJ. They occur, if at all, with respect to applications based on arbitration clauses and, even more rarely, in the context of infringement proceedings⁶⁸¹.

II. Failure to respond (paragraph 1)

1. Duly served application

The first condition, namely a situation in which a “duly served” application initiates proceedings, meaning that the defendant was put in a position to defend himself, is supplemented by paragraph 3, which provides that the ECJ shall assess whether said action is admissible and the claims appear well founded.

2. Failure to respond

The **former** wording “fails to lodge a defence” was slightly ambiguous since it could have been misunderstood as referring to a **statement of defence**, whilst it also covered the case of an application for a decision on a **preliminary objection** within the meaning of Art. 151 RP ECJ. This has now been clarified by using the terms “**fails to respond**”. Whether the defendant disregarded the time-limit prescribed is determined by the **objective situation**, i.e. not by the views of the applicant⁶⁸². That said, a statement of defence that suffers from lacunae or other manifest defects will **not** trigger a default judgment as long as it has been lodged in a timely manner⁶⁸³.

3. Application for judgment of default

There is **no formal time-limit** for an application for a judgment by default. In practice, the Registrar may enquire whether the other party intends to lodge such application⁶⁸⁴. On several occasions the institution concerned, e.g. the Commission in infringement proceedings, waived its right to lodge such application. If the party concerned lodges such a request, the ECJ must decide upon said request by default judgment.

⁶⁸¹ Case 68/88, *Commission v. Greece* [1989], ECR 2965, 2981.

⁶⁸² Case C-32/02, *Commission v Italy* [2003], ECR I-12063, 12071, para. 15.

⁶⁸³ Case C-337/96, *Commission v Industrial Refuse and Coal energy* [1998], ECR I-7943, para. 25.

⁶⁸⁴ Case C-29/03, *Commission v ITEC* [2003], ECR I -12205, para. 19, Case C-30/03, *Commission v ITEC* [2003], ECR I-12217, para. 19 and Case C-323/02, *Commission v Hydrowatt* [2003], ECR I-9071, para. 17.

III. Serving the application (paragraph 2)

- 5 The application for the adoption of a default judgment shall be served on the defendant, but the latter has **no opportunity to reply**.

IV. Assessment of the application (paragraph 3)

1. Ratio legis

- 6 It would be both unfair and against the principle of economy of proceedings if merely failing to lodge a statement of defence or application for decision on a preliminary objection within the time-limit of two months (plus ten days on account of distance) would necessitate a judgment by default, as this would almost automatically result in an application to set aside the judgment by default (Art. 156 RP ECJ).
- 7 **2. Limited assessment. a) Admissibility.** The ECJ assesses whether the application initiating proceedings respects the **procedural requirements** and whether the application is **admissible**⁶⁸⁵, since no inadmissible application may generate any rights based upon its substance.

b) Assessment regarding the substance

- 8 Next, the ECJ assesses the substance of the case, but since it can only do so on the **basis of the application**, it will examine “whether the applicant’s claims **appear** to be well founded”. This test goes **beyond** the *prima facie* examination applicable in interim proceedings, since in the present context there is no risk of prejudging the main proceedings. That said, the test is **not a full assessment** of the case, as it takes place in any normal, i.e. adversarial procedure.

V. Enforceability (paragraph 4)

- 9 The *effet utile* of a default judgment would be very limited if said judgment were not enforceable. The details laid down in paragraph 4 reflect the fact that the defendant may lodge an application to set aside the judgment of default as provided by Art. 156 RP ECJ.

⁶⁸⁵ If necessary, if the Court finds that “there is no doubt as to the admissibility of the action”, see Case C-323/02, *Commission v Hydrowatt* [2003], ECR I-9071, para. 18.

CHAPTER 9 REQUESTS AND APPLICATIONS RELATING TO JUDGMENTS AND ORDERS

Chapter 9 of Title 4 contains all requests or applications that can be made after a case has been closed by the Court.

Article 153 Competent formation of the Court

1. With the exception of applications referred to in Article 159, the requests and applications referred to in this Chapter shall be assigned to the Judge-Rapporteur who was responsible for the case to which the request or application relates, and shall be assigned to the formation of the Court which gave a decision in that case.

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

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

I. General

This provision is new and precedes the various requests and applications (see 1 Art. 154 to 159 RP ECJ), which have been concentrated in Chapter 9 of Title 4. It would seem that those requests and applications have been numbered according to their **practical relevance**, which could explain, why the request for rectification comes first (Art. 154 RP ECJ) and the more exotic revision (Art. 159 RP ECJ) last.

II. Competent formation (paragraphs 1 to 3)

It is in the interest of **procedural economy** to provide those requests and 2 applications to be assigned to the **same Judge-Rapporteur** and to the **same formation** of the ECJ, which adopted the decision at issue, except for the revision within the meaning of Art. 159 RP ECJ.

Article 154 Rectification

1. Without prejudice to the provisions relating to the interpretation of judgments and orders, clerical mistakes, errors in calculation and obvious inaccuracies may be rectified by the Court, of its own motion or at the request of a party made within two weeks after delivery of the judgment or service of the order.

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

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

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

Outline:

I. Introduction	1
II. Request (paragraph 1)	2
1. Purpose	2
2. Time-limit	3
a) Judgments and orders	3
b) Too short a time-limit?	4
3. Scope of the provision	6
III. Operative part and grounds (paragraph 2)	7
IV. Advocate-General (paragraph 3)	9
V. Order (paragraph 4)	10

I. Introduction

- 1 This provision enables the ECJ to correct **typing**⁶⁸⁶, **computing**- and other **obvious errors in judgments** or, as is now explicitly specified, taking account of the case-law⁶⁸⁷, orders, by way of an order adopted either *ex officio*, or upon request of one of the parties.

II. Request (paragraph 1)

1. Purpose

- 2 A request for **rectification**⁶⁸⁸ of obvious typing and/or calculation errors is, as the name suggests, neither designed to **interpret**⁶⁸⁹, **nor** to **change** the substance of the **judgment** or **order** concerned. The ECJ may also, if need be, publish a **corrigendum** regarding an erroneous **translation** of the judgment into a given official language.
- 3 **2. Time-limit. a) Judgments and orders.** Since this provision applies to both judgments and orders, the time-limit of **two weeks** starts as of **delivery** (i.e. **not** as

⁶⁸⁶ Joined Cases C-502/01 and C-31/02, *Gaumain-Cerri* [2004], ECR I-6483.

⁶⁸⁷ Case C-45/11 P, *Deutsche Bahn v OHIM* [2012] (not published in the ECR).

⁶⁸⁸ Which accurately replaces the former term “application”.

⁶⁸⁹ Joined Cases 4/59 to 13/59, *Mannesmann and others v High Authority ECSC* [1960], ECR 339, 343.

of the **service**, as one would expect to be the normal starting point of any time-limit) in the case of **judgments**, whilst in the case of **orders**, it is the **service** that matters.

b) Too short a time-limit?

Even though such request requires an “obvious” slip in the judgment, this time-limit seems quite short, for the following reasons: On the one hand, the ECJ may act *ex officio*, which means that even years after the date of a judgement’s delivery⁶⁹⁰ the Court still has the possibility to rectify said judgement⁶⁹¹ or order. On the other hand, the application concerns **errors of the ECJ**, i.e. errors which its translation and revision services did not spot over a period which may, depending upon the circumstances, be considerably longer than two weeks.

That said, in case a party spots a clerical mistake or error of calculation *after the time-limit* has elapsed, it is not prevented from signalling such mistakes to the Registry *informally*, i.e. without lodging a formal request within the meaning of Art. 154 RP ECJ. The idea is not to circumvent the time-limit of two weeks, but, quite simply, to signal the existence of an error which the ECJ could and possibly even should have spotted and rectified on its own motion.

3. Scope of the provision

The wording, which seem deliberately wide (“obvious slips”, meaning obvious inaccuracies) gives the ECJ **discretionary power** concerning errors, which may not be directly comparable to clerical mistakes and errors of calculation⁶⁹². This includes e.g. an erroneous reference to a Regulation⁶⁹³.

III. Operative part and grounds (paragraph 2)

In the past, the parties would be systematically heard, prior to any rectification, i.e. regardless of the importance of the clerical error mistake or obvious slip. As this turned out to be disproportionate in the event of minor errors, such as the misspelling of a name or city, the parties are, as of the new paragraph 2, **only consulted** if the error or inaccuracy concerns the **operative part** or the **grounds** of the judgment or order, and rightly so.

The parties may submit written observations, it being understood that for obvious reasons of economy of procedure there is not a further exchange of written submissions, let alone an oral hearing, nor is the rectification formally delivered on a given date.

⁶⁹⁰ Case C-501/00, *Spain v Commission* [2004], ECR I-6717.

⁶⁹¹ Case C-370/05, *Festersen* [2007], ECR I-1135.

⁶⁹² On a modification of costs, Joined cases C-89/85, C-104/85, C-114/85, C-117/85 and C-125/85 to C-129/85 m *Ahlström Osakeyhtiö and others v Commission* [1994], ECR I-99, 113.

⁶⁹³ Joined Cases C-31/02 and C-502/01, *Gaumain-Cerri* [2004], ECR I-6483.

IV. Advocate-General (paragraph 3)

- 9 In such circumstances, the Advocate General does of course not deliver an opinion, he is merely heard.

V. Order (paragraph 4)

- 10 The order, which at least in the past was not specifically reasoned⁶⁹⁴, is annexed to the original judgment.

Article 155 Failure to adjudicate

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

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

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

I. General

- 1 Proceedings in which the ECJ omitted to address an individual aspect of the **order(s) sought** in the main proceedings or with respect to **costs** are, as one would expect, extremely rare. Since there is no appeal against decisions of the ECJ a specific legal remedy needed to be created, which has now been extended, since it relates not only to **judgments**, but also to **orders**.

II. Application (paragraph 1)

1. No supplementing *ex officio*

- 2 Supplementing a judgment or order requires a specific **application**⁶⁹⁵ by a party. In this respect, and unlike e.g. in the case of a rectification of clerical errors⁶⁹⁶, the Court may **not** act of its own motion. Since such omission carries far more weight

⁶⁹⁴ Case C-376/03, D [2005], ECR I-5821.

⁶⁹⁵ In this particular circumstance, the term “application”, which elsewhere in the RP ECJ has been replaced by the term “request”, is adequate, since this procedure a continuation or rather epilogue of proceedings.

⁶⁹⁶ See Art. 154 RP ECJ.

than e.g. a clerical mistake (see Art. 154 RP ECJ), where the ECJ may act on its own motion, it does not seem very consistent to prevent the ECJ from rectifying its mistake on its own accord here. That said, this remains a bit of a theoretical question, since in practice the parties to the proceedings will almost certainly not fail to spot any such error.

2. Time-limit

The **one-month** time-limit⁶⁹⁷ starts “**after service**” of the judgment or order. ³ Thus there is no distinction between the delivery of the judgment and the service of the order, unlike in the case of a rectification (Art. 154 RP ECJ). The time-limit is mandatory and therefore **not extendable**.

III. Right to be heard (paragraph 2)

Given the importance of the issue it goes without saying that the other party ⁴ needs to be heard and needs to be given an **adequate time-limit**.

IV. Decision (paragraph 3)

The applicant needs to demonstrate that the ECJ has completely omitted to ⁵ address a head of claim, i.e. that it has neither taken account of it together with other heads of claim, nor that it has addressed it by referring to a reasoning made in respect of a different head of claim. Such an application may be successful if the ECJ, “excessively concise in its approach”, did not explicitly address the issue of costs with respect to a party⁶⁹⁸.

Article 156 Application to set aside

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

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

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

4. The proceedings shall be conducted in accordance with Articles 59 to 92 of these Rules.

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

⁶⁹⁷ Plus the standard ten-day distance period.

⁶⁹⁸ Joined Cases C-89/85, C-104/85, C-14/85, C-116/85, C-117/85, C-125/85 to C-129/85, *Ahlström Osakeyhtiö and others v Commission* [1994], ECR I-99, para. 5.

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.

I. Rights of defence (paragraph 1)

- 1 This provision is the corollary of Art. 152 RP ECJ which governs judgments by default. The **defendant's right** to lodge a legal remedy against a default judgment restores the **adversarial nature** of the proceedings, which is one of the fundamental characteristics governing judicial (and administrative) proceedings. Thus, the consequences of **not complying** with the time limit are not the same for the defendant as they are for the applicant. The applicant may find himself entirely blocked from bringing proceedings if he cannot rely on *force majeure*, unforeseen circumstances⁶⁹⁹, or an excusable error in order to justify his tardiness, while the defendant may use the application for setting aside the judgment by default to replace the statement of defence the party failed to submit in a timely manner.

II. Time-limit (paragraph 2)

- 2 The time limit of **one-month** for lodging the application, which needs to be in line with the rules applying to all applications (Art. 120 to 122 RP ECJ) seems more than adequate, because at that stage the defendant is usually already familiar with the details of the case and will, in many instances, already have a statement of defence ready for submission.

III. Rights of defence and subsequent procedure (paragraphs 3 to 6)

1. Reply, no rejoinder

- 3 The **other party** may then submit its “written observations” within the period set by the President. Such observations amount to a **reply** within the meaning of Art. 126 RP ECJ. The only major difference with a classical written procedure is that the defendant, i.e. the party which failed to comply with the time-limit in the first place, has **no** right to hand in a **rejoinder**.

2. Oral hearing

- 4 That said, the oral hearing, if any, will provide the defendant with the opportunity to react to the reply.

⁶⁹⁹ Art. 45 (2) Statute ECJ.

Article 157 Third-party proceedings

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

- (a) specify the judgment or order contested;
- (b) state how the contested decision is prejudicial to the rights of the third party;
- (c) indicate the reasons for which the third party was unable to take part in the original case.

- 2. The application must be made against all the parties to the original case.
- 3. The application must be submitted within two months of publication of the decision in the *Official Journal of the European Union*.
- 4. The Court may, on application by the third party, order a stay of execution of the contested decision. The provisions of Chapter 10 of this Title shall apply.
- 5. The contested decision shall be varied on the points on which the submissions of the third party are upheld.
- 6. The original of the judgment in the third-party proceedings shall be annexed to the original of the contested decision. A note of the judgment in the third-party proceedings shall be made in the margin of the original of the contested decision.

Outline:

I. General	1
II. Application (paragraph 1).....	2
1. Contents	2
2. Proving that the judgment is prejudicial.....	3
a) Admissibility	3
b) No prejudicial effect.....	4
III. Addressees of the application (paragraph 2).....	5
IV. Time-limit (paragraph 3).....	6
V. Suspension of operation (paragraph 4).....	7
VI. Varying the contested judgment (paragraphs 5 and 6).....	8

I. General

This provision, which implements and complements 42 Statute ECJ, enables any 1 third party which could **not intervene** in the proceedings to contest any judgment which it deems prejudicial to its rights if certain conditions are fulfilled⁷⁰⁰.

⁷⁰⁰ In third party proceedings the case numbers bear the acronym “TO” (“tierce opposition”).

II. Application (paragraph 1)

1. Contents

- 2 In its application, the third party must prove that the **judgment or order** is **prejudicial** to its rights and must indicate the **reasons** that **prevented** it from intervening in the main proceedings.
- 3 **2. Proving that the judgment is prejudicial.** a) **Admissibility.** Natural or legal persons other than institutions of the EU and Member States may not initiate third party proceedings concerning matters in which they may not intervene in the first place⁷⁰¹, as in infringement proceedings initiated by the Commission against a Member State⁷⁰².
- b) **No prejudicial effect**
- 4 One may not consider there to be a prejudicial effect if the judgement or order could not have altered the legal situation of the applicant or prevented said applicant from taking legal action to assert the rights which it claims to have⁷⁰³.

III. Addressees of the application (paragraph 2)

- 5 It is within the logic of an application made by a third party, i.e. someone who was not a party to the proceedings, that the application needs to be made against all parties of the original case.

IV. Time-limit (paragraph 3)

- 6 The application needs to be lodged within **two months** (plus 10 days on account of distance) as of the publication of the notice on the judgment in the Official Journal⁷⁰⁴.

V. Suspension of operation (paragraph 4)

- 7 If the enforcement of the judgment concerned entails the risk of an irreparable prejudice for the applicant, the applicant may submit a request for interim measures.

⁷⁰¹ Art. 40.2 Statute ECJ.

⁷⁰² See Case C-147/86 TO 1, *Fédération professionnelle de deuxième degré- POIFXG v Greece and Commission* [1989], ECR p. 4103, 4107.

⁷⁰³ Case 267/80 TO, *Birra Dreher v Riseria Modenese, Council and Commission* [1986] ECR p. 3901.

⁷⁰⁴ The respective decision is announced a few weeks before its publication in the OJ and available on the same day on the website of the Court.

VI. Varying the contested judgment (paragraphs 5 and 6)

If the third-party’s request is granted, the judgment concerned is not annulled or 8
otherwise quashed, but amended accordingly. Consequently, the judgment in the
third-party proceedings is annexed to the original judgment or order.

Article 158 Interpretation

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

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

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

- (a) the decision in question;
- (b) the passages of which interpretation is sought.

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

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

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

Outline:

I. Purpose (paragraph 1)	1
II. Time-limit (paragraph 2).....	2
III. Application (paragraphs 3 and 4).....	3
1. Overview.....	3
2. Applicants	4
a) Rule.....	4
b) Exception	6
c) Interveners.....	7
3. Passages.....	8
4. Cases of inadmissibility.....	9
5. “Defendants”	10
IV. Effect of the judgment	11

I. Purpose (paragraph 1)

This provision implements Art. 43 Statute ECJ and has been improved, since its 1
processor, Art. 102 of the old RP ECJ, shed little light on the conditions of such an
application, in particular with respect to its admissibility.

II. Time-limit (paragraph 2)

- 2 Hitherto there was no specific time limit for such an application, which is now limited to **12 months** after the delivery of the judgment or order. Inserting a time-limit was overdue, since only an explicit time-limit creates the required legal certainty, whilst the principle of “reasonable delay”, which otherwise applies by default, requires a reasoning by analogy, which may or may not be possible, depending upon the circumstances. The absence of any legislative time-limit remains an open issue concerning e.g. applications for taxation of costs (Art. 145 RP ECJ).

III. Application (paragraphs 3 and 4)

1. Overview

- 3 An application for interpretation needs to comply with the general rules in Art. 120 to 122 RP ECJ. Initially, applications regarding the interpretation of **orders** were not admissible⁷⁰⁵, were then “tacitly” accepted⁷⁰⁶ and are now officially admissible, since Art. 158 RP ECJ explicitly applies to both judgments and orders.
- 4 **2. Applicants. a) Rule.** Only a party to the initial proceedings may apply for an interpretation of the subsequent judgment or order, since the proceedings for interpretation are **ancillary**⁷⁰⁷.
- 5 This restriction is both legitimate and regrettable at the same time. Only parties to the proceedings have an **interest to act** concerning resulting decision, as would be the case with any other subsequent legal remedy, such as an appeal (if it were possible, which is not the case concerning ECJ decisions); applications for revision; etc. Third parties may nevertheless be interested in being allowed to apply for an interpretation of a given judgment, but such general interest is **not protected** as to make an application admissible. Besides, the ECJ would in all likelihood be swamped by such applications, which would create an unbearable addition to its workload.

b) Exception

- 6 Despite the ancillary nature of an application for interpretation of a judgment or order, ruling out an application by third parties, one must employ a different appraisal when one seeks an interpretation which pertains specifically to another case pending between a third party and the party seeking the interpretation. Protecting the rights of defence requires that the third party who establishes an

⁷⁰⁵ Case C-502/06 P-INT, *Matos v. Parliament* [2008] ECR I-00129 paras. 7 and 8.

⁷⁰⁶ Case C-114/08 P(R)-INT, *Pellegrini v Commission* [2010] ECR I-00048, which is about the interpretation of an order.

⁷⁰⁷ Case 24–66 BIS, *Gesellschaft für Getreidehandel v Commission* [1973] ECR p. 1599.

interest in the result of the case should be allowed to intervene in the proceedings for an interpretation⁷⁰⁸.

c) Interveners

An intervener must be allowed to submit an application for interpretation even if the party on whose behalf it intervened has not done so⁷⁰⁹.

3. Passages

An application for interpretation must essentially seek an interpretation of the **operative part** of a judgment together with said judgment's **essential grounds**⁷¹⁰. According to the case law, an application for interpretation must seek to resolve **obscurity or ambiguity** affecting the meaning or scope of the judgment in order to be admissible⁷¹¹. The application cannot concern controversies pertaining to the possible effect of said judgment on cases other than those on which a ruling has been given or on its application⁷¹².

4. Cases of inadmissibility

An application for interpretation is not admissible should it relate to points the judgment⁷¹³ or the order⁷¹⁴ did not decide, or where said application seeks to obtain an opinion on the application, implementation, or consequences of the judgment⁷¹⁵ from the Court. A party may not seek the interpretation of a judgment delivered in a referral for preliminary ruling⁷¹⁶, as is now explicitly provided in Art. 104 RP ECJ.

5. "Defendants"

Since the outcome of the interpretation is binding for all parties the application for interpretation needs to be addressed to all parties.

IV. Effect of the judgment

Once all the parties have been heard (Art. 158(5) RP ECJ) the ECJ hands down the interpreting judgment, which is binding not only on the applicants but also on

⁷⁰⁸ Case 9/81, *Court of Auditors v Williams* [1983] ECR p. 2859, para. 7.

⁷⁰⁹ Case C-245/95 P-INT, *NSK* [1999] ECR I-00001, para. 15 and the case law referred to.

⁷¹⁰ See Case C-114/08 P(R)-INT, *Pellegrini v Commission* [2010] ECR I-00048 para. 6 and the case law referred to.

⁷¹¹ See Case C-114/08 P(R)-INT, *Pellegrini v Commission* [2010] ECR I-00048, paras. 6 and the case law referred to.

⁷¹² Case 9/81, *Court of Auditors v Williams* [1983] ECR p. 2859, paragraphs 9, 12–13.

⁷¹³ Joined Cases 146/85 INT and 431/85 INT, *Maindix and others v. EECS* [1988] ECR I-2003, paras. 5 and 6.

⁷¹⁴ Case C-114/08 P(R)-INT, *Pellegrini v Commission* [2010] (not published in the ECR), para. 7.

⁷¹⁵ Case 206/81, *Alvarez v. Parliament* [1983] ECR 2865.

⁷¹⁶ Case C-262/88 INT, *Barber*, [2010] (not yet published in the ECR), para. 3–4.

any other party, in so far as that party is affected by the passage in the judgment that the ECJ is asked to interpret or by a passage that is exactly similar thereto⁷¹⁷.

Article 159 Revision

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

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

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

- (a) specify the judgment or order contested;
- (b) indicate the points on which the decision is contested;
- (c) set out the facts on which the application is founded;
- (d) indicate the nature of the evidence to show that there are facts justifying revision, and that the time-limits laid down in paragraph 2 have been observed.

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

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

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

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

Outline:

I. Introduction	1
II. Purpose of a revision (paragraph 1).....	2
1. Implementation of Art. 44 Statute ECJ	2
2. Judgments and orders	3
3. Decisive factor	4
a) General.....	4
b) Cases	5
III. Time-limits (paragraph 2).....	6
1. Three months	6
2. Ten years	7

⁷¹⁷ Joined Cases 41, 43 and 44-73-Interprétation, *Société anonyme Générale Sucrière A.O. v Commission* [1977] ECR p. 445.

IV. Application (paragraph 3).....	8
1. General.....	8
2. Specifying the decision	9
3. Indicating the points on which the judgment is contested	10
4. Facts on which the application is founded and evidence	11
V. Application against all parties (paragraph 4).....	12
VI. Admissibility (paragraph 5).....	13
1. First step	13
2. Rejected as inadmissible.....	14
VII. Assessing the substance (paragraph 6).....	15
VIII. Judgment (paragraph 7)	16

I. Introduction

During the period in which ECJ had jurisdiction over direct applications lodged 1
by natural or legal persons, cases of revision outnumbered third party proceedings,
while still remaining **rare** on the whole. In view of the ECJ's current jurisdiction,
revision has very little importance for proceedings at the ECJ. This explains why
Art. 98 to 100 of the previous RP ECJ have been be reproduced in a **single**
provision, i.e. Art. 159.

II. Purpose of a revision (paragraph 1)

1. Implementation of Art. 44 Statute ECJ

Art. 159 RP ECJ implements Art. 44 Statute ECJ, which provides for the 2
possibility of a “revision of a judgment”⁷¹⁸. This is a legal remedy that enables the
party concerned to obtain a modification of an ECJ ruling if one discovers a **fact of
crucial importance** that was unknown to the applicant before the ECJ handed down
its judgment. Thus, under these very particular and demanding conditions, a
judgment or order, which in the case of the ECJ is by definition definitive⁷¹⁹ as of
the date it was handed down, may be revised.

2. Judgments and orders

Only judgments and orders resulting from **contentious** proceedings may be 3
revised. Thus, there is **no** revision in a **referral for a preliminary ruling**, as the
national Tribunal or Court must inform the ECJ about new aspects, if any⁷²⁰.

3. **Decisive factor.** a) **General.** Proving that a “fact which is of such nature as to be 4
a decisive factor” was **unknown** prior to the date on which the judgment was
handed down is a **genuine hurdle**⁷²¹. The fact that the judgment of a Court is

⁷¹⁸ The cases numbers bear the acronym “REV” (“revision”).

⁷¹⁹ Case 116/78 REV, *Bellintani A. O. v Commission* [1980] ECR p. 23.

⁷²⁰ Case C-116/98 REV, *Reisebüro Binder* [1998], ECR I-1889, para. 9.

⁷²¹ See Comments on Art. 44 Statute ECJ.

subsequent to the ECJ's judgment cannot in and of itself prevent aforementioned judgment from being considered discovery of a new fact⁷²².

b) Cases

- 5 In order to determine whether something is of “crucial importance”, i.e., if it may have had a **decisive influence** on the outcome of the proceedings⁷²³, one must assess this element in the light of the reasoning of the judgment concerned⁷²⁴.

III. Time-limits (paragraph 2)

1. Three months

- 6 The three-month time limit is “*ordre public*”, i.e. binding and not subject to the will of the parties, and thus not extendable⁷²⁵. In practice it is not necessarily easy to prove the exact date on which the applicant became aware of the relevant fact.

2. Ten years

- 7 Art. 44 (3) Statute ECJ provides that no application for revision may be made after the lapse of 10 years from the date of the judgment, point in time as of which the need for legal certainty prevails over anything else.

IV. Application (paragraph 3)

1. General

- 8 As with most legal remedies, the procedural rules applicable to revisions include **general provisions** (Art. 120 to 122 RP ECJ) and **specific rules** (see Art. 159 (3) lit a) to d). The application for revision needs to be drafted in the **same language** of procedure as the one used at first instance, which in turn determines the language of the procedure during an appeal⁷²⁶.

2. Specifying the decision

- 9 An application for revisions not only admissible concerning a judgment, as was the case before, but also regarding an “**order**”. This is the case of an order adopted

⁷²² Case 56–75 REV, *Elz v Commission* [1977] ECR p. 1617.

⁷²³ Case 37–71 REV, *Jamet v Commission* [1973] ECR p. 295.

⁷²⁴ Case 28–64 REV, *Müller v Council* [1967] ECR p. 183.

⁷²⁵ See about an obvious missing of the deadline: Case C-403/85 REV, *Ferrandi v Commission* [1991], ECR I-1215, para. 12.

⁷²⁶ Case C-64/98 P-REV *Petrides v Commission* [2010] (not published in the ECR).

e.g. on the basis of Art. 181 RP ECJ which rejects an appeal as manifestly inadmissible⁷²⁷.

3. Indicating the points on which the judgment is contested

An application that is not directed against the operative part and/or the reasons 10 contained in the judgment concerned but instead only against the measures adopted after a ruling is **inadmissible**.

4. Facts on which the application is founded and evidence

The applicant needs to prove the existence of a decisive factor which, when the 11 judgment was delivered or the order served, was unknown to the ECJ and the party claiming revision.

V. Application against all parties (paragraph 4)

Given that a successful revision affects the substance of the judgment or order 12 concerned an application for revision needs to be made against all parties to the case.

VI. Admissibility (paragraph 5)

1. First step

The ECJ first assesses the admissibility of the application for revision. The 13 revision is one of the very rare instances in which a positive decision on admissibility of the legal remedy is in the form of a **judgment**, while a negative decision takes the form of an **order**⁷²⁸.

2. Rejected as inadmissible

The ECJ has rejected applications in the following cases: should the documents 14 provided by the applicant not contain any facts of crucial importance which were unknown prior to the date of the judgment⁷²⁹; should the application not indicate any fact likely to be new and to have had a decisive influence on the outcome of the proceedings⁷³⁰; should the application contest neither the reasoning nor the operative part of the challenged judgment and should it in fact intend to contest the measures adopted in order to implement the contested judgment⁷³¹. A new judg-

⁷²⁷ Joined Cases C-199/94 p. and C-200/94 p. REV, *Impesca v Commission* [1998], ECR I-831, para. 16.

⁷²⁸ Case C-116/96 REV, *Reisebüro Binder* [1998], ECR I-1889, 1894.

⁷²⁹ Case C-130/91 REV, *ISEA/VP and Interdata v Commission* [1995], ECR I-407, paras. 7 and 9.

⁷³⁰ Case C-295/90 REV, *Council v Parliament* [1992] ECR p. I-5299, paras. 4–5.

⁷³¹ Case 235/82 REV, *Ferriere San Carlo v Commission* [1986] ECR p. 1799, para. 9.

ment or a clerical error in the challenged judgment is clearly not a fact of crucial importance⁷³². An application for revision is furthermore inadmissible if it is based on a legal opinion that was written after the date of the judgment, especially if said legal opinion turns out to be irrelevant⁷³³.

VII. Assessing the substance (paragraph 6)

- 15 Once the application is declared admissible the ECJ will assess the substance.

VIII. Judgment (paragraph 7)

- 16 The revised judgment is annexed to the original of the decision revised.

CHAPTER 10 SUSPENSION OF OPERATION OR ENFORCEMENT AND OTHER INTERIM MEASURES

Article 160 Application for suspension or for interim measures

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

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

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

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

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

6. The President may order a preparatory inquiry.

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

⁷³² Case C-295/90 REV, *Council v Parliament* [1992], ECR I-5299, para. 5.

⁷³³ Case C-130/91 REV, *ISEA v VP and Interdata v Commission* [1995], ECR I-407, para. 7.

Outline:

I. Introduction	1
1. Overview.....	1
2. Purpose	2
3. Relevance	3
4. Limits of jurisdiction.....	4
a) Provisional measure.....	4
b) Broad discretionary power of institution.....	5
II. Ancillary nature of the application (paragraphs 1 and 2)	6
1. Main proceedings	6
2. Admissibility	7
a) Main proceedings.....	7
b) Other requirements	8
3. No formal time-limit.....	9
III. Contents of the application (paragraph 3)	10
1. General.....	10
a) Overview	11
b) Broad discretionary power	12
2. Stating the subject matter.....	13
3. Urgency	14
a) Definition.....	14
aa) Purpose of the proceedings	14
bb) Degree of probability.....	15
b) Urgency rejected.....	16
aa) Purely financial prejudice	16
bb) In infringement proceedings.....	17
cc) In proceedings between Member States and institutions.....	18
c) Urgency accepted.....	19
aa) In infringement proceedings.....	19
(1) Commission.....	20
(2) Member States	21
(a) Economic and social interest.....	21
(b) Use by the Commission of Community funds.	22
(c) Health and environment.....	22
bb) Other cases	23
4. Necessity (fumus boni juris).....	24
a) Fumus boni juris	24
b) Exception	25
5. Interests	26
IV. Separate document (paragraph 4)	27
1. Formal requirements	27
2. Language of proceedings	28
V. Notification and observations (paragraph 5)	29
1. Serving the application on the other party	29
2. Written observations.....	30
a) Contents	31
aa) Written observations.....	31
bb) No particular procedural rules.....	32
b) Time-limit	33
aa) By the President	33
bb) Duration	34
3. Oral hearing.....	35
VI. Preparatory inquiry (paragraph 6)	36
VII. “Inaudita altera parte” procedure (paragraph 7)	37

I. Introduction

1. Overview

- 1 Primary law⁷³⁴, which contains the legal basis for proceedings for **interim relief**, i.e. the generic term for the **suspension** of operation or enforcement and **interim measures**, provides almost no procedural rules governing these specific legal remedies. The RP ECJ contains most if not all of the relevant rules (Articles 160 to 166 RP ECJ), while the rather **abundant case law** interprets these provisions.

2. Purpose

- 2 Proceedings for interim relief are intended to guarantee the *effet utile* of the legal remedy in the **main proceedings**, since any judicial protection would be incomplete and in some cases indeed worthless if the applicant risks suffering an irreparable damage **prior** to the main proceedings' judgement, should he have a *prima facie* case.

3. Relevance

- 3 Despite shifting jurisdiction over all direct actions lodged by natural and legal persons from the ECJ to the GC, interim relief proceedings at the ECJ still play a role especially in the area of **infringement proceedings**, both regarding a request for suspension of a decision⁷³⁵ and regarding interim measures⁷³⁶.

- 4 **4. Limits of jurisdiction. a) Provisional measure.** An order in proceedings for interim relief must be provisional, since it must **not prejudice** the points of law or fact in issue or neutralize in advance the effects of the decision given in the main action⁷³⁷.

b) Broad discretionary power of institution

- 5 Should the contested act fall within a sector in which an EU institution appears to have a large margin of discretion in deciding whether the conditions justifying the adoption of the measure in question exist, and should most of the applicant's pleas raise particularly **complex legal problems** and **economic questions** which merit thorough examination after a hearing *inter partes*, the judge hearing the application may only substitute his assessment for that of the institution in **exceptional circumstances**⁷³⁸.

⁷³⁴ Art. 278 and 279 TFEU.

⁷³⁵ Case C-180/96 R, *United Kingdom v Commission* [1996] ECR p. I-3903, paras. 44–45.

⁷³⁶ Case C-120/94 R, *Commission v Greece* [1994] ECR p. 3037, paras. 42–43.

⁷³⁷ Case C-110/97 R, *The Netherlands v Council* [1997] ECR p. I-1795, paras. 31–33.

⁷³⁸ Art. 39 (3) Statute ECJ, see e.g. Case C-110/97 R, *The Netherlands v Council* [1997] ECR p. I-1795, paras. 31–33.

II. Ancillary nature of the application (paragraphs 1 and 2)

1. Main proceedings

This provision immediately clarifies that an application for suspension of operation, for suspension of enforcement, or for interim measures is **ancillary**, since such application may only be lodged if it relates to an application in the main proceedings. Since the latter need to be of a contentious nature, an application for interim measures in referrals for preliminary rulings is **inadmissible**.

2. Admissibility. a) Main proceedings. In principle, proceedings for interim measures are not to examine the admissibility of the legal remedy in the main proceedings in order **not to prejudge** the decision in the main proceedings⁷³⁹. However, if the defendant contends that the application in the main proceedings is **manifestly inadmissible**, then in the context of the interim proceedings the Judge must assess if there are prima facie indications that the application in the main proceedings is admissible⁷⁴⁰. The ancillary nature of interim proceedings renders such an application manifestly inadmissible should the application in the main proceedings already be declared inadmissible.

b) Other requirements

The applicant must prove that he has an **interest to act**, as is the case with any legal remedy⁷⁴¹.

3. No formal time-limit

The application, which must be submitted by a **separate document** (see paragraph 4), must be lodged at the very earliest **concurrently** with the application in the main proceedings, but **not prior** to that point in time. Such application may also be lodged at a **later date**, as there is **no time limit** aside from the condition that the main proceedings must be pending. That said, the later an application for interim proceedings is lodged the more difficult it may be, depending upon the circumstances, to prove the **urgency** of such application.

III. Contents of the application (paragraph 3)

1. General

This rule governs the material conditions of interim measures, which need to be stated in the application, regardless of the nature of the measures requested, in very abstract terms.

⁷³⁹ Art. 39 (3) Statute ECJ.

⁷⁴⁰ Case 123/80 R, *B v Parliament* [1980] ECR p. 1793; Joined Cases C-239/96 R and C-240/96 R, *United Kingdom v Commission* [1996] ECR p. I-4475, para. 37.

⁷⁴¹ Case C-206/89, *S v Commission* [1989] ECR p. 2841, para. 8.

a) Overview

- 11 In the proceedings for interim relief, the ECJ may order the **suspension** of the decision challenged in the main proceedings or **adopt other interim measures**, if required. The applicant needs to provide **adequate factual and legal elements** establishing a **prima facie case** (*fumus boni juris*), and prove that his application is **urgent**, meaning that there is a clear risk that the applicant suffers a **serious and irreparable prejudice** before the judgment is being handed down in the main proceedings. The measures required must be **provisional** in that they do not prejudice the factual and legal aspects of the main proceedings⁷⁴². The **burden of proof** rests with the applicant⁷⁴³.

b) Broad discretionary power

- 12 In the context of that overall examination, the judge hearing the application enjoys broad discretion and is thus free to determine the **manner and order** in which those various conditions are to be **examined** according to the specific circumstances of the case, as no rule of Community law imposing a pre-established scheme of analysis within which interim measures' necessity must be analysed and assessed⁷⁴⁴. Those conditions are **cumulative**, so that an application for interim measures must be dismissed if any one of them is absent⁷⁴⁵.

2. Stating the subject matter

- 13 In the separate document (see paragraph 4), the applicant must describe the subject-matter which is already stated in the main proceedings in a self-explanatory way, i.e. **without** referring to the main proceedings.
- 14 **3. Urgency. a) Definition. aa) Purpose of the proceedings.** The purpose of the procedure for interim relief, which is to **guarantee the full effectiveness of the definitive future decision** in order to ensure that there is no lacuna in the legal protection provided by the Court, determines the urgency of the case at hand. In order to achieve the objective of effective decisions which guarantee full and continuous legal protection, one must assess urgency in view of the need for interlocutory order so one may avoid **serious and irreparable damage** to the party seeking the interim relief⁷⁴⁶. In other words, the applicant who alleges such irreparable damage must establish that he **cannot await** the outcome of the judicial proceedings without **risking** prejudice which holds serious and irreparable consequences for him⁷⁴⁷. This condition is at the very heart of the interim proceedings and in many instances presents the primary or even sole hurdle for the applicant for such proceedings.

⁷⁴² Joined Cases 229/82 R and 228/82 R, *Ford v Commission* [1982] ECR 3091, paras. 3–4.

⁷⁴³ Case 142/87 R, *Belgium v Commission* [1987] ECR p. 2589, para. 23.

⁷⁴⁴ Case C-180/96 R, *United Kingdom v Commission* [1996] ECR p. I-3903, paras. 44–45.

⁷⁴⁵ Case C-7/04 p. (R), *Commission v. Akzo and Akros* [2004] ECR p. I-8739, para. 28.

⁷⁴⁶ Case C-656/11 R, *UK v Council* [2012] (not published in the ECR), para. 31 and the case-law cited.

⁷⁴⁷ Case 44/88 R, *De Compte v Parliament* [1988] ECR p. 1669, paras. 30–31.

bb) Degree of probability

In order to establish the existence of such damage, one need **not** prove **beyond all possible doubt** that the damage in question will arise; one must simply show that such damage sufficiently **likely to occur**⁷⁴⁸. General observations without any specific evidence in support of a party's claims do not fulfil this requirement⁷⁴⁹.

b) Urgency rejected. aa) Purely financial prejudice. Apart from exceptional situations, a purely financial damage is not considered irreparable, because usually any financial prejudice may be **repaired** by an adequate payment and thus the *status quo ante* may be restored⁷⁵⁰. It is also not sufficient to claim that the enforcement of the challenged act is "imminent"⁷⁵¹,

bb) In infringement proceedings

One may not consider a case in which a Member State acting as a defendant in a case claims that the application for interim measures should be dismissed since in its view measures taken and undertakings given at national level were sufficient to preserve the status quo urgent if said Member State has not shown how the interim measures applied for would guarantee maintenance of the status quo better than the measures already taken and undertakings already given at national level⁷⁵². The risk that the development of Community law might be based on an incorrect interpretation of the existing legislation cannot amount to urgency within the meaning of Article 160 (3) RP ECJ⁷⁵³.

cc) In proceedings between Member States and institutions

Whilst a breach of EU primary law may affect the validity of a Directive which a Member State challenges, establishing that any damage caused is serious and irreparable is not on its own a sufficient basis for urgency⁷⁵⁴.

c) Urgency accepted. aa) In infringement proceedings. (1) Commission. In its capacity as guardian of the Treaties, the Commission may bring proceedings for the adoption of interim measures in parallel with an action against a Member State for failure to fulfil its obligations, e.g. regarding a disputed procedure for the award of a public contract. Failure to comply with a directive in this field constitutes a serious threat to the legality of the Community order⁷⁵⁵.

(2) Member States. (a) Economic and social interest. Since Member States are responsible for those interests which are regarded as general interests at national level, in particular economic and social interests, said Member States are thereby

⁷⁴⁸ Case C-377/98 R, *The Netherlands v Parliament and Council* [2000] ECR p. I-6229, para. 51 and the case-law cited.

⁷⁴⁹ Case C-278/00 R, *Greece v Commission* [2000] ECR p. I-8787, paras. 14–16, 21.

⁷⁵⁰ Case 229/88 R, *Cargill v Commission* [1988] ECR po. 5183, paras. 14 and 17.

⁷⁵¹ Case 378/87 R, *Top Hit Holzvertrieb v Commission* [1988] ECR p. 161, para. 18.

⁷⁵² Case C-40/92 R, *Commission v United Kingdom* [1992] ECR p. I-3389, paras. 27, 31–32.

⁷⁵³ Case 352/88 R, *Commission v Italy* [1989] ECR p. 267, para. 22.

⁷⁵⁴ Case C-377/98, *The Netherlands v Parliament and Council* [2000] ECR p. I-6229, para. 45.

⁷⁵⁵ Case C-87/94 R, *Commission v Belgium* [1994] ECR p. I-1395, para. 1 of the summary.

entitled to defend such interests before the Courts. They may therefore invoke damage affecting an entire sector of their economy, in particular should the contested Community measure entail unfavourable repercussions on the level of employment and the cost of living⁷⁵⁶.

- 22 (b) **Use by the Commission of Community funds.** The institutional rules governing the allocation of powers between the various EU institutions occupy an essential place in the Community legal order, in which, of course, the Member States play a vital role. In view of this situation, measures such as involving participation in the exercise of legislative and budgetary powers and contribution to the Community budget or the Commission's use of Community funds for measures which lack a proper legal basis because they lack Council authorization would cause a Member State such serious and irreparable damage as to justify the granting of interim measures⁷⁵⁷.

(c) **Health and environment.** Harm caused to the environment⁷⁵⁸ and to health is generally considered **irreversible** and thus **urgent** since, more often than not, damage to such interests cannot, by reason of its nature, be eliminated retroactively⁷⁵⁹.

bb) Other cases

- 23 A case is deemed urgent if in the absence of a measure of suspension threatens the economic survival of the applicant⁷⁶⁰.

- 24 4. **Necessity (fumus boni juris).** a) **Fumus boni juris.** Stating "the pleas of fact and law establishing a prima facie case" means that the applicant must demonstrate that his application in the main proceedings has a **clear prospect of success**. Given the ancillary nature of the interim proceedings, the pleas of fact and law found in an application for interim measures are always identical to those raised in the main proceedings, as summarised in the separate document (see paragraph 3) initiating the interim proceedings. Thus the pleas of fact and law raised in the application for interim measures must not only include a fraction of the pleadings in the initial application, let alone be include pleadings which are different from those raised in the main application.

b) Exception

- 25 If an application raises **complex legal issues** which require a thorough examination as well as a contentious debate, the judge will apply a less stringent legal test by merely assessing whether the application, lacks any justification prima facie⁷⁶¹.

⁷⁵⁶ Case C-280/93 R, *Germany v Council* [1993] ECR p. I-3667, paras. 22, 26–27; Case C-180/96, *United Kingdom v Commission* [1996] ECR p. I-3903, paras. 82, 85.

⁷⁵⁷ Joined Cases C-239/96 R and C-240/96 R, *United Kingdom v Commission* [1996] ECR p. I-4475, paras. 66, 69, 71.

⁷⁵⁸ Case C-393/03 R, *Austria v Commission* [2009] ECR p. I-13593, paras. 60, 63–65.

⁷⁵⁹ Case C-320/03 R, *Commission v Austria* [2003] ECR p. I-11665, paragraphs 90–92, 97, 101–102.

⁷⁶⁰ Joined Cases C-51/90 R and C-59/90 R, *Comos Tank A.O. v Commission* [1990] ECR p. I-2167, paras. 17 and 24.

⁷⁶¹ So called "fumus non mali juris", even though this is *not* a term officially used by the ECJ.

5. Interests

Moreover, in certain circumstances the Court may balance the interests of the 26 parties. Such circumstances necessarily require considering whether annulment of the contested act would make it possible to reverse the situation brought about by the immediate implementation of that act and, conversely, considering whether suspension of the act's operation would prevent said act from being fully effective should the main application be dismissed⁷⁶².

IV. Separate document (paragraph 4)

1. Formal requirements

Requiring a “separate document” is self-explanatory and means that any applica- 27 tion for interim measures which is integrated into the main application is automatically inadmissible. This “separate document” must follow the formal requirements laid down in Art. 120 to 122 RP ECJ, i.e. the rules applicable to any written submission. Thus, the “separate document”, as tempting as this might appear, must not merely refer to the legal arguments put forward in the application in the main proceedings.

2. Language of proceedings

Given its ancillary nature, the “separate document” needs to be drafted in the 28 same language as the application in the main proceedings.

V. Notification and observations (paragraph 5)

1. Serving the application on the other party

In principle, the application shall be **served** on the **other party**, either together 29 with the application in the main proceedings, or after this application is served. On some rare occasions in which the urgency, i.e. the need to prevent a serious and irreparable prejudice, appears to clearly prevail over the rights of defence, the interim measure may be ordered prior to hearing the other party.

2. Written observations

The wording of paragraph 1 (“written or oral observations”) is a bit ambiguous 30 in that the opposite party is always entitled to submit **written observations**, while an oral hearing remains the exception rather than the rule in interim proceedings.

⁷⁶² Case 293/85 R, *Commission v Belgium* [1985] ECR 3521, para. 24; Case C-180/96 R, *United Kingdom v Commission* [1996] ECR p. I-3903, para. 89.

- 31 a) **Contents. aa) Written observations.** In his written observations, the defendant may comment upon the *prima facie* merits of the action in the main proceedings as well as upon the **urgency** and, if required, the **balance of interests** in the case, depending upon the contents of the application.

bb) No particular procedural rules

- 32 **Unlike** Art. 160 (4) RP ECJ, which governs the **request for interim proceedings** and refers to Art. 120 to 122 RP ECJ, this provision does not refer to the procedural rules governing a **statement of defence**. Such provision would provide more legal certainty, but it seems that in practice there is no particular need for it.

- 33 b) **Time-limit. aa) By the President.** By definitions, urgent proceedings do not enable the opposite party to benefit from any time-limit pre-defined by law, but do allow them to benefit from a “short” period determined by the President of the ECJ in the light of the circumstances of each case.

bb) Duration

- 34 In practice, such a “short” period is anything from a **few days** to **about 3 to 4 weeks** in exceptional cases. This does not exclude a request for an extension of the time-limit once said time limit has been defined, provided such request is both moderate and well-reasoned.

3. Oral hearing

- 35 The President of the ECJ may waive an oral hearing if the written submissions are sufficiently clear⁷⁶³. Normally, such a hearing is **less formal** than a traditional oral hearing: the parties **do not plead** (and on this occasion they do not wear a gown), nor may they anticipate the merits of the hearing. If necessary and depending on the complexity of the case, they may express their views in more detail. The oral hearing usually focuses on the President’s **questions**. Sometimes, however, a party is required to answer written questions posed after the oral hearing in writing.

VI. Preparatory inquiry (paragraph 6)

- 36 In this framework, formal measures of enquiry are rare, while measures of organisation, such as written questions, are more common.

VII. “*Inaudita altera parte*” procedure (paragraph 7)

- 37 Awaiting the other party’s written submission risks an irreparable prejudice for the applicant. The judge must weigh the applicant’s interest in the immediate

⁷⁶³ Case 281/84 R, *Pizzinato v Commission* [1984], ECR 3619, 3620.

adoption of an interim measure, on the one hand, and observance of the other parties' rights of defence, on the other, while always considering what such an interim measure would actually entail. Once such an order, which might also contain measures of organisation, has been handed down, the defending party may hand in a written submission, following which the President of the ECJ may hear the parties, if need be. The subsequent order either confirms or amends the previous decision.

Article 161 Decision on the application

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

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

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

I. President (paragraph 1)

Most cases are decided by the President of the ECJ; no Advocate-General is 1 involved in the proceedings. In complex cases, the President refers the matter to the Court. He may do so even if he has already ruled on the request for interim relief.

II. Vice-President (paragraph 2)

Representing the President whenever he is prevented from acting is one of duties 2 of the Vice-President.

III. Referring the matter to the Court (paragraph 3)

The President may also refer the matter to the Court which he will do in 3 particularly complex and/or fundamental cases.

Article 162 Order for suspension of operation or for interim measures

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

2. The execution of the order may be made conditional on the lodging by the applicant of security, of an amount and nature to be fixed in the light of the circumstances.

3. Unless the order fixes the date on which the interim measure is to lapse, the measure shall lapse when the judgment which closes the proceedings is delivered.

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

I. Reasoned order (paragraph 1)

1. Contents and timing

- 1 Under normal circumstances, the President will hand down his order within a period of 2 to 4 weeks, unless the proceedings are “*inaudita altera parte*” (Art. 160(7) RP ECJ). Since the President of the ECJ is the highest judicial instance, his orders are, by definition, final meaning that the **absence of an appeal** or any other legal remedy indicated in paragraph 1, first sentence amounts to stating the obvious. Even in the absence of an explicit provision it seems somewhat obvious that the order needs to be reasoned and that it shall be served on the parties “forthwith”, as this is within the logic of urgent proceedings.

2. Costs

- 2 The decision on costs remains **reserved**, which means that it will be made during the main proceedings. Should the application for interim measures be withdrawn or should the application in the main proceedings be rejected prior to any order, the President shall adopt a specific decision on costs. In rare cases, the order adopted in the interim proceedings includes a decision on costs, e.g. in the case of a procedural abuse.

II. Lodging of a security (paragraph 2)

- 3 Since an order in interim proceedings applies only **temporarily**, i.e. not beyond the handing down of the judgment in the main proceedings, it provides an “unsafe” basis for any enforcement. Therefore, the enforcement of the order may be **conditional** on the lodging by the applicant of **security**. But the lodging of security can only be contemplated if the party against which it is ordered is liable for the sums intended to cover the security is and if there is a risk of that party becoming insolvent. There is no such risk if the debtor is an EU institution⁷⁶⁴. Thus, in view of the ECJ’s jurisdiction, this provision is of little importance for ECJ cases.

III. Limitation in time of the measure (paragraph 3)

- 4 The interim measures may possess time limits which may lapse at the latest when the judgment in the main proceedings is handed down.

⁷⁶⁴ Case C-195/90 R, *Commission v Germany* [1990] ECR p. I-3351, paras. 48 to 49.

IV. Without prejudice to the decision on substance (paragraph 4)

All interim proceedings must by definition be without prejudice to the decision 5 of the Court on the substance of the case. This principle remains theoretical, however, since a *prima facie* examination of the merits of a case is bound to provide some indication as to the merits in the main proceedings.

Article 163 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.

I. Introduction

This provision governs the conditions under which an order may be varied or 1 cancelled due to a change in circumstances. Any party to the proceedings may lodge such an application. By contrast, Art. 164 RP ECJ lays down the conditions for a new application should an application be rejected, and shall only be used by the party who applied for interim proceedings.

II. Changes in circumstances

1. Overview

The broad wording (“changed circumstances”) expresses the **provisional nature of 2 interim relief**. In principle, such “circumstances” include **facts** which have changed after the handing down of the order, provided said facts have an influence on the question of urgency. This also includes e.g. amended legal provisions. In some of its orders, the ECJ explicitly refers to the possibility of changed circumstances.

2. Case-law

A revised national legislation is not a case of “changed circumstances”, since the 3 latter cannot retroactively eliminate a breach of EU law resulting from administrative acts⁷⁶⁵.

Article 164 New application

Rejection of an application for an interim measure shall not bar the party who made it from making a further application on the basis of new facts.

⁷⁶⁵ Case C-272/91 R, *Commission v Italy* [1992] ECR p. I-3929, paras. 6–8.

This provision illustrates the **provisional** nature of interim proceedings. It primarily applies to new facts which were not yet the subject of the previous procedure and which could render the case urgent. Only applicants whose application is **unsuccessful** may use this provision, while Art. 163 RP ECJ applies to all parties.

Article 165 Applications pursuant to Articles 280 TFEU and 299 TFEU and Article 164 TEAEC

1. The provisions of this Chapter shall apply to applications to suspend the enforcement of a decision of the Court or of any measure adopted by the Council, the European Commission or the European Central Bank, submitted pursuant to Articles 280 TFEU and 299 TFEU or Article 164 TEAEC.

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

This provision has been slightly redrafted but is of little importance since an enforcement of judgments of the ECJ or of measures of other institutions remains rare.

Article 166 Application pursuant to Article 81 TEAEC

1. An application of a kind referred to in the third and fourth paragraphs of Article 81 TEAEC shall contain:

- (a) the names and addresses of the persons or undertakings to be inspected;
- (b) an indication of what is to be inspected and of the purpose of the inspection.

2. The President shall give his decision in the form of an order. Article 162 of these Rules shall apply.

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

Article 81 TEAEC grants the Commission the right to send inspectors onto the territories of each Member State. If a Member State objects to such inspection being carried out, the Commission may seek a “court order” on the basis of Article 81 (3) and (4) TEAEC to enforce these measures.

TITLE V
APPEALS AGAINST DECISIONS OF THE GENERAL COURT

CHAPTER 1
FORM AND CONTENT OF THE APPEAL, AND FORM OF ORDER SOUGHT

Introduction

Outline:

1. Relevant provisions.....	1
2. Parties.....	2
3. The appellant faces multiple challenges	3
a) Introduction.....	3
b) Challengeable decision.....	5
aa) Introduction.....	5
bb) Orders.....	6
c) Proper understanding of the decision.....	7
d) Factual or additional reasons.....	9
e) Appeal on points of law only.....	11
f) The contents of the appeal.....	12
g) Statistics.....	13

1. Relevant provisions

The relevant provisions governing the appeal⁷⁶⁶ consist of Art. 256 (1), 2nd sub- 1 paragraph TFEU, Art. 56 to 61 Statute ECJ, and Art. 167 to 190 RP ECJ, which have substantially enlarged the former Art. 110 to 123 RP ECJ. The current edition of the “Practice Directions relating to direct actions and appeals”⁷⁶⁷, and “Notes for the guidance of Counsel”⁷⁶⁸ will have to be updated accordingly.

2. Parties

As in the proceedings at first instance, the appeal is not limited to the main 2 parties; other parties, especially those who intervened at first instance⁷⁶⁹ may intervene in appeal proceedings. Likewise, the main parties may apply for interim proceedings.

3. The appellant faces multiple challenges. a) Introduction. Every appellant faces a 3 multitude of challenges: First, he must comply with requirements which apply to every legal remedy such as the interest in bringing proceedings⁷⁷⁰, a condition of

⁷⁶⁶ See B. Wägenbaur, EuZW 1995, p. 199 and EuZW 2003, p. 517.
⁷⁶⁷ See paras. 23 to 36 thereof.
⁷⁶⁸ See pages 14 and 16 thereof.
⁷⁶⁹ Case C-245/95 P, *Commission v NTN Corporation and Koyo Seiko* [1996] ECR p. I-553, paras. 7–8.
⁷⁷⁰ Case C-111/99 P, *Lech Stahlwerke v Commission* [2001] ECR p. I-727, para. 18.

admissibility which the ECJ may verify of its own motion⁷⁷¹. Thus the appeal must procure an advantage to the party bringing it⁷⁷², and this advantage must continue up to the Court's decision in the case⁷⁷³.

- 4 Next and most importantly, the appellant must comply with specific procedural parameters and must ultimately prove the existence of at least one legal error that affected the operative part of the GC's decision.
- 5 **b) Challengeable decision. aa) Introduction.** Appeals may only be directed against parts of final judgments and orders that are unfavourable to the appellant⁷⁷⁴. The ECJ assesses this requirement on its own motion⁷⁷⁵.

bb) Orders

- 6 Orders against which an appeal is possible include those relating to e.g. interim proceedings⁷⁷⁶ in which the applicant has to prove a relevant error⁷⁷⁷, or applications for revision⁷⁷⁸. Orders made during the proceedings at first instance, such as the order not to treat a plea of inadmissibility⁷⁷⁹ separately but together with the substance of the case⁷⁸⁰, are not eligible for appeal.

c) Proper understanding of the decision

- 7 First, it is essential to accurately understand the contents of the decision in question, i.e. to avoid any selective or otherwise erroneous reading⁷⁸¹ of the respective judgment or order⁷⁸². It is thus obviously erroneous from the outset to select legal arguments based on assumptions that are merely read into the decision of first instance⁷⁸³.
- 8 Next, the appellant needs to also consider that while the GC must assess all documents that the parties submit during the proceedings⁷⁸⁴, the GC's duty under Art. 36 and the first paragraph of Art. 53 Statute ECJ to **state reasons** for its judgments⁷⁸⁵ does not mean that it has to exhaustively address each argument that

⁷⁷¹ Case C-605/10 p. (R), *Inuit Tapiriit Kanatami A. O. v Parliament and Council* [2011] (not yet published in the ECR), paras. 15–16, 18.

⁷⁷² Case C-503/07 P, *Saint-Gobain Glass Deutschland v Commission* [2008] ECR p. I-2217, para. 48.

⁷⁷³ Case C-550/07 P, *Akzo Nobel Chemicals and Akcros Chemicals v Commission* [2010] (not yet published in the ECR), paras. 22–23 and the case-law cited.

⁷⁷⁴ Case C-383/99 P, *Procter & Gamble v OHIM* [2001] ECR p. I-6251, para. 22, 25–27.

⁷⁷⁵ Case C-23/00 P, *Council v Boehringer* [2002] ECR p. I-1873, paras. 46, 50–52.

⁷⁷⁶ Case C-149/95 p. (R), *Commission v Atlantic Container Line A. O.* [1995] ECR p. I-2165, paras. 17–18.

⁷⁷⁷ Case C-481/01 p. (R), *NDC Health v IMS* [2002] ECR p. I-3401, paras. 81–82.

⁷⁷⁸ Case C-5/93 P, *DSM v Commission* [1999] ECR p. I-4695, paras. 30–31.

⁷⁷⁹ Art. 114 (1) RP GC.

⁷⁸⁰ Case C-126/90 P, *Bocos Viciano v Commission* [1991] ECR I-781, para. 6.

⁷⁸¹ Case C-150/96 P, *Galtieri v Parliament* [1997] ECR p. I-1229, paras. 15–16.

⁷⁸² Just as it is essential that the GC understands the exact contents of a legal plea at first instance, see e.g. Case C-298/93 P, *Klinke v Court of Justice* [1994] ECR p. I-3009, paras. 19–25.

⁷⁸³ Case C-268/96 p. (R), *SCK and FNK v Commission* [1996] ECR I-4973, para. 49.

⁷⁸⁴ Joined Cases C-101/07 p. and C-110/07 P, *Coop de France bétail et viande v Commission* [2008] ECR p. I-10193, paras. 74–75.

⁷⁸⁵ Case C-47/10 P, *Austria v Scheucher-Fleisch A.O* [2011] (not yet published in the ECR), para. 104.

the parties put forward⁷⁸⁶. The GC's reasoning concerning certain arguments may therefore be implicit as long as said reasoning enables the persons concerned to understand why the General Court has not upheld their arguments and provides the Court of Justice with sufficient material for it to exercise its power of review⁷⁸⁷.

d) Factual or additional reasons

Understandably, the GC is eager to make its decisions as “**appeal-proof**” as 9 possible. It will thus tend to base its judgments or orders on both legal and factual reasons, since the latter cannot be challenged by an appeal on points of law⁷⁸⁸. Alternatively or in addition, it may base its findings relating to a given legal plea on **several** legal arguments⁷⁸⁹. Thus, should one of these arguments prove erroneous, the operative part of the challenged decision may still stand in law based on the other reasons given⁷⁹⁰. Finally, the GC's decision may contain reasons which have **no bearing** at all on the operative part⁷⁹¹, e.g. if they were included in the decision purely for the sake of completeness⁷⁹² and thus cannot lead to the judgment being set aside⁷⁹³.

Thus, every appellant needs, firstly, to prove that the GC's challenged decision 10 contains an error of law⁷⁹⁴, and, secondly, to prove that this error has a direct **bearing** on the operative part of that decision⁷⁹⁵. Since these conditions are **cumulative**, even the particular weight of a given error in law, such as a distortion of a means of evidence⁷⁹⁶, does not, as such, suffice to make the appeal effective, if said error has **no bearing** on the operative part of the challenged decision⁷⁹⁷.

e) Appeal on points of law only

The appellant needs to clearly differentiate between the ECJ as an instance of 11 appeal, and the GC as the first instance. The ECJ may under no circumstances

⁷⁸⁶ Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 p. and C-219/00 P, *Aalborg Portland A. O. v Commission* [2004] ECR p. I-123, para. 372.

⁷⁸⁷ Case C-583/08 P, *Gogos v Commission* [2010] ECR p. I-4469, para. 30 and the case-law cited; Case C-260/09 P, *Activision Blizzard Germany v Commission* [2011] (not yet published in the ECR), para. 84.

⁷⁸⁸ Case T-320/02, *Esch-Leonhardt and others v ECB* [2004], ECR SC II-79, paras. 86–87.

⁷⁸⁹ Case C-73/93 P, *Viho v Commission* [1996], ECR I-5457, para. 22.

⁷⁹⁰ Case C-30/91 P, *Lestelle v Commission* [1992], ECR I-3755, para. 28; Case C-167/04 P, *JCB Service v Commission* [2006] ECR I-8935, para. 186; Case C-534/07 P, *Prym and Prym Consumer v Commission* [2009] ECR I-7415, para. 72.

⁷⁹¹ Joined Cases C-302/99 p. and C-308/99 P, *Commission and France v TF1* [2001] ECR p. I-5603, paras. 26–29.

⁷⁹² Case C-399/08 P, *Commission v Deutsche Post* [2010] (not yet published in the ECR), para. 75.

⁷⁹³ Case C-367/10 P, *EMC Development v Commission* [2011] (not yet published in the ECR), para. 78.

⁷⁹⁴ Not every error regarding a point of law is relevant, such as e.g. purely editorial mistakes regarding the reasoning, see e.g. Case C-326/91 P, *de Compte v Parliament* [1994] ECR p. I-2091, para. 96.

⁷⁹⁵ Excluding the decision on costs, see Art. 51 (2) Statute ECJ and e.g. Case C-253/94 P, *Roujansky v Council* [1995] ECR p. I-7, paras. 13–14.

⁷⁹⁶ Case C-510/06 P, *Archer Daniels Midland v Commission* [2009] ECR p. I-1843, paras. 105, 117, 132–138.

⁷⁹⁷ This also means that the number of decisions on appeal quashing a decision of first instance do not directly reflect the number of legal errors committed at first instance.

substitute itself to the GC⁷⁹⁸. Next appeals against decisions of the GC are limited to **points of law**⁷⁹⁹, and the appeal may not merely repeat before the ECJ the proceedings at first instance. Appellants frequently disregard and sometimes even seem to deliberately ignore the difference between points of law and point of fact⁸⁰⁰.

f) The contents of the appeal

- 12 According to the purpose of the appeal in general and the limitation to points of law in particular, the appellant must indicate **exactly** which parts of the GC's decision he contests as well as exactly which legal pleas he will employ in order to contest said decision.

g) Statistics

- 13 In 2011, an appeal procedure took on average **15.4 months**. An expedited appeal required only 4.6 months⁸⁰¹.

Article 167 Lodging of the appeal

1. An appeal shall be brought by lodging an application at the Registry of the Court of Justice or of the General Court.

2. The Registry of the General Court shall forthwith transmit to the Registry of the Court of Justice the file in the case at first instance and, where necessary, the appeal.

I. Filing of the appeal (paragraph 1)

- 1 The appellant may **choose** whether he lodges his appeal at the GC or the ECJ. He may not, however, proceed in two steps, as is the case in some Member States, i.e. first lodge an appeal, in order to meet the time-limit, and subsequently hand in the relevant reasoning, by way of a separate written submission. At the level of the ECJ (as well as the GC, in case of appeals against the decisions of specialised courts) the appeal needs to comply with all procedural rules applicable⁸⁰².

II. Transmitting the papers in the case at first instance (paragraph 2)

- 2 Even though the appeal is limited to **points of law**⁸⁰³ and is thus not a legal remedy designed to fully examine the decision at first instance, the Registry of the

⁷⁹⁸ See e.g. with respect to the review of the amount of fines in competition cases for reasons of equity, Case C-310/93 P, *British Gypsum v Commission* [1995] ECR p. I-865, para. 34, or proportionality, Case C-328/05 P, *SGL Carbon v Commission* [2007] ECR p. I-3921, paras. 98–99.

⁷⁹⁹ Art. 56 (1) Statute ECJ.

⁸⁰⁰ See *Brown*, CMLR 1995, p. 743 et seq.

⁸⁰¹ See Case C-39/03 P, *Commission v Artégodon and others* [2003], ECR p. I-07885.

⁸⁰² See Art. 190 RP ECJ.

⁸⁰³ See Art. 256 (1) (2) TFEU and Art. 58 (1) Statute ECJ.

General Court transmits the full set of files to the ECJ. Without this the ECJ would not have developed the concept of the “manifest distortions” of the contents of pleadings or evidence.

Article 168 Content of the appeal

1. An appeal shall contain:

- (a) the name and address of the appellant;
- (b) a reference to the decision of the General Court appealed against;
- (c) the names of the other parties to the relevant case before the General Court;
- (d) the pleas in law and legal arguments relied on, and a summary of those pleas in law;

- (e) the form of order sought by the appellant.

2. Articles 119, 121 and 122(1) of these Rules shall apply to appeals.

3. The appeal shall state the date on which the decision appealed against was served on the appellant.

4. If an appeal does not comply with paragraphs 1 to 3 of this Article, the Registrar shall prescribe a reasonable time-limit within which the appellant is to put the appeal in order. If the appellant fails to put the appeal in order within the time-limit prescribed, the Court of Justice shall, after hearing the Judge-Rapporteur and the Advocate General, decide whether the noncompliance with that formal requirement renders the appeal formally inadmissible.

Outline:

I. General	1
II. Contents (paragraph 1)	2
1. Name and address (lit. a)	2
a) Appellant	2
b) Lawyer.....	3
2. Reference to the decision of the GC (lit. b)	4
3. Designation of the other parties at first instance (lit. c).....	5
4. Pleas in law, legal arguments and summary (lit. d)	6
a) Introduction	6
b) Pleas in law and legal arguments	7
aa) Choosing the legal pleas	7
(1) Primary and/or secondary law.....	7
(2) No mere repetition of arguments	8
(a) Inadmissibility of mere re-examinations	8
(b) Admissibility of re-discussions.....	9
(3) No new pleas in law	10
(4) Withdrawn legal pleas.....	12
bb) Identifying the legal pleas	13
(1) Legal standard	13
(2) Admissible	14
(3) Inadmissible.....	15
c) Summary of the pleas in law	16
5. Form or order sought (lit. e).....	17
III. Applicable procedural rules (paragraph 2).....	18
IV. Indicating the date of notification (paragraph 3)	19
V. Curing defects (paragraph 4)	20
1. Principle	20
2. Art. 168 (4) RP ECJ.....	21

I. General

- 1 The contents of an appeal⁸⁰⁴ is determined by the **general rules**⁸⁰⁵ as well as a number of **specific rules**⁸⁰⁶, the latter having been specified by the case law.

II. Contents (paragraph 1)

- 2 **1. Name and address (lit. a). a) Appellant.** The ECJ is not very demanding concerning the indication of the name and residence of the **appellant**⁸⁰⁷. This may reflect the fact that these name and address should normally appear in the decision of the General Court that is attached to the appeal. The appellant indicating a company's administrative address, rather than address where said company is established does not constitute a procedural error important enough to make the appeal inadmissible as long as place of establishment results from the decision at first instance. Should the applicant's name have been made **anonymous** in the proceedings at first instance, such request should normally also be granted at the level of the appeal.

b) Lawyer

- 3 Every legal remedy, including appeals, requires the involvement of a lawyer. Thus, the name and address of the appeals lawyer must be indicated as well.

2. Reference to the decision of the GC (lit. b)

- 4 This is a **new** requirement, which provides information which the appellant will provide anyway, since he needs to attach the challenged decision of the GC as an annex to the appeal.

3. Designation of the other parties at first instance (lit. c)

- 5 The ECJ is not particularly formalistic concerning the indication of the "other parties" to the proceedings before the GC. Thus, the lack of such indication and of the date on which the decision at first instance has been served is not a ground of inadmissibility.

- 6 **4. Pleas in law, legal arguments and summary (lit. d). a) Introduction.** The wording of Art. 168 (1) (d) RP ECJ reproduces in essence Art. 120 (1) (c) RP ECJ, which governs the content of an application.

⁸⁰⁴ See further Paras. 23 to 29 of "Practice directions relating to direct actions and appeals".

⁸⁰⁵ Art. 190 RP ECJ.

⁸⁰⁶ See Art. 168 RP ECJ.

⁸⁰⁷ Case C-91/95 P, *Tremblay A. O. v Commission* [1996] ECR p. I-5547, paras. 10–11.

b) Pleas in law and legal arguments. aa) Choosing the legal pleas. (1) **Primary and/or secondary law.** The appellant may only put forward legal pleas based on primary or secondary EU law and/or upon the general principles of law such as the rights of defence⁸⁰⁸, the ECHR⁸⁰⁹, etc. The potential spectrum of procedural and/or substantive legal pleas is, by definition, very broad and includes such seemingly remote pleas as reviewing the legality of a GC decision refusing a re-opening of the oral hearing and/or the GC ordering measures of inquiry for which a party applied⁸¹⁰.

(2) **No mere repetition of arguments. (a) Inadmissibility of mere re-examinations.** An appeal that merely repeats or reproduces verbatim the pleas in law and arguments that the party previously submitted to the GC, including those based on facts that the GC expressly rejected, does not satisfy the requirements found in Art. 168 (1) (d) RP ECJ⁸¹¹. Such mere repetition amounts to seeking a simple re-examination of the application at first instance⁸¹², over which the ECJ has no jurisdiction.

(b) **Admissibility of re-discussions.** However, provided that the appellant challenges the GC's interpretation or application of EU law⁸¹³ by indicating precisely which parts of the decision at first instance he challenges⁸¹⁴, the points of law examined at first instance may be discussed again in an appeal, even if he repeats them verbatim⁸¹⁵. Indeed, if an appellant could not thus base his appeal on pleas in law and arguments already relied on before the GC, an appeal would be deprived of part of its purpose⁸¹⁶.

(3) **No new pleas in law.** However, a party may not put forward before the ECJ a plea in law and arguments which it has not raised before the GC, since this would authorize it to bring a case before the ECJ, whose jurisdiction in appeals is limited, which has a wider scope than that of the case which it brought before the GC⁸¹⁷. The ECJ's appellate jurisdiction is thus confined to review of the GC's findings of law on the pleas argued before⁸¹⁸.

Nevertheless, should the GC have joined two cases and given a single judgment which answers all the pleas submitted by the parties to the proceedings before the Court, each of those parties may criticize the reasoning concerning pleas which, before the GC, were raised only by the applicant in the other joined case⁸¹⁹.

⁸⁰⁸ Case C-462/98 P, *Mediocurso v Commission* [2000] ECR p. I-7183, para. 35.

⁸⁰⁹ Case C-185/95 P, *Baustahlgewebe v Commission* [1998] ECR p. I-8417, paras. 18–21.

⁸¹⁰ Case C-200/92 P, *ICI v Commission* [1999] ECR p. I-4399, paras. 57–59.

⁸¹¹ Case C-499/03 P, *Biegi Nahrungsmittel and others v Commission* [2005], ECR I-1751, para. 38.

⁸¹² Case C-234/02 P, *Mediator v Lamberts* [2004] ECR p. I-2803, paras. 75–77.

⁸¹³ Case C-187/03 P, *Drouvis v Commission* [2004], ECR I-, para. 18.

⁸¹⁴ Case C-386/96 P, *Dreyfus v Commission* [1998] ECR p. I-2309, para. 38.

⁸¹⁵ Case C-41/99 P, *Sadam Zuccherifici and others v Council* [2001], ECR I-4250, para. 19.

⁸¹⁶ Case C-41/00 P, *Interporc v Commission* [2003], ECR I-2125, para. 17 and Case C-254/03 P, *Eduardo Vieira v Commission* [2005], ECR I -237, para. 32 with further references.

⁸¹⁷ Case C-520/09 P, *Arkema v Commission* [2011] (not yet published in the ECR), para. 64; Case C-521/09 P, *Elf Aquitaine v Commission* [2011] (not yet published in the ECR), paras. 35, 51, 78.

⁸¹⁸ Case C-413/08 P, *Lafarge v Commission* [2010] ECR p. I-5361, para. 52 and the case-law cited.

⁸¹⁹ Case C-369/09 P, *ISD Polska A. O. v Commission* [2011] (not yet published in the ECR), para.

- 12 (4) **Withdrawn legal pleas.** However, the appellant may not rely on pleas in law which he expressly withdrew in proceedings before the General Court or on pleas declared inadmissible by that Court should he not contest the finding that they are inadmissible⁸²⁰.
- 13 **bb) Identifying the legal pleas. (1) Legal standard.** The appellant must not only clearly identify the aspects of the contested judgment that he criticizes, but must also **identify the legal arguments that specifically support his appeal**⁸²¹. Thus, if the appellant alleges a distortion of the clear sense of the evidence, i.e. where, without recourse to new evidence, the assessment of the existing evidence appears to be clearly incorrect⁸²², he needs to indicate exactly which elements have been allegedly distorted⁸²³.
- 14 (2) **Admissible.** Despite this seemingly strict criterion, the ECJ has so far not been overly formalistic, since it did accept to interpret⁸²⁴ “unclear”⁸²⁵, “laconic”⁸²⁶, or “somewhat misleading” passages⁸²⁷ in light of the **principle of effectiveness**⁸²⁸. The fact that certain portions of the appellant’s argument in a given grounds of appeal lacked “rigor” did not result in those grounds being inadmissible⁸²⁹.
- 15 (3) **Inadmissible.** That said, a legal plea is inadmissible if it is presented **too abstractly**. This is the case should the appellant merely state that the challenged initial decision contains “legal errors”⁸³⁰ or that the GC, “for reasons of equity”, should have interpreted a particular judgment or a provision differently⁸³¹ without providing any further explanation⁸³². The same obviously also applies to those appellants who merely refer to “reasons that were presented in a different context”⁸³³. A mere reference to provisions of EU law without proving that said provisions are applicable in the case at issue and without setting out in what respect the decision under appeal infringes those provisions does not fulfil the duty to state the reasons for an appeal⁸³⁴.

⁸²⁰ Case C-354/92 P, *Eppe v Commission* [1993], ECR I-7054, para. 13.

⁸²¹ Case C-76/00 P, *Petrotub and others v Council* [2003], ECR p. I-79, para. 71.

⁸²² Case C-414/08, *Sviluppo Italia Basilicata v Commission* [2010] ECR p. I-2559, paras. 114, 118–119.

⁸²³ Case C-413/08 P, *Lafarge v Commission* [2010], ECR p. I-5361, paras. 16–17, 22.

⁸²⁴ Case C-283/90 P, *Vidrányi v Commission* [1991], ECR p. I-4361, para. 19.

⁸²⁵ Case C-420/05 P, *Ricosmos v Commission* [2007], ECR p. I-00067, para. 65.

⁸²⁶ Case C-299/98 P, *CPL Imperial v Commission* [1999], ECR p. I-8686, para. 36.

⁸²⁷ Case C-240/03 P, *Comunità Montana della Valnerina v Commission* [2006], ECR p. I-731, para. 110.

⁸²⁸ Case C-257/98 P, *Lucaccioni v Commission* [1999], ECR p. I-5251, para. 36.

⁸²⁹ Case C-67/09 P, *Nuova Agricast and Cofra v Commission* [2010] (not yet published in the ECR), paras. 48–49.

⁸³⁰ Case C-156/96 P, *Williams v Rechnungshof* [1997], ECR p. I-239, paras. 13 and 20.

⁸³¹ Case C-257/98 P, *Luccacioni v Commission* [1999] ECR p. I-5251, paras. 61–62.

⁸³² Case C-338/93 P, *De Hoe v Commission* [1994], ECR p. I-819, paras. 25 and 26.

⁸³³ Case C-51/95 P, *Unifruit Hellas v Commission* [1997], ECR p. I-727, para. 33.

⁸³⁴ Case C-401/09 P, *Evropaiki Dynamiki v ECB* [2011] (not yet published in the ECR), para. 61.

c) Summary of the pleas in law

The purpose of this obligation is administrative, rather than judicial, since it is designed to enable the text of the notice on each new case which the ECJ publishes in the Official Journal of the EU. 16

5. Form or order sought (lit. e)

The various admissible alternatives of orders sought are laid down in Art. 169–170 RP ECJ. These alternatives must in any event relate to the decision at first instance and may not include the repeal of the contested decision before the GC. 17

III. Applicable procedural rules (paragraph 2)

Moreover, the appeal must respect the general requirements laid down in Art. 119, 121, and 122 (1) RP ECJ. Although the Registry of the General Court transmits the papers in the case at first instance to the Registry of the ECJ, the appellant still needs to attach the decision of the GC to his appeal in order to avoid any ambiguity as to which judgment or order is being challenged. 18

IV. Indicating the date of notification (paragraph 3)

This provision requires a statement regarding the date on which the contested decision was notified to the appellant in order to verify compliance with the time limit. This statement is not necessary if the receipt already confirms this date⁸³⁵. 19

V. Curing defects (paragraph 4)

1. Principle

As a rule, any non-compliance with procedural rules is likely to have consequences, in particular in terms of inadmissibility, since those rules would otherwise serve little if no purpose. In practice though, a distinction is drawn between those procedural rules, which are “ordre public” and/or “non-negotiable” and rules, which are ancillary and thus of minor importance. Regarding the former, there is obviously no room for any curing or else only under extraordinary circumstances, such as e.g. *force majeure* in case of a non-compliance with a time-limit. 20

2. Art. 168 (4) RP ECJ

Under the previous Art. 112 (3) of the old RP ECJ a non-compliance with the provision governing the **contents of the appeal** (Art. 112 (1) of the old RP ECJ), 21

⁸³⁵ Case C-263/02 P, *Commission v Jégo Quéré* [2004], ECR I-3425, para. 2.

which now became Art. 168 (1) RP ECJ), could **not** be cured. This seems to have **changed**, since Art. 168 (4)⁸³⁶ refers to Art. 168 (1) to (3) RP ECJ. Thus, according to that logic an appeal which would e.g. not contain any legal grounds could be put in order. This seems all the more inconsistent since there is no equivalent provision with respect to the contents of an application in an action for annulment (see Art. 120 RP ECJ).

Article 169 Form of order sought, pleas in law and arguments of the appeal

1. An appeal shall seek to have set aside, in whole or in part, the decision of the General Court as set out in the operative part of that decision.

2. The pleas in law and legal arguments relied on shall identify precisely those points in the grounds of the decision of the General Court which are contested.

I. Order sought (paragraph 1)

1. Total or partial appeal

- 1 This provision provides further detail for Art. 168 (1) (e) RP ECJ concerning the form or order sought to be incorporated into the appeal. It illustrates that an appeal may be either total or partial.

2. New wording

- 2 Art. 169 (1) RP ECJ is **new** in that it specifies that the form of order sought must concern **“the operative part”** of the decision the appeal seeks to have set aside. Thus, a party which has been successful at first instance and has thus no reason to contest the operative part of the judgment or order at issue may **not lodge** an appeal merely because that party does not agree with the GC’s **reasoning**.

II. Indicating the challenged parts (paragraph 2)

1. Introduction

- 3 Pursuant to the consistent case-law the appellant must not only indicate the “pleas in law and legal arguments relied on” (Art. 168 (1) (d) RP ECJ), but must also **explicitly indicate the contested parts** of each decision whose annulment he seeks⁸³⁷.

⁸³⁶ To which Art. 171 (2) RP ECJ refers.

⁸³⁷ Case C-286/04 P, *Eurocermex v HABM* [2005], ECR I-5797, para. 42 with further reference.

2. Requirements

Since an appeal is designed to trigger a judicial review by the ECJ, i.e. not a mere repetition of the first instance, the appellant must therefore **precisely indicate** which parts of the contested decision at first instance he seeks to challenge, and which legal pleas and arguments he will employ in order to do so⁸³⁸. The fact that the legal plea does not challenge the GC's entire reasoning on a given question does not make this plea inadmissible⁸³⁹.

3. Omission

Not indicating the contested part of the challenged decision does not automatically result in the appeal or the legal plea being inadmissible, provided the other party can still comment upon the legal pleas and thus defend itself. Nevertheless, an appellant who turns in such an application for appeal is taking a major risk in terms of admissibility.

Article 170 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 General Court may not be changed in the appeal.

2. Where the appellant requests that the case be referred back to the General Court if the decision appealed against is set aside, he shall set out the reasons why the state of the proceedings does not permit a decision by the Court of Justice.

Outline:

I. No different form of order, no change of subject (paragraph 1).....	1
1. General.....	1
2. Same form of order	2
3. No change of the subject-matter	3
a) Rule.....	4
b) Exceptions	5
aa) Breach of mandatory provisions	5
bb) Infringement of procedural rules or general principles of law	6
cc) New arguments	7
II. Specific order sought (paragraph 2).....	8

⁸³⁸ This is certainly not the case when the appellant alleges that the General Court did not rule on a plea of law, see Joined Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 p. to C-252/99 p. and C-254/99 P, *Limburgse Maatschappij and others v Commission* [2002], ECR I-8375, para. 423).

⁸³⁹ Case C-458/98 P, *Industrie des poudres sphériques v Council* [2000] ECR I-8147, paras. 65 to 67.

I. No different form of order, no change of subject (paragraph 1)

1. General

- 1 In line with the purpose of the appeal, the appellant shall not repeat⁸⁴⁰ let alone further elaborate the proceedings at first instance, but may submit the GC's decision to a **legal review** by the ECJ.

2. Same form of order

- 2 It follows from the purpose of the appeal that the appellant may only seek the same form of order as at **first instance**. This means e.g. that the appellant may not claim damages at the level of his appeal if the proceedings at first instance were merely about an annulment of a decision⁸⁴¹.

3. No change of the subject-matter

- 3 For the same reasons, an appeal may **not change** the subject-matter of the proceedings before the GC.

a) Rule

- 4 Under Art. 170 (1), 2nd sentence, RP ECJ, fresh submissions not contained in the original application may not be raised in an appeal⁸⁴², as this would broaden the subject-matter of the proceedings at first instance and make the appeal ineffective⁸⁴³. This rules out any application for **measures of inquiry**⁸⁴⁴ in appeals proceedings and substantial change of **orders sought**⁸⁴⁵, as already provided in Art. 170 (1), 1st sentence, RP ECJ.

- 5 **b) Exceptions. aa) Breach of mandatory provisions.** The appellant does **not** change the subject matter of the proceedings at first instance if he contends that the GC infringed a provision of a rule that the ECJ needs to examine of its **own motion**.

bb) Infringement of procedural rules or general principles of law

- 6 Next, the appellant may assert that the decision at first instance breaches a specific procedural rule or a general principle of law, as by definition the appellant could not raise such arguments before the GC adopted its decision.

⁸⁴⁰ Case C-28/10 P, *Bayramoglu v Parliament and Council* [2010] (not published in the ECR), para. 13.

⁸⁴¹ Case C-283/90 P, *Vidrányi v Commission* [1991], ECR I-4339, paras. 9–10.

⁸⁴² Case C-1/98 P, *British Steel v Commission* [2000] ECR I-10353, para. 47.

⁸⁴³ Case C-19/95 P, *San Marco v Commission* [1996] ECR p. I-4435, para. 49.

⁸⁴⁴ Case C-199/92 P, *Hüls v Commission* [1999] ECR p. I-4287, paras. 90–92.

⁸⁴⁵ Case C-28/10 P, *Bayramoglu v Parliament and Council* [2010] (not published in the ECR), para. 16.

cc) New arguments

Third, the appellant remains free to **further develop** its legal pleas by way of **new arguments**⁸⁴⁶ as long as this does not amount to putting forward new legal pleas⁸⁴⁷.

II. Specific order sought (paragraph 2)

The appellant needs to assess whether the ECJ should refer the case back to the GC, should the appeal be successful. Normally, a judgment or order, which is either fully or partly annulled on appeal, needs to be referred back to the first instance if further facts need to be found or assessed, which is a matter for the first instance. Thus, whenever the appellant requests the case to be referred back to the GC, he must state the reasons why this should be the case.

CHAPTER 2 RESPONSES, REPLIES AND REJOINDERS

Article 171 Service of the appeal

1. The appeal shall be served on the other parties to the relevant case before the General Court.

2. In a case where Article 168(4) of these Rules applies, service shall be effected as soon as the appeal has been put in order or the Court of Justice has declared it admissible notwithstanding the failure to observe the formal requirements laid down by that Article.

I. All parties (paragraph 1)

The appeal is served on the other party along the same logic as the notification of an application (see Art. 39 RP ECJ) and is thus notified to all parties at first instance, including any interveners.

II. Putting the appeal in order (paragraph 2)

Since an appeal is not served as long as it not been put in order, if need be, the appellant has a major incentive to put his appeal in order swiftly, within the time-limit set by the Registry.

⁸⁴⁶ Case C-229/05 P, *PKK and KNK v Council* [2007] ECR p. I-439, para. 66; Case C-322/09 P, *NDSHT v Commission* [2010] (not yet published in the ECR), para. 41.

⁸⁴⁷ Case C-76/93 P, *Scaramuzza v Commission* [1994], ECR p. I-5173, para. 8.

Article 172 Parties authorised to lodge a response

Any party to the relevant case before the General Court 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.

I. The parties to the proceedings at first instance

- 1 These parties include the **defendant (s)** as well as the **interveners** at first instance, if any. Thus, the latter must not apply for leave to intervene in the appeal proceedings⁸⁴⁸. Art. 172 now specifies that only those parties to the proceedings “**having an interest in the dismissal of the appeal**” may submit a response. This newly inserted part expresses the idea that each party needs to have a legitimate interest to act, which is a general principle applicable to all legal remedies.

II. No obligation to lodge a response

- 2 During judgments at first instance, the defendant must hand in a written submission, i.e. either a statement of defence or, where appropriate, a request for a decision on a preliminary objection, since he otherwise risks a default judgment. During appeals, the defendant may exercise his discretion concerning whether he hands in a response, as the appellant may **not** file for a default judgment.

III. Time-limit

- 3 The time limit for lodging the response⁸⁴⁹ is **two months**⁸⁵⁰ and thus the same as the one applying to a statement of defence, except that this time limit may **not be extended**, as is now explicitly provided. This time-limit also applies to cross-appeals⁸⁵¹, just as in cross-appeals at the GC against decisions of the CST⁸⁵².

This limitation has been critiqued⁸⁵³, but one should remember that the defendant and the interveners already understand the matter due the proceedings at first instance, and must also remember that the ECJ must speed up the proceedings.

⁸⁴⁸ Case C-390/95 P, *Antillean Rice Mills and others v Commission* [1999], ECR I-769, 809.

⁸⁴⁹ See p. 16 of “Note for the guidance of Council”.

⁸⁵⁰ Plus 10 days on account of distance.

⁸⁵¹ Case C-136/92 P, *Commission v Brazzelli Lualdi A. O.* [1994] ECR p. I-1981, paras. 71–72.

⁸⁵² Case T-49/08 P, *Michail v Commission* [2009] (not yet published in the ECR), para. 38.

⁸⁵³ See *Schermers*, CMLR 1988, p. 541–556.

Article 173 Content of the response

1. A response shall contain:
 - (a) the name and address of the party submitting it;
 - (b) the date on which the appeal was served on him;
 - (c) the pleas in law and legal arguments relied on;
 - (d) the form of order sought.
2. Articles 119 and 121 of these Rules shall apply to responses.

This provision is identical to Art. 168 (1) RP ECJ⁸⁵⁴. Instead of indicating the name of the other parties to the proceedings, the defendant and the interveners, if any, need to specify the date on which the appeal was notified to them.

Article 174 Form of order sought in the response

A response shall seek to have the appeal allowed or dismissed, in whole or in part.

I. Form of order sought

The defendant does not lodge a statement of defence, which is the term used at 1 first instance, but a “response”. He may choose between a full or partial rejection of the appeal, with the understanding that the orders sought by interveners on the defendant’s behalf may not exceed the scope of the defendant’s own order.

II. No cross-appeal in the response

The defendant may no longer integrate a cross-appeal into his response, since a 2 cross-appeal must now (see Art. 177 (2) RP ECJ) be introduced by a document separate from the response.

Article 175 Reply and rejoinder

1. The appeal and the response may be supplemented by a reply and a rejoinder only where the President, on a duly reasoned application submitted by the appellant within seven days of service of the response, considers it necessary, after hearing the Judge-Rapporteur and the Advocate General, in particular to enable the appellant to present his views on a plea of inadmissibility or on new matters relied on in the response.

⁸⁵⁴ See also paras. 30–35 of “Practice directions for direct actions and appeals”.

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.

Outline:

I. Introduction	1
II. Reply and rejoinder (paragraph 1)	2
1. General.....	2
2. Time-limit	3
3. Application	4
a) “Duly reasoned”	5
aa) Details	5
bb) Not applicable to rejoinder.....	7
b) Inadmissibility	8
c) Unfounded applications	9
d) Expedited procedure	10
4. Limiting the reply to certain aspects	11
III. Time-limits, number of pages, subject-matter (paragraph 2)	12
1. Procedural time-limit	12
2. Number of pages and subject-matter.....	13

I. Introduction

- 1 In appeal proceedings, the written phase normally **only** includes the exchange of one set of submissions, i.e. the **appeal** and the **response**, if any, in contrast to classical written proceedings at the ECJ, which include two exchanges of written submissions. Art. 177 (1) RP ECJ provides an exception to this rule by allowing a second exchange of written submissions which is not granted *ex officio*, but which instead requires an **application** by the appellant over which the President has broad discretionary power.

II. Reply and rejoinder (paragraph 1)

1. General

- 2 This provision is a compromise between the right to justice and the principle of accelerating procedures. There are regrettably no published statistics on the probability to be granted a second exchange of written submissions.

2. Time-limit

- 3 The appellant has only **seven days**⁸⁵⁵ as of service of the response to decide whether to apply for a reply and is thus given the *shortest* of all deadlines in the Statute or RP ECJ.

⁸⁵⁵ Plus the 10 days on account of distance.

3. Application

Since Art. 175 (1) RP ECJ is an exception to the rule of a single exchange of 4 written submissions, the application must be “duly reasoned”, as is now explicitly specified, to convince the President that a reply is “**necessary**”:

a) “**Duly reasoned**” aa) **Details**. The appellant should clearly identify those aspects 5 in the **response** that **require** a reply, i.e. make it necessary to react in **writing**, rather than in the context of an oral hearing (which may or may not take place, as the case may be). The appellant should, ideally, be able to explain why some subjects he wishes to address do not lend themselves to be elaborated at the hearing, due, e.g. to their complexity and/or novelty, also bearing in mind the limited speaking time.

To some extent, the appellant will thus reveal the contents of a potential reply. 6 That said, “duly reasoned” does not mean that the appellant may submit an application of such magnitude that it turns, *de facto*, into a reply, since this would constitute a clear **misuse**.

bb) Not applicable to rejoinder

If the appellant is granted a reply, the **defendant** is automatically⁸⁵⁶ entitled, but 7 not obliged, to lodge a rejoinder, bearing in mind his rights of defence.

b) Inadmissibility

A reply filed **without** the express permission of the President is manifestly 8 inadmissible⁸⁵⁷. A **legal plea** put forward for the first time at the stage of the reply is equally manifestly inadmissible⁸⁵⁸. An appellant who expressly **waives** the possibility of lodging a reply may not request such reply a later stage⁸⁵⁹.

c) Unfounded applications

An application that suggests that the appellant intends to merely **repeat** certain 9 aspects of the proceedings for a second or third time has little chance of success. Likewise, an application which e.g. refers to facts and documents which are not relevant for the outcome of the procedure⁸⁶⁰ will not likely meet with success.

d) Expedited procedure

If the appellant has already been granted an expedited procedure⁸⁶¹, he may still 10 lodge an application within the meaning of Art. 175 (1) RP ECJ.

⁸⁵⁶ In contrast to the law applicable before November 2000, which provided an application for rejoinder.

⁸⁵⁷ See Case C-173/95 P, *Hogan v Court* [1995], ECR p. I-4905, 4919.

⁸⁵⁸ Case C-104/97 P, *Atlanta v Commission* [1999] ECR p. I-6983, paras. 19, 22.

⁸⁵⁹ Case C-291/98 P, *Sario v Commission* [2000], ECR p. I-1213, 1218.

⁸⁶⁰ Case C-12/95 P, *Tramasa and others v Commission* [1995], ECR p. I-467, 473.

⁸⁶¹ See Art. 190 in conjunction with 133 RP ECJ.

4. Limiting the reply to certain aspects

- 11 Art. 175 (1) RP ECJ is **new** in that it puts more emphasis on the principle of economy of proceedings. Apart from the requirement of a “duly reasoned application” (see 3. above), it enables the President to **limit** the contents of the **reply** to aspects which should necessarily be addressed in writing, such as a plea of inadmissibility or “new matters” relied on in the response. Given the principle of equality of arms, the subsequent rejoinder should be limited to the same aspects (see Art. 175 (2), 2nd sentence, RP ECJ).

III. Time-limits, number of pages, subject-matter (paragraph 2)

1. Procedural time-limit

- 12 In case of a reply and subsequent rejoinder, the parties are **not** granted a period of two months, as is the case for the appeal⁸⁶² and the response⁸⁶³, but rather receive a time period determined by the President which is usually shorter. It may vary according to objective criteria, such as the limitation of the reply to a given issue of admissibility, but needs to comply with the principle of equal treatment and equality of arms.

2. Number of pages and subject-matter

- 13 So far, the length of the pleadings, including replies and rejoinders in appeals proceedings, was only addressed in the “Practice directions relating to direct actions and appeals”. This concept has now been “lifted up” to the level of the RP ECJ, meaning that a non-compliance with the limit of number of pages set by the President is bound to have **consequences** in terms of admissibility. The President may moreover **limit** the subject-matter of a reply and subsequent rejoinder, if this is in the interest of an economy of proceedings.

CHAPTER 3

FORM AND CONTENT OF THE CROSS-APPEAL, AND FORM OF ORDER SOUGHT

Article 176 Cross-appeal

1. The parties referred to in Article 172 of these Rules 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.

⁸⁶² See Art. 56 (1) Statute ECJ.

⁸⁶³ See Art. 172 RP ECJ.

I. Introduction

Prior to the coming into force of the new RP ECJ the rules provided that a cross- 1
appeal needed to be integrated into the defendant's reply. This has now been
replaced by a separate set of rules (Art. 176 to 180 RP ECJ), in the interest of an
easier case-management.

II. Time-limit (paragraph 1)

Any party to the proceedings at first instance having an interest to act⁸⁶⁴, thus 2
including interveners, may lodge a cross-appeal, within **two months** of notification
of the appeal. This time-limit is mandatory and cannot be extended.

III. Separate document (paragraph 2)

For reasons of clarity of the proceedings, a cross-appeal is now treated as a 3
“separate” legal remedy, which is why the relevant document needs to be separate
from the response within the meaning of Art. 172 and 173 RP ECJ.

Article 177 Content of the cross-appeal

1. A cross-appeal shall contain:

- (a) the name and address of the party bringing the cross-appeal;
- (b) the date on which the appeal was served on him;
- (c) the pleas in law and legal arguments relied on;
- (d) the form of order sought.

2. Articles 119, 121 and 122(1) and (3) of these Rules shall apply to cross-
appeals.

Since a cross-appeal needs to be lodged by a document separate from the
response (see Art. 176 (2) RP ECJ), its contents has now been explicitly defined,
on the basis of the content of an appeal as laid down in Art. 168 RP ECJ.

Article 178 Form of order sought, pleas in law and arguments of the cross-appeal

1. A cross-appeal shall seek to have set aside, in whole or in part, the decision
of the General Court.

2. It may also seek to have set aside an express or implied decision relating to
the admissibility of the action before the General Court.

⁸⁶⁴ Joined Cases C-501/06 P, C-513/06 P, C-515/06 P, and C-519/06 P, *GlaxoSmithKline Services A. O. v Commission A. O.* [2009] ECR p. I-9291, para. 33.

3. The pleas in law and legal arguments relied on shall identify precisely those points in the grounds of the decision of the General Court which are contested. The pleas in law and arguments must be separate from those relied on in the response.

This provision corresponds in essence to Art. 169 RP ECJ, which applies to appeals. There are some **differences** though: A cross-appeal is **not** limited to the decision of the General Court “*as set out in the operative part of that decision*”, unlike an appeal. Next, the party lodging the cross-appeal may also challenge an express or implied decision of the GC on the **admissibility** of the action at first instance. Paragraph 3 reproduces the terms of Art. 169 (2), 1st alternative RP ECJ. The pleas in law and arguments must be **distinct** from those relied on in the response to the appeal.

CHAPTER 4 PLEADINGS CONSEQUENT ON THE CROSS-APPEAL

Article 179 Response to the cross-appeal

Where a cross-appeal is brought, the applicant at first instance or any other party to the relevant case before the General Court 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.

The appellant and any other party to the proceedings before the GC may lodge a response to the cross appeal within a time-limit of two months as of service. The contents of that response is, *mutatis mutandis*, the same as the contents of a response within the meaning of Art. 173 RP ECJ.

Article 180 Reply and rejoinder on a cross-appeal

1. The cross-appeal and the response thereto may be supplemented by a reply and a rejoinder only where the President, on a duly reasoned application submitted by the party who brought the cross-appeal within seven days of service of the response to the cross-appeal, considers it necessary, after hearing the Judge-Rapporteur and the Advocate General, in particular to enable that party to present his views on a plea of inadmissibility or on new matters relied on in the response to the cross-appeal.

2. The President shall fix the date by which that reply is to be produced and, upon service of that pleading, the date by which the rejoinder is to be produced. He may limit the number of pages and the subject-matter of those pleadings.

This provision corresponds to Art. 175 RP ECJ.

CHAPTER 5
APPEALS DETERMINED BY ORDER

Article 181 Manifestly inadmissible or manifestly unfounded appeal or cross-appeal

Where the appeal or cross-appeal is, in whole or in part, manifestly inadmissible or manifestly unfounded, the Court may at any time, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide by reasoned order to dismiss that appeal or cross-appeal in whole or in part.

Outline:

I. General	1
II. Manifest inadmissibility	2
1. Missed time-limits, etc.	2
2. Challenging the facts	3
3. Other	4
III. Manifestly unfounded	5
IV. Order	6
1. Costs of the proceedings	6
2. Judicial costs	7

I. General

This provision is *lex specialis* to Art. 53 (2) RP ECJ⁸⁶⁵ and enables the ECJ to 1 reject **appeals or cross-appeals** that are clearly inadmissible and/or unfounded **without an oral hearing** and an Opinion of Advocate General. The ECJ uses this provision rather frequently, because a number of appellants disregard the specific conditions of admissibility governing appeals.

II. Manifest inadmissibility

1. Missed time-limits, etc.

The Court dismisses an entire appeal as clearly inadmissible, if e.g. the decision at 2 first instance **cannot be challenged** by appeal; if the appellant has not complied with the **time-limit** of two months⁸⁶⁶; if the appeal does not contain any **legal pleas**⁸⁶⁷; or if it merely **repeats** the case at first instance⁸⁶⁸.

⁸⁶⁵ This provision is not listed in Art. 190 RP ECJ.
⁸⁶⁶ Case C-7/99 P, *Campoli v Commission* [1999], ECR p. I-2679, 2683.
⁸⁶⁷ Case C-30/96 P, *Abello and others v Commission* [1998], ECR p. I-372, 395, but see Art. 168 (4) RP ECJ.
⁸⁶⁸ Case C-244/92 P, *Kupka-Floridi v WSA* [1993], ECR I-2041, 2045.

2. Challenging the facts

- 3 The ECJ rejects as inadmissible or manifestly inadmissible, appeals challenging **factual aspects**, whether those aspects be findings⁸⁶⁹ or factual appraisals of facts⁸⁷⁰ and/or questions of evidence⁸⁷¹ such as the credibility of explanations given by an institution⁸⁷², since such questions are under the **exclusive jurisdiction of the GC**⁸⁷³. Nevertheless, **exceptions** to this rule exist if it is clear from the documents submitted⁸⁷⁴ that the GC **distorted** either the facts or the clear sense of the evidence⁸⁷⁵; if the evidence has been obtained in breach of rules; or if the Court has disregarded⁸⁷⁶ general principles of law and/or the rules governing the burden of proof or any other legal rule regarding the evidence⁸⁷⁷. The same applies to means of attack or defence put forward in the course of the proceedings⁸⁷⁸.

3. Other

- 4 An appeal challenging a GC order asking the Commission to provide documents to be added to the file is manifestly inadmissible⁸⁷⁹.

III. Manifestly unfounded

- 5 The ECJ has rejected some appeals as manifestly unfounded⁸⁸⁰ and, in a number of cases, as partly manifestly inadmissible and partly manifestly unfounded⁸⁸¹.

IV. Order

- 6 Under these circumstances, the order is handed down **without** an oral hearing and **without** an Opinion of the Advocate General.

1. Costs of the proceedings

The costs of the proceedings are determined on the basis of Art. 184 RP ECJ, which refers to the general rules regarding costs⁸⁸².

⁸⁶⁹ Case C-346/90 P, *F. v Commission* [1992] ECR p. I-2691, paras. 7–10, 16–18.

⁸⁷⁰ Case C-115/90 P, *Turner v Commission* [1991] ECR p. I-1423, paras. 13–14.

⁸⁷¹ Case C-294/91, *Sebastiani v Parliament* [1992] ECR p. I-4997, paras. 13–14.

⁸⁷² Case C-274/00 P, *Simon v Commission* [2002] ECR p. I-5999, paras. 44, 46–47.

⁸⁷³ Case C-436/97 P, *Deutsche Bahn v Commission* [1999], ECR p. I-2387, 2394.

⁸⁷⁴ Case C-140/96 P, *Dimitriadis v Court of Auditors* [1997] ECR I-5635, para. 18.

⁸⁷⁵ Case C-136/91 P, *Commission v Brazzelli Lualdi* [1994] ECR I-1981, paras. 47–49.

⁸⁷⁶ Case C-551/03 P, *General Motors* [2006] ECR p. I-3173, paras. 51–52, 54.

⁸⁷⁷ Case C-143/95 P, *Commission v Socurte* [1997] ECR p. I-1, para. 36.

⁸⁷⁸ Case C-341/00P, *CNPA and others v Commission* [2001], ECR I-5263, 5276.

⁸⁷⁹ Case C-349/99 P, *ADT Projekt Gesellschaft v Commission* [1999] ECR p. I-6467, paras. 9–11.

⁸⁸⁰ Case C-249/99 P, *Pescados Congelados Jogamar v Commission* [1999], ECR I-8333, 8341.

⁸⁸¹ Case C-338/93 P, *De Hoe v Commission* [1994], ECR I-819, 830.

⁸⁸² With the exception of special rules for civil servants' action. As from then on, these claims are the CST's competence, it became insubstantial in the meantime.

2. Judicial costs

As a rule, the proceedings before the ECJ are **free of charge**. Beyond the 7 exceptions provided for in Art. 144 RP ECJ, there is no reason why an appellant should not bear some judicial costs, e.g. in case of obviously inadmissible appeals, although the current RP ECJ do not provide for this possibility.

Article 182 Manifestly well-founded appeal or cross-appeal

Where the Court has already ruled on one or more questions of law identical to those raised by the pleas in law of the appeal or cross-appeal and considers the appeal or cross-appeal to be manifestly well founded, it may, acting on a proposal from the Judge-Rapporteur and after hearing the parties and the Advocate General, decide by reasoned order in which reference is made to the relevant case-law to declare the appeal or cross-appeal manifestly well founded.

This **new** provision is inspired by the first alternative in Art. 99 RP ECJ, which applies to requests for preliminary rulings, and is obviously in the interest of the **economy of proceedings**. The requirements of this provision are demanding though since the questions of law need to be “**identical**” to those raised by the pleas in law of the appeal or cross-appeal. While the very fact that such new provision was inserted seems to suggest that this is not the exception in practice, it remains to be seen how much room there is for applying this provision.

CHAPTER 6 EFFECT ON A CROSS-APPEAL OF THE REMOVAL OF THE APPEAL FROM THE REGISTER

Article 183 Effect on a cross-appeal of the discontinuance or manifest inadmissibility of the appeal

A cross-appeal shall be deemed to be devoid of purpose:

- (a) if the appellant discontinues his appeal;
- (b) if the appeal is declared manifestly inadmissible for non-compliance with the time-limit for lodging an appeal;
- (c) if the appeal is declared manifestly inadmissible on the sole ground that it is not directed against a final decision of the General Court or against a decision disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility within the meaning of the first paragraph of Article 56 of the Statute.

This **new** provision illustrates that a cross-appeal is **ancillary** with respect to the appeal, meaning that discontinuance and certain types of inadmissibility of the appeal affect also the cross-appeal.

CHAPTER 7 COSTS AND LEGAL AID IN APPEALS

Article 184 Costs in appeals

1. Subject to the following provisions, Articles 137 to 146 of these Rules shall apply, *mutatis mutandis*, to the procedure before the Court of Justice on an appeal against a decision of the General Court.

2. Where the appeal is unfounded or where the appeal is well founded and the Court itself gives final judgment in the case, the Court shall make a decision as to the costs.

3. When an appeal brought by a Member State or an institution of the European Union which did not intervene in the proceedings before the General Court is well founded, the Court of Justice may order that the parties share the costs or that the successful appellant pay the costs which the appeal has caused an unsuccessful party to incur.

4. Where the appeal has not been brought by an intervener at first instance, he may not be ordered to pay costs in the appeal proceedings unless he participated in the written or oral part of the proceedings before the Court of Justice. Where an intervener at first instance takes part in the proceedings, the Court may decide that he shall bear his own costs.

I. General

- 1 Depending upon the particular situation concerning the facts, which is a matter for the GC, the ECJ will either **decide** the contentious case upon which the appeal is based or **refer** said case back to the GC, which will then hand down its final judgment, which includes a decision on costs.

II. General reference (paragraph 1)

- 2 Given the principles of equal treatment and fair proceedings the rules governing the costs of the proceedings may not vary from one legal remedy to another, unless this is objectively justified, since this would penalise certain categories of applicants. Thus, the new phrased first paragraph contains an explicit general reference to the rules on costs in **direct actions**, subject to the special provisions in paragraphs 2 to 4 of Art. 184 RP ECJ.

III. Final judgment given by ECJ (paragraph 2)

- 3 If the ECJ dismisses the appeal as **inadmissible** or **unfounded** and by virtue of the general rules on costs (Art. 137 to 146 RP ECJ) the losing party will normally bear the costs if the other party so requests and applies. Otherwise, each party shall

bear its own costs⁸⁸³. In exceptional cases, the ECJ may also order that the successful party bears the costs it has caused either without reason or vexatiously⁸⁸⁴.

IV. Appeal by a Member State or institution (paragraph 3)

This provision covers **exceptional cases** in which a Member State or institution 4 appeals a decision at first instance even though it was **not a party to the proceedings at first instance**⁸⁸⁵. This rule differs from the normal rules in that the Member State or institution may be ordered to bear its own⁸⁸⁶ or all costs even if it wins the appeal.

This provision is separate from cases in which Member States or institutions 5 intervene in the context of the appeal; in such cases, Member State or institutional interveners must bear their own costs (see Art. 140 (1) RP ECJ).

V. Appeal not brought by intervener (paragraph 4)

Interveners at first instance can be ordered to pay costs only if they brought the 6 appeal themselves or if they participated in the written or oral part of the proceedings before the ECJ.

Article 185 Legal aid

- 1. A party who is wholly or in part unable to meet the costs of the proceedings may at any time apply for legal aid.
- 2. The application shall be accompanied by all information and supporting documents making it possible to assess the applicant’s financial situation, such as a certificate issued by a competent national authority attesting to his financial situation.

Outline:

I. General	1
1. Limited practical relevance.....	1
2. Information on the ECJ’s website.....	2
II. Application by a party (paragraph 1)	5
1. Party.....	5
2. Application at any time	6
3. Inadmissible appeal	7
III. Burden of proof (paragraph 2)	8

⁸⁸³ Case C-327/97 P, *Apostolidis and others v Commission* [1999], ECR I-6709, 6744.
⁸⁸⁴ Case C-36/92 P, *SEP v Commission* [1994], ECR I-1911, 1944.
⁸⁸⁵ Art. 56 (3) Statute ECJ.
⁸⁸⁶ Case C-73/97 P, *France v Comafrika and others* [1999], ECR I-185, 220.

I. General

1. Limited practical relevance

- 1 Art. 185 to 189 RP ECJ make similar provisions to Art. 115 to 118 RP ECJ, i.e. the rules governing legal aid in the context of requests for preliminary rulings, which are nevertheless adapted to the specificities of an **appeal**.

2. Information on the ECJ's website

- 2 At the stage of an appeal a natural person applying for legal aid, which remains rare in practice, will already have a reasonable knowledge of the relevant rules, at least in those cases where legal aid was already an issue at first instance. That said, regarding legal aid at EU courts in general, there is often a lack of information on the side of natural persons non-advised by lawyers as to the jurisdiction of the EU courts and the rules governing legal aid, which is particularly visible in proceedings at the GC.
- 3 Thus, the Court ought to consider placing the **link** to the application for legal aid in a **prominent place** (ideally the front page) on its **website**, rather than in the far less visible part on the rules of procedure. This link should lead to a clear set of instructions concerning what sorts of cases may and may not be brought before the EU Courts (e.g., a natural person cannot bring a case against a Member State). This information should come **first** and be presented in such a way that the access to the legal aid form becomes only possible **after** having read this information.
- 4 Finally, in view of the fact that applicants for legal aid lack by definition any sort of legal counsel, the Court might consider a sort of “**Legal Aid Tutorial**”, a multi-slide guide to how best to prepare an application for legal aid, including which documents one ought to include or exclude; what sorts of cases ought not to be brought since they would be manifestly inadmissible; and how best to describe the complaint and the relevant facts for the case. These measures would be relatively inexpensive and would present little inconvenience to the Court but would greatly help legal aid applicants while also reducing Court costs and time invested in ineligible legal aid applications, an issue which is particularly relevant in the case of the GC.

II. Application by a party (paragraph 1)

1. Party

- 5 While this term is generic and not specified, this clearly means **natural persons**.

2. Application at any time

- 6 A party may apply for legal aid at any time, i.e. before (Art. 186 RP ECJ) or during the proceedings.

3. Inadmissible appeal

An application for legal aid is inadmissible if the legal proceedings concerned are **manifestly inadmissible**⁸⁸⁷. Since this is a horizontal principle, it also applies in appeals proceedings.

III. Burden of proof (paragraph 2)

The applicant must prove his **need for financial assistance** by providing information on his “financial situation” (rather than his “lack of means”, as was the case under the previously applicable provision), e.g. by attaching a confirmation of his income tax or a document from the social welfare authority of his Member State. In practice, the other party will be **heard** on this application for legal aid. Subsequently, the ECJ decides on the application without a hearing.

Article 186 Prior application for legal aid

1. If the application is made prior to the appeal which the applicant for legal aid intends to commence, it shall briefly state the subject of the appeal.

2. The application for legal aid need not be made through a lawyer.

3. The introduction of an application for legal aid shall, with regard to the person who made that application, suspend the time-limit prescribed for the bringing of the appeal until the date of service of the order making a decision on that application.

4. The President shall assign the application for legal aid, as soon as it is lodged, to a Judge-Rapporteur who shall put forward, promptly, a proposal as to the action to be taken on it.

Since a lack of funds normally means that the applicant cannot afford a lawyer, be it regarding the entire appeals procedure or, at least, parts of it, it is only fair to allow a natural person submitting an application for legal aid himself.

Article 187 Decision on the application for legal aid

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

⁸⁸⁷ Case 233/82, *K. v Germany* [1982] ECR p. 3637.

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

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

In order to speed up the proceedings the decisions on applications for legal aid are always taken by the smallest formation of the Court, which includes the designates Judge-Rapporteur, i.e. a Chamber of 3 or 5 Judges. Said chamber will consider whether the appeal is manifestly unfounded, a rule which is clearly in the interest of the economy of proceedings.

Article 188 Sums to be advanced as legal aid

1. Where legal aid is granted, the cashier of the Court shall be responsible, where applicable within the limits set by the formation of the Court, for costs involved in the assistance and representation of the applicant before the Court. At the request of the applicant or his representative, an advance on those costs may be paid.

2. In its decision as to costs the Court may order the payment to the cashier of the Court of sums advanced as legal aid.

3. The Registrar shall take steps to obtain the recovery of these sums from the party ordered to pay them.

Advancing the legal funds necessary to meet the expenses is a necessary consequence of legal aid being granted, as such positive decision would otherwise be deprived from any practical meaning.

Article 189 Withdrawal of legal aid

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

This dynamic clause explicitly expresses a principle which is inherent to the conditions for obtaining legal aid, i.e. if the circumstances change during the proceedings this may have an effect on the entitlement to legal aid.

CHAPTER 8
OTHER PROVISIONS APPLICABLE TO APPEALS

Article 190 Other provisions applicable to appeals

1. Articles 127, 129 to 136, 147 to 150, 153 to 155 and 157 to 166 of these Rules shall apply to the procedure before the Court of Justice on an appeal against decisions of the General Court.
2. By way of derogation from Article 130(1), an application to intervene shall, however, be made within one month of the publication of the notice referred to in Article 21(4).
3. Article 95 shall apply, *mutatis mutandis*, to the procedure before the Court of Justice on an appeal against decisions of the General Court.

Outline:

I. General	1
II. General provisions (paragraph 1).....	2
1. No new pleas in law.....	2
2. Further provisions.....	3
3. General rules which do not apply	4
III. Specific time-limit for interveners (paragraph 2)	5
1. Scope	5
2. Time-limit of one month	6
IV. Anonymity (paragraph 3)	7

I. General

The procedural rules applicable to appeals include a set of **general**⁸⁸⁸ as well as 1 **specific provisions**⁸⁸⁹. Since Art. 190 RP ECJ is an important part of the legal framework applicable to appeals, which comprises a particularly large number of provisions (Art. 167 to 190 RP ECJ), it would have been in the interest of clarity to insert Art. 190 RP ECJ at the very beginning of the Chapter on appeals, rather than at the very end, where it is at risk of remaining unnoticed, despite a new specific heading (“other provisions applicable to appeals”).

II. General provisions (paragraph 1)

1. No new pleas in law

This rule, outlined in Art. 127 RP ECJ, pertains to a possible **reply**⁸⁹⁰ and 2 **rejoinder**, as well an **oral hearing**⁸⁹¹. The same applies to a change of the subject matter of the proceedings before the GC.

⁸⁸⁸ Art. 56 to 61 Statute ECJ.
⁸⁸⁹ Art. 167 to 190 RP ECJ.
⁸⁹⁰ Case C-321/99 P, *ARAP A. O. v Commission* [2002] ECR p. I-4287, para. 112.
⁸⁹¹ See for example Case C-219/95 P, *Ferriere Nord v Commission* [1997], ECR p. I-4411, 4447.

2. Further provisions

- 3 The following applies to appeals: provisions concerning interventions⁸⁹², on expedited procedure⁸⁹³, on amicable settlement, discontinuance and absolute bar to proceedings⁸⁹⁴, on certain requests and applications⁸⁹⁵, and special legal remedies⁸⁹⁶.

3. General rules which do not apply

- 4 As the appeal is limited to points of law⁸⁹⁷, the rules pertaining to the **evidence** are obviously not applicable. The same is true for **preliminary objections** and other **preliminary pleas**⁸⁹⁸, although the parties remain free to question the inadmissibility of certain means of attack or defence. The rules governing the **default judgments** are also not applicable⁸⁹⁹.

III. Specific time-limit for interveners (paragraph 2)

1. Scope

- 5 This provision applies only to those parties who did **not** intervene during the first proceedings. Thus, an application to intervene lodged by a party that was an intervener at first instance is inadmissible⁹⁰⁰, because such party is automatically admitted to intervene in appeals proceedings.

2. Time-limit of one month

- 6 The application to intervene must be lodged within a period of **one month**⁹⁰¹ after the publication of the notice of the appeal in the Official Journal, rather during than the six weeks provided in Art. 130 (1) RP ECJ.

IV. Anonymity (paragraph 3)

- 7 Granting anonymity if need be is a horizontal rule which thus applies also to appeals against decisions of the GC.

⁸⁹² Art. 129 to 132 RP ECJ.

⁸⁹³ Art. 133 RP ECJ.

⁸⁹⁴ Art. 147 to 150 RP ECJ.

⁸⁹⁵ Art. 153 to 155 RP ECJ.

⁸⁹⁶ Art. 157 to 166 RP ECJ.

⁸⁹⁷ Art. 256 (1) (2) TFEU and Art. 58 (1) Statute ECJ.

⁸⁹⁸ Art. 151 RP ECJ.

⁸⁹⁹ Art. 152 RP ECJ.

⁹⁰⁰ Case C-245/95 P, *Commission v NTN Corporation and Koyo Seiko* [1996], ECR I-553, 557.

⁹⁰¹ Plus the 10 days on account of distance.

TITLE VI REVIEW OF DECISIONS OF THE GENERAL COURT

Introduction

1. Purpose

The special review within the meaning of Art. 256 (2) and (3) TFEU, as detailed 1 in Art. 62 to 62 b of the Statute ECJ, is not a classical legal remedy, since it is **not** in the hands of the parties. Rather, this is a procedure within the **interest of the law**, since it is designed to prevent a “**serious risk of the unity or consistency of Union law being affected**”. It is initiated by the First Advocate General.

2. Revised rules

The previously applicable Art. 123 a to 123 e of the former RP ECJ have been 2 replaced by a **simplified** set of provisions (Art. 191 to 195 RP ECJ).

Article 191 Reviewing Chamber

A Chamber of five Judges shall be designated for a period of one year for the purpose of deciding, in accordance with Articles 193 and 194 of these Rules, whether a decision of the General Court is to be reviewed in accordance with Article 62 of the Statute.

Not every legal remedy at the ECJ is a matter for an assignment to the traditional formations of Judges. In certain cases, the legislation provides for a specific Chamber or formation, such as the one hearing appeals at the GC⁹⁰². In the case of review of GC decisions by the ECJ the initial concept of “special Chamber” has now been replaced by a **Chamber** of five Judges, **designated** for that purpose for a period of one year. This is **consistent** with the concept of designated Chamber hearing urgent preliminary ruling procedures (Art. 108 RP ECJ). The designated Chamber is entrusted with examining the First Advocate General’s proposals.

Article 192 Information and communication of decisions which may be reviewed

1. As soon as the date for the delivery or signature of a decision to be given under Article 256(2) or (3) TFEU is fixed, the Registry of the General Court shall inform the Registry of the Court of Justice.

⁹⁰² Whose composition is published in the OJ (President of the GC and several Presidents of Chambers).

2. The decision shall be communicated to the Registry of the Court of Justice immediately upon its delivery or signature, as shall the file in the case, which shall be made available forthwith to the First Advocate General.

Keeping the ECJ continuously and immediately informed of all GC appeal decisions or GC decisions on referrals for preliminary rulings (to date the latter remains theoretical) enables the ECJ's First Advocate General to more easily determine whether a given **judgement** or **order**, as has now been **explicitly clarified**, poses a "serious risk of the unity or consistency of Union law being affected" and thereby determine whether or not he should propose to initiate a special review.

Article 193 Review of decisions given on appeal

1. The proposal of the First Advocate General to review a decision of the General Court given under Article 256(2) TFEU shall be forwarded to the President of the Court of Justice and to the President of the reviewing Chamber. Notice of that transmission shall be given to the Registrar at the same time.

2. As soon as he is informed of the existence of a proposal, the Registrar shall communicate the file in the case before the General Court to the members of the reviewing Chamber.

3. As soon as the proposal to review has been received, the President of the Court shall designate the Judge-Rapporteur from among the Judges of the reviewing Chamber on a proposal from the President of that Chamber. The composition of the formation of the Court shall be determined in accordance with Article 28(2) of these Rules on the day on which the case is assigned to the Judge-Rapporteur.

4. That Chamber, acting on a proposal from the Judge-Rapporteur, shall decide whether the decision of the General Court is to be reviewed. The decision to review the decision of the General Court shall indicate only the questions which are to be reviewed.

5. The General Court, the parties to the proceedings before it and the other interested persons referred to in the second paragraph of Article 62 a of the Statute shall forthwith be informed by the Registrar of the decision of the Court of Justice to review the decision of the General Court.

6. Notice of the date of the decision to review the decision of the General Court and of the questions which are to be reviewed shall be published in the *Official Journal of the European Union*.

Outline:

I. Proposal of the First Advocate General (paragraphs 1 and 2).....	1
1. First Advocate General's right of proposal	1
2. Practical aspects	2
II. Decision on the proposal (paragraphs 3 to 6)	4
1. General.....	4
2. Procedure.....	5
3. Substance	6
4. Informing the parties	7

I. Proposal of the First Advocate General (paragraphs 1 and 2)

1. First Advocate General's right of proposal

Conferring the right of initiative to the First Advocate-General rather than 1 granting the ECJ a right to initiate revisions on its own motion enables an autonomous “third-party” to have an independent view on whether or not the GC's decision presents a “serious risk” to EU legal unity. Furthermore, it is legally consistent to not give the parties formal rights of initiative. No matter how narrow the scope of a revision, it would hardly be in line with the principle of equal treatment to grant parties to staff cases access to judicial protection comprised of three instances, while other natural persons in proceedings at the GC only have access to two instances.

2. Practical aspects

Even though *de jure* the First Advocate General has an exclusive right of 2 proposal, there might in practice be some room for *de facto* initiatives. Nothing really prevents the ECJ from informally suggesting that the First Advocate General makes use of his right of initiative in a given case, as long as the ECJ does not send the First Advocate General a formal injunction.

Also, in the only case so far effectively resulting in a judgment of revision⁹⁰³, one 3 of the **parties** contacted the First Advocate General and convinced him to submit a proposal to the President of the ECJ. In any event, and even though this might be pure speculation, the First Advocate General would be probably reluctant to make any such proposal unless he expects that the designated Chamber of the ECJ would ultimately be sufficiently convinced of the necessity and merits of such special review.

II. Decision on the proposal (paragraphs 3 to 6)

1. General

While the First Advocate General's proposal is a prerequisite for the special 4 review, it is **not** in any way **binding**, as the designated Chamber must decide whether or not to review the GC's decision.

2. Procedure

By definition, the parties to the initial proceedings (either to the appeal or the 5 referral for preliminary ruling) are **not entitled** to provide their views on this

⁹⁰³ See Case 197/07 RX-II, *M v EMEA* [2009] ECR p. I-12033.

proposal should they learn of its existence, as this is a legal procedure in the interest of the law and as they will have a chance to be heard at a later stage (Art. 195 RP ECJ).

3. Substance

- 6 In the absence of any procedural rule, the designated Chamber will likely do a *prima facie* assessment of the case's content in order to determine whether there is a "serious risk of the unity or consistency of Union law being affected".

4. Informing the parties

- 7 If the ECJ decides to review the GC's decision, it will immediately inform the parties and the other interested parties.

Article 194 Review of preliminary rulings

1. The proposal of the First Advocate General to review a decision of the General Court given under Article 256(3) TFEU shall be forwarded to the President of the Court of Justice and to the President of the reviewing Chamber. Notice of that transmission shall be given to the Registrar at the same time.

2. As soon as he is informed of the existence of a proposal, the Registrar shall communicate the file in the case before the General Court to the members of the reviewing Chamber.

3. The Registrar shall also inform the General Court, the referring court or tribunal, the parties to the main proceedings and the other interested persons referred to in the second paragraph of Article 62 a of the Statute of the existence of a proposal to review.

4. As soon as the proposal to review has been received, the President of the Court shall designate the Judge-Rapporteur from among the Judges of the reviewing Chamber on a proposal from the President of that Chamber. The composition of the formation of the Court shall be determined in accordance with Article 28(2) of these Rules on the day on which the case is assigned to the Judge-Rapporteur.

5. That Chamber, acting on a proposal from the Judge-Rapporteur, shall decide whether the decision of the General Court is to be reviewed. The decision to review the decision of the General Court shall indicate only the questions which are to be reviewed.

6. The General Court, the referring court or tribunal, the parties to the main proceedings and the other interested persons referred to in the second paragraph of Article 62 a of the Statute shall forthwith be informed by the Registrar of the decision of the Court of Justice as to whether or not the decision of the General Court is to be reviewed.

7. Notice of the date of the decision to review the decision of the General Court and of the questions which are to be reviewed shall be published in the *Official Journal of the European Union*.

This provision, which is essentially the same as Art. 193 RP ECJ, remains **theoretical** for as long as the areas in which the GC is to have jurisdiction to hear and determine requests for preliminary rulings under Art. 267 TFEU have not been determined, which requires an amendment of the Statute ECJ.

Article 195 Judgment on the substance of the case after a decision to review

1. The decision to review a decision of the General Court shall be served on the parties and other interested persons referred to in the second paragraph of Article 62 a of the Statute. The decision served on the Member States, and the States, other than the Member States, which are parties to the EEA Agreement, as well as the EFTA Surveillance Authority, shall be accompanied by a translation of the decision of the Court of Justice in accordance with the provisions of Article 98 of these Rules. The decision of the Court of Justice shall also be communicated to the General Court and, if applicable, to the referring court or tribunal.

2. Within one month of the date of service referred to in paragraph 1, the parties and other interested persons on whom the decision of the Court of Justice has been served may lodge statements or written observations on the questions which are subject to review.

3. As soon as a decision to review a decision of the General Court has been taken, the First Advocate General shall assign the review to an Advocate General.

4. The reviewing Chamber shall rule on the substance of the case, after hearing the Advocate General.

5. It may, however, request the Court of Justice to assign the case to a formation of the Court composed of a greater number of Judges.

6. Where the decision of the General Court which is subject to review was given under Article 256(2) TFEU, the Court of Justice shall make a decision as to costs.

I. Serving the decision to review (paragraph 1)

The legislature presumably opted for a procedure involving as many interested parties and instances as possible because a *“serious risk of the unity or consistency of Union law being affected”* is such a **fundamental matter** and also because of the need to preserve the **rights of defence**. Thus, in addition to the parties to the appeal (or the main proceedings, where applicable), all institutions and Member States may lodge statements or written observations on questions which are subject to review. Furthermore, these proceedings always involve an Advocate-General.

II. Time-limit (paragraph 2)

At first sight, the non-extendable time limit of **one month** (plus 10 days on account of distance) seems rather short when compared to the two months

applicable in referrals for preliminary rulings. However, questions subject to review are of a limited quantity, and assessing whether there is a “serious risk of the unity or consistency of Union law being affected” will normally focus on a specific aspect which the First Advocate General and then the special chamber clearly identifies.

III. Advocate-General (paragraph 3)

- 3 In the present proceedings, the First Advocate General is limited to making a proposal (see Art. 193 (1) RP ECJ) and assigning the review to an Advocate-General, i.e. **not to himself**, a measure likely to allow a fresh view on the matter.

IV. Further procedure (paragraphs 4 and 5)

- 4 The procedure has been simplified, the reviewing Chamber rules on the substance, having heard the Advocate-General, who thus does not deliver a formal opinion.

V. Costs (paragraph 6)

- 5 Since there are no specific rules governing orders for costs in a review, the interested parties referred to in Art. 23 Statute ECJ and the parties to the proceedings before the GC who lodged pleadings or written observations before the ECJ concerning the questions covered by the review bear their own costs during the review procedure.

TITLE VII OPINIONS

Article 196 Written part of the procedure

1. In accordance with Article 218(11) TFEU, a request for an Opinion may be made by a Member State, by the European Parliament, by the Council or by the European Commission.

2. A request for an Opinion may relate both to whether the envisaged agreement is compatible with the provisions of the Treaties and to whether the European Union or any institution of the European Union has the power to enter into that agreement.

3. It shall be served on the Member States and on the institutions referred to in paragraph 1, and the President shall prescribe a time-limit within which they may submit written observations.

I. General

Providing an Opinion on the compatibility of an **envisaged agreement** between 1 the EU and one or several States or international organizations⁹⁰⁴ is by definition a **non-contentious procedure**. Therefore, the typical procedures applicable to contentious proceedings such as an application for a decision on a plea of inadmissibility within the meaning of Art. 151 RP ECJ do not apply⁹⁰⁵.

II. Object of the Opinion

An Opinion of the ECJ⁹⁰⁶ may concern the division of powers between the EU 2 and the Member States⁹⁰⁷. Moreover, it may address any question that raises procedural or substantive doubts based upon the TFEU concerning the validity of the agreement concerned⁹⁰⁸.

III. Procedure

The European Commission, the Council, the Parliament and the Member States 3 may submit a request for an Opinion. The procedure usually includes written observations by the addressees, which, since 1997 includes the Parliament. Additional written statements are not excluded⁹⁰⁹ and in some cases a non-public oral hearing will take place⁹¹⁰.

Article 197 Designation of the Judge-Rapporteur and of the Advocate General

As soon as the request for an Opinion has been submitted, the President shall designate a Judge-Rapporteur and the First Advocate General shall assign the case to an Advocate General.

As in a contentious proceeding, there is also a Judge-Rapporteur. The Court does no longer hears all Advocate-Generals prior to handing down the Opinion, as was the case under the previous RP ECJ.

⁹⁰⁴ See Art. 218 TFEU.

⁹⁰⁵ Opinion 2/92 of the Court of 24 March 1995, [1995], ECR I-521, para. 11.

⁹⁰⁶ The GC has no comparable jurisdiction.

⁹⁰⁷ Opinion 2/92 of the Court of 24 March 1995, [1995], ECR I-521, para. 13.

⁹⁰⁸ Opinion 1/1975 of the Court of 11 November 1975 [1975], ECR 1355, 1360.

⁹⁰⁹ Opinion 1/1976 of the Court of 26 April 1977, *Fonds européen d'immobilisation de la navigation intérieure sur le Rhin* [1977], ECR 741, 744.

⁹¹⁰ Opinion 1/78 of the Court of 4 October 1979, *Accord international sur le caoutchouc naturel* [1979], ECR 2871, 2902.

Article 198 Hearing

The Court may decide that the procedure before it shall also include a hearing.

Pursuant to this new provision the ECJ may decide to hold an oral hearing, which is what it does in the majority of proceedings re. Opinions.

Article 199 Time-limit for delivering the Opinion

The Court shall deliver its Opinion as soon as possible, after hearing the Advocate General.

There is **no formal time-limit**, but there is a de facto urgency, since the agreement cannot be concluded, let alone does it come into force before the ECJ delivers its Opinion.

Article 200 Delivery of the Opinion

The Opinion, signed by the President, the Judges who took part in the deliberations and the Registrar, shall be delivered in open court. It shall be served on all the Member States and on the institutions referred to in Article 196(1).

Opinions are now delivered in open Court, by contrast to what was provided in Art. 108 (3) of the previous RP ECJ.

TITLE VIII PARTICULAR FORMS OF PROCEDURE

Introduction

Since the new RP ECJ were restructured according to, in particular, the practical importance of the various legal remedies, thus starting with the request for preliminary rulings, followed by the direct actions, etc., it is consistent to use the final title of the RP ECJ to **centralize** six legal remedies of minor importance, which were hitherto scattered in the RP ECJ. Three of these legal remedies (Art. 201 to 203 RP ECJ) relate to proceedings under the TEAEC, whilst the remainder concerns procedures in the **EEA Agreement** (Art. 204 RP ECJ), the TEU (Art. 205) and the TFEU (see the new Art. 206 RP ECJ).

Article 201 Appeals against decisions of the arbitration committee

1. An application initiating an appeal under the second paragraph of Article 18 TEAEC shall state:

- (a) the name and permanent address of the applicant;

- (b) the description of the signatory;
 - (c) a reference to the arbitration committee's decision against which the appeal is made;
 - (d) the names of the respondents;
 - (e) a summary of the facts;
 - (f) the grounds on which the appeal is based and arguments relied on, and a brief statement of those grounds;
 - (g) the form of order sought by the applicant.
2. Articles 119 and 121 of these Rules shall apply to the application.
 3. A certified copy of the contested decision shall be annexed to the application.
 4. As soon as the application has been lodged, the Registrar of the Court shall request the arbitration committee registry to transmit to the Court the file in the case.
 5. Articles 123 and 124 of these Rules shall apply to this procedure. The Court may decide that the procedure before it shall also include a hearing.
 6. The Court shall give its decision in the form of a judgment. Where the Court sets aside the decision of the arbitration committee it may refer the case back to the committee.

I. General

Article 18 TEAEC⁹¹¹ provides the possibility of an **appeal** against a decision of 1 the Arbitration Committee with respect to the granting of certain licences under **patents**, provisionally protected **patent rights**, **utility models** or **patent applications** covering such information. Such appeal has a **suspensory effect**, unlike all other legal remedies provided in the TFEU, an appeal.

II. Parties

The appeal may be brought by the parties that failed to reach an amicable 2 agreement.

Article 202 Procedure under Article 103 TEAEC

1. Four certified copies shall be lodged of an application under the third paragraph of Article 103 TEAEC. The application shall be accompanied by the draft of the agreement or contract concerned, by the observations of the European Commission addressed to the State concerned and by all other supporting documents.

2. The application and annexes thereto shall be served on the European Commission, which shall have a time-limit of 10 days from such service to submit

⁹¹¹ Since this provision is part of primary EU law, and even though this procedure is only very rarely used, it would be adequate to quote its wording in the chapter "Extracts from Treaties" contained in the ECJ's website.

its written observations. This time-limit may be extended by the President after the State concerned has been heard.

3. Following the lodging of such observations, which shall be served on the State concerned, the Court shall give its decision promptly, after hearing the Advocate General and, if they so request, the State concerned and the European Commission.

I. Overview

- 1 This provision implements the legal remedy under Art. 103 TEAEC, which is part of the chapter on **external relations** of the TEAEC. Pursuant to Art. 103 (1) “Member States shall communicate to the Commission draft agreements or contracts with a third State, an international organisation or a national of a third State to the extent that such agreements or contracts concern matters within the purview of this Treaty”. Art. 103 (3) TEAEC enables a Member State to challenge the observations of the European Commission regarding the compatibility with the draft agreement or contract and the TEAEC.

II. Emergency procedure

- 2 This particular legal remedy amounts to an expedited procedure, since the time-limit given to the Commission for submitting written observations is only **10 days** from the service of the Member State’s application (Art. 202 (2) RP ECJ) and in particular because the ECJ must give its decisions “**promptly**”.

Article 203 Procedures under Articles 104 TEAEC and 105 TEAEC

Applications under the third paragraph of Article 104 TEAEC and the second paragraph of Article 105 TEAEC shall be governed by the provisions of Titles II and IV of these Rules. Such applications shall also be served on the State to which the respondent person or undertaking belongs.

This provision implements the special applications provided in Art. 104 (3) TEAEC and Art. 105 (2) TEAEC which enables a Member State to initiate an appropriate **emergency procedure** in order to obtain a decision of the ECJ concerning the compatibility of such an intended agreement or contract with the provisions of the TEAEC.

Article 204 Procedure provided for by Article 111(3) of the EEA Agreement

1. In the case governed by Article 111(3) of the EEA Agreement, the matter shall be brought before the Court by a request submitted by the Contracting Parties which are parties to the dispute. The request shall be served on the other

Contracting Parties, on the European Commission, on the EFTA Surveillance Authority and, where appropriate, on the other interested persons on whom a request for a preliminary ruling raising the same question of interpretation of European Union legislation would be served.

2. The President shall prescribe a time-limit within which the Contracting Parties and the other interested persons on whom the request has been served may submit written observations.

3. The request shall be made in one of the languages referred to in Article 36 of these Rules. Article 38 shall apply. The provisions of Article 98 shall apply *mutatis mutandis*.

4. As soon as the request referred to in paragraph 1 of this Article has been submitted, the President shall designate a Judge-Rapporteur. The First Advocate General shall, immediately afterwards, assign the request to an Advocate General.

5. The Court shall, after hearing the Advocate General, give a reasoned decision on the request.

6. The decision of the Court, signed by the President, the Judges who took part in the deliberations and the Registrar, shall be served on the Contracting Parties and on the other interested persons referred to in paragraphs 1 and 2.

I. Overview

This provision, which was inserted after the EEA Agreement was enacted, 1 implements Art. 111 (3) of that Agreement, which allows for referrals for preliminary rulings regarding the interpretation and application of the EEA Agreement. Art. 111 provides a two-step procedure: Pursuant to paragraph 1 the Commission or an EEA Member State may refer such questions to the Joint Committee. If the referral concerns a provision which either largely corresponds to or is identical with a provision of the TFEU and if the matter is not resolved within a period of three months, the parties may refer the matter to the ECJ.

II. Procedure

This procedure includes elements of the classical referral for preliminary ruling 2 within the meaning of the TFEU. The Registrar notifies the request for interpretation to the addressees mentioned in § 1, who may submit their written observations within the time-limit set by the Registrar.

Thus, the standard time limit of two months (plus ten days on account of 3 distance) applicable in case of “normal” referrals for preliminary rulings does **not** apply. Since the request should be submitted in one of the official languages referred to in Art. 36 RP ECJ, Norway and Iceland cannot use their own language. The procedure does not include an oral hearing or an Opinion of the Advocate-General.

Article 205 Settlement of the disputes referred to in Article 35 TEU in the version in force before the entry into force of the Treaty of Lisbon

1. In the case of disputes between Member States as referred to in Article 35(7) TEU in the version in force before the entry into force of the Treaty of Lisbon, as maintained in force by Protocol No 36 annexed to the Treaties, the matter shall be brought before the Court by an application by a party to the dispute. The application shall be served on the other Member States and on the European Commission.

2. In the case of disputes between Member States and the European Commission as referred to in Article 35(7) TEU in the version in force before the entry into force of the Treaty of Lisbon, as maintained in force by Protocol No 36 annexed to the Treaties, the matter shall be brought before the Court by an application by a party to the dispute. The application shall be served on the other Member States, the Council and the European Commission if it was submitted by a Member State. The application shall be served on the Member States and on the Council if it was submitted by the European Commission.

3. The President shall prescribe a time-limit within which the institutions and the Member States on which the application has been served may submit written observations.

4. As soon as the application referred to in paragraphs 1 and 2 has been submitted, the President shall designate a Judge-Rapporteur. The First Advocate General shall, immediately afterwards, assign the application to an Advocate General.

5. The Court may decide that the procedure before it shall also include a hearing.

6. The Court shall, after the Advocate General has delivered his Opinion, give its ruling on the dispute by way of judgment.

7. The same procedure as that laid down in the preceding paragraphs shall apply where an agreement concluded between the Member States confers jurisdiction on the Court to rule on a dispute between Member States or between Member States and an institution.

I. Overview

- 1 This particular procedure, which was inserted into the Rules of Procedure in 2000, concerns the former third pillar of the European Union (police and judicial cooperation in criminal matters). It outlines a kind of arbitration for disputes between Member States regarding the respect of common positions and framework decisions within the meaning of Art. 34 (2) TEU.

II. Delimitation

- 2 One must distinguish this settlement procedure from the referrals for preliminary rulings within the meaning of Art. 267 TFEU, which relate to the interpretation and

validity of legislative measures and measures of implementation in the area of police and judicial cooperation in criminal matters.

Article 206 Requests under Article 269 TFEU

1. Four certified copies shall be submitted of a request under Article 269 TFEU. The request shall be accompanied by any relevant document and, in particular, any observations and recommendations made pursuant to Article 7 TEU.

2. The request and annexes thereto shall be served on the European Council or on the Council, as appropriate, each of which shall have a time-limit of 10 days from such service to submit its written observations. This time-limit shall not be extended.

3. The request and annexes thereto shall also be communicated to the Member States other than the State in question, to the European Parliament and to the European Commission.

4. Following the lodging of the observations referred to in paragraph 2, which shall be served on the Member State concerned and on the States and institutions referred to in paragraph 3, the Court shall give its decision within a time-limit of one month from the lodging of the request and after hearing the Advocate General. At the request of the Member State concerned, the European Council or the Council, or of its own motion, the Court may decide that the procedure before it shall also include a hearing, which all the States and institutions referred to in this Article shall be given notice to attend.

I. Introduction

This is a **new provision** which implements the special legal remedy (“request”) ¹ provided by Art. 269 TFEU, which enables a Member State to request the ECJ to review the legality of observations and recommendations made by the Council or the European Council pursuant to **Art. 7 TEU** and relating to a “clear risk of a serious breach by a Member State of the values referred to in Article 2 [TEU]”.

II. Emergency procedure

Given the topic in Art. 7 TEU, this particular procedure is inherently urgent, ² which is why the European Council or the Council only has **ten days** as of service for submitting written observations and the Court has only **one month** from lodging the request by the Member State concerned.

FINAL PROVISIONS

Article 207 Supplementary rules

Subject to the provisions of Article 253 TFEU and after consultation with the Governments concerned, the Court shall adopt supplementary rules concerning its practice in relation to:

- (a) letters rogatory;
- (b) applications for legal aid;
- (c) reports by the Court of perjury by witnesses or experts, delivered pursuant to Article 30 of the Statute.

The procedures and aspects listed in a) to c) play a minor role in proceedings at the ECJ and have been further detailed in the “Supplementary Rules”⁹¹². The fact that these aspects have been codified separately from the actual rules of procedure may reflect their primarily administrative nature. However, this further fragments the procedural rules, which reduces clarity but only in a limited manner given the rather marginal nature of the three aspects in (a) to (c) in proceedings at the ECJ. That said, incorporating such additional legislation into the RP ECJ seems advisable, as is the case for the GC and the CST.

Article 208 Implementing rules

The Court may, by a separate act, adopt practice rules for the implementation of these Rules.

Primary law (Art. 19 of the TEU and Art. 260 to 267 TFEU and the Statute ECJ) defines most of the important parameters of the procedural rules governing the legal remedies at the EU courts. **Secondary law**, i.e. the RP ECJ, further details and complements this primary law definition. Despite this already rather vast regulatory framework, one must still define and explain a number of **practical aspects** of the proceedings to the parties. The ECJ itself presumably knows best which aspects ought to be covered.

On this basis, the ECJ adopted the

- “Practice Directions relating to direct actions and appeals”,
- “Information note on references from national courts for a preliminary ruling”, and
- the “Notes for the guidance of Counsel”.

Parties need to comply with these directions and notes, which the ECJ will have to adapt in due course to the new numbering in the RP ECJ.

⁹¹² In the English version, there is no discrepancy as both texts use the term ‘legal aid’. However, in the German version, the terminology in the case of lit b should be adjusted since art. 125 RP ECJ accurately mentions “Prozesskostenhilfe”, while Art. 4 and 5 of the “Supplementary Rules” still use the term “Armenrecht”, (the right of the poor), which is definitely outdated.

Article 209 Repeal

These Rules replace the Rules of Procedure of the Court of Justice of the European Communities adopted on 19 June 1991, as last amended on 24 May 2011 (Official Journal of the European Union, L 162 of 22 June 2011, p. 17).

The new RP ECJ came into force in 1 November 2012 (OJEU L 265 of 29.9.2012, p. 1).

Article 210 Publication and entry into force of these Rules

These Rules, which are authentic in the languages referred to in Article 36 of these Rules, shall be published in the *Official Journal of the European Union* and shall enter into force on the first day of the third month following their publication.

RULES OF PROCEDURE OF THE GENERAL COURT OF THE EUROPEAN UNION¹ (RP GC)

INTRODUCTION

Outline:

I. Jurisdiction of the General Court	1
1. Natural and legal persons.....	1
2. Member States.....	2
3. Workload.....	3
II. Purpose of the Rules of Procedure	4
1. Prerequisite for the admissibility of legal remedies.....	4
2. Complementing primary law.....	5
3. No equivalent in the Statute.....	6
4. No equivalent in the RP GC.....	7
III. Contents of the RP GC	8
1. Similarities.....	8
2. Visible differences.....	9
3. Less visible differences.....	10
IV. Amendments to the RP GC	11
1. Numerous changes.....	11
2. Coming into force.....	12
3. Average duration of proceedings.....	13
a) GC.....	13
b) CST.....	14
4. Expedited procedure.....	15
V. Derived law and other useful information	16
1. Practice Directions to parties before the GC.....	16
2. Instructions to the Registrar of the GC.....	17
3. Other sources of information.....	18
VI. Important public databases	19
1. The ECJ's website.....	19
2. Important links.....	20
a) "Eur-Lex".....	20
b) "Digest of the case law".....	21
VII. The Civil Service Tribunal (CST)	22
1. Own set of procedural rules.....	22
2. Specificities.....	23
VIII. Interpretation	24
1. Hierarchy of norms.....	24
2. Interpretation.....	25
a) Autonomous interpretation.....	25
b) Binding rules.....	26
aa) For the parties.....	26
bb) For the Judges.....	27
IX. Headings and numbering of paragraphs	28

¹ Of 2 May 1991 (OJ L 136 of 30 May 1991; corrigendum published in OJ L 317 of 19.11.1991, p. 34), as last amended on 25 May 2011 (OJ L 162 of 22.6.2011, p. 18).

I. Jurisdiction of the General Court

1. Natural and legal persons

- 1 The Court of First Instance, recently renamed² the “**General Court**”³ (hereafter: GC), was created in 1988 in order to reduce the ECJ’s workload. Rather quickly after becoming operational in 1989, the GC’s jurisdiction was successively extended to include all **direct actions** and ensuing interventions lodged by **natural or legal persons**. Thus, access to and comprehension of the GC is particularly important for both EU and non-EU enterprises and individuals. It is also important to consider both the RP ECJ and the RP GC, as there is always the possibility of an appeal to the ECJ on points of law against judgments and certain orders of the GC⁴.

2. Member States

- 2 As an exception to the rule above, the GC has also jurisdiction over certain applications of **Member States**⁵.

3. Workload

- 3 Over the years, a number of factors, in particular the broadening of GC jurisdiction, the successive EU enlargements and the complexity of cases in areas such as competition, merger control etc., have considerably increased the workload of the GC. This workload was, only temporarily as it turns out, reduced by the creation of the Civil Service Tribunal (CST) some seven years ago, especially since of number of CST cases are “coming back” as appeals to the GC. This work load has now reached a critical level and thus generated the need for a more structural relief of the GC. A variety of measures, such as an increase of the number of Judges at the GC and/or the creation of a further specialized Tribunal, have been discussed.

II. Purpose of the Rules of Procedure

1. Prerequisite for the admissibility of legal remedies

- 4 The admissibility of legal remedies in general is governed, on the one hand, by substantive rules, such as the time-limits enshrined in the TFEU, as well as the Statute ECJ and the Rules of Procedure, on the other hand.

² Since the creation of the Civil Service Tribunal (CST), in 2005, the Court of First Instance hears appeals against judgments and final orders of the CST and its name was thus no longer accurate.

³ The new name, “General Court”, was chosen in order to avoid any confusion with the Court of Justice; there was no such need in other linguistic versions, such as French (“Tribunal”) or German (“Gericht”). That said, it comes at the price of an adjective (“General”) which might be understood by some as suggesting an all-embracing jurisdiction, which is not the case.

⁴ Art. 55 et seq. Statute ECJ and Art. 167 et seq. RP ECJ.

⁵ Art. 256 (1) TFEU and Art. 51 (1) lit. a), 1st-3rd indent Statute ECJ.

2. Complementing primary law

The rules of procedure of the GC⁶ (hereafter: **RP GC**) **complement** and **specify** 5 the legal framework provided by EU primary law, i.e. the relevant provisions in the “Treaty on the European Union” (TEU)⁷, the “Treaty on the Functioning of the European Union” (TFEU)⁸ and the “Statute of the Court of Justice of the European Union”, now called the “Statute” (**Statute ECJ**).

3. No equivalent in the Statute

Parties need to be aware that in a few instances, the relevant provision is **only** to 6 be found in the RP GC, with no equivalent in the Statute ECJ. This is the case regarding e.g. the rules on taxation of costs.

4. No equivalent in the RP GC

In some rare instances it is the other way around, i.e. the Statute ECJ contains 7 provisions, which are not even mentioned let alone implemented by the RP GC. These instances include the existence of unforeseeable circumstances or *force majeure* (Art. 45 (2) Statute ECJ), a provision which may be very relevant in case of non-compliance with a time-limit.

III. Contents of the RP GC

1. Similarities

Many rules contained in the **RP GC** are either identical or very similar to those 8 provided in the **RP ECJ**. Both judicial instances even share some rules, such as those laid down in the “Supplementary Rules” the ECJ has adopted in addition to the RP ECJ. The GC did not adopt such Supplementary Rules; instead, a number of provisions in the **RP GC**⁹ refer to those rules.

2. Visible differences

The most **visible differences** are due to the differing specificities of the GC’s and 9 the ECJ’s current jurisdiction concerning e.g. the referral for preliminary ruling or the review of decisions of the GC.

⁶ See the legal basis in Art. 254 (6) TFEU.

⁷ Art. 19 TEU.

⁸ Art. 251–281 TFEU.

⁹ Art. 72 (1) (case of perjury); Art. 75 (3) (letters rogatory); Art. 96 (3), 2nd sub-paragraph (certain aspects of legal aid).

3. Less visible differences

- 10 But there are also some less visible differences regarding mechanisms existing in both sets of procedural rules, but where the conditions are different, such as the stay of proceedings¹⁰.

IV. Amendments to the RP GC

1. Numerous changes

- 11 The RP GC are more dynamic than one might expect. Its initial RP, which were adopted in 1991, i.e. 2 years after the then CFI became operational, have been amended 17 times. These amendments took into consideration the changes to the GC's jurisdiction, the successive enlargements of the European Union, and, more specifically, the need to reduce the GC's work load while maintaining a high level of individual judicial protection¹¹.

2. Coming into force

- 12 Procedural rules are generally considered to apply to all proceedings pending at the time when they enter into force¹².
- 13 3. Average duration of proceedings. a) GC. It is difficult to assess the exact impact of these successive amendments upon the average duration of proceedings at the GC. The "Statistics of judicial activity of the General Court"¹³ reveal the following figures (in months):

Area	2011	2007
Competition:	50,5	42,6
State aid:	32,8	32,4
Intellectual property:	20,3	24,5
Other direct actions:	22,8	21,5
Appeals:	18,3	7,1

Regrettably, there are no official figures as to the average duration between the end of the written proceedings and the oral hearing, if any, or regarding the time-span between the oral hearing and the date on which the judgment is handed down.

¹⁰ Art. 77 RP GC and Art. 55 RP ECJ.

¹¹ *Lenaerts*, CDE 2000, 323, 347.

¹² Case T-16/09 P, *Marcuccio v Commission* [2010] ECR p. II-0000, para. 59 and the case-law cited.

¹³ www.curia.europa.eu.

b) CST

In 2011 the average amount of time which passed between the initial application 14 and the handing down of the judgment in staff matters was 23.1 months. Orders took, on average, 12 months.

4. Expedited procedure

The “expedited procedure”¹⁴, which applies to both **proceedings at first 15 instance and appeals**¹⁵, substantially reduces the above figures, but its conditions are fairly demanding, as one would expect. A number of such requests have been successful¹⁶.

V. Derived law and other useful information

The RP GC are complemented by a number of derived legislative rules, which 16 parties also need to take into consideration:

1. Practice Directions to parties before the GC

The “Practice Directions to Parties”¹⁷, which were recently revised¹⁸, provide many **practical indications** regarding both the **written and oral proceedings** at the GC¹⁹, such as the use of technical means of communication, the lodging and length of pleadings, the form and content of the application and of the statement of defence, etc. Their purpose is to improve judicial protection, to speed up the proceedings, and to make those proceedings more efficient.

2. Instructions to the Registrar of the GC

The parties must furthermore take into consideration the “Instructions to the 17 Registrar of the General Court”, which have been updated in March 2012²⁰. Despite what their name suggests, these instructions contain a number of procedural rules which are **directly relevant to parties**. Given their great practical relevance, these instructions are referenced throughout this part of the commentary whenever appropriate.

¹⁴ Art. 76 a RP GC.

¹⁵ Art. 144 RP GC.

¹⁶ See the comments on Art. 76 a RP GC.

¹⁷ Based on Art. 150 RP GC.

¹⁸ OJ EU L 68 of 7.3.2012 p. 23 et seq., and the corrigendum in OJ EU L 73 of 13.3.2012, p. 23.

¹⁹ A consolidated version is published on the Courts website.

²⁰ Based on Art. 23 Statute ECJ.

3. Other sources of information

- 18 Recently, the GC has published a number of practical guides designed to illustrate practical aspects of its written and oral procedure²¹, as the CST had done some time earlier. At present there are guides covering subjects such as the “aide mémoire” regarding an application, the “model summary of the pleas in law and main arguments relied on in the application”, the “aide-mémoire: hearing of oral argument”, and the “advice to Counsel appearing before the Court”.

VI. Important public databases

1. The ECJ’s website

- 19 This website²² provides easy access to the various substantive and procedural provisions of primary and secondary law, which are relevant for judicial proceedings at the three judicial instances of the EU. One can also find ECJ case law, the annual reports, etc. all published in the official languages of the EU on this website. Access to these public documents in general and the ECJ’s website in particular have been considerably improved over the years whilst in the old days access, e.g. to databases such as “Celex”, were a rather costly matter.

2. Important links

- 20 The ECJ’s website also provides links to a number of important databases:

a) “Eur-Lex”

This very comprehensive database provides access to EU legislation and case-law.

b) “Digest of the case law”

- 21 This is a most useful **source of information**. It provides extracts of case law which are categorized according to the various areas of law and various sub-areas. Regrettably, it is currently only available in **French**, the working language of the EU courts, but includes links to the full text of judgments in other languages, when available.

²¹ www.curia.europa.eu.

²² www.curia.europa.eu.

VII. The Civil Service Tribunal (CST)

1. Own set of procedural rules

The “Civil Service Tribunal of the EU”²³ was created in 2005, thus at a rather late 22 stage in the institution’s development²⁴, in order to relieve the GC’s²⁵ (and indirectly the ECJ’s) case load. The CST has its own rules of procedure (RP CST), which came into force on 1.11.2007²⁶. These RP CST implement the framework provisions in **Art. 1 to 13 of Annex 1** of the **Statute ECJ** and are, like the RP GC, complemented by a number of further rules such as the “Instructions to the Registrar of the Civil Service Tribunal” and the “Practice directions to parties on judicial proceedings before the Civil Service Tribunal”.

2. Specificities

On the whole, the RP CST are identical to the RP GC. Nevertheless, they **differ** 23 **substantially** in a number of circumstances, e.g. as regards the length of certain time-limits, certain procedural organizational measures, etc. In view of these similarities and differences, this book does not contain a separate chapter on the RP CST but instead addresses the most **notable specificities** of CST procedural law and its difference to GC procedural law in the context of each related provision of the RP GC.

VIII. Interpretation

1. Hierarchy of norms

The RP GC must be applied and interpreted in light of the primary law, i.e. the 24 TFEU and in particular the articles in the Statute ECJ which are implemented by the RP GC. Furthermore, one must take due account of the written und unwritten **general principles of law**²⁷, of the ECHR²⁸ and the **Charter of Fundamental Rights of the EU**, which includes the right to effective judicial protection²⁹.

2. Interpretation. a) Autonomous interpretation. Since the RP GC (as well as the 25 Statute ECJ) are part of the EU legal order they need to be interpreted without any

²³ See overview by *Hakenberg*, EuZW 2006, 391 et seq.

²⁴ Nevertheless, initial plans to create such a Court date back to the 1970 s.

²⁵ *Lavranos*, ELR 2005, 262.

²⁶ www.curia.europa.eu.

²⁷ Such as e.g. the principle of legal certainty.

²⁸ In particular Art. 6 and 13, concerning the right to a fair trial thereof, see e.g. *Joined Cases T-117/07 and T-121/07, Areva and Alstom v Commission* [2011] (not yet published in the ECR), para. 224.

²⁹ Case T-181/08, *Tay Za v Council* [2010] ECR p. II-0000, para. 141 and the case law cited.

reference to any **national law**³⁰ or **legal systems**³¹, regardless of their degree of resemblance to said national provisions, **unless** there is an express provision to that effect³².

- 26 **b) Binding rules. aa) For the parties.** It is equally within their very nature that these Rules of Procedure are binding³³ and that the parties may only invoke those rules which are **explicitly** laid down in a legislative provision³⁴. They may also only make use of those **legal remedies** which are explicitly provided in primary law³⁵ or the RP GC. Furthermore, no party is permitted to circumvent the rules contained in a provision of the RP GC by artificially making it subject to other rules contained in the Rules of Procedure³⁶.

bb) For the Judges

- 27 While it is clear that Judges are also bound by the RP GC they may and indeed must take account of the **principle of good administration**, meaning that there is no need for them to be unnecessarily formalistic in the application of these Rules. They may thus, e.g. reject an application as unfounded, without there being a need to first assess its admissibility³⁷.

IX. Headings and numbering of paragraphs

- 28 Even though the RP GC are subdivided into “Titles”, “Chapters” and “Sections”, they are still not very user-friendly, since in the official version of the RP GC none of the 151 articles carries an individual heading or keyword indicating the contents of the respective article by contrast to the provisions in the RP ECJ.
- 29 Also, the paragraphs of the individual articles are not always numbered, and there is no numbering whatsoever with respect to the sometimes numerous sub-paragraphs.
- 30 Thus, all 151 articles of the RP GC commented hereafter carry a (non-official) **heading** and the individual paragraph, sub-paragraph and individual sentences are **numbered**.

³⁰ Case T- 79/99, *Euro-Lex v OHIM* [1999] ECR p. II-3555, para. 26.

³¹ Case T-2/09, *Internationale Fruchtimport Gesellschaft Weichert v Commission* [2009] (not published in the ECR), para. 22 and the case-law cited (confirmed on appeal).

³² Case T-98/10, *Franssons Verkstäder v OHIM* [2010] (not published in the ECR), para. 11.

³³ Case T-422/03 R II, *Enviro Tech Europe A. O. v Commission* [2004] ECR p. II-2003, para. 45.

³⁴ Case T-1/90, *Pérez-Mingueaz Casariego v Commission* [1991] ECR p. II-143, para. 43.

³⁵ Case T-28/03, *Holcim v Commission* [2005] ECR p. II-1357, para. 31.

³⁶ Case T-310/03 R, *Kreuzer Medien v Parliament and Council* [2004] ECR p. II-3243, para. 18.

³⁷ Case F-54/10, *Verheyden v Commission* [2011] (not yet published in the ECR), para. 31; F-45/10, *AO v Commission* [2011] (not yet published in the ECR), para. 34.

INTERPRETATION

Article 1 [Terminology]

Throughout these Rules:

- provisions of the Treaty on the Functioning of the European Union are referred to by the number of the article concerned followed by “TFEU”;
 - provisions of the Treaty establishing the European Atomic Energy Community are referred to by the number of article followed by “TEAEC”;
 - ‘Statute’ means the Protocol on the Statute of the Court of Justice of the European Union;
 - ‘EEA Agreement’ means the Agreement on the European Economic Area.
- For the purposes of these Rules:
- ‘institution’ or ‘institutions’ means the institutions of the Union and the bodies, offices and agencies established by the Treaties, or by an act adopted in implementation thereof, and which may be parties before the General Court;
 - ‘EFTA Surveillance Authority’ means the surveillance authority referred to in the EEA Agreement.

Article 1 is not a procedural rule in the traditional sense, but rather a list of 1
abbreviations and **definitions** inserted for the purpose of the subsequent procedural rules. As the various EU Treaties have been ratified, these acronyms have changed a number of times, as have the numbering of the provisions of primary law. By contrast, there were no dramatic changes to the numbering of the Statute ECJ and the Rules of Procedure of the three EU Courts (with the exception of the new RP ECJ), even though those provisions have also evolved over the recent years.

The “institutions” are defined in Article 13 TEU, while the number of EU bodies 2
 which may act as parties in proceedings before the GC remains rather undefined. Such permitted bodies include not only the European Investment Bank and the European Central Bank, but also the many specialized agencies and other decentralized EU bodies established in the Member States.

TITLE I ORGANISATION OF THE GENERAL COURT

CHAPTER 1 PRESIDENT AND MEMBERS OF THE GENERAL COURT

Preliminary

Title 1 of the RP GC, which includes Articles 2 to 42, essentially concerns the internal organization, i.e. the “**inner life**” of the GC. A number of these provisions are, however, also relevant for the **parties**, as demonstrated by e.g. the rules on the

allocation of cases to the chambers³⁸, on the language of the proceedings³⁹, and on the rights and obligations of agents, advisers and lawyers⁴⁰.

Article 2 [Judges and Advocates-General]

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

Members of the General Court are hereinafter referred to as ‘Judges’.

2. Every Judge, with the exception of the President, may, in the circumstances specified in Articles 17 to 19, perform the function of Advocate General in a particular case.

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

I. Judge (paragraph 1)

- 1 The GC comprises 27 Judges, pending the adoption of the proposed increase to 39 Judges, which has been postponed to 2013. During their term of office, the Judges of the ECJ and the CST always, exclusively perform the function of Judge⁴¹, while the Judges at the GC perform that function only “as a rule”. This is because under paragraph 2 a Judge at the GC may be called upon to perform, on an *ad hoc* basis, the function of Advocate General.

II. Function as Advocate General (paragraph 2)

1. Definition

- 2 While the ECJ is assisted by eight nominated Advocates-General⁴², the GC neither has Advocates-General of its own, nor may “borrow” them from the ECJ. It may, however⁴³ bestow the function of Advocate-General upon one of its Judges on a **temporary basis**, as provided in Articles 17 to 19 RP GC. While exercising this function the Judge keeps his status as magistrate, but may, of course, not take part in the deliberations of the case in which he serves as Advocate-General⁴⁴.

³⁸ Art. 10–11 RP GC.

³⁹ Art. 35–37 RP GC.

⁴⁰ Art. 38–42 RP GC.

⁴¹ Which is why the RP ECJ and RP CST do not contain a provision equivalent to that of Art. 2 RP GC.

⁴² Art. 252 TFEU.

⁴³ Art. 254 (1), 2nd sentence TFEU, Art. 49 Statute ECJ and Art. 2 (2) RP GC.

⁴⁴ Art. 49 (4) Statute ECJ.

2. Obsolete provision

In the early 1990s the GC made occasional use of this provision⁴⁵ but has not 3 used it since. This is unlikely to change in the future, given the often factual nature of proceedings at the GC as well as its high burden of work.

3. Application by the parties

Only the GC may decide whether it entrusts a Judge with the function of 4 Advocate-General. Although a party may apply for such a measure, its application has little or no chance of success.

Article 3 [Term in office]

The term of office of a Judge shall begin on the date laid down in his instrument of appointment. In the absence of any provision regarding the date, the term shall begin on the date of the instrument.

1. General

In the case of international and supranational jurisdictions⁴⁶, the judicial term of 1 is always **limited**. This is likewise the case in all three EU judicial instances, unlike the life mandate of judges which exists in some Member States.

2. Beginning of the term

Each Judge's term of office does not begin with his selection by his Member State, 2 but instead begins at the point at which they are officially appointed as Judges, i.e. when the document detailing the mutual consent of the Governments of the Member States⁴⁷ regarding the appointment of said Judge has been signed.

Article 4 [Taking the oath]

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

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

2. Immediately after taking the oath, a Judge shall sign a declaration by which he solemnly undertakes that, both during and after his term of office, he will respect the obligations arising therefrom, and in particular the duty to behave

⁴⁵ A rare example is Case T-1/89, *Rhône Poulenc v Commission* [1991] ECR p. II-867.

⁴⁶ See e.g. Art. 2 RP European Court for Human Rights.

⁴⁷ Art. 253 (1) TFEU regarding the ECJ and Art. 254 (1) TFEU in the case of the GC. By contrast the Judges of the CST are appointed by the Council, see Art. 3 of the Annex of the Statute ECJ.

with integrity and discretion as regards the acceptance, after he has ceased to hold office, of certain appointments and benefits.

I. General

- 1 At the ECJ the Judges take the oath during the first public sitting, while the Judges at the GC take their oath – which is the same for all EU courts – not before the GC, but **before the ECJ**. Such details illustrate the hierarchy between the ECJ and the GC.

II. The oath (paragraph 1)

- 2 Somewhat surprisingly, the oath does not refer explicitly to EU law. It does so only indirectly, since the “duty” of the Judges consists of ensuring “*that in the interpretation and application of the Treaties the law is observed*”.⁴⁸
- 3 The oath does not include the option of a religious affirmation (i.e., “so help me God”), unlike the possibility provided in the laws of some Member States. This may have to do with the principle of the separation between the church and the state⁴⁹. While there are thus good reasons for not making such formula an integral part of the oath, the absence of any such option limits Judges’ own individual choice.

III. Solemn declaration (paragraph 2)

- 4 § 2 provides a number of additional obligations, which are equally important and yet not specific enough to be incorporated into the oath. They are therefore included in a “solemn declaration” that the Judge needs to sign⁵⁰. While these additional obligations are similar to those applicable to officials and temporary agents, the Judges are not subject to the Statute of the officials of the EU.

Article 5 [Revocation]

1. When the Court of Justice is called upon 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 closed session and in the absence of the Registrar.

⁴⁸ See Art. 19 (1) TEU.

⁴⁹ The Treaty on the European Constitution also did not contain any reference to God, which at the time became a political issue for some Member States, see *B. Wägenbaur*, EuZW 2003, p. 609.

⁵⁰ See also the “Code of Conduct” applying to the Judges of all three EU Jurisdictions, OJ EU C 223 of 22.9.2007, p. 1 et seq.

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 of the General Court. In that event, particulars of the voting shall be communicated to the Court of Justice.

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

Outline:

I. General	1
II. Procedure	2
1. Jurisdiction	2
2. Vote	3
a) GC	3
b) ECJ	4
3. Right to be heard	5
4. Judicial protection	6
a) No judicial clause	6
b) Procedural aspects	7

I. General

This provision implements **Article 6 Statute ECJ** by laying down the procedural 1 rules governing a revocation. To date, such a measure, which may be equivalent depending on the circumstances to a retirement for reasons of invalidity or due to a disciplinary measure, has never been applied.

II. Procedure

1. Jurisdiction

While the Member States appoint the Judges at the GC by mutual agreement⁵¹, 2 they have no jurisdiction for a removal, i.e. the *actus contrarius* of an appointment. This is a matter for the ECJ, i.e. the judicial instance above the GC, to resolve.

2. **Vote.** a) GC. In matters of revocation of one of its Judges, the GC has a purely 3 advisory function, in order to rule out any situation of **conflict of interest**. The GC thus provides the ECJ with a reasoned opinion, requiring only a simple majority vote.

⁵¹ Art. 254 (2) TFEU.

b) ECJ

- 4 A removal requires a **unanimous** decision of the ECJ, i.e. of all its Judges⁵² and Advocates-general⁵³. It would seem that only such maximum consensus would bestow upon a removal decision the required degree of authority acceptable to the Member States. That said, since a unanimous vote requires a consensus of currently 35 persons, i.e. 27 Judges and 8 Advocates-General, it may only be reached in very serious, clear-cut cases. In any event, the Judge concerned may always prevent a formal removal by resigning.

3. Right to be heard

- 5 In view of the **rights of defence**, it seems questionable that the Judge concerned should be heard only by the GC, which has a purely advisory role in these proceedings⁵⁴, and not by the ECJ, which is the instance responsible for the actual removal procedure⁵⁵.

- 6 **4. Judicial protection.** a) **No judicial clause.** Furthermore, there is no specific provision concerning the judicial protection of a Judge in danger of removal or having been removed. This raises a question-mark given both the requirements laid down in Art. 6 ECHR and the significance of the decision in question. While it is true that the requirement of a unanimous opinion of the Judges and Advocates-General of the Court of Justice (Art. 6 Statute ECJ) provides a decision of removal with a high degree of authority which is in line with the gravity of the measure, this does not justify the **absence** of a clause granting judicial protection.

b) Procedural aspects

- 7 The procedural aspects of such judicial protection, assuming it would be unwritten, also remain unclear, since the ECJ and the GC seem to be excluded for reasons of bias, while the jurisdiction of the CST is excluded due to its status as a court of first instance for the GC as an appellate court, and since its jurisdiction is limited to officials and temporary agents.

Article 6 [Order of seniority]

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

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

Retiring Judges who are reappointed shall retain their former precedence.

⁵² Currently there are 27 Judges.

⁵³ Currently there are 8 Advocates-General.

⁵⁴ Art. 5 (1) RP GC.

⁵⁵ By contrast to the case of a revocation of the Registrar, see Art. 20 (6) RP GC.

In contrast to **Article 7 RP ECJ**, this provision refers explicitly to the President 1 and the President of the Chambers of the GC. The “ranking” does not only exist for reasons of protocol, but also has a legal bearing, e.g. regarding the appointment of the deputy of the President⁵⁶, as well as judicial participation in deliberations⁵⁷.

That said, any Judge has the same rights as his colleagues, regardless of his 2 “ranking”, concerning e.g. being appointed as Judge Rapporteur⁵⁸, or the right to pose questions at the oral hearing⁵⁹.

Article 7 [Election of the President]

1. The Judges shall, immediately after the partial replacement provided for in 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 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 Court shall be elected. If no Judge obtains that majority, further ballots shall be held until that majority is attained.

This provision, which has been adapted a number of times to reflect the evolving primary law, is the same as the one which applies to the ECJ. The Presidential mandate, i.e. **three years**, is half as long as a Judge’s term of office. The first President of the GC, then the CFI, was nominated by the governments of the Member States, while the subsequent presidents have been elected by the Judges.

Article 8 [Powers of the President]

1. The President of the General Court shall direct the judicial business and the administration of the General Court. He shall preside at plenary sittings and deliberations.

2. The President of the General Court shall preside over the Grand Chamber.

3. If the President of the General Court is assigned to a Chamber of three or of five Judges, he shall preside over that Chamber.

The President of the GC (not to be confused with the President of a given Chamber) has a broad variety of obligations, both in the area of management and the various legal remedies and proceedings. Since 2003 he is *de jure* the chairman of the Grand Chamber, and of each Chamber of three or five judges, to which he is assigned.

⁵⁶ Art. 9 RP GC.

⁵⁷ Art. 32 (1) 1st sub-paragraph RP GC.

⁵⁸ Art. 32 (1) 1st sub-paragraph RP GC.

⁵⁹ Art. 58 (2) RP GC.

Article 9 [Substitute of the President]

1. When the President of the General Court is absent or prevented from attending or when the office of President is vacant, the functions of President shall be exercised by a President of a Chamber according to the order of precedence laid down in Article 6.

2. If the President of the General Court and the Presidents of the Chambers are all absent or prevented from attending at the same time, or their posts are vacant at the same time, the functions of President shall be exercised by one of the other Judges according to the order of precedence laid down in Article 6.

- 1 These rules determining the deputy of the President clearly demonstrate that neither the GC nor the CST have a Vice-President. In the case of the ECJ this has now changed since **Art. 9a** Statute ECJ creates the function of a **Vice-President** of the ECJ. That said, there is an obvious need for a provision designating the person representing the President, when he is absent or otherwise prevented from attending proceedings or from completing other official duties.
- 2 Though the President of the GC may clearly sometimes be absent or otherwise prevented from attending (see paragraph 1), the situation assumed in the second paragraph, i.e. a simultaneous absence of the President of the GC and all Presidents of Chambers, is extremely rare.

CHAPTER 2

CONSTITUTION OF THE CHAMBERS AND DESIGNATION OF JUDGE-RAPPORTEURS AND ADVOCATES GENERAL

Article 10 [Chambers]

1. The General Court shall set up Chambers of three and of five Judges and a Grand Chamber of thirteen Judges and shall decide which Judges shall be attached to them.

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

I. Uneven number of Judges (paragraph 1)

1. Purpose

- 1 All chambers of the GC include an uneven number of Judges, as is the case in the ECJ, the CST and Member States, to facilitate voting and avoid a tie.
- 2 **2. Number of Chambers.** a) **Chambers.** Currently there are **eight Chambers** of three Judges at the GC, as well as **eight enlarged Chambers**, each comprised of five Judges, it being understood that more than three or five Judges are assigned to each

of these Chambers and enlarged Chambers. Each Judge participates in both a Chamber of three and a chamber of five Judges, except the President of the GC, who is also the *de lege* President of a Chamber⁶⁰, traditionally the first Chamber.

b) Grand chamber

The number of Judges who are considered members of the Grand Chamber⁶¹ has 3 increased from eleven to **thirteen** due to the enlargement of the EU in 2004, while at the same time the number of Judges at the GC has increased from fifteen to twenty-five, which has risen to twenty-seven in the meantime.

II. Publication (paragraph 2)

The composition of the Chambers and the names of the Chamber Presidents are 4 published each year in the Official Journal of the EU⁶². Judicial nominations and ends of terms in office are likewise published in this Journal, while this might not apply to the case of a removal of a judge.

Article 11 [Competence of the Chambers]

1. Cases before the General Court shall be heard by Chambers composed of three or of five Judges in accordance with Article 10.

Cases may be heard by the General Court sitting in plenary session or by the Grand Chamber under the conditions laid down in Articles 14, 51, 106, 118, 124, 127 and 129.

Cases may be heard by a single Judge where they are delegated to him under the conditions specified in Articles 14 and 51 or assigned to him pursuant to Articles 124, 127(1) or 129(2).

2. In cases coming before a Chamber, the term ‘General Court’ in these Rules shall designate that Chamber. In cases delegated or assigned to a single Judge the term ‘General Court’ in these Rules shall designate that Judge.

I. The various formations

1. Chambers and other formations

The vast majority of incoming cases are heard by Chambers of three⁶³ or, far less 1 frequently, five⁶⁴ Judges. They are only very rarely by the Grand Chamber⁶⁵. The

⁶⁰ Art. 8 (3) RP GC.

⁶¹ This formation was created in 2003.

⁶² In the “C”-series.

⁶³ 84.59 % in 2011 (80.17 % in 2006).

⁶⁴ 3.50 % in 2011 (11.37 % in 2006).

⁶⁵ None in 2011 (0.19 % in 2006).

GC hardly ever sits in **full Court**⁶⁶, in contrast to the CST, which heard 2 cases in full Court in 2006. One must consider this statistic in context, however: the CST's Full Court consists of seven Judges, while the GC's Full Court consists of 27 Judges, pending the adoption of the proposed increase by 12 Judges.

2. Single Judge

- 2 In 1999, in order to decrease the workload while increasing the efficiency of the GC, the legislature provided⁶⁷ for the possibility of a trial by a **single Judge**⁶⁸. This measure was inspired by the high number of staff cases, which now come under the jurisdiction of the CST. However, little use was made of this possibility⁶⁹, which might be due to the restrictive conditions set out in Art. 14 (2) RP GC.

II. No subjective right of the parties

- 3 The parties to a dispute are not **eligible** for assignment to a given Chamber or to a formation of a certain size and composition. That said, there is nothing to prevent a party from **suggesting** or even requesting a chamber assignment if they believe they have objective reasons for doing so even though the chances of such application being successful are slim.

Article 12 [Criteria of allocation]

1. The General Court shall lay down criteria by which cases are to be allocated among the Chambers.

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

I. Criteria for allocation (paragraph 1)

- 1 Pursuant to Art. 50 (2) Statute ECJ the assignment of cases is governed by the RP GC. Until 1994, new cases were usually assigned to a Chamber of five Judges, while staff cases were heard by Chambers comprising three Judges. Since then case allocation has become more flexible in that the GC defines criteria for allocation of the cases, which reflects the substantial enlargement of its jurisdiction.
- 2 The GC has consistently refused to create Chambers **specializing** in certain areas of EU law. This is largely due to the fact that such division of legal labour would risk **compartmentalization** within the same judicial instance, and might subsequently produce rival, contradictory bodies of jurisprudence.

⁶⁶ None in 2011.

⁶⁷ Art. 14 (2) RP GC.

⁶⁸ *Nota bene*: There is no single Judge at the ECJ.

⁶⁹ In 2011 no cases completed by the GC were heard by a Single Judge.

II. Publication in the Official Journal (paragraph 2)

The GC regularly publishes its “Criteria for assigning cases to Chambers” on the 3 web-site of the ECJ⁷⁰. It has also decided⁷¹ that an **appeals chamber** will hear appeals against the decisions of the CST, notwithstanding Art. 14 and 51 RP GC. This appeals chamber consists of the President of the GC (who is also the President of the First Chamber) as well as the Presidents of the Second, Third, Fourth and Fifth enlarged Chambers. In contrast, Art 14 (2) RP GC predetermines the criteria for assigning cases to a **single Judge**, who is not considered a Chamber within the meaning of Article 12 RP GC; decisions on such assignments are therefore not in the hands of the GC.

Article 13 [Assignment, Judge-Rapporteur]

- 1. As soon as the application initiating proceedings has been lodged, the President of the General Court shall assign the case to one of the Chambers.
- 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.

Outline:

I. General	1
II. Assignment (paragraph 1)	2
1. Assignment.....	2
2. Reassignment	3
III. Designation of the Judge-Rapporteur (paragraph 2).....	4
IV. No role for the parties	6

I. General

Art. 13 and 14 RP GC and the “Criteria for assigning cases to Chambers,”⁷² 1 provide important parameters for the division of labour among the Judges. The President of the GC has a margin of discretion in this respect.

II. Assignment (paragraph 1)

1. Assignment

The President of the GC does not only assign “applications initiating proceed- 2 ings” but also any other written submission initiating proceedings such as applica-

⁷⁰ www.curia.europa.eu.
⁷¹ www.curia.europa.eu.
⁷² Art. 12 RP GC.

tions for legal aid or taxation of costs to a Chamber. The specific Chamber selection is based on the internal rules of the GC⁷³ according to the order in which the cases become pending. However, the President may make an exception, e.g. in case of connected cases, or to ensure a more equal distribution of work.

2. Reassignment

- 3 While the RP GC contain rules governing a referral to a Chamber composed of a different number of Judges, the Grand Chamber etc. (Art. 14 RP GC), it does not explicitly address reassigning a case to a different Chamber composed of the same number of Judges. The “**Criteria for assigning cases to Chambers**” merely govern the **initial** assignment, i.e. when the case is first referred to a given Chamber, and it is in this context that they provide the possibility to derogate from the rotas “on the ground that cases are related or with a view to ensuring an even spread of the workload”. This does not mean, however, that Art. 13 (1) RP GC rules out a subsequent reassignment to a Chamber with the same number of Judges as the initial Chamber provided there are **objective reasons** for doing so. Both assignment and reassignment are the expression of the GC’s **capacity to organize itself**, whilst taking due account of the principle of good administration of justice. The ECJ and the CST possess the same implied powers. Objective reasons for reassigning a given case might include changes within the initial chamber due to e.g. a member being elected President of another Chamber, etc., meaning that arbitrary reasons relating to e.g. nationality, language, etc. are obviously excluded.

III. Designation of the Judge-Rapporteur (paragraph 2)

- 4 Once the case is assigned to a Chamber, the President of the GC, acting on the proposal of the Chamber president, will designate a member of the formation as “**Judge-Rapporteur**”. The member of the formation of Judges who has been given this *ad hoc* function plays an important role⁷⁴, since he is in charge of drafting the **preliminary report**⁷⁵ and the **report for the hearing**. If there is an oral hearing, the Judge-Rapporteur will, in many instances, pose more questions to the parties than the other members of the formation.
- 5 If the Rapporteur is later assigned to a different Chamber, the case is assigned to that new Chamber⁷⁶, and it may also happen that a new Rapporteur is then appointed⁷⁷.

⁷³ Art. 12 RP GC.

⁷⁴ *Lenaerts*, CDE 2000, 323, 348.

⁷⁵ Art. 52 (1) RP GC.

⁷⁶ Case T-26/99, *Trabisco v Commission* [2001] ECR p. II-633, 639.

⁷⁷ Case T-87/96, *Assicurazioni Generali A. O. v Commission* [1999] ECR p. II-203, 216.

IV. No role for the parties

The decision to assign a case to a chamber and to designate the Judge-Rapporteur 6 is adopted in the context of measures of administration of justice. The parties are thus not to make written comments concerning chamber and assignment and Judge-Rapporteur designation, notwithstanding a case of bias (Art. 18 Statute ECJ)⁷⁸. But parties may request a referral to a different formation of Judges (Art. 14 (1) and 51 (1) RP GC).

Article 14 [Plenary session, Grand Chamber and Chambers]

1. Whenever the legal difficulty or the importance of the case or special circumstances so justify, a case may be referred to the General Court sitting in plenary session, to the Grand Chamber or to a Chamber composed of a different number of Judges.

2. (1) The following cases assigned to a Chamber composed of 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 Article 51:

- (a) cases brought pursuant to Article 270 TFEU;
- (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 a 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;
- (c) in the cases referred to in Article 130(1).

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

3. The decisions to refer or to delegate a case which are provided for in paragraphs 1 and 2 shall be taken under the conditions laid down in Article 51.

⁷⁸ Case T-213/08 REV, *Marinova v Commission and Université Libre de Bruxelles* [2009] (not published in the ECR), para. 29.

Outline:

I. Referral (paragraph 1)	1
1. General.....	1
a) Legal difficulty	2
b) Importance of the case	3
c) Special circumstances	4
d) Smaller formation	4
2. Request for a referral	5
a) General.....	5
b) Reasoned request	6
3. Staff cases.....	7
II. Delegation to a single Judge (paragraph 2)	8
1. General.....	8
2. Conditions.....	9
a) Overview	9
b) Chamber of three Judges	10
c) Characteristics of the case.....	11
3. Exclusion	12
a) Acts of general application.....	13
b) Competition cases, etc.	14
c) Intellectual property rights.....	15
4. Statistics.....	16
5. Civil Service Tribunal.....	17
III. Procedure (paragraph 3)	18

I. Referral (paragraph 1)

1. General

- 1 The GC may disregard the “Criteria for assigning cases to Chambers”⁷⁹ and refer a given case to a formation with a larger number of judges if the proceedings turn out to be **particularly difficult** from a legal point of view or important or in case of “special circumstances”.

a) Legal difficulty

- 2 While over the past five decades a number of areas of EU law have become increasingly complex, due to new EU capabilities and powers, novel legal concepts and principles, etc., most cases are now heard by Chambers of three or, to a far lesser extent, five Judges. A referral to the Grand Chamber is very rare, and the involvement of the plenary session remains theoretical and thus virtually non-existent. Formally, a case whose difficulty arises from matters of fact rather than matters of law does not qualify under this heading (see 2 b) hereafter).

b) Importance of the case

- 3 It would seem that this rather broad term covers both cases which are important to the parties, and, *a fortiori*, cases which are important to the evolution of EU law and/or to an undetermined number of natural persons and/or economic operators.

⁷⁹ Art. 12 RP GC.

c) Special circumstances

This general clause remains undefined and provides the GC with broad discretionary power.

d) Smaller formation

Neither the wording nor the purpose of this provision seems to exclude a referral to a smaller formation (“different number”) of Judges⁸⁰.

2. Request for a referral. a) General. Art. 14 (1) is further explicated by Art. 51 (1) RP GC, which states that referral to a different formation of Judges may take place either *ex officio* or at the request of a party to the proceedings. The latter may only request a referral to a formation comprised of a higher number of Judges.

b) Reasoned request

Requests for referrals must be **thoroughly reasoned**, and the decision is left within the GC’s discretion⁸¹. Thus, no party is entitled to a referral to a given Chamber⁸². Furthermore, the parties should consider that cases which tend to be **factually complex**, such as competition or state aid cases, usually do not lend themselves to a referral to a large formation, e.g. the Grand Chamber. It is no coincidence that Art. 14 (1) RP GC refers to the “**legal difficulty**” of a case⁸³. It is worth noting that the GC quickly abandoned its practice of referring major competition cases to the full Court⁸⁴. A referral to another formation of Judges is much more common⁸⁵.

3. Staff cases

When the GC still had jurisdiction at first instance over staff cases, a referral to a Chamber of five Judges remained an exception in staff cases⁸⁶. The GC’s plenary session has never dealt with staff cases⁸⁷, in contrast to the staff-focused CST, which comprises far less judges.

⁸⁰ Case C-437/98 P, *Infrisa v Commission* [1999] ECR p. I-7145, point 4 of summary.

⁸¹ Case T-47/92, *Lenz v Commission* [1992] ECR p. II-2523, para. 31; Case T-387/00, *Comitato organizzatore del convegno internazionale v Commission* [2002] ECR p. II-3031, para. 22.

⁸² Joined Cases T-479/93 and T-559/93, *Bernardi v Commission* [1991] ECR p. II-1115, para. 19.

⁸³ An thus not to the “factual complexity”, such as e.g. Art. 18 RP GC.

⁸⁴ Case T-51/89, *Tetra Pak v Commission* [1990] ECR p. II-309, 352; Case T-24/00, *Automec v Commission* [1992] ECR p. II-2223, 2257; Case T-28/90, *Asia Motor France v Commission* [1992] ECR p. II-2285, 2294.

⁸⁵ Case T-398/94, *Kahn Scheepvaart v Commission* [1996] ECR p. II-477, paragraph 10.

⁸⁶ But see Case T-307/00, *C v Commission* [2003] ECR SC p. II-221, paragraph 12 as well as the particularly pedagogical Judgment in Case T-311/04, *Buendia Sierra v Commission* [2006] ECR p. II-4137.

⁸⁷ See e.g. Case T-447/93, *Hogan v Commission* [1995] ECR p. II-703, 713.

II. Delegation to a single Judge (paragraph 2)

1. General

8 This provision, which is rather long in light of its **reduced practical significance**⁸⁸, lays down the conditions for delegating a case to a single Judge, a judicial formation which exists since 1999 at the GC (and is also provided for in the RP CST⁸⁹), but which **does not exist at the ECJ**. The procedural conditions for this formation are laid down in Art. 51 (2) RP GC. Any Judge of the GC may be entrusted with the function of single Judge.

9 **2. Conditions. a) Overview.** The conditions for delegating a case to a single Judge are very **restrictive**. It would seem that while the legislature was keen to reduce the GC's workload by creating this additional formation, it did not want to so at any price, let alone at the price of too many (successful) appeals to the ECJ, as this would have increased the workload of the latter and thereby called into question the creation of the formation of single Judge.

b) Chamber of three Judges

10 Only cases which were initially assigned to a Chamber of three Judges qualify for a referral to a single Judge.

c) Characteristics of the case

11 A case qualifies for a decision by a single Judge only if there is a “**lack of difficulty of the questions of law or fact raised**”, if the importance of the case is limited, and in the absence of other special circumstances. It would seem that these three conditions are **cumulative**, which is bound to considerably limit the number of cases suitable for being heard by a single Judge.

3. Exclusion

12 § 2 sub-paragraph 2 lists the areas of law and categories of cases which may **not be assigned** to a single Judge.

a) Acts of general application

13 The criteria in (a), i.e. “cases which raise issues as to the legality of an act of general application” is interpreted **extensively**, since it is sufficient that it is about an act of “general application” within an institution⁹⁰.

⁸⁸ Indicate % of cases heard by single Judge.

⁸⁹ Art. 4 (2) Annex of the Statute ECJ.

⁹⁰ Case C-171/00 P, *Libéros v Commission* [2002] ECR p. I-451, paras. 35–36.

b) Competition cases, etc.

The four categories of cases listed in lit. (b) tend to be the very opposite of a “lack 14 of difficulty of the questions of law or fact raised” or of “limited importance” within the meaning of Art. 14 (2) RP GC.

c) Intellectual property rights

The cases referred to in Art. 130 (1) RP GC, as mentioned in lit. (c) are a further 15 example of cases which tend to be both complex and important. Such cases are not only unsuitable to be delegated to a single Judge, but also raise the question as to whether or not they should be heard by a **specialized Tribunal**, in order to reduce the GC’s currently very high workload.

4. Statistics

In practice, the GC has made **little use** of the possibility to delegate a case to a 16 single Judge⁹¹. Such delegation mainly took place in staff matters⁹², and to some extent in cases involving agriculture⁹³ and proceedings involving an arbitration clause⁹⁴. So far, no cases have been referred back to the Chamber (see paragraph 2 (3) RP GC).

5. Civil Service Tribunal

Even though the RP CST provides for the possibility of delegating a case to a 17 single Judge, this remains an exception⁹⁵. This may have to do with the fact that nowadays staff cases tend to be more complex than they previously were.

III. Procedure (paragraph 3)

The delegation to a single Judge is made in accordance with Art. 51 RP GC. 18

Article 15 [Electing the President of the Chamber]

1. The Judges shall elect from amongst themselves, pursuant to the provisions of Article 7(3), the Presidents of the Chambers composed of three and of five Judges.

2. The Presidents of Chambers of five Judges shall be elected for a term of three years. Their term of office shall be renewable once.

⁹¹ 0,57 % of all cases completed in 2010 were heard by a single Judge, none in 2011.

⁹² The first case to be heard by a single Judge as Case T-180/98, *Cotrim v CEDEFOP* [1999] ECR SC p. II-1077, para. 20; see also Case T-53/99, *Progoulis v Commission* [1999] ECR p. II-1249, para. 13.

⁹³ Case T-429/93, *Héritiers d'Edmond Ropars v Commission* [2000] ECR p. II-2439, para. 28.

⁹⁴ Case T-68/99, *Toditec v Commission* [2001] ECR p. II-1443.

⁹⁵ 0,78 % of all cases in 2010, none in 2011.

The election of the Presidents of Chambers of five Judges shall take place immediately after the election of the President of the Court of First Instance as provided for in Article 7(1).

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

4. If the office of the President of a Chamber falls vacant before the normal date of expiry thereof, a successor shall be elected as President of the Chamber for the remainder of the term.

5. The results of those elections shall be published in the *Official Journal of the European Union*.

I. General

- 1 This **purely internal rule** is similar to the one applicable to the ECJ⁹⁶. The Presidents of the Chambers of three or five Judges are **elected** by the Judges, and thus not appointed by the President of the GC⁹⁷. The President of the GC is *de lege* the President of the Grand Chamber⁹⁸.

II. Number of terms

- 2 The number of terms of office is limited to **two**⁹⁹. In the case of the Chambers of five Judges¹⁰⁰, the term of office is limited to three years, which allows for some rotation and provides each Judge with an opportunity to become President of Chamber. The results of the judicial elections are **published** in the Official Journal of the EU¹⁰¹ and on the webpage of the ECJ¹⁰².

III. Powers

- 3 Under the RP the Presidents of the Chambers have a number of decision-making¹⁰³ and participation powers¹⁰⁴.

Article 16 [Powers of the President of a Chamber]

1. In cases coming before a Chamber the powers of the President shall be exercised by the President of the Chamber.

⁹⁶ Art. 12 RP ECJ.

⁹⁷ As is the case with respect to the Judge-Rapporteur, see Art. 13 (2) RP GC.

⁹⁸ Art. 8 (2) RP GC.

⁹⁹ Art. 15 (2) 2nd sentence RP GC.

¹⁰⁰ Art. 15 (2) 1st sentence RP GC.

¹⁰¹ Art. 15 (4) RP GC.

¹⁰² www.curia.europa.eu.

¹⁰³ See e.g. Art. 16 RP GC.

¹⁰⁴ See e.g. Art. 13 (2) RP GC.

2. In cases delegated or assigned to a single Judge, with the exception of those referred to in Articles 105 and 106, the powers of the President shall be exercised by that Judge.

I. President of the Chamber (paragraph 1)

Since the vast majority of cases are assigned to a Chamber of either three or, to a much lesser extent, five Judges, the Presidents of those Chambers almost permanently exercise the powers of the President of the GC. This empowerment, however, is limited to **procedural** matters. The direction of judicial business, the administration of the GC, and the task of presiding over plenary sessions¹⁰⁵ remains a matter for the President of the GC and may only be performed by a President of a Chamber if the President of the GC is absent or prevented from attending within the meaning of Art. 9 RP GC. The same applies in the event of interim proceedings¹⁰⁶.

II. Single judge (paragraph 2)

The second paragraph was inserted in 1999, when the function of the single Judge was created. In practice it is **hardly relevant**, given the restrictive conditions in Art. 14 (2) RP GC.

Article 17 [Advocate General assisting plenary session]

When the General Court sits in plenary session, it shall be assisted by an Advocate General designated by the President of the General Court.

I. Little practical significance

1. Obligation

The GC **shall** be assisted by a Judge acting as Advocate General when sitting in plenary session¹⁰⁷. The GC only sat in plenary session on a few occasions during its early years. For the appointment of a Judge as Advocate General, meaning that there is one Judge who is not available as such, inevitably affects the distribution of work between the Judges and in particular the Judges-Rapporteur¹⁰⁸.

¹⁰⁵ Art. 8 (1) RP GC.

¹⁰⁶ Art. 106 RP GC.

¹⁰⁷ Art. 2 (2) RP GC.

¹⁰⁸ *Lenaerts*, CDE 2000, 323, 340.

2. Optional

- 2 If the GC sits as a Grand Chamber or Chamber, it **may** be assisted accordingly¹⁰⁹.

II. Importance of the Opinion

- 3 The requirement of compulsory assistance by an Advocate-General illustrates the exceptional importance of cases which come before the full Court. The Advocate-General's opinion not only provides useful guidance to the GC (which is already provided by the Judge Rapporteur), but also provides similar guidance to the parties to the proceedings as well as to third parties.

III. Appointment of the Advocate General

- 4 The President of the GC chooses the Judge to whom he will entrust the function of Advocate General, which means that the **parties** have **no say** concerning the designation of Advocate General, except in cases of bias¹¹⁰. One might therefore speculate whether this designation enables the President to influence the composition of the judicial bench, in particular since this bench currently includes 27 Judges and since plenary sessions have since become merely theoretical.

Article 18 [Advocate General assisting a Chamber]

A Chamber of 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.

I. Low practical significance

- 1 The GC may also be assisted by an Advocate General if the case is not referred to the full Court as set out in Art. 17 RP GC. Like Art 17, this provision is now hardly relevant.

II. Conditions

- 2 The substantive criteria ("legal difficulty" or the "factual complexity of the case") are similar to those referred to in Art. 14 (1) RP GC and confirm implicitly that

¹⁰⁹ Art. 18 RP GC.

¹¹⁰ Art. 18 Statute ECJ.

cases with **complex facts** are not suitable to be referred to the full Court¹¹¹. The conditions for designating an Advocate-General are laid down in Art. 19 RP GC.

III. No subjective right of the parties

Although a party has the possibility to apply for the assistance of an Advocate General it has no right¹¹² and, additionally, no tangible potential for success, given the GC's very restrictive practice concerning assistance by an Advocate General.

Article 19 [Designating an Advocate General]

1. The decision to designate an Advocate General in a particular case shall be taken by the General Court sitting in plenary session at the request of the Chamber before which the case comes.

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

This provision complements Art. 18, as it outlines the procedure for designating the Advocate General. The Full Court, not the President of the Chamber, decides on the appointment of the Advocate General, which, while strengthening the independence of the Full Court, may also be one of the reasons why hardly any use is made of Art. 18 RP GC.

CHAPTER 3 REGISTRY

SECTION 1 – THE REGISTRAR

Preliminary

Art. 20 to 27 RP GC, which concern the Registrar and Assistant Registrars, bear some **importance for the parties**, as both are contact persons for a number of practical and procedural issues¹¹³ (see II. in Art. 23 RP GC below).

Article 20 [Appointment of the Registrar]

1. The General Court shall appoint the Registrar.

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

¹¹¹ Art. 14 RP GC.

¹¹² Case T-47/92, *Lenz v Commission* [1992] ECR p. II-2523, para. 32; see also Case T-447/93, *Hogan v Commission* [1995] ECR p. II-703, 713.

¹¹³ See also the "Instructions to the Registrar".

2. An application shall be accompanied by full details of the candidate's age, nationality, university degrees, knowledge of any languages, present and past occupations and experience, if any, in judicial and international fields.

3. The appointment shall be made following the procedure laid down in Article 7(3).

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

5. Before he takes up his duties the Registrar shall take the oath before the General Court in accordance with Article 4.

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 after giving the Registrar an opportunity to make representations.

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

I. Appointment

- 1 The **Judges** appoint the Registrar of the GC from a list of candidates. Thus, unlike the Judges, the Registrar is not appointed by the Member States. The professional **requirements** for this position are high (see paragraph 2), as a Registrar must not only have a legal background, but must also possess relevant experience.

II. Oath

- 2 The Registrar of the GC shall take the **same oath** as the Judges (see paragraph 5), in contrast to the Registrar of the ECJ, who takes a specific form of oath¹¹⁴.

Article 21 [Assistant Registrars]

The General Court may, following the procedure laid down in respect of the Registrar, appoint one or more Assistant Registrars to assist the Registrar and to take his place in so far as the Instructions to the Registrar referred to in Article 23 allow.

While the GC is obliged by law to appoint a Registrar¹¹⁵, it may decide by its sole discretion whether or not to appoint, one or more additional Assistant Registrars, who supports the Registrar in his various tasks. To date the GC has appointed one Assistant Registrar.

¹¹⁴ Art. 9 Statute ECJ.

¹¹⁵ Art. 20 RP GC.

Article 22 [Substitute]

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

Normally, the Assistant Registrar represents the GC’s Registrar. If both are absent or prevented from attending, the President of the GC designates officials or temporary agents to represent the Registrar. These temporary representatives take the same oath as the officials and agents of the ECJ¹¹⁶, which differs slightly from the wording of the oath taken by the Registrar (the one also taken by the Judges of the ECJ)¹¹⁷.

Article 23 [Instructions to the Registrar]

Instructions to the Registrar shall be adopted by the General Court acting on a proposal from the President of the General Court.

Outline:

I. General	1
1. Relevance for the parties	1
2. Contents of the instructions	2
a) Binding rules	2
b) Derogations.....	3
3. Practice directions.....	4
II. The Registry as a source of information	5
1. Introduction.....	5
2. Questions of fact.....	6
3. No legal advice.....	7

I. General

1. Relevance for the parties

Art. 24 to 27 RP GC do not govern the full spectrum of the Registrar’s tasks, as 1
these tasks are scattered throughout the rules of procedure. The “**Instructions to the Registrar**”, which were adopted in 1994 and which have been updated a number of times, most recently in March 2012, specify a number of Registrar tasks which are particularly important for the **parties** to the proceedings. It is indeed essential for all parties to take into consideration not only the procedural rules laid down in the **primary law** (essentially the chapter re. the ECJ of the EU in the TFEU and the Statute ECJ) and **secondary law**, i.e. the RP GC, but also the instructions

¹¹⁶ Art. 18 (2) RP ECJ.

¹¹⁷ Art. 4 RP GC.

and explanations found at the **tertiary level**, i.e. the Instructions to the Registrar and the “Practice Directions to parties”.

- 2 **2. Contents of the instructions.** a) **Binding rules.** These “instructions” provide rules ranging from practical aspects such as the opening hours of the Registry, to the modalities for a request for confidential treatment of documents, to the correction of formal defects in the written submissions or pleadings.

b) Derogations

- 3 Pursuant to Art. 20 Instructions to the Registrar, “*where the special circumstances of the case and the proper administration of justice require, the Court or the President may derogate from any of these Instructions*”. This is in contrast to the TFEU, the Statute ECJ and the RP GC, which leave no room for any derogation of instructions.

3. Practice directions

- 4 In addition, the GC has adopted “**Practice Directions to parties**” on the basis of Art. 150 RP GC, which provides over 20 pages of valuable information, guidance, and binding rules regarding the written and oral part of GC procedure, but as well as instructions regarding the expedited procedure, interim proceedings, etc.

II. The Registry as a source of information

1. Introduction

- 5 The Registry is a precious source of information and help prior to, during, and, as the case may be, after a case ends. But lawyers and the parties should have a clear idea as to the scope of the Registry’s mission vis-à-vis the public – as well as its limitations.

2. Questions of fact

- 6 During its opening hours the Registry provides over-the-phone information concerning e.g. the confirmation of the receipt of a telefax or electronic mail, if needs be; the formalities of the submission of written pleadings; the modalities of an application for extension of a time-limit. It also responds to questions of agenda, within the limit of the information available to the Registry, such as the likely date regarding the hearing or the handing down of a judgment, and also clarifies the outcome of a given case by reading the operative part of the Judgment (in case it is not yet available on the internet), etc.

3. No legal advice

In contrast, the Registry is not authorized to provide any legal advice. The Registrar and the officials of the Registry will neither **calculate** the time-limit for the lodging of an application¹¹⁸, nor are they entitled to comment on a calculation undertaken by the lawyer of one of the parties¹¹⁹. *A fortiori* they are neither entitled nor in a position to comment on a Judgment **before** it is announced, nor may they provide any information regarding the contents. All personnel of the Registry are under the same obligation of confidentiality as the Judges and their clerks. Parties are well advised to respect this **at all times**.

Article 24 [Register]

1. There shall be kept in the Registry, under the control of the Registrar, a register in which all pleadings and supporting documents shall be entered 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 and, if a party so requests, on any copy submitted for the purpose.

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

4. Rules for keeping the register shall be prescribed by the Instructions to the Registrar referred to in Article 23.

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

The parties to a case may on payment of the appropriate charge also obtain copies of pleadings and authenticated copies of orders and judgments.

6. Notice shall be given in the *Official Journal of the European Union* of the date of registration of an application initiating proceedings, the names and addresses of the parties, the subject-matter of the proceedings, the form of order sought by the applicant and a summary of the pleas in law and of the main supporting arguments.

7. Where the Council or the European Commission is not a party to a case, the General Court shall send to it copies of the application and of the defence, without the annexes thereto, to enable it to assess whether the inapplicability of one of its acts is being invoked under Article 277 TFEU. Copies of those documents shall likewise be sent to the European Parliament to enable it to assess whether the inapplicability of an act adopted jointly by that institution and by the Council is being invoked under Article 277 TFEU.

¹¹⁸ Case C-112/09 P, *SGAE v Commission* [2010] ECR p. I-0000, paras. 20 et seq.

¹¹⁹ Case T-104/99, *AS Bolderaja v Council* [2000] ECR p. II-451, 459, while leaving it open whether it is a case of unforeseeable circumstance or force majeure (Art. 45 (2) Statute ECJ) if an applicant takes account of an erroneous information of a member of the Registry.

I. General

- 1 This provision, which is equivalent to Article 20 RP ECJ, outlines the obligations and responsibilities of the Registrar concerning his action and oversight of the Register¹²⁰, the case-file¹²¹, and publication in the Official Journal of the EU¹²².

II. Register

1. Case number

- 2 Each new case before the GC shall be given a reference number¹²³, which consists of the letter “T”¹²⁴ (“Tribunal”), followed by the respective serial number and year. In the case of specific legal remedies¹²⁵ this is followed by a specific acronym, such as “R” (“référé”) in interim proceedings, “Oppo” (“opposition”) for an application against a judgment by default, “REV” (“révision”) for revision of a Judgment, “TO” (“tierce opposition”) for third-party proceedings, “AJ”: (“assistance judiciaire”) for legal aid, “DEP”¹²⁶ for a taxation of costs, “P” (“pourvoi”) for an appeal against decisions of the CST, etc.

2. Number of the written submission

- 3 All written submissions and pleadings of each case are numbered with the general case number.

3. Copies

- 4 Copies of or extracts from the written procedures are available upon payment of a “Registry charge”¹²⁷, provided the applicant has a relevant interest in these documents.

III. Publication in the Official Journal

- 5 Since under the Rules of Procedure there is only the possibility for a given party to **intervene** of its own initiative in a given case, i.e. there is no possibility for the

¹²⁰ Art. 3 Instructions to the Registrar.

¹²¹ Art. 5 Instructions to the Registrar.

¹²² Art. 18 Instructions to the Registrar.

¹²³ Art. 4 Instructions to the Registrar.

¹²⁴ All acronyms are based on the (French) working language of the GC, thus “T” stands for “Tribunal”, i.e. the French word for “Court”.

¹²⁵ Art. 104 to 129 and Art. 136 a to 149 RP GC.

¹²⁶ “Dépens” (costs). Prior to this acronym, the relevant article of the RP GC would be added in brackets, such as (“92”) for Art. 92 RP GC.

¹²⁷ Art. 17 Instructions to the Registrar.

GC to request a person to become a party to given proceedings, these rules only provide for the publication of a notice of any application in the Official Journal of the EU¹²⁸. This allows third parties to assess whether there is reason and sufficient interest to intervene in the main proceedings¹²⁹.

Article 25 [Further tasks of the Registrar]

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

2. The Registrar shall assist the General Court, the President and the Judges in all their official functions.

I. General

The tasks of the Registrar¹³⁰ described in this provision, which is identical to 1 Art. 20(1) and (2) RP ECJ, are of a purely **administrative** nature and are not in any way judicial activities¹³¹. The Registrar is assisted by a number of officials and temporary agents (see Art. 28 et seq.).

II. Effecting service (paragraph 1)

In contrast to legal provisions in some Member States, it is a matter for the 2 Registry, i.e. **not the parties**, to transmit documents and to furnish service of applications, statements of defence, rejoinders and replies and other written submissions¹³² to the other party. It is thus also part of the Registrar's tasks to send back written submissions to the party concerned if such submissions are not provided for in the Rules of Procedure, unless the GC decides to add those submissions to the file.

III. Assistance in all official functions (paragraph 2)

Given the recent EU enlargements and the subsequent increase of the number of 3 GC Judges, the Registrar is by no means and even less than in the past able to assist the General Court, the President and the 27 Judges in all their official functions in person.

¹²⁸ Art. 18 Instructions to the Registrar.

¹²⁹ Case T-35/91, *Zubizarreto A.O v Albani*, [1992] ECR p. II-1599, para. 32.

¹³⁰ Art. 1 Instructions to the Registrar.

¹³¹ Case 131/83, *Vaupel v Court of Auditors*, (not published in the ECR), para. 10.

¹³² Art. 10 Instructions to the Registrar and Art. 100 RP GC.

Article 26 [Archives and publications]

The Registrar shall have custody of the seals. He shall be responsible for the records and be in charge of the publications of the General Court.

This provision¹³³ is detailed in Articles 1, 15 and 18 of the “Instructions to the Registrar”.

Article 27 [Attending the sittings]

Subject to Articles 5 and 33, the Registrar shall attend the sittings of the General Court.

The Registrar or his representative attend all sittings of the GC, i.e. all the **administrative sittings**, unless the GC decides otherwise¹³⁴. They also attend the **oral hearings**, although they may not attend the subsequent deliberations, nor the removal from office of a Judge¹³⁵. The Registrar attends these sittings in a purely administrative capacity; he does not exercise any judicial function.

SECTION 2 – OTHER DEPARTMENTS

Article 28 [Administrative support]

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

I. General

- 1 The ECJ provides the GC with a number of officials and temporary agents¹³⁶ who **directly support** the Judges and the Registrar. Other administrative departments, such as the press and information service, the library, etc. serve the institution as a whole.

II. Staff Regulations

- 2 The officials and temporary agents are subject to the “Statute of officials of the EU” or, as the case may be, the “Conditions of employment of other servants of the

¹³³ Art. 18 Instructions to the Registrar.

¹³⁴ Art. 33 (7) RP GC.

¹³⁵ Art. 5 RP GC.

¹³⁶ See also Art. 52 Statute ECJ.

European Communities”. They are thus subject to a number of specific obligations regarding **confidentiality**¹³⁷. In addition, they take their own specific oath, which is identical for staff at the GC and ECJ¹³⁸. Parties or third persons should therefore **abstain** under any circumstance to seek information from the Registry’s staff which is covered by confidentiality.

Article 29 [Oath]

The officials and other servants referred to in Article 28 shall take the oath provided for in Article 20(2) of the Rules of Procedure of the Court of Justice before the President of the General Court in the presence of the Registrar.

The officials and temporary agents referred to in Art. 28 RP GC are not only subject to the obligations, in particular concerning confidentiality, laid down in the relevant legislation applicable to staff, but must furthermore take an oath. Unlike the oath of the Judges of the GC, the oath is not taken before the ECJ, but before the President of the GC, their highest hierarchical superior, as well as before the Registrar of the GC.

Article 30 [General administration]

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; he shall be assisted in this by the departments of the Court of Justice.

This provision illustrates once again that the various judicial instances (the ECJ, the GC, and the CST) are all under the umbrella of the institution “the Court of Justice of the European Union”, and that there is a certain hierarchical relationship between the ECJ and the GC.

CHAPTER 4 THE WORKING OF THE GENERAL COURT

Preliminary

As provided for in Article 31 to 34 the “working” of the GC relates primarily to internal, organizational aspects of judicial activity during GC meetings and deliberations.

¹³⁷ Art. 12, 17 and 17 a Statute EU Officials.

¹³⁸ Art. 29 RP GC and Art. 18 (5) RP ECJ.

Article 31 [Dates of the sittings]

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

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

I. Meeting Dates (paragraph 1)

- 1 The sittings scheduled by the President of the GC¹³⁹ mainly include the sittings prior to and the deliberations following oral hearings, as well as meetings on administrative matters.

II. External meetings (paragraph 2)

- 2 A geographical shift of sittings seems rather complicated and thus more likely to remain the exception.

Article 32 [Deliberations]

1. Where, by reason of a Judge being absent or prevented from attending, there is an even number of Judges, the most junior Judge within the meaning of Article 6 shall abstain from taking part in the deliberations unless he is the Judge-Rapporteur. In this case, the Judge immediately senior to him shall abstain from taking part in the deliberations.

Where, following the designation of an Advocate General pursuant to Article 17, there is an even number of Judges in the General Court sitting in plenary session, the President of the Court shall designate, before the hearing and in accordance with a rota established in advance by the General Court and published in the *Official Journal of the European Union*, the Judge who will not take part in the judgment of the case.

2. If after the General Court has been convened in plenary session, it is found that the quorum of nine Judges has not been attained, the President of the General Court shall adjourn the sitting until there is a quorum.

3. If in any Chamber of three or of five Judges, the quorum of three Judges has not been attained, the President of that Chamber shall so inform the President of the General Court who shall designate another Judge to complete the Chamber.

The quorum of the Grand Chamber shall be nine Judges. If that quorum has not been attained, the President of the General Court shall designate another Judge to complete the Chamber.

If in the Grand Chamber or in any Chamber of five Judges the number of Judges provided for by Article 10(1) is not attained by reason of a Judge's being

¹³⁹ Art. 11 (2) RP GC.

absent or prevented from attending before the date of the opening of the oral procedure, the President of the General Court shall designate a Judge to complete that Chamber in order to restore the number of Judges provided for.

4. If in any Chamber of three or 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.

5. If the single Judge to whom the case has been delegated or assigned is absent or prevented from attending, the President of the General Court shall designate another Judge to replace that Judge.

Outline:

I. General	1
II. Absence or prevention of a Judge (paragraphs 1 and 2)	2
1. Absence	2
2. Prevented from attending	3
3. Designation as Advocate-General	4
III. Quorum (paragraph 3)	5
1. Chambers of three or five Judges	5
2. Grand Chamber	6
IV. “Surplus” of Judges (paragraph 4)	7
V. Single judge (paragraph 5)	8

I. General

The rules laid down in this provision¹⁴⁰ govern judicial participation in delibera- 1
tions and ensure that the presence of an **odd number** of Judges required for the
deliberations and thus preserves the **quorum** of the respective formation.

II. Absence or prevention of a Judge (paragraphs 1 and 2)

1. Absence

A Judge, whether a member of a formation or a President of Chamber¹⁴¹, is 2
absent, if he is e.g., nominated Advocate-General¹⁴² or Judge at the ECJ, or if his
term expires¹⁴³, or if he passes away¹⁴⁴. Should he have been participating in an oral
hearing as part of a Chamber of five Judges at the time of his absence, three out of
those five Judges will deliberate about the case in question.

¹⁴⁰ See also Art. 32 et seq.RP ECJ.
¹⁴¹ Case T-232/95, *Cecom v Council* [1998] ECR p. II-2679, 2685.
¹⁴² Case T-232/95, *Cecom v Council* [1998] ECR p. II-2679, para. 13.
¹⁴³ Joined Cases T-305/94 etc., *Limburgse Vinyl Maatschappij A.O. v Commission* [1999] ECR
p. II-931, para. 25.
¹⁴⁴ Case T-195/95, *Guérin Automobiles v Commission* [1997] ECR p. II-679, para. 10.

2. Prevented from attending

- 3 Cases in which a Judge is prevented from attending an oral hearing are also rather rare.

3. Designation as Advocate-General

- 4 In the event of the GC sitting in plenary session, which is extremely rare, it must designate a Judge as Advocate-General (see Art. 18 RP GC). This means that a further Judge will not take part in the judgment of the case, in order to guarantee an uneven number of Judges.

III. Quorum (paragraph 3)

1. Chambers of three or five Judges

- 5 This provision ensures that the necessary quorum of three Judges required by both the Chambers of three and five Judges is met.

2. Grand Chamber

- 6 In the case of a meeting of the Grand Chamber and in order to take into account the enlargement of the EU in 1995, the quorum consists of 9 Judges, instead of the previous 7 Judges. However, although the number of Judges almost doubled as a result of the most recent enlargements (2004 and 2007), the quorum of 9 Judges remained unchanged.

IV. “Surplus” of Judges (paragraph 4)

- 7 This provision reflects the fact that a Chamber of three or five Judges may actually include more Judges than three or five, which may result in an even number of Judges¹⁴⁵. In such case it is for the President of the Chamber to determine which Judge shall participate in the particular case in order to achieve an uneven number of Judges.

V. Single judge (paragraph 5)

- 8 This provision is of little relevance, as it concerns the – extremely rare – case of an assignment of a case to a single Judge who then turns out to be either absent or prevented from attending.

¹⁴⁵ Case T-26/90, *Finsider v Commission* [1992] ECR p. II-1789, 1801.

Article 33 [Modalities of deliberations]

- 1. The General Court shall deliberate in closed session.
- 2. Only those Judges who were present at the oral proceedings may take part in the deliberations.
- 3. Every Judge taking part in the deliberations shall state his opinion and the reasons for it.
- 4. Any Judge may require that any question be formulated in the language of his choice and communicated in writing to the other Judges before being put to the vote.
- 5. 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 of precedence laid down in Article 6.
- 6. Differences of view on the substance, wording or order of questions, or on the interpretation of a vote shall be settled by decision of the General Court.
- 7. Where the deliberations of the General Court concern questions of its own administration, the Registrar shall be present, unless the General Court decides to the contrary.
- 8. Where the General Court sits without the Registrar being present it shall, if necessary, instruct the most junior Judge within the meaning of Article 6 to draw up minutes. The minutes shall be signed by this Judge and by the President.

Outline:

I. General	1
II. Non-public deliberations (paragraph 1)	2
III. Link between oral proceedings and deliberations (paragraph 2).....	3
1. Definition.....	3
2. Reopening of oral hearing	4
a) Decision.....	4
b) Economy of proceedings	5
IV. Role of the individual Judge (paragraphs 3 to 6)	6
1. Same rights.....	6
2. Votes	7
V. Presence of the Registrar (paragraphs 7 to 8)	8

I. General

This provision defines a number of modalities of the deliberations following the 1 oral hearing, which represent a very important, though secret and thus invisible, facet of judicial activity.

II. Non-public deliberations (paragraph 1)

- 2 As a rule, oral hearings before the GC (and any other judicial instance of the EU and the Member States) are **public**, with very few exceptions¹⁴⁶. By contrast, the subsequent deliberations always take place in **closed session** and are covered by the **secret of deliberations**. The total exclusion of the public from all deliberations is the only means – which is universally applied to all deliberations in all three judicial instances of the Courts of Justice of the EU – likely to preserve the institutional and individual judicial **independence** and **impartiality** during judicial deliberations.

III. Link between oral proceedings and deliberations (paragraph 2)

1. Definition

- 3 Thus, Judges must take part in the oral hearing as a prerequisite for taking part in the deliberations. This principle ensures that arguments and proof are put to the Judge in the most direct manner possible. In other words, only those Judges who heard the parties may hand down the subsequent Judgment.

- 4 **2. Reopening of oral hearing. a) Decision.** As a result of this principle, a Chamber may have no other choice but to reopen an oral hearing, should a Judge who took part in the oral hearing be prevented, for some reason, from taking part in the deliberations¹⁴⁷, or should there be a need to hear the parties concerning documents upon which they could not comment at the oral hearing¹⁴⁸.

b) Economy of proceedings

- 5 Nevertheless, in such cases the parties may, for reasons of economy of proceedings, be allowed to refer to their previous oral arguments¹⁴⁹. This does not prevent the GC from reopening an oral procedure at a later stage, if need be¹⁵⁰.

IV. Role of the individual Judge (paragraphs 3 to 6)

1. Same rights

- 6 Paragraphs 3 to 6 illustrate that the deliberations are not, at least *de jure*, influenced, let alone governed, by any ranking amongst Judges or by any other hierarchical principles, since every Judge has the **same rights** to state opinions (paragraph 3), to put questions to other Judges (paragraph 4) and to take part in the voting (paragraph 5).

¹⁴⁶ See exception in Art. 57 RP GC.

¹⁴⁷ Art. 62 RP GC.

¹⁴⁸ Joined Cases F-87/08 and T-88/08, *Schuerings A. O. v ETF* [2010] (not published in the ECR).

¹⁴⁹ Case T-169/95, *Quijano v Commission* [1997] ECR SC p. II-273, 279, para. 22.

¹⁵⁰ Case T-20/96, *Pascall v Commission* [1997] ECR p. II-977, para. 34.

2. Votes

Any deliberation of Chamber of three or more Judges, with an obvious exception 7 in the case of the single Judge, may and likely will include Judges’ views which are not necessarily unanimous. Indeed, a plurality of views tends to be frequent whenever magistrates congregate. Thus it would have been grossly unrealistic, undemocratic, and ultimately disruptive to the functioning of the judicial system to request a unanimous consensus amongst the Judges as a prerequisite for a Judgment. Therefore, in case there is no unanimity amongst the Judges – which may well exist with respect to the operative part of a Judgment, but not necessarily as regards the supporting reasoning – the conclusion reached by majority of the Judges shall determine the GC’s position, after a “final discussion”.

V. Presence of the Registrar (paragraphs 7 to 8)

As a rule, the Registrar or a member of the Registry shall attend all the sittings of 8 the GC¹⁵¹, including meetings on administrative matters. The Registrar does not, however, attend the deliberations of the Judges¹⁵².

Article 34 [Judicial vacations]

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

- from 18 December to 10 January,
- from the Sunday before Easter to the second Sunday after Easter,
- from 15 July to 15 September.

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

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

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

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

Outline:

I. Judicial vacations	1
1. General.....	1
2. Relevance for the parties	2
a) No oral hearings	2
b) No Judgments and orders	3

¹⁵¹ Art. 27 RP GC.

¹⁵² And in the case of revocation, see Art. 5 RP GC.

c) Applications and submissions	4
d) Procedural time-limits	5
e) Registry	6
II. Public holidays	7
III. Submission of documents during the vacations.....	8

I. Judicial vacations

1. General

1 Since they are part of the same institution, i.e. the European Court of Justice of the EU, the rules on judicial vacations are the same for the GC, the ECJ¹⁵³ and the CST¹⁵⁴.

2 **2. Relevance for the parties.** a) **No oral hearings.** During the judicial vacations, as well as during a relatively short period prior to their beginning and after their ending, no oral hearings take place, except in cases of urgency (see paragraph 2). This includes oral hearings for **interim proceedings**, although in such cases an oral hearing tends to be the exception, rather than the rule anyway.

b) No Judgments and orders

3 As a rule, the GC does not hand down any Judgments or orders during the judicial vacations.

c) Applications and submissions

4 During the judicial holidays, parties may lodge applications, appeals, and other submission, since the vacations have **no impact** on the relevant time-limits. That said a request for an expedited procedure within the meaning of Art. 76 a RP GC may face some delays during the holidays.

d) Procedural time-limits

5 Time-limits set by the GC, e.g. for submitting a statement of defence, rejoinder, reply, answer to written questions and/or requests for written documents, are **not suspended** during the judicial vacations¹⁵⁵. Parties may ask for an extension of the time-limit in order to avoid a possible disruption of their own holidays.

e) Registry

6 During all judicial vacations the Registry remains open¹⁵⁶.

¹⁵³ Art. 24 (2) RP ECJ.

¹⁵⁴ Art. 28 RP CST.

¹⁵⁵ Art. 101 (1) lit. e) RP GC.

¹⁵⁶ Art. 2 Instructions to the Registrar.

II. Public holidays

The GC, like the other judicial instances, observes the official holidays as 7 published annually in the OJEU¹⁵⁷ as well as the public holidays of Luxembourg (see paragraph 3), unlike the other institutions of the EU, such as e.g. the Commission, which do not observe official holidays in Belgium.

III. Submission of documents during the vacations

Documents may be delivered to the reception of the GC at **any day or night- 8 time**. The receptionist indicates the date and time on which the written document was filed and will deliver a receipt upon request¹⁵⁸. It is, however, usual that the reception of e.g. faxes may only be confirmed by the Registry during the opening hours. That said, the easiest option for the submission of documents is and remains “e-Curia”.

CHAPTER 5 LANGUAGES

Article 35 [Language of the case]

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

2. The language of the 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 paragraph 1 for all or part of the proceedings may be authorised;
- (c) at the request of one of the parties, and after the opposite party and the Advocate General have been heard, the use of another of the languages mentioned in paragraph 1 as the language of the case for all or part of the proceedings may be authorised by way of derogation from sub-paragraph (b); such a request may not be submitted by an institution.

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

¹⁵⁷ Art. 101 (2) 2nd sub-paragraph RP GC.

¹⁵⁸ Art. 2 (5) Instructions to the Registrar.

3. The language of the case shall be used in the written and oral pleadings of the parties and in supporting documents, and also in the minutes and decisions of the General Court.

Any supporting documents expressed in another language must be accompanied by a translation into the language of the case.

In the case of lengthy documents, translations may be confined to extracts. However, the General Court may, on its own motion or at the request of a party, at any time call for a complete or fuller translation.

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 statements and to oral addresses. The Registrar shall cause any such statement or address to be translated into the language of the case.

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 paragraph 1, other than the language of the case, when they intervene in a case before the General Court. This provision shall apply both to written statements and oral addresses. The Registrar shall cause any such statement or address to be translated into the language of the case.

4. Where a witness or expert states that he is unable adequately to express himself in one of the languages referred to in paragraph 1 of this Article, the General Court may authorise him to give his evidence in another language. The Registrar shall arrange for translation into the language of the case.

5. The President in conducting oral proceedings, the Judge-Rapporteur both in his preliminary report and in his report for the hearing, Judges and the Advocate General in putting questions and the Advocate General in delivering his opinion may use one of the languages referred to in paragraph 1 of this Article other than the language of the case. The Registrar shall arrange for translation into the language of the case.

Outline:

I. Language of a case (paragraph 1).....	1
1. Definition.....	1
2. Exhaustive list of languages.....	2
a) Official languages.....	2
b) Regional languages in the EU	3
3. Free choice	4
II. Choosing the language of the case (paragraph 2).....	5
1. Rule.....	5
a) Applicant chooses	5
b) Choice is binding.....	6
aa) As regards the pending proceedings.....	6
bb) Appeal and special legal remedies.....	7
2. Exceptions (paragraph 2, sub-paragraph 1)	8
a) General.....	8
b) Action against Member State or legal entity (lit. a)	9
aa) Member State.....	10
bb) Natural or legal person	11
c) Joint request of the parties (lit. b).....	12
aa) General.....	12

bb) Thoroughly reasoned application	14
(1) Choice of new language.....	14
(2) Reasons.....	15
(3) No legal remedy.....	16
d) Request of one of the parties (lit. c)	17
aa) General	17
bb) Request	18
(1) The party.....	18
(2) The intervener.....	19
(a) Request accepted.....	20
(b) Request rejected.....	21
(3) The other party.....	22
cc) Total or partial approval.....	23
(1) Calendar.....	23
(2) Cases.....	24
dd) Hearing the other party.....	25
3. Jurisdiction (paragraph 2, sub-paragraph 2)	26
III. Use the language of the case (paragraph 3).....	27
1. Written and oral pleadings	27
2. Annexes.....	28
a) Supporting documents.....	28
aa) Rule	28
bb) Practice	29
b) Lengthy supporting documents	30
3. Prerogatives of the Member States	31
4. Member States of the EEA-Agreement	32
IV. Witnesses and experts (paragraph 4).....	33
V. Prerogatives of the Judges (paragraph 5).....	34
1. Free choice of the Judges.....	34
2. Parties remain bound.....	35

I. Language of a case (paragraph 1)

1. Definition

The **language of a case**¹⁵⁹ is the language in which the proceedings are conducted both in **writing** and **orally**. It must be distinguished from the GC's **working language**, i.e. the language the GC uses for internal purposes, i.e. **French**¹⁶⁰.

2. Exhaustive list of languages. a) Official languages. The catalogue of languages in paragraph 1 is **exhaustive** and reflects in principle the **official languages** of the 27 Member States.

b) Regional languages in the EU

Languages such as Catalan, Basque, etc., regardless of the extent of their usage in the Member State concerned, cannot become the language of a case, as long as they do not have the status of an **official language** of a Member State. The same is true for those languages which have been given a **special status** by the Member State

¹⁵⁹ See also the quasi identical Art. 29 RP ECG.

¹⁶⁰ The working languages of the European Court of Human Rights are French and English.

concerned, such as Luxembourgish¹⁶¹, but which are not the official language(s) of that State¹⁶².

3. Free choice

- 4 The applicant may freely choose amongst the languages listed in paragraph 1, which now include a catalogue of 23 possible languages¹⁶³. He may do so regardless of his nationality and/or native language(s), his place of residence or establishment, and the native language of his lawyer.

II. Choosing the language of the case (paragraph 2)

- 5 **1. Rule. a) Applicant chooses.** As a rule, the applicant may choose the language of the case on the basis of the **catalogue** of official languages listed in paragraph 1. This is part of his right to judicial protection¹⁶⁴. Choosing the language does **not** require any particular act, let alone a formal application¹⁶⁵, as it is done **implicitly** by drafting the initial submission in the relevant language.
- 6 **b) Choice is binding. aa) As regards the pending proceedings.** The choice of language is binding for all **other parties**, including any interveners, regardless of the side on whose behalf they intervene. By choosing the language of the proceedings, the applicant is also bound to employ that language in any **correspondence** with the Registry regarding the pending proceedings and also in any **ancillary, subsequent and/or special procedure**, such as **proceedings for interim relief**, an application for **taxation of costs**, etc. In other words, once a language has become the “language of the case”, the party who opted for it is **bound by his choice**. And it is within the nature of such choice, that the applicant who subsequently changes his mind, is prevented from claiming a manifest, excusable, or otherwise mitigating error, unless he obtains **derogation** within the meaning of paragraph 2 lit. b) or c).

bb) Appeal and special legal remedies

- 7 The language of proceedings chosen at first instance is also binding for any subsequent **appeal** or **action for revision**¹⁶⁶.
- 8 **2. Exceptions (paragraph 2, sub-paragraph 1). a) General.** Out of the three exceptions in paragraph 2, 1st sub-paragraph, lit. a) to c) the first one applies *de jure*, thus automatically, whereas the two others (lit. b) and c) are in the hands of the party, with the understanding that all exceptions are **construed narrowly**:

¹⁶¹ Luxembourgish is the “National language” of Luxembourg.

¹⁶² The official languages in Luxembourg are French and German.

¹⁶³ The RP GC are published in all 23 official languages, see Art. 151 RP GC.

¹⁶⁴ Case T-11/95, *BP Chemicals v Commission* [1996] ECR II-599, 606.

¹⁶⁵ As was the case in T-11/95, *BP Chemicals v Commission* [1996] ECR II-599, para. 9.

¹⁶⁶ Case T-64/98 P-REV, *Petrides v Commission* [2010] ECR p. I-65, paras. 13–15.

b) Action against Member State or legal entity (lit. a)

The purpose of this provision, which was added in 2004, is to safeguard the **rights of defence** of certain defendants. On the one hand, having to defend oneself at Court in a language other than one's own is bound to **impact**, to some extent at least, the quality of one's defence. On the other hand, the institutions, which are the potential applicants in such cases, have the necessary **logistics** to work in all official languages.

aa) Member State

A Member State may be taken to Court only in his **own official language(s)**. The applicant may choose which language he prefers if the Member State has more than one official language¹⁶⁷.

bb) Natural or legal person

Pursuant to this provision it is the **place of establishment** of the natural or legal person which matters. Other factors, such as the nationality of the natural person, his country of origin, or the language commonly used in said country, do not matter. If the Commission takes a company to Court which is established e.g. in Denmark, then the application must be drafted in Danish, even if the defendant is e.g. the branch of an Austrian company, who might prefer to read the application in e.g. English.

c) Joint request of the parties (lit. b). aa) General. A **consensus** between the parties concerning the change of the language of the case is a prerequisite for a joint request within the meaning of lit. (b), but the GC is **not bound** by such request ("may be authorized")¹⁶⁸. This has to do with the fact that the applicant is essentially bound by his initial decision to make **free use** of his right to choose a language for the case, which is designed to protect him and is therefore for his benefit. This right of initial choice does not however imply a right to future changes.

This fact is not automatically invalidated should both parties agree on the use of another language. That said, it seems appropriate that such consensus should do more than merely trigger a decisional process which is governed by a broad discretionary power.

bb) Thoroughly reasoned application. (1) Choice of new language. The parties may only choose one of the other languages listed in paragraph 1. Official languages of third states, regional languages of Member States, etc. are excluded. Even though lit. b) remains silent in this respect, the joint request should be **amply reasoned**.

(2) Reasons. The parties are likely to increase their chance of success if they can put forward **objective** or even **compelling** reasons for the change of language. They should also keep in mind that any change in the language of the case entails translation constraints and must thus reflect on the appropriate timing of such a joint request. It seems appropriate to lodge such a request at an early stage in

¹⁶⁷ In Belgium: French and Dutch (Flemish).

¹⁶⁸ Case T-74/92, *Ladbroke Racing v Commission* [1993] ECR II-535, 540.

proceedings. Finally, since there is no guarantee of the success of such joint request, the parties should under all circumstances avoid lodging a further joint request at a later stage.

- 16 (3) **No legal remedy.** there is no legal remedy against a negative decision of the GC, and hardly any realistic perspective to raise such a matter in the context of an appeal, given that it is necessarily limited to points of law.
- 17 **d) Request of one of the parties (lit. c). aa) General.** This provision is derogation from the exception laid down in lit. b), i.e. the case of a joint request by the parties, since there are situations in which the party that is not an institution of the EU (which is not entitled to submit such request), has a compelling reason for changing the language of the case. This may for example be the case if the concerned party decides or needs to **change his lawyer(s)**.
- 18 **bb) Request. (1) The party.** The “application of a party” – meaning each party who is not an institution of the EU¹⁶⁹ – has to be thoroughly reasoned. The applicant must prove that in the absence of such an exception his rights (of defence) would be infringed¹⁷⁰. The reasons provided must be “**particularly compelling**” in order to justify a departure from the original choice of the applicant himself¹⁷¹.
- 19 **(2) The intervener.** The intervener carries a lower burden of proof: the success of his request depends on whether or not the change of the language of the case would affect the procedural rights of the parties and whether such change would result in a delay in conducting the proceedings¹⁷².
- 20 **(a) Request accepted.** A request by an intervener has a good chance of success if the other parties do not state any such delays¹⁷³, or if it is either impossible or difficult for an intervening party to obtain a translation of an annex from their own funds¹⁷⁴.
- 21 **(b) Request rejected.** That said, a number of such requests have been rejected on the grounds that the intervener is able to obtain such translation¹⁷⁵, unless the costs for such translation are prohibitive¹⁷⁶.
- 22 **(3) The other party.** Since such unilateral requests may not be submitted by an institution (see lit. (c) *in fine*), the opposite party is normally an institution, which is heard prior to any decision. While it may certainly help if the opposite party has no objections to the request, as such a request then *de facto* resembles a joint request, it does not guarantee success.
- 23 **cc) Total or partial approval. (1) Calendar.** The applicant may choose whether he applies for a change of the language of the proceedings during the **written proceed-**

¹⁶⁹ Art. 35 (2) lit. c), last half-sentence and Art. 13 TEU.

¹⁷⁰ Case T-74/92, *Labroke Racing v Commission* [1993] ECR p. II-535, para. 15.

¹⁷¹ Case T-121/95, *EFMA v Council* [1997] ECR p. II-87, para. 10.

¹⁷² Case T-290/94, *Kayserberg v Commission* [1995] ECR p. II-2247, para. 8.

¹⁷³ Case T-330/94, *Salt Union v Commission* [1995] ECR p. II-2881, para. 27.

¹⁷⁴ Case T-11/95, *BP Chemicals v Commission* [1996] ECR p. II-599, para. 10.

¹⁷⁵ Case T-270/10, *Deutsche Telekom v Commission* [2011] (not published in the ECR), paras. 18 to 19.

¹⁷⁶ Case T-425/08, *KODA v Commission* [2009] (not published in the ECR), para. 16.

ings¹⁷⁷, or only at the stage of the oral hearing¹⁷⁸. Generally speaking a too demanding application has little chances of success, but this does not prevent the applicant from handing in an application limited to the oral hearing¹⁷⁹. Likewise, it seems that the GC is much stricter concerning language changes during the written procedure than in the case of a change the language for the oral hearing¹⁸⁰, provided such change has no impact on the calendar of the GC¹⁸¹.

(2) **Cases.** An applicant cannot argue that it is an **unforeseen circumstance** if he chooses **English** as the language of the case and then applies for being allowed to plead in **French** at the oral hearing, by arguing that English is not the native language of his lawyers¹⁸². Then again, such an application may be rejected insofar as it concerns written proceedings, but turn out to be successful with respect to the oral hearing¹⁸³. Seeking to switch to a widespread language, such as English, seems less demanding than opting for an “exotic” or less-spoken language¹⁸⁴, but parties should bear in mind that any change to a language other than French triggers translation constraints. A change of the language in the context of the oral hearing should not be too difficult to obtain, if the applicant opts for French, i.e. the GC’s working language, and provided the other party agrees¹⁸⁵. Overall, the GC seems to apply less stringent standards when it comes to the oral hearing, when compared to the written procedure¹⁸⁶, but the GC must also always take account of the arrangements with the interpreters.

dd) Hearing the other party

The other party needs to be heard on any such application, but does not need to give its consent, in contrast to the exception provided in point b) above¹⁸⁷. However, such an application is likely to have better chances of success if the other party does not object, or if such objections only relate to the written procedure, not to the hearing¹⁸⁸. Also, it is advisable to **explore** the views of the other party prior to lodging such application.

3. Jurisdiction (paragraph 2, sub-paragraph 2)

This provision illustrates that the President is **not bound** by the wishes of the applicant or other parties. The will of the parties, however, has a bearing on the

¹⁷⁷ Case T-1/90, *Pérez-Minguev Casariego v Commission* [1991] ECR p. II-143, para. 21.

¹⁷⁸ Case T-3/93, *Air France v Commission* [1994] ECR p. II-121, para. 21.

¹⁷⁹ Case T-74/92, *Ladbroke v Commission* [1993] ECR p. II-535, 540.

¹⁸⁰ Case T-3/93, *Air France v Commission* [1994] ECR p. II-121, paras. 13–15; Case T-66/94, *Auditel v Commission* [1995] ECR p. II-239, 251.

¹⁸¹ Case T-425/08, *KODA v Commission* [2009] (not published in the ECR), para. 18.

¹⁸² Case T-121/95, *EFMA v Council* [1997] ECR p. II-87, para. 11.

¹⁸³ Case T-17/93, *Matra Hachette v Commission* [1994] ECR p. II-595, paras. 20–21.

¹⁸⁴ Case T-266/95, *Skriftsvaerftsforeningen A. O. v Commission* [1996] ECR p. II-1399, para. 19.

¹⁸⁵ Joined Cases T-371/94 and T-394/94, *British Airways plc A.O and British Midlands Ltd v Commission* [1998] ECR p. II-2405, para. 29.

¹⁸⁶ Case T-11/95, *BP Chemicals v Commission* [1996] ECR p. II-599, paras. 9–11.

¹⁸⁷ Case T-1/90, *Pérez-Minguev v Commission* [1991] ECR p. II-143, paras. 21 et seq.

¹⁸⁸ Case T-184/01 R, *IMS Health v Commission* [2001] ECR p. II-3198, para. 35.

President's jurisdiction, as he must refer the request to the GC if he intends to grant the request without the consent of all parties.

III. Use the language of the case (paragraph 3)

1. Written and oral pleadings

27 The language of the case- be it the one originally chosen or the one subsequently changed in accordance with (paragraph 2 lit. b) or c) – shall be used in the **written and oral pleadings**, including any possible **correspondence** with the Registry, such as requests for an extension of a time-limit or for confidential treatment of given documents, etc.

28 **2. Annexes. a) Supporting documents. aa) Rule.** As a matter of principle all “supporting documents”, i.e. copies of original documents annexed to written pleadings in order to either illustrate a point, prove a given factual statement, or complement the facts of the case, must, where necessary, be **translated** into the language of the case. The obvious purpose of this obligation is to ensure a **fair hearing** on behalf of the other parties.

bb) Practice

29 In practice, however, such translation is not necessary if the annex concerned is drafted in a universally understandable language, e.g. **English**, and provided no party objects. Parties who themselves attach annexes in English even though it may not be the language of the proceedings are, by definition, less likely to object if the other party does the same.

b) Lengthy supporting documents

30 Paragraph 3, 3rd sub-paragraph provides an exception to the rule for lengthy documents, as only “extracts” of those documents need to be translated. This is most likely to be understood as concerning the **relevant extracts**, but in the absence of objective criteria, such as an indication as to the number of pages, it remains **unclear** as to when a document qualifies for this exception¹⁸⁹. That said, the Registrar will in any event guide the party concerned and request a translation, if need be.

3. Prerogatives of the Member States

31 In proceedings before the GC (like the ECJ), Member States have *de jure* the status of a “privileged party,” which is also illustrated by the fact that sub-paragraph 4 provides them with the right to use their own official language whenever they

¹⁸⁹ para. 3, 3rd sub-paragraph; see in this respect Case T-11/95, *BP Chemicals v Commission* [1996] ECR p. II-599, 607, para. 12.

decide to **intervene** in a given case¹⁹⁰. Thus these special rights do not apply to natural or legal persons¹⁹¹.

4. Member States of the EEA-Agreement

By contrast the Member States of the EEA-Agreement are not automatically¹⁹² 32 entitled to use their own official language¹⁹³.

IV. Witnesses and experts (paragraph 4)

This provision is of little relevance in practice, given that witnesses and/or experts 33 are only heard before the GC on very rare occasions. It takes account of the fact that some witnesses or experts might not have the expected knowledge and that hearing them would present little or even no *effet utile*, if they were not allowed to give their testimony or opinion in another language, which is then translated into the language of the case.

V. Prerogatives of the Judges (paragraph 5)

1. Free choice of the Judges

The language of the case, which is either chosen by a party, agreed upon, or 34 imposed by law, is **not binding** upon the Judges hearing the case. Thus, Judges and the Advocate General, if any, may use a **language of their choice** during the oral hearing as long as it part of the catalogue in paragraph 1.

2. Parties remain bound

It is however understood that the parties, even when addressed in a given 35 language, e.g. English, may only reply in the language of the case, e.g. German, even if a reply in English might be more convenient for them. This provision is not in any way detrimental to the parties, since the Registrar shall arrange for a translation into the language.

Article 36 [Translations]

1. 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

¹⁹⁰ para. 3, sub-paragraph 4.

¹⁹¹ Case T-74/92, *Ladbroke Racing v Commission* [1993] ECR p. II-535, para. 13.

¹⁹² Case T-289/11, *Deutsche Bahn A. O. v Commission* [2012] (not yet published in the ECR), para. 15.

¹⁹³ para. 3, sub-paragraph 5.

before the General Court to be translated into the languages he chooses from those referred to in Article 35(1).

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

Outline:

I. Translations (paragraph 1).....	1
1. Ratio legis.....	1
2. Examples.....	3
a) Unsuccessful applications	3
b) Successful applications.....	4
c) Costs.....	5
II. Publications of the GC (paragraph 2).....	6
1. Paper version.....	6
2. Website of the ECJ.....	7
3. Subscription	8
4. European Court Report	9
a) ECJ and GC.....	10
b) Staff cases.....	11
aa) Specific report.....	11
bb) Translation is the exception.....	12

I. Translations (paragraph 1)

1. Ratio legis

- 1 This is an exception to the rule in Art. 35 (3), sub-paragraph 1 RP GC, which provides that the language of the case is to be used in all written and oral pleadings. Consequently this provision shall be **interpreted narrowly**¹⁹⁴. It must be read in conjunction with the exceptions laid down in Art. 35 (2) sub-paragraph 1 lit. b) and c), which do not confer any subjective right upon the parties, but instead bestow a discretionary power upon the GC to grant a derogation.
- 2 Art. 36 (1) RP GC only refers to those translations which are necessary for the **rights of defence** of a party to the proceeding, the **good conduct of the proceedings**, and the **work of the Court**¹⁹⁵.
- 3 2. Examples. a) **Unsuccessful applications**. An application for a translation into German of all written and oral statements made in English during the proceedings has no prospect of success if the party concerned cannot prove that it does not understand the proceedings in another language as thoroughly as it would if the proceedings were conducted in the language for which it applies and, in particular, if the party cannot provide a translation by its own means¹⁹⁶.

¹⁹⁴ Case T-74/92, *Ladbroke Racing v Commission* [1993] ECR p. II-535, para. 16.

¹⁹⁵ Case T-74/92, *Ladbroke Racing v Commission* [1993] ECR p. II-535, para. 16.

¹⁹⁶ Case T-74/92, *Ladbroke Racing v Commission* [1993] ECR p. II-535, para. 17.

b) Successful applications

A specific application aimed at the translation of certain parts of the case file or 4 interpretation of parts of the hearing is more likely to succeed¹⁹⁷.

c) Costs

The costs for the translation are dealt with in Art. 17 (2) and (3) of the 5 Instructions to the Registrar.

II. Publications of the GC (paragraph 2)

Judgments and orders, i.e. decisions handed down by the GC, may be published 6 in four different ways:

1. Paper version

On the day it is handed down the decision is available in paper form in the shelves outside the courtroom.

2. Website of the ECJ

On the day they are handed down¹⁹⁸, the judgments and orders are published on 7 the Court's website¹⁹⁹, where they are available at **no cost**, regardless of whether or not they are subsequently published in the European Court Report. The decisions published on the ECJ's website do not necessarily include versions in *all* the official languages.

3. Subscription

Paper versions of judgments and orders may be obtained by way of a subscrip- 8 tion, via the **Publications Office of the EU**.

4. European Court Report

A limited number of judgments and in some instances orders are published in 9 the European Court Report.

a) ECJ and GC

Part I of the European Court Report consists of decisions of the ECJ, while **Part 10 II** consists of judgments and orders of the GC.

¹⁹⁷ See the *obiter dictum* in Case T-74/92, *Ladbroke Racing v Commission* [1993] ECR p. II-535, para. 17.

¹⁹⁸ While this may sometimes only be the case in the course of the next day.

¹⁹⁹ www.curia.europa.eu.

- 11 **b) CST. aa) Specific report.** Since 1994, many judgments and orders in staff cases are published in a separate series (“Public Service”). For reasons of cost these decisions, which often provide useful information across all legal areas such as **general principles of law and procedural issues**, are only published in the respective **language of the case proceedings**, as well as in a **summary form** in the other official languages.

bb) Translation is the exception

- 12 The decisions of the CST published on the ECJ’s website are almost always available in French and the language of the procedure (if it is not French). However, since many staff cases are in French²⁰⁰ this useful source of information remains largely un-translated and thus inaccessible to many. The responsibilities of the Registrar regarding the translation and publication are set out in greater detail in Art. 9 (1) and 18 of the Instructions to the Registrar.

Article 37 [Authentic linguistic versions]

The texts of documents drawn up in the language of the case or in any other language authorised by the General Court pursuant to Article 35 shall be authentic.

This provision is identical to Art. 31 RP GC and deviates from the **principle of equality** of all official languages, as it applies e.g. for primary and secondary EU law²⁰¹.

CHAPTER 6

RIGHTS AND OBLIGATIONS OF AGENTS, ADVISERS AND LAWYERS

Preliminary

Only **Agents, advisers, and lawyers** may appear before the Court (see comments regarding **Art. 19 Statute ECJ**). In practice, the immunities, privileges, and facilities conferred upon agents, advisers, and lawyers by virtue of Art. 38 and limited by Art. 39 and 40 RP GC, play a minor role in comparison with the rules of conduct laid down in Art. 41 RP GC.

Article 38 [Immunities, privileges and facilities]

1. **Agents, advisers and lawyers, appearing 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.**

²⁰⁰ 54,72 % in 2011, down from 75 % in 2010.

²⁰¹ Case T-80/97, *Starway v Council* [2000] ECR p. II-3088, para. 81; see also Case C-36/98, *Spain v Council* [2001] ECR p. I-779, paras. 47, 49.

2. Agents, advisers and lawyers shall enjoy the following further privileges and facilities:

- (a) papers and documents relating to the proceedings shall be exempt from both search and seizure; in the event of a dispute the customs officials or police may seal those papers and documents; they shall then be immediately forwarded to the General Court for inspection in the presence of the Registrar and of the person concerned;
- (b) agents, advisers and lawyers shall be entitled to such allocation of foreign currency as may be necessary for the performance of their duties;
- (c) agents, advisers and lawyers shall be entitled to travel in the course of duty without hindrance.

Outline:

I. General	1
1. Agent	2
a) Definition	2
b) Internal or external person	3
c) Legal status	4
2. Adviser	5
a) Definition	5
aa) General	5
bb) Institutions and Member States	6
cc) Natural and legal persons	7
b) Legal status	8
3. Lawyer	9
II. Immunity (paragraph 1)	10
1. Immunity from judicial proceedings	10
a) <i>Ratio legis</i>	10
b) Duration	11
c) Words spoken or written concerning the case or the parties	13
2. No immunity from administrative procedures	14
III. Privileges and facilities (paragraph 2)	15
1. General	15
2. Documents	16
3. Foreign currency	17
4. Freedom of movement	18

I. General

These rights only apply to those persons who have the status of agent, adviser, or 1 lawyer in a given case, i.e. to those persons who have a **power of attorney** or equivalent document. That said, it would be somewhat easier to refer to “parties’ representatives”, as is the case in the equivalent provisions in the RP CST²⁰².

1. **Agent. a) Definition.** An “Agent” is a person entrusted by an **institution** or 2 other body of the EU, or of a **Member State**, regardless of whether that party is an applicant or a defendant.

²⁰² Art. 30 (1) RP CST.

b) Internal or external person

- 3 *De jure* an Agent can be either a member of staff, be it an official or temporary agent, or a third, i.e. external, person. In practice though, an agent will in most instances be a member of staff, normally one assigned to the legal service. In the cases of agencies and other smaller EU bodies, the agent is often either the Director, a member of the legally service, if any, or an external lawyer.

c) Legal status

- 4 Pursuant to Art. 38 to 40 RP GC, Agents are subject to the same rights and obligations as advisers or lawyers. That said, there are differences, e.g. in that Art. 41, which relates to the conduct of persons appearing before the Court, **only** mentions advisers and lawyers. This is most likely the result of an oversight or the – potentially erroneous – perception that there might be no need to include Agents (see comments re. Art. 41 below).

- 5 **2. Adviser. a) Definition. aa) General.** This term is rather generic and thus not self-explanatory. It is clear from **Art. 19 Statute ECJ** that an Agent (see 1. above) may be assisted by an adviser or a lawyer, meaning an external lawyer, just as it is clear that an external lawyer may choose to be assisted by an adviser, provided the party represented agrees. Thus, one may say that an adviser is a **third person** who is not an external lawyer.

bb) Institutions and Member States

- 6 Institutions and Member States may wish to add an adviser to their judicial team, i.e. either an expert from the private sector, such as a Professor and expert in a given subject, or someone from their own administration who is outside their legal service, but who is an expert in the area concerned by the proceedings.

cc) Natural and legal persons

- 7 In the case of natural or legal persons, the lawyer may be assisted by an adviser, meaning e.g. a **tax adviser**, an **expert in customs matters**, or a **legal adviser**, who is specialized in a given area of law but not admitted as a lawyer. The added value of having such an adviser in a case is that at the oral hearing he or she may address the Judges directly, whilst this is not possible if this individual accompanies the party as an expert-witness, since pursuant to Art. 59 RP GC, a party may address the GC only through his agent, adviser or lawyer.

b) Legal status

- 8 Pursuant to Art. 38 to 41, advisers are subject to the same rights and obligations as agents or lawyers. That said, there are differences, e.g. in that by virtue of Art. 43 the original of every pleading “must be signed by the party’s agent or lawyer”, which means that the signature of an adviser involved in the proceedings would be of no legal value in such circumstances.

3. Lawyer

These are those persons who are entitled to appear before a Tribunal or Court of 9 a Member State according to its national law (see Art. 19 Statute ECJ) and who are acting either on behalf of natural or legal persons or as external counsel of an institution or Member State.

II. Immunity (paragraph 1)

1. Immunity from judicial proceedings. a) *Ratio legis*. This immunity protects the 10 agent, adviser or lawyer against any **civil and/or criminal proceedings** due to words spoken or written by them concerning the case or the parties. This provision thus serves the “**interest of the proper conduct of the proceedings**”²⁰³. Absence of such immunity could expose an agent, adviser, or lawyer to the risk of being sued for words spoken or written by them concerning the case or the parties, which in turn could interfere with the proper exercise of their mission and ultimately could encroach on a party’s **rights of defence**. That said, it would be **misuse** if an agent, adviser or lawyer were to take advantage of the immunity granted in order to, e.g. insult a party. This could result in his immunity being removed (Art. 40 (2) RP GC).

b) Duration

This immunity applies as of the day the case is pending and is thus not limited to 11 the lawyer, agent, or advisor’s physical appearance before the GC, e.g. during the oral hearing. Art. 38 remains silent on the exact duration of this immunity and Art. 39 merely indicates that the immunity “shall be limited to a **specified period**”. It is safe to assume that it cannot extend beyond the **entire length** of the proceedings²⁰⁴.

The difficulty with such a restrictive interpretation of this provision is that in 12 order to effectively protect an agent, adviser, or lawyer against a judicial action e.g. for libel and slander, the immunity needs to apply well beyond the date on which the GC handed down its decision and thus closed the case, as cases could be brought against these individuals after the case based on written or oral statements produced during that case.

c) Words spoken or written concerning the case or the parties

The immunity is not only granted with respect to the contents of all written 13 documents submitted by the parties in proceedings at the Tribunal as well as to statements made during the oral hearing, but also to any statement, be it written or oral, which is published or made in public and which has a clear link with the case and/or the parties to that case.

²⁰³ Art. 40 (1) RP GC.

²⁰⁴ See Art. 39 (b) RP GC.

2. No immunity from administrative procedures

- 14 The immunity conferred by Art. 38 (1) only applies to “judicial” proceedings. Thus, it would seem that this provision gives no protection against any **disciplinary proceedings**. Lawyers thus remain subject to their professional rules and the disciplinary authority of the law society of which they are a member should they display any judicial or administrative misconduct.

III. Privileges and facilities (paragraph 2)

1. General

- 15 In practice, this provision is not very relevant. The privileges and facilities granted in lit. a) seem to apply regardless of whether the judicial proceedings they relate to are closed, while those mentioned in lit. b) and c) seem limited to the duration of the proceedings.

2. Documents

- 16 In practice, such protection of documents or records concerning judicial proceedings against **search** and **seizure** is likely to play a minor role, especially in Member States with no systematic border controls. Ideally, the agent, lawyer or adviser in question has the proof indicated in Art. 39 RP GC at hand, as it is doubtful merely citing the RP GC will suffice to persuade the public authority in question of the existence and scope of his privileges and immunities as a party representative before the GC.

3. Foreign currency

- 17 The right of authorized agent, adviser and lawyer to the allocate “foreign” currency seems rather **outdated**, at least within the Euro zone, and especially bearing in mind the now widespread acceptance of credit cards. That said, it is worth noting that this obligation does not rest with the cashier of the GC, but with the employer or client.

4. Freedom of movement

- 18 In today’s world the freedom of movement of agents, lawyers, or advisers is guaranteed by, inter alia, the freedom to provide services and even further facilitated in the *Schengen* area, which means that this particular provision has little of no significance in practice. Besides, agents of EU institutions enjoy the privileges and immunities which are inherent to the status of the official. It would be thus worth reflecting on removing it.

Article 39 [Proof of status]

In order to qualify for the privileges, immunities and facilities specified in Article 38, persons entitled to them shall furnish proof of their status as follows:

- (a) agents shall produce an official document issued by the party for whom they act and shall forward without delay a copy thereof to the Registrar;
- (b) advisers and lawyers shall produce a certificate signed by the Registrar. The validity of this certificate shall be limited to a specified period, which may be extended or curtailed according to the length of the proceedings.

I. Agents

In the case of an Agent acting either for an institution or a Member State, it is 1 fairly easy to prove his status, as it suffices to provide the Registry of the GC with a power of attorney, which is already requested for the purposes of the case.

II. Lawyers and advisers

The burden of proof to establish the legal status of lawyers or advisers is more 2 demanding. In these cases, one must not merely show a certificate or professional document delivered by the respective law society. Lawyers and advisers instead need to produce a certificate signed by the Registrar. It is more than doubtful, however, whether or not the effort associated with such request is worth the “potential risk” of having to make use of privileges and immunities. It would be somewhat less bureaucratic if the Registrar would send such certificates of his own motion.

Article 40 [Waiving immunities, privileges and facilities]

1. The privileges, immunities and facilities specified in Article 38 are granted exclusively in the interests of the proper conduct of proceedings.

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

The immunities, privileges and facilities provided by Art. 38 RP GC are **not** a personal right of the parties. They are **functional** in the sense that they are designed to prevent certain situations which are likely to interfere with the **proper conduct of the proceedings**. Thus, they are granted in the interest of the proper administration of justice. In the case of abuse these rights may therefore, quite logically, be withdrawn.

Article 41 [Exclusion of the proceedings]

1. If the General Court considers that the conduct of an adviser or lawyer towards 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 adviser or lawyer uses his rights for purposes other than those for which they were granted, it shall so 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.

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

2. Where an 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 adviser or lawyer.

3. Decisions taken under this Article may be rescinded.

Outline:

I. Incompatible conduct (paragraph 1)	1
1. Conduct of an adviser or lawyer	1
a) Persons concerned	1
aa) Advisers and lawyers.	1
bb) Need for extending it to Agents.	2
cc) Parties?	3
b) Conduct	4
aa) General	4
bb) Definition	5
(1) Written statements	6
(2) Oral statements	7
c) Limited catalogue	8
d) Incompatible with the dignity of the GC	9
e) Incompatible with the proper administration of justice	10
f) Other	11
2. Misuse of rights	12
a) General	12
b) Case law	14
c) Comment	15
aa) As of when is there a misuse?	16
bb) Misuse committed by whom?	17
cc) Sanctions	18
(1) Financially	19
(2) Disciplinary measure	20
3. Powers of the GC	21
a) Informing the person concerned	22
b) Informing the competent authorities	23
c) Exclusion from the proceedings	24
aa) Reason for exclusion	24
bb) No reason for exclusion	25
cc) No legal remedy	26
d) Possible bearing on the costs	27
II. Further procedural steps (paragraphs 2 and 3)	28

1. Appointing another adviser or lawyer 28
2. Reversing the measure..... 29

I. Incompatible conduct (paragraph 1)

1. Conduct of an adviser or lawyer. a) Persons concerned. aa) Advisers and lawyers. According to its heading, chapter 6 lays down the rights and obligations of agents, advisers, and lawyers, while this provision only mentions advisers and lawyers.

bb) Need for extending it to Agents

Pursuant to its wording Art. 41 (1) does not apply to Agents, i.e. members of the institutions or Member States acting in Court. It is unclear whether this is an oversight by the legislature, or if it is due to the fact that it is for the hierarchal superiors of an Agent to act, as the case may be, rather than the EU Courts. While it is true that the GC, like any other EU Court, has informal means to inform the EU institution or Member State concerned of bad conduct, if need be, it would be in line with the idea of equal treatment to extend Art. 41 (1) to Agents. As Agents have the same rights as lawyers and advisers, they should also have the same duties and responsibilities. In view of this necessity, such notification of Agent’s potential bad conduct is now explicitly provided by the new Art. 46 RP ECJ.

cc) Parties?

Art. 41 does not explicitly apply to the parties of the proceedings, e.g. natural persons or legal representatives of legal persons. In such a case, assuming that the adviser or lawyer is not explicitly encouraging or otherwise approving his client’s behaviour, the GC may well request the advisers or lawyers to discipline their client. Any refusal or otherwise passive attitude toward their respective parties’ misconduct would then likely to be considered as complacency on the part of the lawyer, or adviser in question.

b) Conduct. aa) General. The amendments to this provision, which were added in 2005, include the following: It is now explicitly provided that the GC alone must decide whether a given “conduct” is incompatible. Next, the behaviour of the adviser or lawyer is not only assessed in view of the dignity of the GC, but also in view of the “requirements of the proper administration of justice”. The latter is a general clause, which covers an undefined variety of situations.

bb) Definition

“Conduct” is any behaviour or statement, be it written, oral, or presumably even certain gestures during oral hearings.

(1) Written statements. Bearing in mind the *ratio legis* there are good reasons to believe that written statements are not limited to what an adviser or lawyer writes in a written submission. This provision also encompasses written statements in any

kind of publication or technical support venue, including the Internet, which relates to the GC and/or one of its members.

- 7 (2) **Oral statements.** The same logic must thus apply to oral statements, with the difference that any such statement made during an oral and/or informal hearing with Judges present may be directly witnessed and assessed by those protected by Art. 41 RP GC, while it may be more difficult to prove the origin and improper character of oral statements made outside the sphere of the GC.

c) Limited catalogue

- 8 Art. 41 (1) contains a limited catalogue of instances and persons protected under this provision. While it does not explicitly protect the other parties to the proceedings, a misconduct vis-à-vis the latter may well be incompatible with the proper administration of justice (see ee) hereafter), depending on the circumstances.

d) Incompatible with the dignity of the GC

- 9 The “dignity” of the GC or, more generally, of a Court or Tribunal, is defined nowhere. Nevertheless, the “dignity of the Court” is a rather old concept. In the absence of any tangible case law likely to shed some light on its exact meaning this phrase remains a bit of a **grey zone**, but it is likely to enhance the protection of the GC’s legitimacy and respect. It is safe to assume that any behaviour qualifying as **contempt of Court** would be incompatible with the dignity of the GC. Thus, directly or indirectly insulting one of its members or making slanderous statements is undoubtedly reprehensible under Art. 41 RP GC, even if it does not fulfil the criteria of a criminal offence.

e) Incompatible with the proper administration of justice

- 10 This legal term is even more abstract than the notion of the dignity of the GC. Such behavior might also be incompatible with the dignity of the GC in a more indirect way, and might include misconduct vis-à-vis another party of the proceedings which might, depending upon the circumstances, also interfere with the proper administration of justice.

f) Other

- 11 Parties should be aware that a given behaviour, e.g. in terms of written or oral statements, does not necessarily remain without consequences merely because it is not considered an incompatible behaviour within the meaning of Art. 41 (1) RP GC. For instance, overly critical or otherwise **undiplomatic written comments** addressed to the GC or to the other party, may result in a – more or less – critical comment in the GC’s judgment or order²⁰⁵.
- 12 **2. Misuse of rights. a) General.** The first alternative (see 1) above) is designed to protect the dignity of the GC, while the purpose of this second alternative is to

²⁰⁵ See e.g. Case T-27/02 DEP, *Kronofrance v Commission* [2010] (not published in the ECR), para. 31 and 54.

prevent and, as the case may be, to **sanction a misuse of rights**. There is a certain link between both alternatives, since an adviser or lawyer who is misusing his rights, especially if he does so recurrently, implicitly disregards the Judges and thus their dignity.

b) Case law

In a rare precedent, *Goldstein v. Commission*, the GC held that “the conduct of a lawyer who persists in bringing, in respect substantially of the same facts, a **series of manifestly inadmissible and/or unfounded applications** both for interim and final relief, particularly where those applications almost invariably contain unsubstantiated assertions of manifest illegality against the contested decisions of the Community institution concerned, bad faith or dereliction of duty on the part of that institution, clearly constitutes an abuse of procedure”²⁰⁶.

In the same orders, the GC held that “if further applications for interim measures of a **frivolous and/or vexatious nature**, or which contain sweeping, but unsubstantiated, allegations of manifest illegality, bad faith or other similarly scandalous pleas, continue to be lodged on behalf of the present applicant concerning the subject-matter of the main case, the Court will consider exercising the powers conferred upon it by Article 41(1)”²⁰⁷.

c) Comment

This order has the merit of providing some indications concerning the conditions in which the GC is likely to consider that there is a misuse or misconduct within the meaning of Art. 41 (1) RP GC. However, and somewhat surprisingly, one finds that a subsequent application of the same applicant, which the GC again deemed to be a misuse, did not have any consequences other than the GC repeating its threat, i.e. without making use of Art. 41 RP GC²⁰⁸. While this approach seems to have been effective in that particular case, since the series of abusive procedures stopped, the question remains why neither the GC nor the CST²⁰⁹ have ever applied this provision in other sectors, e.g. with respect to **staff cases**, an area of law which seems more exposed to the risk of misuse than others.

aa) As of when is there a misuse?

The mere fact that an applicant goes to Court a number of times is of course not, as such, a misuse of the right to judicial protection, bearing in mind the guarantee provided by Art. 6 ECHR. Misuse may arise, however, if an applicant swamps the magistrates with applications which turn out to be manifestly inadmissible and/or unfounded, if not frivolous and/or vexatious. Should a certain “density” in terms of quantity and contents be reached, misuse must be considered to have taken place, in order for the term “misuse” to remain legally relevant.

²⁰⁶ Case T-302/00 R, *Goldstein v Commission* [2001] ECR p. II-1127, para. 40.

²⁰⁷ Case T-302/00 R, *Goldstein v Commission* [2001] ECR p. II-1127, para. 41.

²⁰⁸ Case T-18/01 R, *Goldstein v Commission* [2001] ECR p. II-1147, para. 46.

²⁰⁹ See Art. 32 RP CST.

bb) Misuse committed by whom?

- 17 Art. 41 (1) RP GC mentions the adviser and lawyer, not the respective party. One might first feel that if in a given case the party is misusing its right to judicial protection, it might be somewhat delicate to blame the adviser or lawyer, who may appear as someone who has not misused his rights for purposes other than those for which they were granted. But then again, the adviser or lawyer has the duty to act as a “filter” vis-à-vis his client, which one of the main reasons for the obligation to involve a lawyer in proceedings before the GC. Thus this provision not only provides that an adviser/lawyer should abstain from encouraging any kind of misuses of rights by his clients, but also states that a lawyers should prevent such client-initiated misuses from occurring.

cc) Sanctions

- 18 A misuse of rights may be sanctioned as follows:
- 19 (1) **Financially**
- **Costs of the proceedings.** So far, the GC (somewhat reluctantly) and subsequently the CST applied financial “sanctions” by awarding either parts or all the costs of the proceedings to the misbehaving applicant.
 - **Court costs.** Recently, the CST applied for the first time the exception in Art. 94 lit. a) RP CST, which provides that proceedings before the Tribunal shall be free of charge, except where a party has forced the Tribunal to incur avoidable costs: In cases F-2/10 and F-21/10, *Marcuccio v Commission*, which are merely two out of a dozen or so cases existing to date (see comments to Art. 94 below), the CST rejected the application as manifestly inadmissible and manifestly unfounded and ordered the applicant to pay 1.500 € in the former and 2.000 € in the latter case, on the grounds that these cases had been preceded by numerous applications, all of which had turned out to be manifestly inadmissible or unfounded. The problem, however, is that this is a sanction for the **party** concerned. It does not therefore affect the lawyer in the case, and could even be unfair in those cases where it is clearly the lawyer who appears to be the driving force behind the improper applications.
- 20 (2) **Disciplinary measure.** In the latter cases the Judges should send a clear signal to the lawyer concerned, which should first consist of a more informal reference to Article 41 and, if need be, should be followed by a formal measure within the meaning of this provision.

3. Powers of the GC

- 21 Any measure adopted by the GC under Art. 41 is of a **disciplinary nature** and is thus subject to the **principle of proportionality**:

a) Informing the person concerned

- 22 The GC may limit itself to informing the person concerned that it considers a given conduct in breach of Art. 41 RP GC. Alternatively, the GC may stop short of

such information by informing the party concerned that it might consider advising that person accordingly²¹⁰.

b) Informing the competent authorities

In more serious cases the GC may **threaten to inform** and, as a last resort within this category of measures, actually **inform** the “competent authorities to whom the person concerned is answerable”²¹¹ in writing. Such authorities are the respective Bar Association or, for an employed lawyer, the **employer**.

c) **Exclusion from the proceedings.** aa) **Reason for exclusion.** As a measure of last resort²¹², the GC may exclude an adviser or lawyer from the proceedings. Such measure would be considered immediately enforceable.

bb) No reason for exclusion

An error committed by the defendant’s agent in its written pleadings concerning whether or not the applicant has faced criminal charges in a Member State, which was generated by an “extreme confusion” in the applicant’s written pleadings, is no reason of exclusion²¹³.

cc) No legal remedy

While the person concerned needs to be heard beforehand, he has no legal remedy against such measure.

d) Possible bearing on the costs

In any case, any negative conduct, whether it fulfils the criteria of Art. 41 or remains below that threshold, may have a bearing upon the assignment of costs in the proceedings²¹⁴. It may also result in the GC explicitly expressing its **disapproval** as to e.g. the tone or contents of a written statement²¹⁵.

II. Further procedural steps (paragraphs 2 and 3)

1. Appointing another adviser or lawyer

Excluding the adviser or lawyer from the proceedings is not meant to sanction the party they represented, no matter the extent of that party’s share of responsibility, if any. Bearing in mind the rights of defence, the party concerned is therefore given the opportunity to appoint another adviser or lawyer.

²¹⁰ Which is what the GC did in Case T-302/00 R, *Goldstein v Commission* [2001] ECR p. II-1127, para. 41 and Case T-18/01 R, *Goldstein v Commission* [2001] ECR p. II-1147, para. 46.

²¹¹ Art. 41 (1), 2nd sentence RP GC.

²¹² Art. 41 (1), 2nd sub-paragraph RP GC.

²¹³ Case F-155/10, *Noko Ngele v Commission* [2011] (not published in the ECR), para. 71.

²¹⁴ Case T-398/03, *Castets v Commission* [2005] ECR p. II-507, para. 40, where the applicant’s lawyer did not attend the oral hearing without informing the Registrar beforehand.

²¹⁵ Case T-27/02 DEP, *Kronofrance v Commission* [2010] (not published in the ECR), para. 31.

2. Reversing the measure

- 29 § 3 allows the GC to reverse a measure which turns out to be e.g. unfounded or disproportionate.

Article 42 [University teachers]

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

If a university professor has a right of audience before the GC in accordance with Art. 19 of the Statute ECJ, which refers admittance of such a professor to the procedural law of his respective Member State, then it is a matter of equal treatment to subject him to the same obligations than those applying to other agents, advisers, and lawyers.

TITLE II PROCEDURE

CHAPTER 1 WRITTEN PROCEDURE

Preliminary

Outline:

I. General	1
II. Written procedure	2
III. Access to documents and information	3
1. Introduction	4
a) Legislative rules	4
b) Measures of organization of procedure	5
c) Competition cases	6
d) Staff cases	7
aa) Selection procedure	8
bb) Administrative inquiries	9
cc) OLAF and IDOC	10
2. Public access to documents	11
a) Regulation 1049/2001	11
aa) Opinions relating to a legislative process	12
bb) Opinions relating to an administrative process	13
(1) Regulation No 1049/2001	13
(2) Case-law prior to Regulation No 1049/2001	14
cc) Submissions relating to a judicial process	15
(1) General	15
(2) Regulation 1049/2001	16
b) Specific legal basis	17
3. Other means of fact finding	18
4. Application for measures of organization of procedure	19

I. General

Articles 43 to 103 are the **core** of procedural law in proceedings before the GC; 1
Articles 43 to 54 serve as the very heart of the written procedure²¹⁶.

II. Written procedure

Articles 43 to 48 provide the **central part** of the rules governing the written 2
procedure. Compliance with these seemingly rigid rules governing the binding
contents and structure of written pleadings is of great importance, not merely for
the sake of complying with the relevant rules and thus avoiding potential inadmis-
sibility, but also because clear presentation of the relevant facts is a first step
towards choosing amongst legal arguments according to their relevance.

III. Access to documents and information

Before one can submit an application and thereby begin the written procedure 3
before the GC, one must first thoroughly **research** and **compile** the facts of the case
in question. This often involves retrieving documents from the legislature and other
public institutions, from private organizations, and sometimes from private indivi-
duals. This retrieval and consultation of documents often presents a very specific set
of challenges and constraints which must be taken into consideration as one
compiles facts and prepares a case before beginning the written procedure detailed
in Arts. 43 to 48 RP GC. It is thus useful to examine the **means** and **methods** to
employ when seeking to obtain access to files and documents which are in the
possession of various sorts of institutions and legal entities before taking a closer
look at the RP GC which describe the written procedure in detail.

1. Introduction. a) Legislative rules. Ideally, the conditions for gaining access to 4
the files are laid down in **legislative rules**. Those rules as well as their application in
practice are governed by the need for a **balance** between the need for access arising
from the rights of defence and the requirement to protect confidentiality, business
secrets, and/or the privacy rights of third persons, such as their personal data, etc.

b) Measures of organization of procedure

Access to files and thus to facts hitherto unknown may also be obtained by an 5
application to the GC²¹⁷ for a measure of organization in the context of a pending
case. If granted, the GC may ask the party concerned for “*documents or any papers*”

²¹⁶ Craig/De Búrca, EU Law, 3rd edition, 2002, p. 94.

²¹⁷ Art. 64 RP GC.

relating to the case to be produced”²¹⁸. This requires, again, the GC to balance the rights of defence and the protection of the rights of third parties on a case by case basis, which may turn out to be a complex task, in particular in proceedings at the CST²¹⁹.

c) Competition cases

- 6 In competition cases, the right of access to the file is **codified**, which means that the European Commission must give the entity concerned the opportunity to examine all the documents in the investigation file that might be relevant for its defence. Those documents include both inculpatory and exculpatory evidence, with the exception of business secrets of other undertakings, internal documents of the Commission, and other confidential information. There is abundant case law regarding access to documents by way of applications for **measures of organization**. As regards applications for **measures of inquiry**, the GC has consistently confirmed the presumption of validity enjoyed by EU measures, which also applies to individual decisions, meaning that if an applicant fails to produce the slightest evidence which might rebut that presumed validity, it is not appropriate for the GC to order any measures of inquiry²²⁰.

d) Staff cases

- 7 In some areas, such as in disciplinary proceedings, the rights of access to the personal and or medical file are laid down in legislative rules, such as Art. 26 and 26 a of the Staff Regulations. In other areas, such as **administrative inquiries** following a complaint for harassment, institutions tend to limit access, e.g. by excluding witness statements, while applicants seek access to the entire file. This raises complex questions for both the institution in the context of the administrative proceedings and for the CST, if a party seeks to obtain access to the file by applying for a measure of organization of the proceedings.

aa) Selection procedure

- 8 These cases may raise questions of access to the results of the written²²¹ and/or the oral examination²²².

bb) Administrative inquiries

- 9 Regarding administrative inquiries, e.g. into complaints relating to alleged harassment, applications for access by measure of organization of the procedure tend to focus on the transcripts of the witness statements. Such applications thus raise questions of confidentiality in cases which include both instances in which total

²¹⁸ Art. 64 (3) lit. (d) RP GC.

²¹⁹ See Art. 44 RP CST.

²²⁰ Case T-34/92, *Fiatagri A. O. v Commission* [1994] ECR p. II-905, para. 27 and the case-law cited.

²²¹ Case F- 2/07, *Matos Martins v Commission* [2010] (not yet published in the ECR).

²²² Case F- 74/07, *Meierhofer v Commission* [2008] (not yet published in the ECR) and Case T-560/08 P, *Meierhofer v Commission* [2010] ECR p. II-1739.

access to administrative files²²³ and/or personal and medical files²²⁴ is sought solely for the applicant's lawyer and granted solely for consultation of these documents within the premises of the CST as well as cases in which the GC takes a much more restrictive approach²²⁵ which takes account of the protection of personal data²²⁶.

cc) OLAF²²⁷ and IDOC²²⁸

Access to documents in the context of investigations conducted by IDOC²²⁹ or OLAF²³⁰ tends to be even more difficult and complicated, especially concerning the delineation between access rights of staff and access rights of the public on the basis of regulation 1049/2011²³¹.

2. Public access to documents. a) Regulation 1049/2001. Applicants may also conduct access to documents proceedings on the basis of Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents, which implements Art. 15 (3) TFEU²³². The ECB has adopted a specific legislation regarding public access to documents. Given the length of such administrative proceedings, potential applicants should, if need be, apply for such access well before the decision likely to be challenged is adopted. The GC must recurrently address the question as to whether potential or actual applicants may have access to legal opinions of a legal service.

aa) Opinions relating to a legislative process

In *Turco v Council*²³³ the ECJ, referring to the need to increase the transparency and openness of the legislative process, held that Regulation No. 1049/2001 imposes in principle an obligation to disclose the opinions of the institution's legal service pertaining to a legislative process, unless that legal opinion is of a "particularly sensitive nature". Additionally, submitting a legal opinion relating to the validity of a legal act in that opinion's larger case-file without the institution's permission "runs counter the requirements of a fair hearing and would be tantamount to circumventing the procedure by which application is made for access to such a document, as established by Regulation No 1049/2001".²³⁴

bb) Opinions relating to an administrative process. (1) Regulation No 1049/2001. In *Odile Jacobs v Commission*²³⁵ the GC held that unlike in cases where the EU

²²³ Case F-63/09, *Donati v ECB* [2012] (not yet published in the ECR).

²²⁴ Case F-52/05, *Q v Commission* [2007] (not yet published in the ECR).

²²⁵ Case F-43/10, *Cerafogli v ECB* [2012] (not yet published in the ECR).

²²⁶ Case F-42/10, *Skareby v Commission* [2012] (not published in the ECR), paragraphs 18 et seq.

²²⁷ European Anti-fraud Office.

²²⁸ Investigation and Disciplinary Office of the Commission.

²²⁹ Case F-42/10, *Skareby v Commission* [2011] (not yet published in the ECR).

²³⁰ Joined Cases T-391/03 and T-70/04, *Franchet and Byk v Commission* [2006] ECR p. II-2023.

²³¹ Case F-121/07, *Strack v Commission* [2011] (not yet published in the ECR), currently under appeal of both parties.

²³² *B. Wägenbaur*, EuZW 2001, 680 et seq.

²³³ Joined Cases C-39/05 P and C-52/05 P, *Turco v. Council* [2009] ECR p. I-4723.

²³⁴ Case T-18/10 R, *Inuit Tapiriit Kanatami A. O. v Council and Parliament* [2010] ECR p. II-75.

²³⁵ Case T-237/05, *Odile Jacobs v Commission* [2010] ECR p. II-2245.

institutions act as legislators, in which “wider access should be authorised”, the public’s interest in obtaining access to a document pursuant to the principle of transparency “is **not the same** where the document relates to an administrative procedure” e.g. “intended to apply rules governing the control of concentrations or competition law in general”²³⁶. The judiciary stresses that public policy requires that institutions can receive the advice of their legal service “**given in full independence**”²³⁷. The same applies to legal opinions given by **national administrative authorities**²³⁸. The submission of a legal opinion relating to an administrative decision within a case-file runs counter the requirements of a fair hearing and would be tantamount to circumventing the procedure to apply for access to such a document, as established by Regulation No 1049/2001²³⁹.

- 14 (2) **Case-law prior to Regulation No 1049/2001.** The GC thus echoes its case-law prior to Regulation 1049/2001, in which it stressed that legal opinions of the Legal Services, who need to give their advice in “**full independence**”²⁴⁰, are “**clearly internal documents**”²⁴¹, which may not be produced in proceedings before the GC by persons “*other than the services at whose request they were prepared, without their production having been authorized by the institution concerned or ordered by the Court*”.²⁴²
- 15 cc) **Submissions relating to a judicial process. (1) General.** The RP GC and the RP of the other EU Courts do not provide for a third party right of access to procedural documents lodged with the Registrar by the parties²⁴³. Additionally, as the ECJ consistently held²⁴⁴, “*there is no rule or provision under which parties to proceedings are authorised to or prevented from disclosing their own written submissions to third parties. Apart from exceptional cases where disclosure of a document might adversely affect the proper administration of justice, which is not the case here, the principle is that parties are free to disclose their own written submissions.*” The only procedural provision which prohibits the parties from such disclosure is Art. 57 RP GC, which provides that oral proceedings in cases heard *in camera* are not to be published.
- 16 (2) **Regulation 1049/2001.** Thus, such access is a matter for an application on the basis of Regulation 1049/2001. Regarding a request for **access to pleadings**, the GC held the following²⁴⁵: “*If the pleadings to which access has been requested have not yet reached the hearing stage, the refusal to disclose those pleadings must be considered to*

²³⁶ See also Case C-404/10 P, *Commission v Odile Jacobs* [2012] (not yet published in the ECR), paragraphs 103 et seq., which annuls the Judgement at first instance.

²³⁷ Case T-357/03, *Golnisch v Parliament* [2005] ECR p. II-00001.

²³⁸ Case C-221/06, *Stadtgemeinde Frohnleiten v Gemeindebetriebe Frohnleiten* [2007] ECR p. I-9643.

²³⁹ Case C-9/08, *Donnici v Parliament* [2009] (not published in the ECR), paragraphs 18 et seq.

²⁴⁰ Case C-445/00, *Austria v Council* [2002] (not published in the ECR).

²⁴¹ Case T-610/97 R, *Carlsen A. O. v Council* [1998] ECR p. II-485.

²⁴² Case T-44/97, *Ghignone A. O. v Council* [2000] SC p. I-A-00223; SC p. II-01023.

²⁴³ Case T-36/04, *API v Commission* [2007] ECR p. II- 3201, para. 88, confirmed on appeal, see Joined Cases C-514/07 P, C-528/07 P and C-532/07 P, *Sweden v Commission* [2010] ECR p. I-8533.

²⁴⁴ Case C-376/98, *Germany v Parliament and Council* [2000] ECR p. I-2247, para. 10; Case T-36/04, *API v Commission* [2007] ECR p. II- 3201, para. 88, confirmed on appeal, see Joined Cases C-514/07 P, C-528/07 P and C-532/07 P, *Sweden v Commission* [2010] ECR p. I-8533.

²⁴⁵ Case T-36/04, *API v Commission* [2007] ECR p. II- 3201, para. 82, confirmed on appeal, see Joined Cases C-514/07 P, C-528/07 P and C-532/07 P, *Sweden v Commission* [2010] ECR p. I-8533.

cover all aspects of the information contained therein. After the hearing has been held, the institution is under an obligation to carry out a concrete assessment of each document requested in order to ascertain, having regard to the specific content of that document, whether it may be disclosed or whether its disclosure would undermine the court proceedings to which it relates”.

b) Specific legal basis

This is particularly relevant for members of staff applying for access to documents within the institution or agency by which they are employed²⁴⁶.

3. Other means of fact finding

Other means of fact-finding include e.g. **written questions** posed by members of the EP to the Commission, etc. Such questions should also be initiated well in advance.

4. Application for measures of organization of procedure

The fact-finding *preceding* the lodging of a Court action must be distinguished from the applicant's right to ask for documents or papers relating to the case at any stage of the proceedings²⁴⁷. Again, in the light of the existing case-law it is safe to assume that an application for measures of organization of procedure may not be lodged in order to circumvent Regulation No 1049/2001.

Article 43 [General rules for pleadings]

1. The original of every pleading must be signed by the party's agent or lawyer.

The original, accompanied by all annexes referred to therein, shall be lodged 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.

2. Institutions shall in addition produce, within time-limits laid down by the General Court, translations of all pleadings into the other languages provided for by Article 1 of Council Regulation No 1. The second subparagraph of paragraph 1 of this Article shall apply.

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

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

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

²⁴⁶ The European Central Bank has specific rules for employment-related access to documents by members of staff.

²⁴⁷ Art. 64 (3) and (4) RP GC.

6. Without prejudice to the provisions of paragraphs 1 to 5, the date on which a copy of the signed original of a pleading, including the schedule of documents referred to in paragraph 4, is received at the Registry by telefax or other technical means of communication available to the General Court shall be deemed to be the date of lodgement for the purposes of compliance with the time-limits for taking steps in proceedings, provided that the signed original of the pleading, accompanied by the annexes and copies referred to in the second subparagraph of paragraph 1, is lodged at the Registry no later than ten days thereafter. Article 102(2) shall not be applicable to this period of ten days.

7. Without prejudice to the first subparagraph of paragraph 1 or to paragraphs 2 to 5, 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*.

Outline:

I. General	1
II. Original and copies (paragraph 1).....	4
1. Signed original (sub-paragraph 1)	4
a) Purpose	3
b) Requirements.....	4
aa) Member States and EU institutions.....	4
(1) Agent or lawyer.	4
(2) One signature suffices.....	5
(3) Adviser.....	6
bb) Natural and legal persons	7
cc) Parties	8
c) Pleadings rejected as inadmissible	9
d) No possibility of putting in order.....	10
e) Precautionary measures	11
aa) Measures within the logic of Art. 43 (1) RP GC.....	11
bb) “e-Curia”.....	12
(1) Introduction.	12
(2) Advantages.....	13
2. Certified copies (sub-paragraph 2)	14
a) Obligations for all parties	14
b) Additional obligations for institutions	15
III. Translations (paragraph 2).....	16
1. Parties concerned.....	16
a) Only institutions.....	16
b) Not natural or legal persons	17
2. Languages.....	18
3. Annexes.....	19
IV. Indicating the date in the pleadings (paragraph 3).....	20
1. Date in the pleadings	20
2. Date of the lodgement.....	21
3. Date of registration.....	22
V. List of annexes (paragraph 4).....	23
1. Lacunae	23
2. Possible consequences	24
VI. Lodging documents at the Registry (paragraph 5)	25
1. General comment	25
2. Voluminous annexes.....	26

VII. Transmission by facsimile or electronic mail (paragraph 6).....	27
1. Compliance with the time-limit.....	27
a) Conventional means of transmission.....	27
b) Telefax and electronic mail	28
aa) General	28
bb) Telefax.....	30
(1) Proper use of the fax machine.	30
(2) No last minute sending.	31
(3) Confirmation sheet.	32
cc) Email.....	33
2. No extension of time-limit.....	34
a) General.....	34
b) Obsolete provision	35
3. Practical aspects	36
4. Comment.....	37
VIII. Requirements for the electronic transmission (paragraph 7).....	39
1. Overview.....	39
2. Advantages	40
a) Original	40
b) No certified copies.....	41
c) Meeting the time-limit.....	42
d) Available around the clock.....	43

I. General

Once – ideally – all relevant documents have been accessed and facts gathered, a party must compile and submit its written pleading to the GC. This Article²⁴⁸ contains a number of substantive or procedural requirements, including alternatives which **every written pleading** must meet²⁴⁹, regardless of the nature of the legal remedy concerned. It is further detailed in the “Practice Directions to Parties”, in particular in paragraphs 1 to 16 thereof.

Articles 44 to 48 RP GC lay down the contents of specific pleadings, such as applications, statements of defence, replies, rejoinders, etc. If a given document does not meet the formal requirements of Article 43, only certain deficiencies may be regularized within the conditions laid down in this provision²⁵⁰.

II. Original and copies (paragraph 1)

1. Signed original (sub-paragraph 1). a) Purpose. The purpose of this provision is to ensure that **responsibility** for undertaking procedural steps and for determining the content of procedural documents in cases before the Community courts is bestowed upon a person entitled so to do. In the case of EU institutions, Member States, and other States which are parties to the EEA Agreement, this person is the

²⁴⁸ See also the identical Art. 34 CST RP.

²⁴⁹ As further detailed in the “Practice Directions to Parties”, in particular in paragraphs 1 to 16, and Art. 7 of the “Instructions to the Registrar” (non acceptance of documents and regularization).

²⁵⁰ See Chapter D (“Regularisation of Procedural Documents”) of the “Practice Directions to Parties”.

Agent, or, for the representation of other parties, a **lawyer** who is authorized to practice before a court of a Member State or another State which is a party to the EEA Agreement, Such individual must also be bound by the legal and ethical rules to which practice of the profession of lawyer is subject in those States²⁵¹.

- 4 **b) Requirements. aa) Member States and EU institutions. (1) Agent or lawyer.** The **original** of each pleading needs to bear the personal signature²⁵² of the party's **Agent or lawyer**, which needs to appear at the **end** of the respective document²⁵³.
- 5 **(2) One signature suffices.** If a party is represented by two or more Agents and/or lawyers, the signature of one of them suffices to comply with Art. 43 (1) RP GC.
- 6 **(3) Adviser.** If the Agent or the lawyer is assisted by an **adviser**²⁵⁴ the latter does **not need** to sign the written pleadings. Thus, while an adviser has the same general rights and duties²⁵⁵ as lawyers and agents do, this is not the case with respect to signing the written submission. This provision is not the result of an omission, but simply illustrates that having recourse to an adviser is merely an option for the Agent or the lawyer, and thus that the role of the adviser is more auxiliary when compared with their roles. In other words, a case may involve an Agent/lawyer without an adviser, but not an adviser without an Agent/lawyer. On the other hand, there is nothing to prevent an adviser from adding his signature to the written submission, as long as it is also signed by the Agent or lawyer.

bb) Natural and legal persons

- 7 In the case of natural or legal persons the **lawyer** representing the party needs to sign the original of his written submission. Again, if an adviser is involved his signature is not required by law but is instead merely optional. He cannot sign in lieu of the lawyer.

cc) Parties

- 8 The signature of the party, whether that party is a natural person, or, the legal representative of a legal person, is **not required** and has thus no legal value. That said, there is nothing to prevent the party from signing a document **in addition** to the lawyer.

c) Pleadings rejected as inadmissible

- 9 The following applications have been rejected as inadmissible: should the lawyer sends a simple **photocopy** of the application²⁵⁶ to the Registry, whether by surface mail or telefax; if the lawyer uses a **signature stamp**²⁵⁷, since this is a non-personal way of "signing" with no guarantee of authenticity whatsoever; or if for reasons of

²⁵¹ Case T-37/98, *FTA v Council* [2000] ECR p. p. II-373, para. 25.

²⁵² Preferably in a legible manner.

²⁵³ Para.11 of the "Practice Directions to Parties".

²⁵⁴ Art. 19 (1) Statute ECJ.

²⁵⁵ Art. 38 to 41 RP GC.

²⁵⁶ Case T-194/95 Int. II, *Area Cova A. O. v Council* [1996] ECR p. II-343, 349.

²⁵⁷ Case T-223/06 P, *Parliament v Eistrup* [2007] ECR p. II-1581, paragraphs 40 et seq., 50.

agenda, the lawyer **fails to sign** the application personally²⁵⁸ and therefore delegates this to a colleague, even though the latter is neither mentioned in the power of attorney, nor entitled to appear before a Court of Tribunal of a Member State²⁵⁹. The same applies to a lawyer who is entitled to appear before a Member State court, but is not mentioned in the power of attorney.

d) No possibility of putting in order

Such shortcomings cannot be put in order or remedied, since Art. 43 does not contain an equivalent to Art 44 (6) RP GC, which provides that a non-compliance with certain procedural requirements may be put in order even after the time-limit for the application has elapsed²⁶⁰. A minor error, such as signing the written pleading at the beginning of the document, as common in some Member States, rather than at the end²⁶¹, may be put in order²⁶².

e) **Precautionary measures.** aa) **Measures within the logic of Art. 43 (1) RP GC.** It is rather easy to prevent most possibilities of inadmissibility due to non-compliance with Art. 43 (1) RP GC. First, one must make sure that the document signed is the **original**, i.e. not some draft version²⁶³ or, worse, a pleading from another case involving the same party. Secondly, the Agent or lawyer should consider **signing in advance** the last page of the pleadings containing the heads of claim, if for reasons of calendar he should be prevented from signing it at the relevant point in time. In the same vein it is also helpful to indicate **several names** in the power of attorney, so that if e.g. the leading lawyer is, for some reason, prevented from signing the original, someone else might do so.

bb) **“e-Curia” (1) Introduction.** An even more reliant way of avoiding non-compliance with both sub-paragraphs of Art. 43 (1) is to make use of the newly created **“e-Curia”**²⁶⁴, which enables parties to send a procedural document by electronic means, i.e. via the ECJ’s **website**, to the Registry. This new modus of transmission, which has **nothing to do** with sending documents by **Email**, requires a simple registration as a user which can quickly be accomplished online. The details of use of E-curia are further explained in the Decision of the General Court of 14 September 2011 on the lodging and service of procedural documents by means of e-Curia²⁶⁵ as well as in paragraphs 1 to 3 and 14 of the **“Practice Directions to Parties”**.

(2) **Advantages.** With **“e-Curia”**, sending a **single original** suffices. There is no more need to sign the document²⁶⁶, nor to send any certified copies (see Art. 41 (1) 2nd sub-paragraph, RP GC), which is a major progress. Moreover, the sending of the

²⁵⁸ Case T-507/04, *Ruiz Bravo-Villasante v Commission* [2005] ECR SC p. II-606, para. 36.

²⁵⁹ Case T-37/98, *FTA v Council* [2000] ECR p. II-373, para. 22, 26, 29–30.

²⁶⁰ Case T-507/04, *Ruiz Bravo-Villasante v Commission* [2005] ECR SC p. II-606, para. 36.

²⁶¹ Para.11 of the “Practice Directions to Parties”.

²⁶² Para.63 b) of the “Practice Directions to Parties”.

²⁶³ Which might contain comments, questions and other indications its’ author might not wish to be revealed to the GC and the other party.

²⁶⁴ Art. 43 (7) and the relevant decision of the GC published on www.curia.europa.eu.

²⁶⁵ OJ EU C 289 of 1.10.2011, p. 9.

²⁶⁶ Even though this is advisable, for practical reasons, i.e. in order to make sure that the right version of the document is being sent, i.e. not a draft or otherwise.

document is confirmed by a message appearing on the website of “e-Curia”; the sender also receives a subsequent Email confirming receipt. Thus, with “e-Curia”, the various risks linked to transmission of pleadings by conventional means, such as a telefax machine or Email not working properly, a postal sending getting lost or being delayed, etc. no longer exist.

- 14 **2. Certified copies (sub-paragraph 2). a) Obligations for all parties.** As a rule²⁶⁷, each “party”, meaning in practice the person(s) validly representing each party in Court, needs to provide the GC with the **signed original**²⁶⁸ of the pleading, including its **annexes**, if any, and **five certified photocopies** of said original. An **additional copy** for every **additional** party to the proceedings needs to be added. The agent or lawyer of the respective party certifies by his **signature**²⁶⁹ that the copy conforms in all respects to the original of each pleading. Usually, the copies are submitted together with the original, but the parties may also submit them in two separate steps²⁷⁰, as long as they submit both documents within the relevant time-limit.

b) Additional obligations for institutions

- 15 The EU institutions also need to provide the Court with a certain number of “simple”, i.e. **non-certified copies** of each pleading submitted²⁷¹. Since this is not provided for in the RP GC, but rather in a bilateral agreement between the institutions and the GC, these copies are not reimbursable expenses within the meaning of Art. 91 RP GC.

III. Translations (paragraph 2)

- 16 **1. Parties concerned. a) Only institutions.** This provision applies **only** to EU **institutions** (including **agencies** and other EU bodies with legal personality), regardless of whether they are a main party or an intervener in a given procedure.

b) Not natural or legal persons

- 17 The pleadings of all **other parties**, i.e. natural and legal persons, are translated by the ECJ’s **translation service**. It is thus very much advisable to draft pleadings in view of the need to translate such pleadings into **French**, which implies using short sentences and a simple sentence construction, whilst avoiding nation-specific legal jargon. Parties should bear in mind that what the Judges will ultimately read and use as a basis for the hearing and subsequent deliberations are the **French version** of the pleadings, not the original language submitted.

²⁶⁷ That is, if the parties comprise only the applicant and the defendant, i.e. no interveners or plurality of defendants.

²⁶⁸ If the document is not lodged by means of the e-Curia application, see para. 11 of the “Practice Directions to Parties”.

²⁶⁹ Para.11 “Practice Directions to Parties”.

²⁷⁰ Case T-101/92, *Stagakis v Parliament* [1993] ECR p. II-63, para. 2.

²⁷¹ This does thus not apply to natural and legal Persons or Member States.

2. Languages

Despite its wording paragraph 2 does not mean that the institutions need to provide 18 the Registrar with translations of their pleadings into all other official languages within the time-limit set²⁷². In view of the currently 23 official languages of the Court this would be impossible. The institutions need instead to provide the Registrar with a translation of their pleadings into **French**, i.e. the working language of the GC.

3. Annexes

If the documents²⁷³, i.e. copies of originals attached as **annexes** which have a 19 purely evidential and auxiliary function²⁷⁴, are not written in the language of the procedure, they must normally be **translated** accordingly. In practice, however, this rule is not enforced if the language in question is easily understood by the other party without significant inconvenience on the part of the other party, for example because the documents are in **English**. That said, the other party remains entitled to a translation of the documents into the language of the proceedings²⁷⁵ and the GC may at any time ask for a translation of either some or all annexes.

IV. Indicating the date in the pleadings (paragraph 3)

1. Date in the pleadings

Even without paragraph 3 it would seem normal to indicate a date in all 20 pleadings, although this date is ultimately of secondary or even tertiary importance.

2. Date of the lodgement

Paragraph 3, 2nd sentence, is much more important since it provides that for the 21 purpose of the verification of the compliance with the time-limit only the **date of the lodgement** at the Registry matters. This is the date upon which the pleadings concerned were lodged²⁷⁶, whether by **facsimile** or **Email**, and then subsequently by surface post, at the Registry (see paragraph 6 below); or via “**e-Curia**” (see paragraph 7 below).

3. Date of registration

The date of the lodging of the pleadings must be distinguished from the date 22 upon which the pleadings were entered into the **register** of the GC, which holds no particular importance for the parties.

²⁷² Art. 9 (3) “Instructions to the Registrar”.

²⁷³ Para.57 to 61 of the “Practice Directions to Parties”.

²⁷⁴ Case T-85/92, *De Hoe v Commission* [1993] ECR p. II-523, para. 22.

²⁷⁵ Case T-47/92, *Lenz v Commission* [1992] ECR p. II-2523, para. 36.

²⁷⁶ Case T-145/98, *ADT Projekt v Commission* [2000] ECR p. II-387, para. 80.

V. List of annexes (paragraph 4)

1. Lacunae

- 23 If a pleading includes more than one annex, it needs to be accompanied by a **list of annexes**²⁷⁷. If such list is **missing**, the Registrar will remind the concerned party accordingly²⁷⁸. The same procedure applies if the list needs to be **improved**.

2. Possible consequences

- 24 Failure to comply with this requirement may lead to the pleading being deemed **inadmissible**, if such compliance failures are likely to hinder the other party in its defence²⁷⁹.

VI. Lodging documents at the Registry (paragraph 5)

1. General comment

- 25 Determining the number of annexes and amount of pages to submit may in certain cases produce a dilemma. On the one hand, the more annexes a party submits, the more this will likely slow down the proceedings, due to, *inter alia*, translation constraints, a concern which is less relevant should the proceedings be in French. On the other hand, an annex which is only attached at a later stage of the proceedings, e.g. during the second exchange of pleadings, may be rejected as being inadmissible.

2. Voluminous annexes

- 26 In the absence of explicit wording, this provision does not amount to an obligation, but instead remains a mere possibility. That said, neither this provision nor paragraphs 57 to 61 of the “**Practice Directions to Parties**” indicate the **length** of any extract which a party might lodge at the Registry. Likewise, it is at the discretion of the party concerned to decide which extracts it lodges with the Registry. On the whole, parties should make sparing use of this provision, as it may force the other party to travel to Luxembourg in order to consult the full document. Also, inconveniencing the other party in such way would be hardly beneficial to one’s own case.

²⁷⁷ Para.58 of the “Practice Directions to Parties”.

²⁷⁸ Case T-101/92, *Stagakis v Parliament* [1993] ECR p. II-63, para. 2.

²⁷⁹ Case T-293/01, *Ineichen v Commission* [2001] ECR SC p. I-A-83, I-A-84.

VII. Transmission by facsimile or electronic mail (paragraph 6)

1. Compliance with the time-limit. a) Conventional means of transmission. This provision applies to all written pleadings, i.e. not just the application or statement of defence, but also seemingly less important submissions or letters to the Registry²⁸⁰. The parties may decide by which means they submit their written pleadings to the Registrar. If they make use of conventional means of transmission, such as **surface mail, registered mail**²⁸¹, **express delivery**, or **delivery by hand**, the signed original and certified copies (respectively including the annexes, if any) are normally furnished via the same sending.

b) Telefax and electronic mail. aa) General. If the parties decide to send the original pleading as well as the list of annexes via **telefax** or **electronic mail**,²⁸² they must of course do so within the relevant time-limit. This time-limit is the sum of (1) the time-limit provided by primary or secondary law, e.g. 2 months, and (2) the 10 day period on account of distance²⁸³. A party sending a submission by fax or Email is considered to have complied with the time-limit if the original and the certified copies are furnished within a period of **10 days as of the transmission** of the original by either telefax or electronic mail.

Non-compliance with the 10 day limit as of transmission by facsimile or Email results in the written submission concerned being inadmissible²⁸⁴. Thus, an application at first instance²⁸⁵ or an appeal²⁸⁶ is inadmissible if the original is sent by telefax **within** the relevant time-limit, while the certified copies are furnished to the Registry **more** than ten days later (see Art. 43 (4) RP GC) at a point in time when the time-limit has elapsed.

bb) Telefax. (1) Proper use of the fax machine. The user should make sure that the document is sent in the proper orientation, i.e. face up or down, depending upon the telefax. Getting this rather obvious matter wrong, probably due to the submitter's late night fatigue, resulted in a default judgment in a major competition case²⁸⁷.

(2) No last minute sending. Document should be faxed during the **working hours** of the Registry, i.e. not at the very last minute before midnight, since there is no guarantee that the telefax of the sender and/or the GC is working properly at all times (given the risk of paper jams, etc.). Submission during working hours also

²⁸⁰ Case T-253/08, *Addis Group v OHIM* [2008] (not published in the ECR).

²⁸¹ Case T-283/09 P, *Laleh Aayhan v Parliament* [2009] (not published in the ECR), paragraphs 15 and 16.

²⁸² See paragraphs 4 to 8 of the "Practice Directions to Parties."

²⁸³ Art. 102 (2) RP GC.

²⁸⁴ Case T-253/08, *Addis Group v OHIM* [2008] (not published in the ECR).

²⁸⁵ Case T-358/07, *PubliCare Marketing Communications v OHIM* [2008] (not published in the ECR).

²⁸⁶ Case T-283/09 P, *Laleh Aayhan v Parliament* [2009] (not published in the ECR), paragraphs 15 and 16.

²⁸⁷ Joined Cases T-44/02 OP, T-54/02 OP, T-56/02 OP, T-60/02 OP et T-61/02 OP *Dresdner Bank v Commission* [2006] ECR p. II-3567.

allows the party representative to call the Registry in order to have the receipt confirmed, if need be.

- 32 (3) **Confirmation sheet.** The “confirmation sheet” of the telefax should normally be accepted as evidence for timely submission of the document. In the worst of cases, e.g. should the fax-line of the GC turn out to be constantly busy and time thereby become a pressing matter, a party should send the document to the telefax number of **another EU court**, e.g. the ECJ.

cc) Email

- 33 Sending a document by Email as a pdf may be risky since the party cannot anticipate at which time and date the GC will ultimately receive the Email, even if the document is sent before the end of the time-limit²⁸⁸, as one must bear in mind that it is not the **time zone** of the sender which matters, e.g. the Irish time zone, but rather the time zone of Luxembourg²⁸⁹.

- 34 **2. No extension of time-limit.** a) **General.** Paragraph 6 does not in any way extend the relevant **time-limit**, which is the sum of the time-limit provided by primary law²⁹⁰ or the RP GC and the time-limit on account of distance, i.e. the period of ten days to be added by virtue of the RP GC. But paragraph 6 enables the parties to fully take advantage of that time-limit by sending the original including the list of annexes by telefax or Email on the last day.

b) Obsolete provision

- 35 Given today’s modern means of communication, the concept of a time-limit on account of distance has become outdated, but the proposed suppression of Art. 45 (1) Statute ECJ has not been adopted.

3. Practical aspects

- 36 Making use of this possibility requires two things: First, the original, including the certified copies, must arrive at the Registry²⁹¹ within the period of ten days following submission of the pleading by technical means provided in Art. 43 (6) (not to be confused with the period of ten days on account of distance within the meaning of Art. 102 paragraph 2 RP GC). Secondly, this original must be in every aspect **identical** to the original sent by either telefax or Email, from its contents to the signature(s)²⁹².

²⁸⁸ Case T-472/10, *Cavanee Fishing Co. Ltd. v Commission* [2011] (not published in the ECR), para. 14.

²⁸⁹ Case T-472/10, *Cavanee Fishing Co. Ltd. v Commission* [2011] (not published in the ECR), para. 16.

²⁹⁰ Art. 102 (2) RP GC.

²⁹¹ Case T-2/06, *Yusef v Council* (not published in the ECR).

²⁹² Case T-138/01 R, *F v Court of Auditors* [2001] ECR SC p. II-987, paragraphs 8–9.

4. Comment

At first glance it might seem disproportionate to reject an application as inadmissible on the sole ground that the party who transmitted the original within the time-limit, e.g. by telefax, failed to furnish the original and the certified copies within the next ten days. After all, that party did submit a pleading within the original time-limit. On the other hand, a telefaxed document is not an original and the recipient cannot assess the authenticity of a document on the sole basis of a telefaxed version. Thus, the current rule in Art. 43 (6) RP GC seems fair, especially because it enables the party to take full advantage of the time-limit, since the transmission by telefax or Email is fast and thus may be completed later within the limits set out by the original time-limit, when compared with surface mail or even express courier. This convenience, however, comes at the price of having to comply with Art. 43 (6) RP GC.

Since October 2011, however, the parties have been given the possibility to submit their written pleadings by an electronic transmission system called “e-Curia”, which enables them to take full advantage of the time-limit **without** having to send any paper version and certified copies within a subsequent given time-limit (see Art. 43 (7) RP GC hereafter).

VIII. Requirements for the electronic transmission (paragraph 7)

1. Overview

In October 2011, the GC published its – long awaited – “Decision on the lodging and service of procedural documents by means of e-Curia”.²⁹³ E-Curia, which is common to the three constituent courts of the Court of Justice of the European Union, is based on an electronic authentication system using a combination of **user identification** and a **password**, which meets “*the requirements of authenticity, integrity and confidentiality of documents exchanged*”.²⁹⁴

2. Advantages. a) Original. A procedural document lodged by means of e-Curia, a special website operated by the ECJ, which must be accompanied by all Annexes as well as a summary list of Annexes, shall be deemed to be the original of that document. The representative’s **user identification** shall constitute the signature of the document concerned²⁹⁵.

b) No certified copies

Unlike what is provided for in Art. 43 (1) RP GC, it is not necessary to submit certified copies of a document lodged by e-Curia²⁹⁶. This considerably reduces the

²⁹³ OJ EU C 289 of 1.10.2011, p. 9 -10.

²⁹⁴ Second recital of the GC’s decision regarding e-Curia.

²⁹⁵ See Art. 3 of the decision regarding e-Curia.

²⁹⁶ Art. 4 of the decision regarding e-Curia.

usual secretarial constraints, as well as potential source of errors such as missing pages, and, last but not least, shipping and copying costs.

c) Meeting the time-limit

- 42 A further – invaluable – advantage of e-Curia is that a document shall be deemed to have been lodged “*at the time of the representative’s, meaning the Agent’s or lawyer’s, validation of lodgment of that document*”.²⁹⁷ Thus, the sender no longer needs to worry as to the safe and timely arrival of a document sent by conventional means, e.g. surface mail, fax, Email etc.

d) Available around the clock

- 43 E-Curia may be used anytime, regardless of the opening hours of the Registry and by validating the lodging the sender receives a confirmation, followed by an Email within one or two hours after the event.

Article 44 [Contents of an application]

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

- (a) the name and address of the applicant;
- (b) the designation of the party against whom the application is made;
- (c) the subject-matter of the proceedings and a summary of the pleas in law on which the application is based;
- (d) the form of order sought by the applicant;
- (e) where appropriate, the nature of any evidence offered in support.

2. For the purposes of the proceedings, the application shall state an address for service in the place where the General Court has its seat and the name of the person who is authorised and has expressed willingness to accept service.

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

If the application does not comply with the requirements referred to in the first and second subparagraphs, 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 agent or lawyer of that party. By way of derogation from the first paragraph of Article 100, service shall then be deemed to have been duly effected by the lodging of the registered letter at the post office of the place where the General Court has its seat.

3. The lawyer acting for 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.

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

²⁹⁷ Art. 5 of the decision regarding e-Curia.

5. An application made by a legal person governed by private law shall be accompanied by:

- (a) the instrument or instruments constituting and regulating that legal person or a recent extract from the register of companies, firms or associations or any other proof of its existence in law;
- (b) proof that the authority granted to the applicant's lawyer has been properly conferred on him by someone authorised for the purpose.

5a. An application submitted under Article 272 TFEU pursuant to an arbitration clause contained 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.

6. If an application does not comply with the requirements set out in paragraphs 3 to 5 of this Article, the Registrar shall prescribe a reasonable period within which the applicant is to comply with them whether by putting the application itself in order or by producing any of the above-mentioned documents. If the applicant fails to put the application in order or to produce the required documents within the time prescribed, the General Court shall decide whether the non-compliance with these conditions renders the application formally inadmissible.

Outline:

I. General	1
1. Minimum requirements	1
2. Scope and importance	2
a) Rule	2
b) Exception	3
3. Length of the application	4
a) Principle of the limitation	4
b) Rule	5
aa) Maximum of 50 pages	5
bb) No circumvention	6
c) Exception	7
d) Undue limitation of rights of defence?	8
aa) Application and defence	8
bb) Appeals	9
4. Application in a single document	10
5. CST	11
6. Fact finding prior and during proceedings	12
II. Contents of the application (paragraph 1)	14
1. Name and address of the applicant (lit. a)	13
a) Applicant	13
b) Lawyer	14
2. Name of defendant (lit. b)	15
a) Indicating the name and address of the defendant(s)	15
b) Identity of the defendant	16
c) Case law	17
3. Subject-matter of the proceedings and summary of the pleas in law (lit. c)	18
a) Introduction	18
aa) Importance	18
bb) Additional summary	19
b) Subject matter of the proceedings	20
c) Summary of the pleas in law on which the application is based	21

aa) General.....	21
(1) GC.....	21
(2) CST.....	22
bb) Legal requirements	23
(1) General.	23
(2) Case-law.....	24
(a) GC.....	24
(b) CST.....	27
(3) Sufficient indication	28
(a) Legal basis.....	28
(b) Presentation of the legal pleas.....	29
(4) Insufficient indications.....	30
(a) Facts.....	30
(b) Legal arguments.....	31
(5) Comment.....	32
(6) Action for damages.....	33
(a) Overview.	33
(b) Conduct.	34
(c) Nature of the damage.	35
(d) Unlimited jurisdiction.....	36
(e) Extent of the damage.....	37
(7) Causality.....	38
cc) No confinement to the arguments of the parties	39
dd) Presentation in the application	40
(1) Introduction.	40
(2) No reference to other applications.	41
(3) No reference to submissions in administrative proceedings .	42
(a) Staff cases.	42
(b) Intellectual property cases	43
(4) References to annexes.....	45
(a) Function.....	45
(b) Admissible.	46
(c) Inadmissible.....	47
ee) No remedy in the reply.	48
d) Quantitative aspects.....	49
aa) No formal limit to the number of legal pleas	49
bb) Page numbers	50
4. Form of order sought (lit. d)	51
a) General.....	51
aa) Inadmissible forms for order sought.....	52
(1) Claims seeking general declarations.....	52
(2) Instructions.	53
(3) Claims aiming at the implementation of a judgment.	54
(4) Lack of clarity.	55
(5) Other.....	56
bb) Staff cases	57
b) Requirements as to the contents	58
aa) Determining the forms of order sought by interpretation ...	59
(1) Missing forms of order sought.....	59
(2) Inaccurate forms of order sought.....	61
(3) Limits of interpretation.	62
bb) Inadmissible forms of order sought.....	63
(1) Lack of precision.	63
(2) Examples.	64
cc) No new forms of order sought	65
(1) Rule.	65
(2) Exceptions.....	66
(3) Clarifying the wording of the order sought.....	67

dd) Order on costs	68
(1) Main parties.	68
(2) Interveners.	69
5. Evidence (lit. e)	70
a) Where appropriate	70
b) Practical approach.....	71
III. Address for service (paragraph 2)	72
1. General.....	72
2. Choice of address.....	73
3. Consequence	74
IV. Proof of lawyers' status (paragraph 3)	75
1. Lawyer instructed by a natural or legal person	75
a) Art. 19 Statute ECJ	75
b) Power of attorney	76
aa) Natural person	76
bb) Legal person	77
2. External lawyer appearing for an institution.....	78
V. Attaching the challenged legal act (paragraph 4)	79
VI. Obligations of proof incumbent upon legal persons (paragraph 5)	80
1. General.....	80
2. Instruments or extracts from the register of companies (lit. a)	81
a) General.....	81
b) Establishment in a Member State.....	82
c) Establishment in a third country.....	83
3. Power of Attorney (lit. b)	84
a) Obligation for legal persons.....	84
b) Issued by authorized person	85
c) No particular form	86
VII. Proof of an arbitration clause (paragraph 5a).....	87
VIII. Putting the application in order (paragraph 6)	88
1. General.....	88
2. Defects which cannot be cured.....	89
3. Defects which may be put in order.....	90
a) Address for the service	90
b) Missing documents.....	91
4. Corrigenda.....	92
a) Principle	92
b) Contents	93

I. General

1. Minimum requirements

This provision complements Art. 21 Statute ECJ and is further detailed in the 1 “Practice Directions to Parties”, in particular in paragraphs 17 to 41 thereof. Art. 44 RP GC contains “minimum requirements”²⁹⁸, which are mandatory²⁹⁹ and thus need to be examined *ex officio*³⁰⁰.

²⁹⁸ Case T-468/93, *Frinil v Commission* [1994] ECR p. II-33, para. 30.

²⁹⁹ See para. 18 of the “Practice Directions to Parties” and e.g. Case T-154/01, *Distilleria Palmi v Commission* [2004] ECR p. II-1493, 1512, paragraphs 57 et seq.

³⁰⁰ Case T-180/94, *M v Commission* [1994] ECR SC p. II-663.

2. **Scope and importance.** a) **Rule.** Art. 44, like Art. 43, applies to **all legal remedies**, such as **actions for annulment** etc., whether heard by way of “**normal**” **proceedings**, **expedited proceedings** (Art. 76 a RP GC)³⁰¹, or proceedings relating to **intellectual property rights**³⁰². Every **application** must comply with these criteria, which also apply – within the limits of Article 46 (1) RP GC – to any **statement of defence**³⁰³. These criteria also apply to applications for **suspension**³⁰⁴, for **intervention**³⁰⁵, for **default judgments**³⁰⁶, for **third-party proceedings**³⁰⁷, for **revision**³⁰⁸, **interpretation of judgment**³⁰⁹, etc. Their particular importance is also illustrated by the fact that the Registrar of the GC conducts an initial check of compliance with Art. 44³¹⁰.

b) **Exception**

3 Art. 44 also applies, at least partly, to **appeals** against decisions of the CST³¹¹ and the **response to such appeals**³¹².

4. **Length of the application.** a) **Principle of the limitation.** At the time when the number of pages of an application were not limited by law, the EU Courts, and in particular the GC (then the CFI), were recurrently confronted with applications of inflationary and sometimes epic size. On a number of occasions the CFI had to respond to applications comprised of so many pages that the application was deemed to amount to a **misuse**³¹³. The need to safeguard the **rights of defence**, on the one hand, and to limit the GC’s **workload**, which has a bearing on the average duration of proceedings, led the GC to opt for a **legislative limitation** of the number of pages of an application or pleading, as provided in paragraphs 15 and 16 of the “**Practice Directions to Parties**”.

5 b) **Rule.** aa) **Maximum of 50 pages.** Paragraph 15 of the “**Practice Directions to Parties**” provides that “*Depending on the subject-matter and the circumstances of the case, the maximum number of pages shall be as follows: 50 pages for the application and the defence...*”, etc. The wording suggests, that these 50 pages (excluding annexes) are **not an absolute maximum**, meaning that an application comprising e.g. 53 pages would not be rejected. This is corroborated by another rule in the “**Practice Directions**” which provides that exceeding this limit by **40 % may** (but *must* not necessarily) result in a request to put the application in order

³⁰¹ Case T-87/05, *EDP v Commission* [2005] ECR p. II-3745, para. 183.

³⁰² Art. 130 (1) and Art. 132 (1) RP GC; see also paragraphs 34 to 39 of the “**Practice Directions to Parties**”.

³⁰³ Paragraphs 38 to 41 “**Practice Directions to Parties**”.

³⁰⁴ Art. 104 (3) RP GC.

³⁰⁵ Art. 115 (2) RP GC.

³⁰⁶ Art. 122 (4) RP GC.

³⁰⁷ Art. 123 RP GC.

³⁰⁸ Art. 126 RP GC.

³⁰⁹ Art. 129 (1) RP GC.

³¹⁰ Art. 8 “**Instructions to the Registrar**”.

³¹¹ Art. 138 (1) RP GC.

³¹² Art. 141 (2) RP GC.

³¹³ See e.g. Joined Cases T-191/98, T-212/98 to T-214/98, *Atlantic Container A. O. v Commission* [2003] ECR p. II-3275, para. 1646.

and ultimately delay its notification to the other party³¹⁴. While this rule creates some flexibility, it comes at the cost of legal uncertainty and the conclusion that there might be no perfect solution in so far. An application or appeal may not be rejected as inadmissible in case the party exceeds the limit of page numbers, but this may trigger judicial costs³¹⁵.

bb) No circumvention

Parties should abstain from circumventing the page limit. Paragraph 12 c) of the “Practice Directions to Parties”, to which the abovementioned paragraph 15 explicitly refers, provides that *“the text must appear in characters that are sufficiently large to be easily read with sufficient line spacing and margins to ensure that a scanned version will be legible”*. This sets a reasonable limit upon attempts to cram as much text onto each page as possible. Additionally, subsequent attempts to circumvent the page limit by referring to the original document as an integral part of the current submission may result in a new request to put the application in order³¹⁶.

c) Exception

In certain circumstances, e.g. if an application is lodged by a **large number of applicants** and/or if the **subject is particularly complex** concerning the facts and/or the legal aspects, an application may and indeed sometimes must exceed 50 pages. Under the current system it is difficult for a party to assess in which cases the GC will insist on having the page-limit rule applied. That said, as long as there are objective reasons for an application exceeding 50 pages, the party concerned may rely on its **rights of defence**, as the GC will not disregard³¹⁷ the fact that unduly limiting page numbers may trigger a subsequent appeal to the ECJ, or indeed to the ECHR. It should be kept in mind that ultimately the rights of defence should, except in cases of clear misuse, **prevail** over the need to limit the GC’s workload.

d) Undue limitation of rights of defence? aa) Application and defence. Inevitably, the limitation of pages leads one to question whether this measure is a **balanced comprise** between guaranteeing the rights of defence and preventing a dynamic of inflated applications in order to limit the GC’s burden of work. Since the 50 page rule is **not an absolute quota**, much depends upon the GC’s degree of flexibility regarding the *“subject-matter and the circumstances of the case”*. The GC should not have to deal with extraordinarily long applications simply because their author(s) may be unable to express views in a more condensed manner, or because it is not convenient for him/them to do so. On the other hand, it is only at the end of the proceedings that the GC will be able to tell whether the rights of defence of the party required exceeding the rule, which is all the more the case in appeals, given the comparatively strict limitation to 15 pages.

³¹⁴ Para.63 of the “Practice Directions to Parties”.

³¹⁵ Art. 90 a) RP GC.

³¹⁶ Case T-429/09, *Campailla v Commission* [2011] (not published in the ECR), para. 20.

³¹⁷ Case T-429/09, *Campailla v Commission* [2011] (not published in the ECR), para. 20.

bb) Appeals

- 9 There are nevertheless doubts as to whether the **15 page** rule applicable to **appeals** and **response to appeals**³¹⁸ is appropriate. While it is true that the GC cannot review facts on appeal, an appeal may nevertheless involve complex legal questions relating e.g. to pleas of illegality or distortion of means of evidence which might require more than 15 pages to properly explain. Again, the GC will have to strike a difficult balance between the rights of defence and the needs of limiting the workload. Also a e.g. 20 page long appeal might be more efficient in terms of limiting the workload than a 15 page long document, if it triggers the need for a second exchange of written submissions.

4. Application in a single document

- 10 It is clear from Art. 21 Statute ECJ and Art. 44 RP GC that the entire content of an application must be contained in a **single written document**. Thus even within the time-limit it is inadmissible to add factual and/or legal arguments to the initial application by handing in a second written document, e.g. as an *addendum*. In such a situation, it is appropriate to withdraw the initial application which is now considered incomplete and to instead replace it by a completed version, provided that the time-limit has not yet expired.

5. CST

- 11 Pursuant to the equivalent provision in Art. 35 RP CST, there are **additional requirements** for any application before the CST, which are mainly limited to the “*description and address of the signatory*”³¹⁹ and the need for the applicant to annex the **complaint** within the meaning of Art. 90 (2) of the Staff Regulations, as well as the **reply** to that complaint, if any³²⁰ – which under the RP GC used to be the defendant’s responsibility.

6. Fact finding prior and during proceedings

- 12 Applicants face the challenge of indicating all relevant facts in the application, i.e. from the outset, as normally no new facts may be put forward in the course of the proceedings³²¹. Thus, the party needs to gather a maximum of relevant facts, ideally **prior** to lodging the application, but also during the pending proceedings.

II. Contents of the application (paragraph 1)

- 13 **1. Name and address of the applicant (lit. a). a) Applicant.** The first and last name of the applicant and his address need to be indicated on the **first page** of the

³¹⁸ Para.15 of the “Practice Directions to Parties”.

³¹⁹ Art. 35 (1) (b) RP CST.

³²⁰ Art. 35 (2) (b) RP CST.

³²¹ Art. 48 (2) RP GC.

application³²². Accordingly, if two or more applicants initiate one single court case, which is only permissible if the application has the same purpose and is based on the same legal grounds³²³, the names and residences of all applicants need to be indicated. In any case, the application must make the identity and address of the applicant sufficiently clear³²⁴.

b) Lawyer

Furthermore, the name and address of the applicant's lawyer need to be indicated³²⁵.

2. Name of defendant (lit. b). a) Indicating the name and address of the defendant(s). Designating the name of the defendant is an obvious obligation³²⁶. If the application is addressed to several defendants, as may be the case in matters of extra-contractual liability³²⁷, all defendants need to be indicated.

b) Identity of the defendant

In case of a direct application, only institutions, agencies, and other bodies with legal personality may be considered defendants, **not the EU as such**, even though the EU was legal personality (Art. 47 TEU).

c) Case law

If it appears that an application has been addressed to an institution which is not the author of the challenged legal act and is thus the wrong addressee, then the application is nevertheless admissible if it contains enough indications as to the actual institution it is directed against. This was the case of an application directed against the "European Community"³²⁸ or against a Member State, where the applicant meant the Commission³²⁹. By contrast, the application is inadmissible if an application insists upon maintaining an erroneous designation of a party as a defendant, despite being aware that this institution is not the author of the challenged act³³⁰.

3. Subject-matter of the proceedings and summary of the pleas in law (lit. c).

a) Introduction. aa) Importance. Indicating the subject-matter of the proceedings (see lit. b below), the summary of the pleas in law (see lit. b below), and the plea sought (see lit. d) below) is the **central piece** of the application.

³²² Para.9 of the "Practice Directions to Parties".

³²³ Case T-175/97, *Bareyt v Commission* [2000] ECR SC p. II-1053.

³²⁴ Joined Cases T-54/00 and T-73/00, *Federación de Cofradias de Pescadores de Guipúcoa A. O. v Council* [2001] ECR p. II-2691, paragraphs 28–29.

³²⁵ As implied by para. 11 of the "Practice Directions to Parties".

³²⁶ Para.9 c) "Practice Directions to Parties".

³²⁷ Case T-533/93, *Bouma v Council and Commission* [2001] ECR p. II-203.

³²⁸ Case T-201/99, *Royal Olympic Cruises A.O v Council* [2000] ECR p. II-4005, para. 20.

³²⁹ Case T-173/06, *Aisne and Nature v Commission* [2006] (not published in the ECR).

³³⁰ Case T-173/06, *Aisne and Nature v Commission* (not published in the ECR), para. 18.

bb) Additional summary

- 19 In addition to the subject-matter, the application must be accompanied by a summary of the pleas in law and of the main arguments relied upon³³¹, designed to facilitate the drafting of the notice prescribed by Art. 24 (6) RP GC, in view of its publication in the OJ EU. There is no such obligation regarding the statement of defence, the reply, or the rejoinder.

b) Subject matter of the proceedings

- 20 The applicant needs to provide a brief account of the facts giving rise to the dispute³³² in a **separate chapter**.
- 21 **c) Summary of the pleas in law on which the application is based. aa) General.**
- (1) GC. This – somewhat unexpected – limitation to a “**summary**” of the pleas in law may have to do with the fact that in proceedings at the GC a **second exchange** of pleadings is still the rule³³³, thus enabling the parties to provide the GC with more arguments during the second exchange of written submissions (i.e. during the reply and rejoinder). Non-compliance with this provision results in the application being inadmissible³³⁴.
- 22 (2) CST. This follows *a contrario* from the provision applying in proceedings at the CST, which does **not** use the term “summary”³³⁵. The fact that the written procedure in proceedings at the CST is, as a rule³³⁶, limited to **one** exchange of pleadings (i.e. application and statement of defence)³³⁷ makes it even more important to set out legal grounds and arguments in a **detailed manner** within the application³³⁸.
- 23 **bb) Legal requirements. (1) General.** In practice, it is important to bear in mind that while the GC’s case law is rather applicant-friendly, the term “summary” should neither be interpreted literally, nor should the requirements set out by the case-law be underestimated.
- 24 (2) **Case-law. (a) GC.** In accordance with the case-law and irrespective of any question of terminology³³⁹, that summary must, for reasons of **legal certainty** and **good administration of justice**³⁴⁰, be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the application, even without further information.

³³¹ Para.25 “Practice Directions to Parties”.

³³² Para.20 “Practice Directions to Parties”.

³³³ Art. 47 RP GC.

³³⁴ Case T-100/08 P, *Kerelov v Commission* [2010] (not yet published in the ECR), paragraphs 16–17.

³³⁵ Art. 35 (1) lit. e) RP CST: “the pleas in law and the arguments of fact and law relied on”.

³³⁶ Art. 7 (3) of Annex I Statute ECJ, see Case F-76/09, *AH v Commission* [2011] (not yet published in the ECR), paragraphs 29–33.

³³⁷ But exceptions are not rare, depending upon the subject concerned. Proceedings involving allegations of psychological harassment tend to involve two written submissions on each side.

³³⁸ Case F-8/10, *Gheysens v Council* [2010] ECR SC p. II-0000, para. 60.

³³⁹ Case F-64/10, *Montzouratos v Parliament* [2011] (not yet published in the ECR), para. 16.

³⁴⁰ Case F-102/09, *Bennett A. O. v OHIM* [2011] (not yet published in the ECR), para. 115.

Thus in order for an action to be admissible, it is necessary that the basic legal 25 and factual particulars relied upon be indicated at least in summary form in a coherent and intelligible manner within the application itself, so as to guarantee legal certainty and sound administration of justice³⁴¹. Similar requirements arise when a submission is made in support of a plea in law³⁴².

In practice the GC will assess the contents of the application, rather than its 26 formal aspects, by assessing the application as a whole³⁴³ and by taking account of its special context³⁴⁴, if necessary.

(b) CST. The same standards for applications are relevant to proceedings at the 27 CST³⁴⁵ and to appeals against decisions of the CST³⁴⁶. Compliance with these standards does not mean that an application needs to be long and detailed in order to be admissible³⁴⁷.

(3) Sufficient indication. (a) Of the legal basis. Indicating the basic legal and 28 factual particulars does not require a special wording, let alone a specific vocabulary³⁴⁸. Possible errors made in designating the text applicable to one or another of the claims remain without consequence provided the purpose of the proceedings and summary of the pleas in law appear sufficiently clear from the application³⁴⁹. Furthermore, there is no need for the applicant to comply with the terminology used in the rules of procedure³⁵⁰, as long as the application provides a sufficient indication of the factual and legal particulars.

(b) Presentation of the legal pleas. The legal pleas in an application may be 29 presented “briefly”, on the condition that the applicant provides all the necessary clarifications during the course of the proceedings, e.g. by way of an expert opinion³⁵¹. The presentation of a legal plea may be even “very brief”, if the remainder of the application provides sufficient indications as to the applicant’s meaning and intention³⁵². With respect to joined cases the GC even declared a “poorly structured” application, which did not explicitly indicate its relevant legal pleas, as admissible³⁵³. Thus, it is sufficient that the legal pleas are “implicitly” contained in the application³⁵⁴. In the same vein the GC held that an application is

³⁴¹ Case T-332/01, *Roquette Frères v Commission* [2006] ECR p. II-3137, paragraphs 208 to 209; Case T-359/04, *British Aggregates A. O. v Commission* [2010] (not yet published in the ECR), para. 81.

³⁴² Case T-352/94, *Mo och Domsjö v Commission* [1998] ECR p. II-19889, para. 333; Case T-231/99, *Joynson v Commission* [2002] ECR p. II-2085, para. 127.

³⁴³ Case T-300/97, *Latino v Commission* [1999] ECR p. II-1263, para. 36.

³⁴⁴ Case T-20/94, *Hartmann v Commission* [1997] ECR p. II-595, para. 37; Case T-554/93, *Saint and Murray v Council and Commission* [1997] ECR p. II-563, para. 55.

³⁴⁵ Case F-8/10, *Gheysens v Council* [2010] (not yet published in the ECR), para. 60.

³⁴⁶ Case T-157/09 P, *Marcuccio v Commission* [2010] (not yet published in the ECR), para. 27.

³⁴⁷ Case F-6/10, *Munch v OHIM* [2011] (not yet published in the ECR), paragraphs 91–92.

³⁴⁸ Case T-145/98, *ADT Projekt v Commission* [2000] ECR p. II-387, para. 67.

³⁴⁹ Case T-171/99, *Corus v Commission* [2001] ECR p. II-2967, para. 36.

³⁵⁰ Case T-85/92, *De Hoe v Commission* [1993] ECR p. II-523, para. 21.

³⁵¹ Case T-20/94, *Hartmann v Council and Commission* [1997] ECR p. II-595, para. 41.

³⁵² Case T-21/90, *Generlich v Commission* [1991] ECR p. II-1323, para. 32.

³⁵³ Joined Cases T-121/96 and T-151/96, *Mutual Aid Administration Services v Commission* [1997] ECR p. II-1357, para. 39.

³⁵⁴ Case T-28/97, *Hubert v Commission* [1997] ECR SC p. II-1255, para. 39.

admissible even though its contents were “confused”³⁵⁵ or “quite confused” and even though the applicant did not indicate the reasons as such³⁵⁶.

- 30 (4) **Insufficient indications.** (a) **Facts.** A mere reference to a **factual plea** which does not enable the defendant to defend itself nor the Judge to exercise judicial review is equally not in line with the requirements of Art. 44 (1) lit. c) RP GC³⁵⁷. A plea which appears only in the factual part of an application may also turn out to be inadmissible³⁵⁸.
- 31 (b) **Legal arguments.**
- **Absence.** An application is obviously not up to standard if it contains **no legal plea** whatsoever³⁵⁹, i.e. not even summarily³⁶⁰, or if it is “beyond understanding”³⁶¹.
 - **Too abstract.** A mere **abstract reference** to general principles of law³⁶² or judgments on a specific legal concept³⁶³ is inadmissible, if it contains an **unsubstantiated** reference to a breach of essential procedural requirements³⁶⁴, or a lack of legal basis or reasoning³⁶⁵. The same applies if the applicant is of the view that there would be an “infringement of the Treaty”, without specifying which provisions he considers as breached³⁶⁶, or if he asserts a violation of several provisions, but in an “uncoordinated way”³⁶⁷. Thus, merely referring to Art. 102 TFEU with no precise submissions as to the market position of the undertakings concerned, their uniform conduct, or economic links, cannot be regarded as sufficient³⁶⁸. In other words, a specific reference to the articles of the Treaty the applicant considers to be infringed does not meet the minimum requirements of Art. 44 (1) lit. c) RP GC if the application does not otherwise provide for accurate determination of the subject matter³⁶⁹.
 - **Lack of clarity.** The GC rejected an application as inadmissible by ruling that “it is **vague** and it is not possible to identify from it clearly and precisely the unlawful conduct”³⁷⁰ of which the applicant claims the defendants are guilty. The same is true for an application which referred to a number of challenged

³⁵⁵ Case T-333/01, *Meyer v Commission* [2003] ECR p. II-117, para. 11.

³⁵⁶ Case T-575/93, *Koelman v Commission* [1996] ECR p. II-1, para. 33.

³⁵⁷ Case T-129/98, *Sabbioni v Commission* [1999] ECR SC, p. I-A-223, I-A-228.

³⁵⁸ Joined Cases T-191/98, T-212/98 to T-214/98, *Atlantic Container Line A.O. v Commission* [2003] ECR p. II-3275, para. 283.

³⁵⁹ Case T-310/02, *Theodorakis v Council* [2004] ECR p. II-427, para. 21.

³⁶⁰ Case T-515/93, *B v Commission* [1994] ECR SC p. II-379.

³⁶¹ Case T-267/10, *Land Wien v Commission* [2011] (not published in the ECR), paragraphs 20 et seq.

³⁶² Case T-238/99, *Service Station Veger v Commission* [2006] ECR p. II-27.

³⁶³ Case T-16/91, *Rendo v Commission* [1992] ECR p. II-2417, para. 130; Joined Cases T-33/89 and T-74/89, *Blackman v Parliament* [1993] ECR p. II-249, para. 64; Case T-257/97, *Herold v Commission* [1999] ECR SC p. I-A-49, I-A-51; Joined Cases T-190/95 and T-45/96, *Européenne Automobile v Commission* [1999] ECR p. II-367, para. 57.

³⁶⁴ Case T-16/91, *Rendo v Commission* [1992] ECR p. II-2417, para. 130.

³⁶⁵ Case T-264/03, *Schmoldt A. O. v Commission* [2004] ECR p. II-1515, para. 43.

³⁶⁶ Case T-224/95, *Tremblay A. O. v Commission* [1997] ECR p. II-2215, para. 80.

³⁶⁷ Case T-71/99, *Meyer v Commission* [1999] ECR p. II-1727, para. 15.

³⁶⁸ Case T-102/92, *VIHO v Commission* [1995] ECR p. II-17, para. 70.

³⁶⁹ Case T-73/99, *Meyer v Council and Commission* [1999] II-1739, para. 8.

³⁷⁰ Case T-361/99, *Meyer v Commission and EIB* [2000] ECR p. II-2031, para. 8.

decisions without any further explanation by way of **obscure and unclear expressions** which did not reveal which arguments relate to which decisions³⁷¹.

(5) **Comment.** It would seem from the case-law quoted above that it is not easy to draw an exact line between what is considered to be (still) sufficiently precise and what is not (see paras 28 et seq. and para. 30 above). It is remarkable that even if an application is more or less unclear, the GC is always striving to distill a legal plea out of an application whenever possible. It might indeed be in line with the principle of judicial protection to adopt a generous and open-minded reading of each application. This would undoubtedly be fully understandable and only fair if the parties were to represent themselves, as is the case in a number of lower jurisdictions in the Member States. But shouldn't the GC adopt a slightly stricter approach given that the parties are represented by an Agent or lawyer, who is supposed to be a legal professional and who is therefore liable for complying with procedural rules? This may sound reasonable, in theory, but might only result in trading one problem for another, since the GC would be perceived as being too formalistic and would, besides, still have to determine where exactly it would place its minimum standard for compliance with rules. Given the abundance of the case-law, it would be worth considering making the wording of Art. 44 (1) lit. c) RP GC more specific.

(6) **Action for damages.** (a) **Overview.** An application seeking compensation for damages caused by a Community institution must cite the evidence, from which the **conduct** which the applicant alleges against the institution may be identified, the reasons for which the applicant considers there is a **causal link** between the conduct, the **damage** which he claims to have suffered, and the nature and extent of that damage³⁷².

(b) **Conduct.** The applicant must describe the alleged conduct of the institution in a sufficiently clear manner³⁷³. Should the applicant base his claim on an alleged infringement of national laws, it may suffice to indicate the relevant articles of the directive concerned without providing details of the national legislation³⁷⁴.

(c) **Nature of the damage.** The applicant must explain the nature of the damage, i.e. whether it constitutes a **material** loss and/or a **moral** damage³⁷⁵, which may in turn imply a financial or, alternatively, a purely symbolic compensation³⁷⁶.

(d) **Unlimited jurisdiction.** Even though the GC has unlimited jurisdiction in financial matters, the Judge needs to comply with the parties' rights of defence and may thus not rely on an argument without having heard the parties beforehand³⁷⁷.

³⁷¹ Case T-72/92, *Benzler v Commission* [1993] ECR p. II-347, para. 18.

³⁷² Case T-64/89, *Automec v Commission* [1990] ECR p. II-367, para. 73.

³⁷³ Case T-369/03, *Arizona Chemical A. O. v Commission* [2005] ECR p. II-5839, paragraphs 119–120.

³⁷⁴ Case T-279/03, *Galileo International Technology A. O. v Commission* [2006] ECR p. II-1291, para. 41.

³⁷⁵ Case T-262/97, *Goldstein v Commission* [1998] ECR p. II-2175, para. 27; Case T-277/97, *Ismeri Europa v Court of Auditors* [1999] ECR p. II-1825, para. 81.

³⁷⁶ Case T-157/96, *Affatato v Commission* [1998] ECR p. II-97, paragraphs 44–50.

³⁷⁷ Case T-260/09 P, *OHIM v Simoes Dos Santos* [2010] (not yet published in the ECR), paragraphs 86–87, 91–92.

- 37 (e) **Extent of the damage.** The applicant must provide an **estimate** of the damage, at least in an **approximate and comprehensible manner**³⁷⁸, without necessarily being able to indicate the exact extent of the damage³⁷⁹.
- **Sufficient.** Under certain circumstances, especially where the estimation of the alleged damage proves to be **difficult**³⁸⁰, it is not essential to specify the exact extent of the damage and the amount of compensation sought³⁸¹, as long as the applicant indicates clearly, albeit in a “a few words,”³⁸² the details enabling them to assess both the nature and extent of the damage³⁸³. The applicant may enable the defendant to discuss the nature and the extent of the damage both in the rejoinder and at the hearing by supplying the relevant figures in its reply³⁸⁴. Thus in case of e.g. an alleged loss of income at least an estimate of the actual or anticipated income is required³⁸⁵. The other party and the GC must be enabled to evaluate the “approximate extent” of the damage³⁸⁶.
 - **Not sufficient.** That said, a **complete absence of details** as to the loss of income may not be compensated by applying for the appointment of an expert or the adoption of a measure of organization of procedure if no facts are stated with respect to the alleged loss³⁸⁷. The mere assertion of having suffered a “serious” harm is **not sufficient**³⁸⁸. The same is true when claiming “any compensation for damages”³⁸⁹ or merely indicating an amount to be compensated³⁹⁰, without providing any detail³⁹¹.
- 38 (7) **Causality.** Proving the existence of a causal link between the breach of duty and the damage may be difficult, at least with respect to an application for failure to act³⁹².

cc) No confinement to the arguments of the parties

- 39 Although the GC must rule only on the heads of claim put forward by the parties, whose role it is to define the framework of the dispute, it cannot confine itself to the arguments put forward by the parties in support of their claims, or it might be forced to base its decision on erroneous legal considerations³⁹³.

³⁷⁸ Case T-49/96, *H v Commission* [1997] ECR SC p. I-A 29, 31.

³⁷⁹ Case T-16/04, *Arcelor v Parliament and Council* [2010] ECR p. II-211, paragraphs 132, 135.

³⁸⁰ Case T-180/94, *M v Commission* [1994] ECR SC p. II-663.

³⁸¹ Case T-64/89, *Automec v Commission* [1990] ECR p. II-367, para. 76.

³⁸² Case T-167/94, *Nölle v Commission* [1995] ECR p. II-2589, para. 33.

³⁸³ Case T-13/96, *Team v Commission* [1998] ECR p. II-4073, para. 29.

³⁸⁴ Case T-146/01, *DLD Trading v Council* [2003] ECR p. II-6005, para. 42.

³⁸⁵ Case T-262/97, *Goldstein v Commission* [1998] ECR p. II-2175, para. 26.

³⁸⁶ Case T-149/96, *Coldiretti A. O. v Council and Commission* [1998] ECR p. II-3841, para. 49.

³⁸⁷ Case T-53/96, *Syndicat des producteurs de viande bovine v Commission* [1996] ECR p. II-1579, para. 26.

³⁸⁸ Case T-64/89, *Automec v Commission* [1990] ECR p. II-367, para. 75.

³⁸⁹ Case T-157/96, *Affatato v Commission* [1998] ECR p. II-97, paragraphs 44–50.

³⁹⁰ Case T-64/89, *Automec v Commission* [1990] ECR p. II-367, para. 73.

³⁹¹ Case T-28/0, *Asia Motors France A. O. v Commission* [1992] ECR p. II-2285, para. 49.

³⁹² Case T-195/95, *Guérin Automobiles v Commission* [1997] ECR p. II-679, para. 24.

³⁹³ Case T-148/08, *Beifa Group v OHIM* [2010] (not yet published in the ECR), para. 130; Case T-160/08 P, *Commission v Putterie-De-Beukelaer* [2010] (not yet published in the ECR), para. 65.

dd) Presentation in the application. (1) Introduction. The basic legal and factual 40 issues in dispute, the legal grounds and related arguments, and the applicant's orders sought must normally be presented in the **application proper**. This also means that indicating a legal ground in a **footnote** with no further explanation in the text of the application proper is inadmissible³⁹⁴.

(2) No reference to other applications. An applicant may not in general terms, e.g. 41 to avoid "unnecessary repetitions"³⁹⁵, refer to applications filed in another case³⁹⁶ if the **cases are different**³⁹⁷, e.g. if they concern two different markets and infringements³⁹⁸, unless the other case has been joined³⁹⁹. This applies *a fortiori* to a reference to an application lodged by a **third party**⁴⁰⁰, in particular if the arguments therein are hypothetical⁴⁰¹.

(3) No reference to submissions in administrative proceedings. (a) Staff cases. In 42 proceedings before the CST, the applicant may not limit himself to reproduce verbatim the text of the administrative complaint in the application⁴⁰², or to refer to it⁴⁰³.

(b) Intellectual property cases. In proceedings relating to intellectual property 43 rights, it is not enough to merely refer to the arguments presented before the Board of Appeal of OHIM and to subsequently reserve the right to supplement the arguments more fully later⁴⁰⁴.

This is different in the event of a reference to a document in the same case, e.g. a 44 submission by an intervener before the same chamber⁴⁰⁵.

(4) References to annexes. (a) Function. Annexes (see Art. 43 (1) 2nd sub-para- 45 graph) have a **purely evidentiary and instrumental function**⁴⁰⁶.

(b) Admissible. Thus the body of the application⁴⁰⁷ may be **supported and supple-** 46 **mented**, as regards specific points, by references to extracts of documents appended thereto⁴⁰⁸, e.g. an expert's report⁴⁰⁹.

³⁹⁴ Joined Cases T-141/07, T-142/07, T-145/07 and T-146/07, *General Technic-Otis v Commission* [2011] (not yet published in the ECR), para. 338.

³⁹⁵ Case T-127/02, *Concept v OHIM*, [2004] ECR p. II-1113, para. 19.

³⁹⁶ Case T-23/96, *De Persio v Commission* [1998] ECR SC p. II-1413, paragraphs 45, 46, 49.

³⁹⁷ Case T-374/00, *Verband der freien Recherche A. O. v Commission* [2003] ECR p. II-para. 91.

³⁹⁸ Case T-37/91, *ICI v Commission* [1995] ECR p. II-1901.

³⁹⁹ At least in proceedings at the CST; see Joined Cases F-124/05 and T-96/06, *A and G v Commission* [2010] ECR SC p. II-0000, paragraphs 314 to 318.

⁴⁰⁰ Case T-209/01, *Honeywell v Commission* [2005] ECR p. II-5527, para. 64.

⁴⁰¹ Case T-39/06, *Transcatab v Commission* [2011] (not yet published in the ECR), paragraphs 366, 371–372.

⁴⁰² Case C-338/93 P, *De Hoe v Commission* [1994] ECR p. I-819, paragraphs 28–30.

⁴⁰³ Case T-20/02, *Interquelle v Commission* [2004] ECR p. II-1001, para. 20.

⁴⁰⁴ Case T-212/10, *Strålfors v OHIM* [2010] (not published in the ECR), para. 8.

⁴⁰⁵ Case T-374/00, *Verband der freien Rohrwerke A. O. v Commission* [2003] ECR p. II-2275, para. 91.

⁴⁰⁶ Case T-85/92, *De Hoe v Commission* [1993] ECR p. II-523, para. 22; Case T-454/09 P, *van Arum v Parliament* [2011] (not yet published in the ECR), para. 133.

⁴⁰⁷ Case T-231/99, *Joynson v Commission* [2002] ECR p. II-2090, para. 156.

⁴⁰⁸ Case T-177/07, *Mediaset v Commission* [2010] ECR p. II-0000, paragraphs 24–25.

⁴⁰⁹ Case T-461/7, *Visa Europe and Visa International Service* [2011] ECR p. II-0000, paragraphs 50–51, 53).

- 47 (c) **Inadmissible.** It is not for the GC to seek and identify within the annexes, in particular if they are numerous⁴¹⁰, the grounds upon which it may consider the action to be based⁴¹¹. Consequently, an **overall reference** in the application to other documents, even those annexed to it⁴¹², such as an expert's report⁴¹³, cannot make up for the absence of the essential arguments in law which must feature in the application⁴¹⁴, meaning that any merely abstract presentation is **inadmissible**⁴¹⁵. It is *a fortiori* inadmissible to raise certain grounds at the stage of the reply, whilst referring to certain annexes of the application⁴¹⁶.

ee) No remedy in the reply

- 48 If the applicant failed to comply with the requirements set out in Art. 44 (1) lit. c) RP GC when making his application, for whichever reason, he may not remedy the failure of the application to comply with the provision in question⁴¹⁷. Whilst an applicant is permitted to expand on his pleas in the reply, the right to do so is conditional on the pleas in question having been at least set out in the application⁴¹⁸.
- 49 d) **Quantitative aspects.** aa) **No formal limit to the number of legal pleas.** In light of the applicant's right to be heard there is, quite obviously, no written limit to the number of legal pleas the applicant may raise in his application.

bb) Page numbers

- 50 The Rules of Procedure as such do not limit the number of pages in an application nor the number of annexes. Paragraph 15 of the "**Practice Directions to parties**" provides that an application (and the defence) may not exceed **fifty pages**⁴¹⁹, "depending on the subject-matter and the circumstances of the case". Thus, it does **not contain an absolute upper limit**, due to the need to respect the rights of defence. That said, an excessive number of pages would, in the past, have a bearing on the decision on **costs**, as illustrated by the **Atlantic Container case**⁴²⁰. Even though the applicants were successful, they had to bear their own costs, since the GC considered that the four claims with a total of about two thousand pages, one hundred legal complaints, and one hundred files of annexes amounted to a misuse⁴²¹. By today's

⁴¹⁰ Case T-56/92, *Koelman v Commission* [1993] ECR p. II-1267, para. 23.

⁴¹¹ Case T-84/96, *Cepeke v Commission* [1997] ECR p. II-2081, para. 34; Case T-303/08, *Tresplain Investments v OHIM* [2010] (not yet published in the ECR), paragraphs 37–38.

⁴¹² Case T-330/10, *M v Commission* [2011] (not published in the ECR), para. 8.

⁴¹³ Case T-461/07, *Visa Europe and Visa International Service v Commission* [2011] (not yet published in the ECR), paragraphs 50–51, 53.

⁴¹⁴ Case T-85/92, *De Hoe v Commission* [1993] ECR p. II-523, para. 20.

⁴¹⁵ Case T-369/08, *EWRIA A. O. v Commission* [2010] (not yet published in the ECR), paragraphs 48–49.

⁴¹⁶ Case T-59/07, *Polimeri Europa v Commission* [2011] (not yet published in the ECR), paragraphs 161–162, 168–169.

⁴¹⁷ Case T-100/08 P, *Kerelov v Commission* [2010] ECR p. II-0000, para. 16–17.

⁴¹⁸ Case T-333/99, *X v ECB* [2001] ECR SC p. II-921, para. 115.

⁴¹⁹ Para.15 "Practice Directions to Parties".

⁴²⁰ Joined Cases T-191/98, T-212/98 to T-214/98, *Atlantic Container A. O. v Commission* [2003] ECR p. II-3275, paragraphs 1645 to 1648.

⁴²¹ An appeal to the ECJ may not be limited to the judgement on costs.

standards, these applications would not have been furnished to the other party unless their page number has been very substantially reduced.

4. Form of order sought (lit. d). a) General. At the **beginning** or **end** of the application⁴²², the applicant indicates one or several forms of order sought, which may include **main** and, as the case may be, **alternative** applications⁴²³. The nature of these forms of order are determined by the **legal remedy** chosen, i.e. an action for annulment or failure to act and/or for compensation, followed by a claim regarding the costs.

aa) Inadmissible forms for order sought. (1) Claims seeking general declarations. 52 The Treaty does not make any provision for a legal remedy enabling natural or legal persons to bring proceedings before the EU judiciary on an issue regarding the compatibility of the conduct of the authorities of a Member State with EU law⁴²⁴.

(2) Instructions. Moreover, it is not for the GC to address instructions or directions 53 to institutions⁴²⁵ or other bodies of the EU⁴²⁶, or to substitute itself for them.

(3) Claims aiming at the implementation of a judgment. It is furthermore not for 54 the GC but for the administration concerned to take the necessary measures in order to comply with a judgment delivered in an action for annulment⁴²⁷, or for failure to act⁴²⁸. This rules out any request to the GC to provide indications as to the most appropriate way to implement a judgment.

(4) Lack of clarity. An order sought is inadmissible if in an action for annulment 55 the applicant fails to indicate the legal act he seeks to have annulled⁴²⁹.

(5) Other. A claim is furthermore inadmissible, should the GC thereby be requested 56 to dispose of the case and the preceding complaints, since this exceeds the limits of the power to review the legality of negative decisions which the Community judicature is called upon to exercise under Art. 190 TFEU⁴³⁰.

bb) Staff cases

In staff cases there needs to be consistency between pre-litigation documents and 57 the application commencing an action, including the forms for order sought⁴³¹, a requirement which recently has been somewhat loosened⁴³².

⁴²² Para.22 of the "Practice Directions to Parties".

⁴²³ Joined Cases T-10/97 and T-11/97, *Unifrigo Gadus and CPL Imperial 2 v Commission* [1998] ECR p. II-2231, 2253.

⁴²⁴ Case T-497/93, *Hogan v Commission* [1995] ECR p. II-703, para. 79 et seq.

⁴²⁵ Case T-19/90, *Von Hoessle v Court of Auditors* [1991] ECR p. II-615, para. 30.

⁴²⁶ Case T-63/02, *Cerafogli and Poloni v ECB* [2003] ECR p. II-4929, para. 56.

⁴²⁷ Joined Cases T-432/93, T-433/93 and T-434/93, *Socurte A. O. v Commission* [1995] ECR p. II-503, para. 54.

⁴²⁸ Case T-74/92, *Ladbroke v Commission* [1995] ECR p. II-115, para. 75.

⁴²⁹ Case F-59/09, *De Nicola v EIB* [2011] (not published in the ECR), paragraphs 148–149.

⁴³⁰ Joined Cases T-185/96, T-189/96 and T-190/96, *Riviera Auto Service v Commission* [1999] ECR p. II-93, para. 27.

⁴³¹ Case T-1/90, *Pérez-Mínguez Casariego v Commission* [1991] ECR p. II-143, para. 47.

⁴³² Case F-45/07, *Mandt v Parliament* [2010] (not yet published in the ECR).

b) Requirements as to the contents

- 58 In theory, all forms of order sought should be **clear and unambiguous**⁴³³. In practice, however, the statement of the forms of order sought (and the pleas in the case) is not linked to a particular way of wording them⁴³⁴.
- 59 **aa) Determining the forms of order sought by interpretation.** (1) **Missing forms of order sought.** In **exceptional circumstances**, the GC may overlook a lack of formal forms of order sought if its contents can be **deducted** from the contents of the application⁴³⁵. This, however, requires that the form of order sought is at least **implicitly**⁴³⁶ stated in the application⁴³⁷ and that it is compatible with the procedural legal framework laid down in the primary and secondary EU law⁴³⁸.
- 60 Also, if in the body of the arguments set out in the application and in the reply, the applicant also asks the Court to reduce the amount of the fines, the fact that the applicant did not, in the form of order sought, formally seek an order that his amount should be reduced does not preclude the Court's exercising its unlimited jurisdiction in relation to fines⁴³⁹.
- 61 (2) **Inaccurate forms of order sought.** Following the same logic, an **ambiguous or equivocal** form of order sought may be admissible, provided that the exact *petitum* is clear from the application⁴⁴⁰. An application which is directed against a given decision which also forms part of several decisions may be considered as being also directed, if necessary, against those other decisions⁴⁴¹. In **staff cases** an application for annulment of a decision rejecting a pre-contentious complaint is treated as if it were directed against the challenged decision itself⁴⁴².
- 62 (3) **Limits of interpretation.** The GC is not entitled to alter the meaning of a form of order sought, e.g. by holding that an action for annulment is in fact an action based on an arbitration clause⁴⁴³, in particular should the party concerned declare that this is not the case⁴⁴⁴.
- 63 **bb) Inadmissible forms of order sought.** (1) **Lack of precision.** By contrast, an application for annulment is not sufficiently precise if it remains **unclear** which legal act is being challenged⁴⁴⁵.

⁴³³ Para.16 of the "Practice Instructions to Parties".

⁴³⁴ Joined Cases T-178/00 and T-341/00, *Pflugradt v ECB* [2002] ECR SC p. II-1039, para. 34.

⁴³⁵ Case T-169/94, *PIA HIFI v Commission* [1995] ECR p. II-1735, para. 17.

⁴³⁶ Case T-64/96, *DeJorio v Council* [1997] ECR p. II-127, para. 33.

⁴³⁷ Case T-134/89, *Hettrich A. O. v Commission* [1990] ECR p. II-565, para. 18.

⁴³⁸ Case T-50/89, *Sparr v Commission* [1990] ECR p. II-539, para. 5.

⁴³⁹ Case T-321/05, *AstraZeneca v Commission* [2010] ECR p. II-0000, para. 884 and the case-law cited.

⁴⁴⁰ Case T-219/97, *Brems v Council* [1997] ECR p. II-1085, para. 37.

⁴⁴¹ Case T-320/09, *Planet v Commission* [2011] (not yet published in the ECR), paragraphs 22–23.

⁴⁴² Case T-51/00, *Costacurta v Commission* [2000] ECR SC p. II-425, para. 15.

⁴⁴³ Art. 272 TFEU.

⁴⁴⁴ Joined Cases T-31/03 and T-378/03, *Musée Grévin v Commission* [2004] ECR p. II-1421, para. 88.

⁴⁴⁵ Case T-72/92, *Benzler v Commission* [1993] ECR p. II-347, paragraphs 18–19.

(2) **Examples.** This is the case if the applicant seeks the annulment of “*all related and consequential acts*”⁴⁴⁶, and in particular of “acts, written or otherwise, relating to the admissibility of the nominations of the persons concerned, particularly of politicians” and of the “administrative acts following a given public hearing”⁴⁴⁷. The same is true if an applicant seeks the annulment of e.g. “all acts of the Council and the Commission... which manifestly lack legitimacy”⁴⁴⁸ or a request to “*rule on the other matters which the Court considers relevant*”⁴⁴⁹.

cc) **No new forms of order sought.** (1) **Rule.** An applicant needs all the more to carefully word the claims in the application since they normally may not be amended or otherwise altered at a later stage, whether in the reply⁴⁵⁰ or the oral hearing.

(2) **Exceptions.** An applicant may, for reasons of economy of proceedings, adapt the orders of plea sought and legal grounds⁴⁵¹ in case the **challenged decision**⁴⁵² or the regulation directly and individually affecting the applicant⁴⁵³ might or will be **replaced**⁴⁵⁴ in the course of the proceedings by an act bearing the same subject-matter⁴⁵⁵. That said, the GC will under all circumstances assess whether or not the application was admissible at the time the action was brought⁴⁵⁶.

(3) **Clarifying the wording of the order sought.** If no exception applies (see para. 66 above), the applicant may only **rephrase** the form for order sought in order

- to make it more **precise**,
- to “**reduce**” the number of initial orders sought⁴⁵⁷.
- to take account of the **evolution** of the case law⁴⁵⁸,
- or to remove a **manifest error**⁴⁵⁹.

dd) **Order on costs.** (1) **Main parties.** The claim regarding costs should likewise be sufficiently precise. An application which indicates that “*the decision on costs should be in accordance with the rules of procedure of the GC*” cannot be regarded as a

⁴⁴⁶ Case F-59/09, *De Nicola v EIB* [2011] ECR SC p. II-0000, para. 148 to 149.

⁴⁴⁷ Case T-146/95, *Bernardi v Parliament* [1996] ECR p. II-769, para. 26.

⁴⁴⁸ Case T-56/92, *Koelman v Commission* [1993] ECR p. II-1267, para. 19.

⁴⁴⁹ Case T-575/93, *Koelman v Commission* [1996] ECR p. II-1, para. 31.

⁴⁵⁰ Case T-134/89, *Hettrich A. O. v Commission* [1990] ECR p. II-565, para. 18.

⁴⁵¹ Case T-36/99, *Lenzing v Commission* [2004] ECR p. II-3597, para. 54.

⁴⁵² Case T-306/01, *Yusuf and Al Barakaat International Foundation v Council Commission* [2005] ECR p. II-3533, paragraphs 72 to 73; Case T-315/01, *Kadi v Council and Commission* [2005] ECR p. II-3649, paragraphs 53 and 54.

⁴⁵³ Case C-217/01 P, *Hendrickx v Cedefop* [2003] ECR p. I-3701, paragraphs 29–30.

⁴⁵⁴ Case T-22/96, *Langdon v Commission* [1996] ECR p. II-1009, para. 16.

⁴⁵⁵ Case T-228/02, *Organisation des Modjahedines du peuple d'Iran v Council* [2006] ECR p. II-4665, paragraphs 28 and 29.

⁴⁵⁶ Case T-229/02, *PPK and KNK v Council* [2005] ECR p. II-539, para. 29–30.

⁴⁵⁷ Case T-100/96, *Vicente-Nunez v Commission* [1998] ECR SC p. I-A-591 and p. II-1779, para. 51; Case T-177/05, *Strohm v Commission* [2005] ECR p. II-1, para. 21; T-290/05, *Weber v Commission* [2006] ECR p. II-96, para. 22.

⁴⁵⁸ Joined Cases T-178/00 and T-341/00, *Pflugradt v ECB* [2002] ECR SC p. II-1039, para. 34.

⁴⁵⁹ Case T-2/99, *Port v Council* [2001] ECR p. II-2093, para. 36.

claim made against the other party to pay the costs⁴⁶⁰. The winning party may complement its claim regarding costs at the oral hearing⁴⁶¹.

69 (2) **Interveners.** Interveners may claim costs at an oral hearing even if they did not apply for costs beforehand⁴⁶².

70 5. Evidence (lit. e). a) **Where appropriate.** Unlike the compulsory indications which shall be provided under Art. 44 (1) lit. a) to d) the evidence needs only to be described where **appropriate**⁴⁶³, since its pertinence is determined by each individual case.

b) Practical approach

71 In practice, the applicant has every reason to furnish all relevant evidence during the application process⁴⁶⁴. This is predominantly due to the fact that the applicant cannot predict which of his statements of fact will ultimately be considered common ground, nor is it apparent to him whether he will be given the opportunity to reply⁴⁶⁵, and would then possibly have to justify why he describes a means of proof only at the stage of the reply⁴⁶⁶. In any event, describing a means of proof at the stage of inquiry, e.g. in an opinion by a party to a court-ordered expert report, is inadmissible⁴⁶⁷.

III. Address for service (paragraph 2)

1. General

72 In addition, the application must indicate an address for service⁴⁶⁸, i.e. a person, be it **natural** or **legal**, and **address** to which Court documents are being sent, in order for this person to forward them to the addressee. This obligation applies only “*for the purposes of the first instance*” and thus not automatically for a subsequent appeal⁴⁶⁹.

2. Choice of address

73 The applicant may therefore define an address for service⁴⁷⁰ “at the place of court seat”, i.e. **Luxembourg City**⁴⁷¹. Alternatively or even cumulatively the applicant’s

⁴⁶⁰ Case T-103/99, *Assoziatione delle Cantini Sociale Venete v Ombudsman and Parliament* [2000] ECR p. II-4165, para. 56.

⁴⁶¹ Case T-64/89, *Automec v Commission* [1990] ECR p. II-367, paragraphs 78 and 79.

⁴⁶² Joined Cases T-81/03, T-82/03 and T-103/03, *Mast-Jägermeister v OHIM* [2006] ECR p. II-5409, para. 116.

⁴⁶³ Case T-44/00, *Mannesmannröhren-Werke v Commission* [2004] ECR p. II-2223, para. 264.

⁴⁶⁴ Para.26 of the “Practice Directions to Parties”.

⁴⁶⁵ Art. 47 RP GC.

⁴⁶⁶ Art. 48 (1) RP GC.

⁴⁶⁷ Case T-36/89, *Nijman v Commission* [1991] ECR p. II-699, para. 28.

⁴⁶⁸ Para.19 (d) of the “Practice Directions to Parties”.

⁴⁶⁹ Case C-245/95 P, *Commission v NTN Corporation and Koyo Seiko* [1998] ECR p. I-401, paragraphs 20–23.

⁴⁷⁰ Usually, but not necessarily, a local lawyer.

⁴⁷¹ Art. 44 (2), sub-para. 1.

lawyer, but not the applicant himself, may declare in the application that he carries out the functions of an address for service⁴⁷².

3. Consequence

Under Art. 100 (2), sub-paragraph 1, RP GC the applicant's lawyer will receive 74 every written act by fax or electronic mail. Judgments or orders of the Court, however, are sent by registered mail, given the importance of the date of service for calculating the time-limit for the appeal. Any defects in indicating an address for service under Art. 44 (2) sub-paragraphs 1 and 2 are detrimental to such party, since the service is deemed to have been effected until these deficiencies are remedied and the registered letter posted.

IV. Proof of lawyers' status (paragraph 3)

1. Lawyer instructed by a natural or legal person. a) **Art. 19 Statute ECJ.** The 75 applicant's lawyer must **not**, as before⁴⁷³, prove that he is **admitted** to appear at a specific Court or Tribunal of a Member State. Under Article 19 of the Statute of the ECJ it is sufficient to prove that he is entitled to **appear** before a Court or Tribunal of a Member State of the EU or the EEA-Agreement, which he may do by attaching the relevant evidence to the application⁴⁷⁴. If the applicant's lawyer appears regularly before the GC he must not submit such a certificate each time, but can instead refer to the deposit certificate.

b) Power of attorney. aa) **Natural person.** A lawyer appearing on behalf of a 76 **natural person** must only provide a power of attorney if the other party **requests** so⁴⁷⁵, which is also the case in proceedings at the CST⁴⁷⁶.

bb) Legal person

A lawyer appearing on behalf of a **legal person** must provide the **power of** 77 **attorney** from its own motion⁴⁷⁷.

2. External lawyer appearing for an institution

An institution of the EU that assigns a case to an external lawyer without 78 providing the GC with the relevant evidence as to the lawyer's right to appear before a Court or Tribunal of a Member State does not infringe Art. 44 (3) RP GC, if the institution's agent also signs the written submissions of that⁴⁷⁸.

⁴⁷² Art. 44 (2), sub-para. 2.

⁴⁷³ See e.g. Case T-101/92, *Stagakis v Parliament* [1993] ECR p. II-63, para. 8.

⁴⁷⁴ Para.24 of the "Practice Directions to Parties".

⁴⁷⁵ Case T-34/02, *Le Levant 001 v Commission* [2006] ECR p. II-267, para. 63.

⁴⁷⁶ Art. 35 (5) and Art. 39 (1) RP CST.

⁴⁷⁷ Art. 44(5) RP GC.

⁴⁷⁸ Case T-47/92, *Lenz v Commission* [1992] ECR p. II-2523, para. 35.

V. Attaching the challenged legal act (paragraph 4)

- 79 Together with the application, the applicant needs to provide⁴⁷⁹ the GC with a copy of the legal act which is subject to either an **action for annulment** or of **failure to act**. The application is not automatically inadmissible in the event that these documents are not annexed⁴⁸⁰.

VI. Obligations of proof incumbent upon legal persons (paragraph 5)

1. General

- 80 This provision⁴⁸¹ applies only to **legal persons** governed by **private law** and therefore does **not apply** e.g. to an application which **natural persons** lodge in their capacity as shareholders of a company⁴⁸² or of a heritage community⁴⁸³. Failure to comply with this provision may result in the application being deemed inadmissible, in particular if the applicant explicitly refuses to provide those documents⁴⁸⁴.

- 81 **2. Instruments or extracts from the register of companies (lit. a). a) General.** Under the judicial system of the EU, the applicant has the status of a legal person if he has acquired legal personality under the law of the Member State or Third State applicable⁴⁸⁵. The same is true e.g. if an EU institution considered the applicant in the context of administrative proceedings⁴⁸⁶ as an independent legal entity⁴⁸⁷. Providing the evidence regarding the applicant's legal personality may prove more difficult in the case of a company which is in liquidation⁴⁸⁸.

b) Establishment in a Member State

- 82 Providing the required evidence to be annexed to the application⁴⁸⁹ is normally not a problem for legal persons established within the EU.

c) Establishment in a third country

- 83 This may be more difficult in the case of companies established in certain third countries. The legislator has taken account of this by providing that “any other

⁴⁷⁹ Para.17 of the “Instructions to Parties”.

⁴⁸⁰ Case T-119/02, *Royal Philips Electronics v Commission* [2003] ECR p. II-1433, para. 305.

⁴⁸¹ See also Art. 119 RP ECJ.

⁴⁸² Case T-390/04, *Schröder v Commission* [1997] ECR p. II-501, para. 34.

⁴⁸³ Case T-185/02, *Ruiz-Picasso A. O. v OHIM* [2004] ECR p. II-1739, para. 21.

⁴⁸⁴ Case T-43/09, *Cachuera v OHIM* [2009] (not published in the ECR).

⁴⁸⁵ Case T-50/84, *Bensider A. O. v Commission* [1984] ECR p. II-3991, paragraphs 7–8.

⁴⁸⁶ Case T-161/94, *Sinochem Heilongjiang v Council* [1996] ECR p. II-695, para. 32.

⁴⁸⁷ Case T-170/94, *Shanghai Bicycle v Council* [1997] ECR p. II-1383, para. 26.

⁴⁸⁸ Joined Cases T-551/93, T-231/94, T-232/94, T-233/94 and T-234/94, *Industrias Pesqueras Compas SA v Commission* [1996] ECR p. II-247, para. 51.

⁴⁸⁹ Para.18 “Practice Instructions to Parties”.

proof of its existence in law” suffices. Thus, the Court has accepted a license attesting to the applicant’s registration by the authorities of a Chinese province as an undertaking with its own capital and an independent accounting system⁴⁹⁰. The same applies for a document attesting that the applicant is a “corporate legal person” owned by the Third State and possessing legal personality under local law of that State⁴⁹¹.

3. Power of Attorney (lit. b). a) Obligation for legal persons. Unlike natural persons⁴⁹², any legal person of private law must provide the Registry of the GC with a power of attorney, even if the other party does not contest its existence. The requirement to prove that an applicant’s lawyer’s authority has been properly conferred by **someone** authorized to **represent the legal person** is intended to enable the Court to establish that the lawyer is authorized to act on behalf of the applicant. This requirement therefore constitutes an **essential formal requirement**, failure to comply with which will render the action inadmissible⁴⁹³.

b) Issued by authorized person

These documents must be signed by someone legally entitled to **represent** the company concerned⁴⁹⁴.

c) No particular form

The RP GC do not provide any particular form for power of attorney. It may consist of a **handwritten** document, despite what is said in Art. 8 (3) of the Instructions to the Registrar⁴⁹⁵. There is furthermore no obligation to have it certified by a notary⁴⁹⁶, even if the latter is deemed to have provided clear evidence⁴⁹⁷. The fact that a power of attorney does not bear a date remains without consequences, as long as it is clear that it was signed before the handing in of the application⁴⁹⁸.

VII. Proof of an arbitration clause (paragraph 5a)

This provision, which was inserted in the course of the broadening of the then CFI’s jurisdiction, gained a certain importance given the numerous current **projects** in the area of e.g. innovations co-financed or otherwise subsidized by the European

⁴⁹⁰ Case T-161/94, *Sinochem Heilongjiang v Council* [1996] ECR p. II-695, para. 33.

⁴⁹¹ Case T-170/94, *Shanghai Bycycle v Council* [1997] ECR p. II-1383, para. 28.

⁴⁹² Case T-139/89, *Virgili-Schettini v Parliament* [1990] ECR p. II-535, paragraphs 1–4, 21.

⁴⁹³ Case T-383/08, *New Europe v Commission* [2009] (not published in the ECR), para. 18 and the case-law cited.

⁴⁹⁴ Case T-383/08, *New Europe v Commission* [2009] (not published in the ECR), para. 18.

⁴⁹⁵ Case T-223/06 P, *Parliament v Eistorp* [2007] ECR p. II-1581, para. 44.

⁴⁹⁶ Case T-180/00, *Antipesca v Commission* [2002] ECR p. II-3985, para. 43.

⁴⁹⁷ Case T-363/04, *Koipe v OHIM* [2007] ECR p. II-3355, paragraphs 33 and 34.

⁴⁹⁸ Case T-34/02, *Le Levant 001 A. O. v Commission* [2006] ECR p. II-267, para. 55.

Commission. The GC will examine whether or not it has jurisdiction over a case⁴⁹⁹ on the basis of the particular contract containing the arbitration clause⁵⁰⁰.

VIII. Putting the application in order (paragraph 6)

1. General

- 88 **Serious** violations of Art. 44 RP GC cannot be put in order, while **lighter** deficiencies may be corrected under the provisions of Article 44 (2), sub-paragraphs 3, and paragraph 6, which means that the document concerned, depending upon the nature of the defect referred to in paragraphs 62 to 68 of the “**Practice Directions to Parties**” will either **not be served** upon the other party, or will **only be served with some delay**⁵⁰¹. Most infringements of the procedural rules at issue have a bearing on the serving of the document⁵⁰².

2. Defects which cannot be cured

- 89 In the event of an application manifestly not complying with the mandatory requirements set out in **Art. 44 (1)**, such as the absence of a signed original of the application⁵⁰³, the Registrar shall suspend the serving to the other party until the GC has rendered a decision on the admissibility of the application⁵⁰⁴. By contrast, if the non-compliance only appears in the course of the proceedings, i.e. is not obvious, the GC will assess the matter in the context of its final decision.

- 90 **3. Defects which may be put in order. a) Address for the service.** An infringement of Art. 44 (2), sub-paragraphs 1 or 2, may be put in order under the conditions mentioned in sub-paragraph 3.

b) Missing documents

- 91 If the documents⁵⁰⁵ indicated in **Art. 44 § paragraph 3 to 5 RP GC** are not annexed⁵⁰⁶ to the application⁵⁰⁷ or the request for interim proceedings⁵⁰⁸, such as the evidence that the lawyer may appear at a Tribunal or Court of a Member State⁵⁰⁹, the party concerned needs to put this in order within the time-limit set by

⁴⁹⁹ Joined Cases T-202/96 and T-204/96, *Von Löwis and Alvarez-Cotera v Commission* [1998] ECR p. II-2829, para. 34.

⁵⁰⁰ Art. 272 TFEU.

⁵⁰¹ See also Art. 7 of the Instructions to the Registrar.

⁵⁰² Paragraphs 62 et seq. of the “Practice Directions to Parties”.

⁵⁰³ Case C-426/10 P, *Bell & Ross* [2011] (not yet published in the ECR), paragraphs 42–43.

⁵⁰⁴ Para.8 (1) “Instructions to the Registrar”.

⁵⁰⁵ Art. 44, para. 6 does not refer to para. 5 a RP GC.

⁵⁰⁶ Case T-154/96, *Chvatal A. O. v Court of Justice* [1998] ECR SC p. I-A-527, II-1579 et seq.

⁵⁰⁷ Para.57 to 61 of the “Practice Directions to Parties”.

⁵⁰⁸ Art. 104 (3) RP GC; see e.g. Case T-158/03 R, *Industrias Químicas Del Vallés v Commission* [2003] ECR p. II-3041, para. 44.

⁵⁰⁹ Case T-296/10, *Gheorghe V. Varga v Council* [2010] (not published in the ECR).

the Registrar. In the negative the Registrar decides whether this omission entails the inadmissibility of the application⁵¹⁰, which may be the case if the party concerned consistently ignores the Registrars injunctions⁵¹¹.

4. Corrigenda. a) Principle. In principle both the GC, insofar as it concerns its judgments and orders⁵¹², and – even though there is no specific provision to that effect – the **parties**, with respect to their written submissions (application, defence, rejoinder, reply, etc.), have the right to correct **typographical errors** or **mathematical mistakes**. 92

b) Contents

A corrigendum submitted by the party needs to be labeled accordingly and must be **limited** to the correction of spelling errors, inversions, grammatical mistakes, and other manifest errors (missing words, confusion of names, dates, errors in the numbering of annexes, etc.). It may under **no circumstance** be used to alter the **substantive contents** of a written submission, since this is not provided by the RP GC⁵¹³. 93

Article 45 [Serving the application]

The application shall be served on the defendant. In a case where Article 44(6) 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 formal requirements set out in that Article.

Upon receipt of the application (Art. 44 RP GC) by the GC and provided the applications meets the requirements laid down in Art. 43 RP GC⁵¹⁴, the **Registrar** (i.e. not the applicant, e.g. by way of a bailiff) serves a copy on the defendant(s)⁵¹⁵. This implies that the Registrar and/or his assistants have fixed any deficiencies found in the application within the meaning of Art. 44 (6) RP GC and furthermore signifies that the action is not inadmissible due to a violation of these provisions (i.e., those found in Arts. 43 and 44).

Article 46 [Contents of the statement of defence]

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

(a) the name and address of the defendant;

⁵¹⁰ Case T-158/03 R, *Industrias Químicas Del Vallés v Commission* [2003] ECR p. II-3041, para. 44.

⁵¹¹ Case T-101/92, *Stagakis v Parliament* [1993] ECR p. II-63, para. 8; Case T-238/06, *Pax v OHIM* [2007] (not published in the ECR).

⁵¹² Art. 84 RP GC.

⁵¹³ Case T-547/93, *Lopes v Court of Justice* [1996] ECR SC p. II-185, para. 39.

⁵¹⁴ Art. 6 “Instructions to the Registrar”.

⁵¹⁵ Art. 100 RP GC and para. 10 of the “Instructions to the Registrar”.

- (b) the arguments of fact and law relied on;
- (c) the form of order sought by the defendant;
- (d) the nature of any evidence offered by him.

The provisions of Article 44(2) to (5) shall apply to the defence.

2. In proceedings between the Union and its servants the defence shall be accompanied by the complaint within the meaning of Article 90(2) of the Staff Regulations of Officials and by the decision rejecting the complaint together with the dates on which the complaint was submitted and the decision notified.

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

Outline:

I. General	1
1. Alternatives.....	1
2. Absence of reaction	2
3. Procedural rules	3
4. CST.....	4
II. Statement of defence (paragraph 1)	5
1. Time-limit	5
a) Normal procedure.....	5
aa) GC	5
bb) CST	6
b) Expedited proceedings.....	7
2. Contents of the statement of defence	8
a) Name and address of the defendant.....	9
aa) Coordinates of the defendant	9
bb) Name of agent.....	10
cc) Address for service	11
b) Arguments of fact and law relied on	12
aa) General.....	12
bb) Arguments of fact	13
(1) Introductory remarks.....	13
(2) Undisputed facts.	14
(3) Disputed facts.	15
cc) Arguments in law.....	16
(1) Separate chapter on admissibility.....	16
(2) Admissibility of individual legal grounds or orders sought. .	17
(3) The substance of legal arguments and grounds.	18
c) Forms of order sought.....	19
aa) Procedural aspects	19
bb) Substantive aspects	20
d) Indicating the nature of any evidence offered.....	21
e) Analogous application of Art. 44 (2) to (5).....	22
aa) Equality of arms	22
bb) No possibility to put a statement of defence in order.....	23
III. Staff cases (paragraph 2)	24
1. General.....	24
2. Annexing the complaint.....	25
3. Coherence of legal arguments	26
4. Non-compliance with Art. 46 (2)	27
IV. Extension of time-limit (paragraph 3)	28
1. Application	28
a) General.....	28

b) Duration of the extension.....	29
c) Breach of the principle of equality of arms?	30
2. Giving reasons	31
a) General.....	31
b) Nature of reasons.....	32
c) Repeated applications for extension	33
d) Particular cases.....	34
aa) GC	34
bb) CST	35
e) Other party not heard	36

I. General

1. Alternatives

Unlike what is suggested by the wording of paragraph 1 the defendant may 1 choose whether to submit a **statement of defence**⁵¹⁶, in which case it needs to comply with Art. 46 RP GC, or, where appropriate, apply for a **decision on admissibility** within the meaning of Art. 114 RP GC.

2. Absence of reaction

If the defendant does not react within the time-limit of two months⁵¹⁷ as of the 2 serving of the application⁵¹⁸, be it because he remains non responsive or because he reacts outside the time-limit, then the defendant is at risk of a **judgment by default**⁵¹⁹.

3. Procedural rules

The procedural requirements governing the statement of defence are public 3 order, i.e. **mandatory**⁵²⁰ and are by and large equivalent to those required for an application by Art. 44 RP GC. Thus **Art. 44 (2) to (5)** apply by way of **analogy**⁵²¹.

4. CST

Art. 39 RP CST is equivalent, except that (1) (b) requires the defendant to state, 4 in addition, “the description and address of the signatory”.

⁵¹⁶ Para.s 34 to 41 of the “Practice Directions to Parties” concern intellectual property cases.

⁵¹⁷ Extended by 10 calendar days on account of distance, see Art. 102 (2) RP GC.

⁵¹⁸ Case T-47/92, *Lenz A. O. v Commission* [1992] ECR p. II-252, para. 34.

⁵¹⁹ Such judgment is not handed down ex officio, but only upon application of the applicant, see Art. 12 RP GC.

⁵²⁰ Art. 18 “Practice Directions to the Parties”.

⁵²¹ See also Art. 29 to 33 “Practice Directions to the Parties”.

II. Statement of defence (paragraph 1)

5 **1. Time-limit. a) Normal procedure. aa) GC.** In many instances the **previously** existing time-limit of **one month** turned out to be too short and quite often resulted in applications for **extensions** of the time-limit. Therefore, the time-limit is now **two months**⁵²², and is thus the same as that given for lodging an action for annulment⁵²³. As a result, an application for extension of time will only be extended in “**exceptional circumstances**” (see paragraph 3 below).

bb) CST

6 The time-limit for the statement of defence is **two months**, which may also be extended upon application. If in a given case this time-limit has been extended **several times** upon request of the defendant, this does not breach the principle of **fair trial**, provided that the situation of the parties has not been substantially affected, which is to be assessed in the light of all circumstances of the case⁵²⁴.

b) Expedited proceedings

7 In expedited proceedings at the GC, the time-limit for the submission of the statement of defence is merely **one month**⁵²⁵.

2. Contents of the statement of defence

8 The statement of defence, which needs to be titled accordingly⁵²⁶ and needs to reference the case-number⁵²⁷, **must** contain the following:

9 **a) Name and address of the defendant. aa) Coordinates of the defendant.** The defendant, which is normally an institution or, more rarely, an agency or other body of the EU, complies with this requirement by using its letter-head or equivalent.

bb) Name of agent

10 Furthermore, the defendant needs to indicate the name of its agent(s) and the external lawyer and/or adviser, if any⁵²⁸.

cc) Address for service

11 The defendant needs furthermore to indicate the address for service, i.e. the name of a natural or legal person⁵²⁹ and his postal address, as well as his telefax and Email.

⁵²² Extended by 10 calendar days on account of distance, see Art. 102 (2) RP GC.

⁵²³ Art. 263 (6) TFEU.

⁵²⁴ Case F-121/07, *Strack v Commission* [2011] (not yet published in the ECR), para. 39; Case F-132/07, *Strack v Commission* [2011] (not yet published in the ECR), para. 31.

⁵²⁵ Art. 76 a (2), 1st sub-para. RP GC.

⁵²⁶ Para. 9 (a) “Practice Directions to Parties”.

⁵²⁷ Para. 9 (b) “Practice Directions to Parties”.

⁵²⁸ Para. 11 “Practice Directions to Parties”.

⁵²⁹ Para. 19 (d) “Practice Directions to Parties”.

b) Arguments of fact and law relied on. aa) General. The arguments upon which the defendant relies must be set out with sufficient **clarity and precision**, even if they are brief, in the text of the defence proper in order to enable the applicant to prepare its reply and the Court to give a ruling, if appropriate, without recourse to other information. A mere reference to a statement made in e.g. the report for the hearing of another case is not sufficient⁵³⁰.

bb) Arguments of fact. (1) Introductory remarks. Prior to the chapter regarding the facts of the case it might be useful to provide either a **short introduction** to the issue raised by the case or a preliminary comment, as the case may be.

(2) Undisputed facts. The defendant presents its version of the facts⁵³¹ in a **specific chapter**.

(3) Disputed facts. Should the defendant dispute certain facts as either untrue, inaccurate, or incomplete, it may be appropriate to either insert the relevant indications into the chapter regarding the facts, or to “decentralize” certain facts, i.e. to describe them in greater detail in the context of the legal arguments concerned, whichever approach makes the defence more **readable and convincing**.

cc) Arguments in law. (1) Separate chapter on admissibility. If the defendant does **not** raise a formal plea of inadmissibility within the meaning of Art. 114 RP GC, he may still raise or discuss questions of admissibility of the application in a **separate chapter** of his statement of defence. The defendant may either phrase the grounds of inadmissibility in an **affirmative manner** or rather as a **question mark**, depending upon the strength of the grounds of inadmissibility. This more interrogative way may be most appropriate when citing or relying upon those rules of admissibility, such as compliance with time-limits, etc., which the GC needs to verify of its own accord. Under certain circumstances a statement of defence may even focus more or less exclusively on questions of admissibility⁵³².

(2) Admissibility of individual legal grounds or orders sought. If the defendant has reasons to contest the admissibility of a given legal argument and/or pleas sought, it is in the interest of clarity to do so in a “**decentralized**” way, i.e. to respond to each legal argument as it is raised, rather than concentrating all responses in a separate chapter.

(3) The substance of legal arguments and grounds. The arguments on the merits of the application should be divided, if necessary, into **formal** or procedural and **substantive** arguments. Within both categories a logical order should apply.

c) Forms of order sought. aa) Procedural aspects. The forms of order sought, which should be inserted either at the beginning or the end of the statement of defence⁵³³, tend to be less numerous than those provided by the applicant. Normally, the main form of order is directed at rejecting the application, followed by an order on costs.

⁵³⁰ Joined Cases T-305/94 et seq., *Limburgse Vinyl Maatschappij A. O. v Commission* [1999] ECR p. II-930, paras. 46–48.

⁵³¹ Para. 33 of the “Practice Directions to Parties”.

⁵³² Case T-373/02, *Internationaler Hilfsfond v Commission* [2003] ECR p. II-4389, para. 28.

⁵³³ Art. 31 “Practice Directions to Parties”.

bb) Substantive aspects

- 20 A **counterclaim** is inadmissible since the European judicial system does not provide such legal remedy⁵³⁴. Thus, a claim for damages raised in the statement of defence or the subsequent rejoinder is **inadmissible**⁵³⁵. If in a proceeding involving interveners the defendant fails to request the rejection of the application, but instead requests “to take into account the arguments of the parties,” the form of order sought is inadmissible⁵³⁶.

d) Indicating the nature of any evidence offered

- 21 This is the same rule as the one applying to an **application**, except that the defendant may be in a better position, as the case may be, to state the nature of the evidence offered⁵³⁷.

- 22 e) **Analogous application of Art. 44 (2) to (5).** aa) **Equality of arms.** Since for reasons of equality of arms the rules governing the statement of defence need to correspond as much as possible to those governing the application, paragraphs (2) to (5) of Art. 44 also apply to the statement of defence.

bb) No possibility to put a statement of defence in order

- 23 The possibility to put an application in order, as provided in Art. 44 (6) GC RP does **not apply** to the statement of defence, since the rules in Art. 44 (3) to 5) are specific to applicants.

III. Staff cases (paragraph 2)**1. General**

- 24 In the meantime this provision has become **obsolete**, since as of its creation in 2005, the CST has jurisdiction for these cases and since its **own rules of procedure** came into force in 2007.

2. Annexing the complaint

- 25 As a rule⁵³⁸ an action in a staff matter⁵³⁹ must be preceded by an administrative complaint. This “**pre-contentious phase**” is thus a *conditio sine qua non* of admissibility of the application. The CST assesses compliance with this requirement on its

⁵³⁴ Case T-140/97, *Hautem v EIB* [1999] ECR SC p. I-A-171; Case T-141/97, *Yasse v EIB*, [1999] ECR SC p. II-929, paras. 143, 144.

⁵³⁵ Case T-141/97, *Yasse v EIB*, [1999] ECR SC p. II-929, paras. 143; see also Case T-85/01, *IAMI Consulting v Commission* [2003] ECR p. II-4973, para. 62.

⁵³⁶ Case T-99/01, *Mystery Drinks v OHIM* [2003] ECR p. II-43, para. 15.

⁵³⁷ Art. 44 (1) lit. e) RP GC.

⁵³⁸ Exceptions apply if the applicant intends to challenge an annual assessment report or a decision taken by a Jury in a general competition.

⁵³⁹ Art. 270 TFEU.

own motion, basing its assessment on the complaint, its annexes⁵⁴⁰, and the explicit reply, if any. Thus, it is particularly important to document both the **date** on which the complaint was furnished to the respective addressee and the **date** on which the reply to such complaint was furnished to the complainant. All of these documents are normally in the possession of the **defendant**.

3. Coherence of legal arguments

On the basis of these documents, the CST also assesses whether there is a sufficient degree of coherence between the legal grounds raised in the **administrative complaint** and those raised in the **application**.

4. Non-compliance with Art. 46 (2)

Non-compliance with Art. 46 (2) RP GC does not *ipso jure* result in the statement of defence being deemed inadmissible. This is only the case if such omission affects the rights of defence of the other party⁵⁴¹.

IV. Extension of time-limit (paragraph 3)

1. Application. a) General. Unlike the time-limit applying to applications, the time-limit for handing in the statement of defence may be extended upon application. In exchange for the legislative extension of the time-limit from the previous one month to two months, the possibility to extend this deadline has been considerably limited. It is now only granted in “**exceptional circumstances**”. Such requests should therefore be thoroughly justified and should not be brought forward at the end of the two-month period.

b) Duration of the extension

There is **no written rule** as to how much more time the defendant may request⁵⁴². It should be borne in mind, however, that the current legislative rules have achieved an equality of arms: Since the applicant benefits from a time-limit of 2 months⁵⁴³ the same time-limit applies to the defendant. Thus, a request for an extension of one or two weeks is in many instances more realistic than aiming at an extension of one month or more.

⁵⁴⁰ Case T-293/01, *Ineichen v Commission* [2003] ECR SC p. I-A-83.

⁵⁴¹ A party can hardly claim that it does not know the contents of its own complaint and of the decision adopted by the institution further to the complaint; Case T-236/02, *Marcuccio v Commission* [2005] ECR SC p. I-A-365, paras. 58–59.

⁵⁴² Unlike e.g. what is provided for the Administrative Tribunal of the ILO, where the initial time-limit is 30 days, which may be extended up to a maximum of 90 days.

⁵⁴³ Except in staff cases, where the time-limit for actions for annulment is 3 months.

c) Breach of the principle of equality of arms?

30 The principle of equality of arms, which is one of the sub-elements of the broader concept of **fair trial**, “requires each party to be given a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent”⁵⁴⁴. Could one thus argue that any extension, no matter its length, of the two-month period for lodging the statement of defence confers to the defendant an **undue advantage**, since the time-limit applying to the applicant is set by primary law and is thus not extendable? On the face of it, yes, especially since the defendant’s logistical means (manpower, familiarity with EU law, etc.) outweigh the more limited means of an applicant, whether it be a natural or legal person, by definition. On the other hand, one must not ignore the fact that in the vast majority of cases, the legal act directly concerning the applicant **does not come as a surprise**. On the contrary, the applicant is more or less closely involved in the administrative proceedings which produced the challengeable act, which gives the applicant ample time prior to the formal beginning of the time-limit to start reflecting as to whether he will challenge a negative decision, and if so, on the basis of which arguments. Thus, *de facto*, the applicant’s time-limit is considerably longer than two months (plus the extension of ten days on account of distance). Furthermore, one needs to consider that the institution concerned normally adopts a relatively large number of decisions and thus faces a potentially great number of judicial proceedings at one given point in time. Furthermore, some applications may raise fundamental or horizontal questions, such as pleas of illegality, which concern other institutions as well since it raises questions of legality of secondary legislation. Consequently, it is safe to conclude that if one were to question compliance with the principle of equality of arms, one ought to conduct more than a mere mathematical comparison between the length of the time-limits for the application and the statement of defence.

31 **2. Giving reasons. a) General.** The fact that the defendant has a **right of defence**, which normally implies that he is given sufficient time to make an **effective use** of said right⁵⁴⁵, does not mean that an extension is granted automatically and/or without providing reasons.

b) Nature of reasons

32 Normally, a notification of the application during a **holiday period**, in particular during the summer break, and/or the need to **consult** with other instances or departments, and/or a high **workload**, and/or a particularly **complex** and **voluminous** application may all be reasons for applying for an extension of the time-limit. That said, the reasons given should not be a standard text, just as it is advisable to thoroughly reflect as to whether such extension is applied for and if so, what should be the additional amount of time requested.

⁵⁴⁴ Case T-36/04, *API v Commission* [2007] ECR p. II- 3201, para. 79 and the case-law cited.

⁵⁴⁵ Consistent case-law, see e.g. Case 85/76, *Hoffmann-Laroche v Commission* [1979] ECR p. 461.

c) Repeated applications for extension

Under the previous rules providing a time-limit of one month⁵⁴⁶, two or more 33 applications for extension of the time-limit had little chances to succeed; this tends to be even more the case under the current rule of two months. But this may well be different in case of extraordinary circumstances, or if the parties are engaged in **settlement negotiations**, which occurs most often in staff matters and, by its very nature, tends to take time⁵⁴⁷.

d) **Particular cases.** aa) GC. Under the rules currently applicable to the GC, the 34 time-limit for the statement of defence, i.e. two months, is the **same** as for a formal plea of inadmissibility within the meaning of Art. 114 RP GC. Thus, there is no misuse if in addition to an extension of the time-limit a party lodges a formal plea of inadmissibility on the basis of Art. 114 RP GC rather than a statement of defence⁵⁴⁸.

bb) CST

In the case of the CST, the time-limit for raising a formal plea of inadmissibility 35 within the meaning of Art. 78 RP CST is only **one month**, in contrast to the two months for the statement of defence. This raises the question of whether an extension of the initial time-limit of two months has any bearing on the date on which the one month period starts and ends. According to the case-law, an extension of the time-limit of two months which takes place during the first month after the notification of the application has an *implicit* bearing on the starting point of the time-limit of one month for raising a formal plea of inadmissibility within the meaning of Art. 78 RP CST⁵⁴⁹. This case is currently under appeal⁵⁵⁰.

e) Other party not heard

The other party is not heard, which, pursuant to the CST's case-law, is **not** in 36 breach of the principle of fairness and the rights of defence⁵⁵¹.

Article 47 [Reply and rejoinder]

1. The application initiating the proceedings and the defence may be supplemented by a reply from the applicant and by a rejoinder from the defendant unless the General Court, after hearing the Advocate General, decides that a second exchange of pleadings is unnecessary because the documents before it are sufficiently comprehensive to enable the parties to elaborate their pleas and arguments in the course of the oral procedure. However, the General Court may

⁵⁴⁶ Case T-42/89, *York von Wartenburg v Parliament* [1990] ECR p. II-31, para. 3.

⁵⁴⁷ Case F-121/07, *Strack v Commission* [2011] ECR SC p. II-0000, para. 39.

⁵⁴⁸ Case T-387/00, *Comitato Organizzatore del Convegno Internazionale v Commission* [2002] ECR p. II-3031, para. 35.

⁵⁴⁹ Case F-121/07, *Strack v Commission* [2009] (not published in the ECR), para. 20.

⁵⁵⁰ Case T-198/11 P, *Strack v Commission*, pending.

⁵⁵¹ Case F-121/07, *Strack v Commission* [2011] ECR SC p. II-0000, para. 39; Case F-132/07, *Strack v Commission* [2011] ECR SC p. II-0000, para. 31.

authorize the parties to supplement the documents if the applicant presents a reasoned request to that effect within two weeks from the notification of that decision.

2. The President shall fix the time-limits within which these pleadings are to be lodged.

Outline:

I. Overview.....	1
1. General.....	1
2. GC.....	2
3. CST.....	3
a) Introduction.....	3
b) Comment.....	4
c) Reply ordered <i>ex officio</i>	5
aa) Purpose.....	5
bb) Risk of misuse.....	6
d) Application for a reply.....	7
4. Length of documents	8
a) Reply and rejoinder	8
b) Annexes.....	9
II. Reply and rejoinder (paragraph 1, 1 st alternative).....	10
1. Reply	10
a) Admissibility	10
aa) Rule and exception	10
(1) “Unnecessary”.....	11
(2) Balancing the interests	12
bb) Possible actions for the parties	13
(1) No legal remedy.....	13
(2) Application for a second exchange of submissions.....	14
(3) Request for reopening the written proceedings.....	15
cc) Statistics	16
dd) End of written proceedings	17
b) Contents of the reply	18
2. Rejoinder	19
3. No further exchange of written pleadings	20
a) No right of the parties	20
b) Initiative of the GC.....	21
III. Supplementing the documents (paragraph 1, 2 nd alternative).....	22
1. General.....	22
2. Supplementing the documents	23
3. Time-limit	24
IV. Time-limits (paragraph 2).....	25
1. General.....	25
2. Length and extension.....	26
a) Length.....	26
b) Application for extension	27

I. Overview

1. General

This provision governs the conditions of a **second exchange** of written pleadings, 1 i.e. the applicant's **reply** to the statement of defence, and the subsequent **rejoinder**, if any, by the defendant⁵⁵² (paragraph 1, 1st alternative). It also provides the possibility to supplement the documents (paragraph 1, 2nd alternative), although this is less important in practice.

2. GC

In the early days of the CFI (until 2000), the parties were *ipso jure* entitled to a 2 second exchange of proceedings. Today, for reasons of acceleration of the proceedings, such a right exists only in **principle**, i.e. unless the GC decides that it is “unnecessary”.

3. **CST. a) Introduction.** In proceedings at the CST the opposite logic applies⁵⁵³; in 3 principle there will be **no second exchange** of pleadings, unless the Tribunal decides otherwise either on its own motion, e.g. in case the party changes the lawyer or applies for legal aid⁵⁵⁴, or upon the applicant's request⁵⁵⁵. It would seem that the reason for this specific rule is, first of all, to **accelerate** the proceedings as much as possible. Secondly, staff cases tend to become increasingly complex and voluminous anyway, so further written exchanges are not necessarily encouraged. Despite this underlying principle, however, the second exchange of written pleadings is not exceptional; indeed, in certain categories of cases, such as harassment matters, it tends to be the rule.

b) Comment

An alternative to the GC's current opposition to a second exchange of pleadings 4 could be to **revert** to the GC's rule found above, while simultaneously limiting the number of pages of the reply and the rejoinder even further than is the case today.

c) **Reply ordered ex officio. aa) Purpose.** If in his statement of defence the 5 defendant raises **arguments of inadmissibility**, the applicant will normally be granted the right to respond, but with the caveat that his response must be **limited** to the particular points alleged to be inadmissible, unless the grounds of inadmissibility lend themselves to be addressed at the hearing.

⁵⁵² In principle the number of pages of a reply and rejoinder is limited to 25 pages; see para. 15 of the “Practice Directions to Parties”.

⁵⁵³ Art. 33 and 41 RP CST.

⁵⁵⁴ Case F-142/07, *Kaminska v CoR* [2008] (not published in the ECR).

⁵⁵⁵ While the defendant might have an interest in a second exchange of pleadings it has no right to apply for same.

bb) Risk of misuse

- 6 Since the CST has thus imposed a limitation upon the applicant's response, the latter should strictly comply with these limits. In practice, however, this is not always the case, since some applicants are tempted to take advantage of the situation in order to lodge a full reply, thus also covering the substance of the case and thereby ignoring the CST's condition⁵⁵⁶. It would therefore be worth considering instead adopting a measure of organization of the proceedings, which by definition leaves no room for comment on anything but the subject indicated in such measure.

d) Application for a reply

- 7 An application for a reply must be properly reasoned. This implies that the application should not be so detailed that it appears that the applicant is using (or rather misusing⁵⁵⁷) it as a *de facto* reply that might otherwise be rejected as inadmissible⁵⁵⁸.

- 8 **4. Length of documents. a) Reply and rejoinder.** In proceedings before the GC, a reply (and the subsequent rejoinder, if any) may not as a rule exceed 25 pages⁵⁵⁹. In cases before the CST both written submissions should, again as a rule, be comprised of less than 15 pages⁵⁶⁰.

b) Annexes

- 9 The number of annexes should be limited to those which are strictly relevant to the case⁵⁶¹. Any non-compliance with this limitation may result in a request for an abbreviated version⁵⁶².

II. Reply and rejoinder (paragraph 1, 1st alternative)

- 10 **1. Reply. a) Admissibility. aa) Rule and exception.** As a rule the applicant may hand in a reply to the statement of defence unless the GC decides that a second exchange of pleadings is "unnecessary"⁵⁶³, which automatically excludes any rejoinder⁵⁶⁴.

⁵⁵⁶ See e.g. Case F-43/10, *Cerafogli v ECB* [2012] (not yet published in the ECR).

⁵⁵⁷ See in the context of interim proceedings e.g. Case F-38/12 R, *BP v Fundamental Rights Agency* [2012] (not yet published in the ECR), paras. 12 et seq.

⁵⁵⁸ Case F-112/10, *Trentea v Fundamental Rights Agency* [2011] (not published in the ECR).

⁵⁵⁹ Para. 15 of the "Practice Directions to Parties".

⁵⁶⁰ Para. 15 of the "Practice Directions to Parties".

⁵⁶¹ Paras 57 et seq. of the "Practice Directions to Parties".

⁵⁶² Case F-41/10, *Bermejo v ECOSOC* [2011] (not published in the ECR).

⁵⁶³ Which became increasingly the case during the last years of the GC's jurisdiction on staff cases.

⁵⁶⁴ Slightly unclear insofar Case T-54/91, *Almeida Antunes v Parliament* [1992] ECR p. II-1739, para. 13.

(1) **“Unnecessary”.** A second exchange is unnecessary if the documents before the GC *“are sufficiently comprehensive to enable the parties to elaborate their pleas and arguments in the course of the oral procedure”*. This is thus essentially a question of whether or not the respective pleas and arguments lend themselves to being elaborated **orally**, bearing in mind that the GC may also clarify certain matters by putting written questions to the parties.

(2) **Balancing the interests.** Striking a careful balance between the need to provide sufficient space for, i.e. an *effet utile* to, the **right to be heard** and the need to **accelerate proceedings** is essential. The GC will thus take into consideration the extent of the complexity of the factual and/or legal aspects addressed in the application. This is also true should the proceedings raise questions of principle or e.g. raise important economic issues.

bb) Possible actions for the parties. (1) **No legal remedy.** There is no legal remedy should the GC decide not to grant a second exchange of written pleadings.

(2) **Application for a second exchange of submissions.** That said, nothing prevents the applicant from adopting a cautious attitude by applying for a second exchange of written submissions through the provision of adequate reasons. This should be done after the notification of the statement of defence, rather than as a reaction to the GC deciding to close the written proceedings.

(3) **Request for reopening the written proceedings.** The RP GC neither provide nor exclude such a right, since said right is an expression of the rights of defence and of fair trial. Nevertheless, the applicant needs to provide substantive reasons for a reopening of written proceedings.

cc) Statistics

Regrettably, the GC’s annual report does not provide any statistical figures on the frequency of second exchanges of written submissions. It seems though that in many cases a second exchange of pleadings takes place.

dd) End of written proceedings

If no second exchange of written pleadings takes place; if the applicant waives his right to a reply⁵⁶⁵; or if he simply fails to hand it in within the relevant time-limit⁵⁶⁶, the written procedure is closed by a decision of the GC, not by the will of the parties⁵⁶⁷.

b) Contents of the reply

A reply is of course not a new application within the meaning of Art. 44 RP GC⁵⁶⁸, as it is limited to **commenting** upon the factual and/or legal contents of the

⁵⁶⁵ Case T-259/01, *Nutrinvest v Commission* [2004] ECR p. II-649, para. 23.

⁵⁶⁶ Case T-28/90, *Asia Motor France v Commission* [1992] ECR p. II-2285, para. 16.

⁵⁶⁷ See to this effect Case T-74/92, *Ladbroke v Commission* [1995] ECR p. II-115, para. 22.

⁵⁶⁸ Case T-22/92, *Weissenfels v Parliament* [1993] ECR p. II-1095, para. 29.

defence, as deemed appropriate by the applicant⁵⁶⁹. That said, the GC may request the applicant to limit himself to a particular legal ground, e.g. inadmissibility, which was raised in the statement of defence⁵⁷⁰. If after his reply the applicant submits a “complement to the reply” (even though the RP provide no such basis) the GC can extend the time-limit for the rejoinder⁵⁷¹.

2. Rejoinder

19 A rejoinder⁵⁷² is admissible only if there was a **reply**. There is **no obligation** to submit a rejoinder. In some cases it may be more effective to waive the right to such an additional written pleading⁵⁷³ and to instead articulate the arguments during the oral hearing. This may not be the case in other cases. Much depends upon the complexity of the facts and/or the legal questions. A rejoinder may of course also address questions of admissibility when appropriate, but the party may under no circumstance raise a plea of inadmissibility within the meaning of Art. 114 RP GC in lieu of a rejoinder.

20 **3. No further exchange of written pleadings. a) No right of the parties.** Once the rejoinder has been submitted, the parties may not on their own motion hand in a further written pleading, e.g. a comment on the rejoinder⁵⁷⁴, even if the circumstances are particular, e.g. if in the course of the proceedings a party hired a new lawyer. Such unsolicited submissions will be **returned** to the party in question.

b) Initiative of the GC

21 In certain proceedings, the GC may request a party to submit additional pleadings⁵⁷⁵. In such case the other party will then be entitled to submit its written comments for reasons of equality of arms⁵⁷⁶.

III. Supplementing the documents (paragraph 1, 2nd alternative)

1. General

22 Pursuant to the second alternative in paragraph 1 the GC may authorize the parties to “supplement the documents” if the applicant presents a reasoned request

⁵⁶⁹ Within the limit of 25 pages which applies, in principle, by virtue of para. 15 of the “Practice Directions to Parties”.

⁵⁷⁰ Case T-372/02, *Internationaler Hilfsfond v Commission* [2003] ECR p. II-4389, para. 29.

⁵⁷¹ Case T-36/91, *ICI v Commission* [1995] ECR p. II-1847, para. 21; Case T-37/91, *ICI v Commission* [1995] ECR p. II-1901, para. 18.

⁵⁷² Within the limit of 25 pages which applies, in principle, by virtue of para. 15 of the “Practice Directions to Parties”.

⁵⁷³ Case T-329/00, *Bonn Fleisch Ex- und Import v Commission* [2003] ECR p. II-291, para. 40.

⁵⁷⁴ Case T-280/94, *Lopes v Court of Justice* [1996] ECR SC p. II-239, para. 38.

⁵⁷⁵ Case T-47/92, *Lenz v Commission* [1992] ECR p. II-2523, para. 39.

⁵⁷⁶ Case T-464/04, *Impala v Commission* [2006] ECR p. II-2289, para. 549.

within a time-limit of **two weeks**. It is clear from the wording (“however”) that this alternative only applies if no further exchange of submission takes place.

2. Supplementing the documents

A literal reading of this provision means that the party may not add any ²³ arguments to its submission, as it might in the event of a second exchange of pleadings, but is instead merely entitled to add documents to those already in the file. Thus, the second alternative of paragraph 1 is of **little practical relevance**.

3. Time-limit

The time-limit of 2 weeks (plus 10 days on account of distance) is “*ordre public*” ²⁴ and may thus not be extended.

IV. Time-limits (paragraph 2)

1. General

The RP GC do **not** provide time-limits for the reply and the rejoinder, as is the ²⁵ case for e.g. an action for annulment (primary law)⁵⁷⁷; an action in staff matters (secondary law)⁵⁷⁸; and the statement of defence (secondary law)⁵⁷⁹. The President sets these time-limits.

2. Length and extension. a) Length. Normally, the GC grants a time-limit of **one** ²⁶ **month** (plus ten days on account of distance).

b) Application for extension

Although Art. 47 (2) RP GC does **not** contain a provision equivalent to that ²⁷ found in Art. 46 (3), which governs the extension of time-limits for statements of defence, the party concerned may lodge a request for extension. This request must be **sufficiently reasoned**, and must not be submitted just before the time-limit is about to expire. It likewise has more chances to be accepted if the party seeks a **moderate** extension, e.g. two weeks.

Article 48 [Further evidence; no new pleas in law]

1. In reply or rejoinder a party may offer further evidence. The party must, however, give reasons for the delay in offering it.

⁵⁷⁷ See e.g. Art. 263 (6) TFEU.

⁵⁷⁸ Art. 91 (2) Staff Regulations of the EU officials.

⁵⁷⁹ Art. 46 RP GC.

2. 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.

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

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

Outline:

I. General	1
1. Limiting the contents of reply and rejoinder.....	1
2. Provision applies only to parties	2
II. Offering further evidence (paragraph 1)	3
1. General.....	3
2. Only fresh evidence	4
3. Giving reasons for the delay.....	5
a) General.....	5
b) Reasons given	6
aa) Valid reasons	7
bb) Insufficient reasons.....	8
4. CST	9
III. No new plea in law (paragraph 2)	10
1. Overview.....	10
2. No new plea in law.....	11
a) General.....	11
aa) New	11
bb) Plea in law	12
cc) CST	13
b) New order sought	14
aa) General.....	14
bb) Infringement.....	15
cc) No infringement	16
c) New factual or legal pleas	17
aa) General.....	17
bb) Exceptions	18
(1) Ex officio aspects.....	19
(2) Mere amplifications.....	20
(3) Distinguishing new legal grounds from new legal arguments	21
(a) Admissible	22
(b) Inadmissible.....	23
3. Exceptions	24
a) General.....	24
b) Factual or legal circumstances coming to light in the course of the procedure	25
aa) Requirements.....	25
bb) No time-limit	26
cc) Admissible	27
(1) Oral hearing	27
(2) Amendment or withdrawal of decision.....	28
c) Inadmissible	29
4. Procedure.....	30
a) Written submissions	30

b) Decision of the President..... 31

c) No separate order..... 32

I. General

1. Limiting the contents of reply and rejoinder

This provision⁵⁸⁰ considerably limits the contents of a reply or rejoinder. The parties thereby face the challenge of having to incorporate all factual and legal arguments they deem relevant, including the means of evidence, into their **initial pleadings**, i.e. the **application** and the **statement of defence**. This limitation is frequently ignored.

2. Provision applies only to parties

Non-compliance with Art. 48 does not prevent the GC from addressing the substance of the application or the legal ground concerned⁵⁸¹ “*in the interest of judicial protection*”⁵⁸².

II. Offering further evidence (paragraph 1)

1. General

The relevant evidence must be indicated in the **application**⁵⁸³ or the **defence**⁵⁸⁴. The underlying reason for the exception provided in Art. 48 (1) is that while the evidence is new, the facts it relates to are not. This is also because the parties are for practical reasons not always able to indicate all the relevant evidence at the time of the first exchange of written submissions.

2. Only fresh evidence

Art. 48 (1) concerns offers of **fresh evidence** and must be read in the light of Article 66 (2), which expressly provides that evidence may be submitted in **rebuttal** and that previous evidence may be **amplified**. Thus, the time-bar in Art. 48 (1) of the RP⁵⁸⁵ does not apply to evidence in rebuttal, nor to amplification of offers of evidence submitted in response to evidence from the opposite party in his defence.

⁵⁸⁰ See also Art. 127 RP ECJ.

⁵⁸¹ Case T-87/91, *Boessen v ECOSOC* [1993] ECR p. II-235, paras. 37 et seq. and Case T-562/93, *Obst v Commission* [1995] ECR SC p. I-A-247, 251.

⁵⁸² Case T-171/94, *Descom Scales v Council* [1995] ECR p. II-2413, para. 98.

⁵⁸³ Art. 44 (1) lit. e) RP GC.

⁵⁸⁴ Art. 46 (1) lit. d) RP GC.

⁵⁸⁵ Case C-185/95 P, *Baustahlgewebe v Commission* [1998] ECR p. I-8417, paras. 71–72.

- 5 **3. Giving reasons for the delay. a) General.** Offering fresh evidence in a reply and/or rejoinder⁵⁸⁶ is not *ipso jure* inadmissible, provided that the party concerned gives pertinent⁵⁸⁷ reasons for the delay. Otherwise, one would breach of the principle of *audi alteram partem* and the rights of the defence⁵⁸⁸.

b) Reasons given

- 6 Giving reasons for the delay is not merely an obligation to act, but also serves as a justification or excuse for the delay. The weight of the reasons given is thus very important⁵⁸⁹.

aa) Valid reasons

- 7 The defendant may rely on Art. 48 (1) if e.g. he can prove that he gathered the evidence only after having lodged the statement of defence⁵⁹⁰. This should also apply if a party can prove that it had difficulties in determining the existence and exact nature of the evidence.

bb) Insufficient reasons

- 8 A party may not rely on Art. 48 (1) if it already possessed evidence or if it provides no reasons whatsoever for its delay⁵⁹¹.

4. CST

- 9 Art. 42 RP CST is a **specific rule** which provides that the parties may offer further evidence in support of their arguments until the end of the hearing on the condition that their delay in offering this evidence is duly justified. This provision takes account of the fact that in proceedings at the CST a second exchange of pleadings is, according to Art. 33 and 41 RP CST, the exception.

III. No new plea in law (paragraph 2)

1. Overview

- 10 The rule and exception provided by Art. 48 (2) RP GC applies only to the parties and therefore not to the GC⁵⁹², which does nevertheless remain bound by the

⁵⁸⁶ Or in the context of an application within the meaning of Art. 114 RP GC; see Case T-47/92, *Lenz v Commission* [1992] ECR p. II-2523, para. 38.

⁵⁸⁷ Case T-158/05, *Trek Bicycle v OHIM* [2007] ECR p. II-49, para. 42.

⁵⁸⁸ Case T-24/00, *Sunrider v OHIM* [2001] ECR p. II-449, para. 14.

⁵⁸⁹ Case T-47/92, *Lenz v Commission* [1992] ECR p. II-2523, para. 39; T-84/92, *Nielsen and Moller v ECOSOC* [1993] ECR p. II-949, para. 39; T-66/92, *Herlitz v Commission* [1994] ECR p. II-531, para. 40.

⁵⁹⁰ Case T-172/01, *M v ECJ* [2004] ECR p. II-1075, paras. 40–42.

⁵⁹¹ Case T-303/02, *Westfalen Fassen Nederland v Commission* [2006] ECR p. II-4567, para. 191.

⁵⁹² Case T-114/02, *Babyliiss v Commission* [2003] ECR p. II-1279, para. 306 et seq.

principle *ne ultra petita*⁵⁹³. This does not infringe the right to be heard, which is guaranteed by the opportunity to present all relevant matters at the oral hearing⁵⁹⁴.

2. No new plea in law. a) General. aa) New. A plea in law is “new” if it has **no link** 11 whatsoever to the application or to the statement of defence and thus **modifies the subject-matter** of the proceedings⁵⁹⁵. As a rule such legal pleas are **inadmissible** regardless at which stage they are put forward, e.g. in the reply⁵⁹⁶, the rejoinder⁵⁹⁷, the answer to measures of organization of the procedure⁵⁹⁸, the observations on means of evidence⁵⁹⁹, a submission by an intervener⁶⁰⁰, an application for an oral hearing⁶⁰¹, or during the oral hearing itself⁶⁰².

bb) Plea in law

This **generic term** covers new orders sought⁶⁰³, the extension of existing orders 12 sought⁶⁰⁴, and new factual and/or legal pleas⁶⁰⁵.

cc) CST

Art. 43 (1) RP CST applies the identical principle to staff cases, except that this 13 principle also provides that no new plea in law may be introduced after the first exchange of pleadings. In staff cases, the applicant may not raise a legal plea which is “new” when compared to the pleas put forward in the administrative complaint which, as a rule, needs to precede any contentious application in staff matters⁶⁰⁶.

b) New order sought. aa) General. Art. 48 (2) RP GC applies *a fortiori* to any 14 subsequent modification of the order sought⁶⁰⁷.

bb) Infringement

Putting forward a new order sought at the stage of the **reply**, e.g. by substituting a 15 claim for annulment of the initial claim for a declaration of failure to act⁶⁰⁸ or for a

⁵⁹³ Case C-252/96 P, *Parliament v Gutiérrez de Quijano and Lloréns* [1998] ECR p. II-7421, paras. 29–30.

⁵⁹⁴ Case T-547/93, *Lopes v ECJ* [1996] ECR SC p. II-185, paras. 45 et seq.

⁵⁹⁵ Case T-28/90, *Asia Motors France A. O. v Commission* [1992] ECR p. II-2285, para. 43.

⁵⁹⁶ Case T-22/92, *Weissenfels/Parliament* [1993] ECR p. II-1095, para. 27.

⁵⁹⁷ *A contrario* Case T-21/90, *Generlich v Commission* [1991] ECR p. II-1323.

⁵⁹⁸ Case T-16/90, *Panagiopoulou v Parliament* [1992] ECR p. II-89, para. 72.

⁵⁹⁹ Joined Cases T-80/89 etc., *BASF A.O v Commission* [1995] ECR p. II-729, para. 64.

⁶⁰⁰ Case T-535/93 R, *F v Council* [1995] ECR p. II-163, para. 76.

⁶⁰¹ Case T-223/07 P, *Thierry v Commission* [2008] (not published in the ECR), para. 27.

⁶⁰² Case T-562/93, *Obst v Commission* [1997] ECR SC p. II-31, para. 54; Case T-207/95, *De los Angeles Ibarra Gil v Commission* [1997] ECR SC p. II-31, para. 54; Case T-139/99, *AICS v Parliament* [2000] ECR p. II-2849, para. 66; Case T-3/99, *Banatrading v Council* [2001] ECR p. II-2123, para. 43.

⁶⁰³ Case T-556/93, *Saby v Commission* [1995] ECR SC p. I-A-117, 120.

⁶⁰⁴ Case T-22/92, *Weissenfels v Commission* [1993] ECR p. II-1095, para. 27.

⁶⁰⁵ Case T-T-53/91, *Mergen v Commission* [1992] ECR II-2041, para. 53.

⁶⁰⁶ Case Joined Cases T-39/93 and T-553/93, *Baltsavias v Commission* [1995] ECR p. II-695, para. 73.

⁶⁰⁷ Case T-236/07, *Germany v Council* [2010] ECR p. I-0000, paras. 27–28.

⁶⁰⁸ Case T-188/08, *infeurope v Commission* [2009] (not published in the ECR), para. 38 and the case-law cited.

request for payment of damages⁶⁰⁹, is clearly in breach of Art. 48 (2) RP GC. This is *a fortiori* the case should an applicant put forward new orders sought during the oral hearing, even if the party considers them ancillary to those orders sought contained in the application⁶¹⁰.

cc) No infringement

- 16 A party remains perfectly entitled to **clarify** a sought order contained in the application during its reply, in its comments concerning a formal plea of inadmissibility, or in order to correct **typing errors**⁶¹¹.

- 17 c) **New factual or legal pleas.** aa) **General.** This includes stating **new facts** and/or putting forward **new legal pleas**⁶¹².

bb) Exceptions

- 18 Not everything which appears as new is *ipso jure* inadmissible within the meaning of Art. 48 (2) sub-paragraph 1.
- 19 (1) **Ex officio aspects.** Those legal questions which the GC needs to assess on its own initiative may be raised at any stage of the proceedings, i.e. even during the oral hearing⁶¹³. This includes e.g. assessing whether the **time-limits**⁶¹⁴ or the **obligation to provide reasons**⁶¹⁵ have been respected.
- 20 (2) **Mere amplifications.** Parties remain furthermore entitled to develop and amplify pleas, i.e. to put forward **additional arguments** in support of a given plea which had already been raised explicitly or implicitly⁶¹⁶ in the **application** or statement of **defence** if there is a “**close relationship**”⁶¹⁷ between new pleas in the **reply** and the other pleas already put forward in the application⁶¹⁸. The same principle applies to the **rejoinder**, when compared to the **statement of defence**⁶¹⁹.
- 21 (3) **Distinguishing new legal grounds from new legal arguments.** The exact **delineation** between new legal grounds, which are considered inadmissible, and new arguments, which are designed to develop or amplify legal grounds already put forward and are thus always admissible, may turn out to be difficult⁶²⁰.

⁶⁰⁹ Case T-87/01, *Boessen v ECOSOC* [1993] ECR p. II-235, para. 36; Case T-241/03, *Marcuccio v Commission* [2006] ECR p. II-A-2-517, para. 57.

⁶¹⁰ Case T-398/94, *Kahn Scheepvaart v Commission* [1996] ECR p. II-477, para. 20.

⁶¹¹ Case T-2/99, *Port v Commission* [2001] ECR p. II-2093, para. 36.

⁶¹² Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, *Dansk Rørindustri A.O v Commission* [2005] ECR p. II-5425.

⁶¹³ Case T-196/95, *FFSA A. O. v Commission* [1997] ECR p. II-233, para. 62.

⁶¹⁴ Case T-275/97, *Guérin Automobiles v Commission* [1998] ECR p. II-253, para. 8 et seq.

⁶¹⁵ Case T-37/89, *Hanning v Parliament* [1990] ECR p. II-463, para. 38; T-44/00, *Mannesmann-Röhren-Werke v Commission* [2004] ECR p. II-2223, para. 210.

⁶¹⁶ Case T-216/95, *Moles Gracia Ortúzar v Commission* [1997] ECR SC p. I-A-403, 411.

⁶¹⁷ See e.g. Case T-419/03, *Altstoff Recycling Austria v Commission* [2011] ECR p. II-0000, para. 44; Joined Cases T-456/05 and T-457/05, *Gütermann and Zwicky v Commission* [2010] ECR p. II-1443, paras. 198 to 199.

⁶¹⁸ Case T-16/91, *Rendo A. O. v Commission* [1992] ECR p. II-2417, para. 123; Case T-459/93, *Siemens v Commission* [1995] ECR p. II-1675, para. 30.

⁶¹⁹ Case T-204/99, *Mattila v Council and Commission* [2001] ECR p. II-2265, para. 33.

⁶²⁰ Case T-16/91, *Rendo v Commission* [1992] ECR p. II-2417, para. 96.

(a) **Admissible.** The GC did accept the inclusion of an expert opinion in the case file⁶²¹. Thus, a party may request to include an expert opinion or analysis concerning certain facts in the case file⁶²². Even after the closure of the written proceedings, a party may be granted permission to lodge an expert's opinion on its legal status in order to comply with the requirements in Art. 44 (5) lit. a) RP GC⁶²³.

(b) **Inadmissible.** A document put forward during the oral hearing is normally considered new evidence and is thus inadmissible unless it merely illustrates the remarks of the party concerned during its submissions⁶²⁴.

3. Exceptions. a) General. The provision in paragraph 2, sub-para 1, second half-sentence, provides an exception to this rule in that new pleas in law are admissible if they are based "*on matters of law or of fact which come to light in the course of the procedure*". It would be unfair to penalize the party in question for developments which are outside its control, namely the occurrence of certain legal or factual circumstances during the proceedings.

b) Factual or legal circumstances coming to light in the course of the procedure.

aa) Requirements. The fact that the applicant became aware of a factual matter during the course of the procedure before the GC does not mean that that element constitutes a matter of fact coming to light in the course of the procedure⁶²⁵. Furthermore, the applicant must not be in a position to be aware of that matter previously⁶²⁶, even though it could have been aware of it⁶²⁷. This is the case if the factual matter was hitherto unknown to the party in question and came to light as a result of e.g. indications made by the other party in its statement of defence⁶²⁸; a response to the measure of inquiry adopted by the GC⁶²⁹; or a reply to written questions⁶³⁰.

bb) No time-limit

Article 48(2) RP GC establishes neither a time-limit nor any particular formality for the submission of a new plea in law. More specifically, it does not provide that such a submission must be made immediately or within a particular period after the matters of fact or of law to which it refers come to light if said submission is not to be time-barred⁶³¹.

⁶²¹ Case T-220/94, *Deutsche Bahn v Commission* [1997] ECR p. II-1689, para. 20.

⁶²² Case T-69/96, *Hamburger Hafen- und Lagerhaus A.O v Commission* [2001] ECR p. II-1037, paras. 19 and 20.

⁶²³ Case T-161/94, *Sinochem Heilongjiang v Council* [1996] ECR p. II-695, paras. 17 and 19.

⁶²⁴ Case T-340/00, *Arne Mathisen v Council* [2002] ECR p. II-2905, para. 28.

⁶²⁵ Case T-303/08, *Tresplain Investments v OHIM* [2010] ECR II-0000, para. 167.

⁶²⁶ Case T-139/99, *AICS v Parliament* [2000] ECR II-2849, para. 62 and the case law cited.

⁶²⁷ Case T-32/91, *Solvay v Commission* [1995] ECR II-1823, para. 38.

⁶²⁸ Case T-141/97, *Yasse v EIB* [1999] ECR II-929, 965.

⁶²⁹ Joined Cases T-80/89 et seq., *BASF A. O. v Commission* [1995] ECR II-729, para. 66.

⁶³⁰ Case T-508/93, *Mancini v Commission* [1994] ECR II-761, para. 33–34.

⁶³¹ Case T-32/91, *Solvay v Commission* [1995] ECR II-1823, para. 40.

- 27 **cc) Admissible. (1) Oral hearing.** During the oral hearing an applicant may for the first time comment upon information contained in the **statement of defence**, even if he has waived his right to a reply⁶³². This also applies if the applicant learns about certain facts from reading the reply of the other party to **measures of organization** of the GC⁶³³.
- 28 **(2) Amendment or withdrawal of decision.** An amendment⁶³⁴ or withdrawal⁶³⁵ of the contested decision in the course of the proceedings is a new fact allowing the applicant to **adjust its legal grounds**⁶³⁶ or **forms of order sought**⁶³⁷. These newly-adjusted legal grounds or forms of order sought are then considered to be directed against the new legal act⁶³⁸. This does not mean, however, that the applicant may first challenge a preparatory act and subsequently challenge a final decision⁶³⁹. Likewise, an amendment such as this one does not alter the nature of the action for annulment initially lodged⁶⁴⁰. The admissibility of an application is assessed on the basis of the conditions which existed when it was introduced, which means that an application which was lodged prematurely remains inadmissible⁶⁴¹. A decision by which the Commission rejects a competitor's complaint after the challenged decision is adopted may be considered either a matter of law or of fact which has come to light in the course of the procedure, within the meaning of Art. 48(2) RP GC⁶⁴². That said, if the challenged decision is e.g. withdrawn, i.e. replaced by another one, there is nothing preventing the applicant from lodging a new application within the relevant time-limit.

c) Inadmissible

- 29 An applicant may not rely on Art. 48 (2) RP GC if he was aware of a given fact before the action was brought. Such a fact may be found in a **memorandum**⁶⁴³; an exchange of **correspondence** mentioned in the challenged decision⁶⁴⁴; a **judgment** which merely confirms law which ought to have been known to the applicant when it brought an action⁶⁴⁵; **secondary legislation** which already existed when the action was initiated⁶⁴⁶; or the mere fact that the applicant changed his interpretation of a given principle in law⁶⁴⁷.

⁶³² Joined Cases T-437/04 and T-441/04, *Standertskjöld-Nordenstam A. O. v Commission* [2006] ECR II-A-2, 127, para. 58.

⁶³³ Case T-153/95, *Kaps v ECJ* [1996] ECR II-663, para. 35.

⁶³⁴ Case T-36/99, *Lenzing v Commission* [2004] ECR II-3597, paras. 54 et seq.

⁶³⁵ Case T-28/90, *Asia Motors France v Commission* [1992] ECR II-2285, para. 43.

⁶³⁶ Case T-161/00, *Tsarnavas v Commission* [2001] ECR SC II-721, paras. 27 et seq.

⁶³⁷ Joined Cases T-46/98 and T-151/98, *CCRE v Commission* [2000] ECR II-167, para. 33.

⁶³⁸ Case T-111/00, *BAT International (Investments) v Commission* [2001] ECR p. II-2997, para. 22.

⁶³⁹ Case T-90/96, *Peugeot v Commission* [1997] ECR p. II-663, para. 38.

⁶⁴⁰ Case T-10/95, *Akli Chehab v Commission* [2001] ECR SC p. II-721, paras. 26–27.

⁶⁴¹ Case T-161/00, *Tsavarnas v Commission* [2001] ECR SC p. II-721, paras. 26–27.

⁶⁴² Case T-77/92, *Parker Pen v Commission* [1994] ECR p. II-549, para. 62.

⁶⁴³ Case T-53/91, *Mergen v Commission* [1992] ECR p. II-2041, para. 53.

⁶⁴⁴ Case T-196/95, *FFSA A. O. v Commission* [1997] ECR p. II-233, para. 48.

⁶⁴⁵ Case T-196/95, *FFSA A. O. v Commission* [1997] ECR p. II-233, para. 57; Case T-2/99, *T. Port v Council* [2001] ECR p. II-2093, para. 57 et seq.

⁶⁴⁶ Case T-2/99, *T. Port v Council* [2001] ECR p. II-2093, para. 36.

⁶⁴⁷ Case T-87/91, *Boessen v ECOSOC* [1993] ECR p. II-235, para. 33.

4. Procedure. a) Written submissions. If the applicant puts forward a new admissible plea in law in his reply, the defendant may comment it in his rejoinder. A new plea in law included in the rejoinder may be addressed during the oral hearing.

b) Decision of the President

Pursuant to paragraph 2, sub-paragraph 2, the President may on his own motion initiate a debate on the question of the admissibility of a plea in law, regardless of any time-limit⁶⁴⁸.

c) No separate order

The GC does not adopt a separate order, as it does in other circumstances regarding questions of admissibility, but instead decides the matter in its final judgment⁶⁴⁹ after having discussed it at the oral hearing⁶⁵⁰.

Article 49 [Measures of organization or of inquiry]

At any stage of the proceedings the General Court may, after hearing the Advocate General, prescribe any measure of organization of procedure or any measure of inquiry referred to in Articles 64 and 65 or order that a previous inquiry be repeated or expanded.

I. General

The sole purpose of this provision is to clarify that measures of organization of procedure and measures of inquiry within the meaning of Art. 64 and 65 may be adopted “**at any stage of the proceedings**”. This might be why this provision has been inserted between provisions governing the written part and those relating to the oral part of the proceedings.

II. Practice

1. GC

In practice, the GC tends to adopt measures of organization, if any, after the completion of rather than during the written procedure.

2. CST

The CST frequently adopts measures of organization of the procedure prior to the oral hearing, but sometimes also does so afterwards, prior to the formal closing of the oral phase.

⁶⁴⁸ A formal application based on Art. 114 RP GC is inadmissible, see Case T-54/93, *Lopes/ECJ*, [1996] ECR SC p. II-185, paras. 42 et seq.

⁶⁴⁹ Art. 48 (2) sub-para. 3 RP GC.

⁶⁵⁰ Case T-16/90, *Panagiotopoulou v Parliament* [1992] ECR p. II-89, para. 69.

3. Measures of inquiry

- 4 In contrast, measures of inquiry remain the **exception** with both jurisdictions.

Article 50 [Joining cases]

1. The President may, at any time, after hearing the parties and the Advocate General, order that two or more cases concerning the same subject-matter shall, on account of the connection between them, be joined for the purposes of the written or oral procedure or of the final judgment. The cases may subsequently be disjoined. The President may refer these matters to the General Court.

2. The agents, advisers or lawyers of all the parties to the joined cases, including interveners, may examine at the Registry the pleadings served on the parties in the other cases concerned. The President may, however, on application by a party, without prejudice to Article 67(3), exclude secret or confidential documents from that consultation.

Outline:

I. General	1
II. Joining cases (paragraph 1)	2
1. Timing	2
2. Ex officio or upon application.....	3
a) General.....	3
b) Ex officio.....	4
c) Upon application	5
3. Conditions.....	6
a) Legal remedies	6
b) Same subject-matter and connection.....	7
aa) Same subject-matter.....	7
bb) Connection	8
(1) GC.....	8
(2) CST.....	9
c) Legal effect.....	10
4. Contents of the order.....	11
a) General.....	11
b) Common procedure and decision	12
c) Common oral hearing and decision	13
d) Common oral hearing	14
e) Common judgment	15
f) Disjoining cases.....	16
g) No legal remedy	17
III. Access to documents and confidentiality (paragraph 2).....	18
1. General.....	18
2. Access to documents.....	19
a) Principle	19
b) Modalities.....	20
3. Confidentiality.....	21

I. General

It is a matter of **economy of proceedings** and **good administration of justice** to 1
join pending cases which possess a certain degree of connection. Joining cases also
prevents the risk of **diverging judgments**. It is clear from this provision, however,
that an order for joinder does not affect the **independence** and **autonomy** of the
cases which it covers, since cases may always subsequently be disjoined⁶⁵¹.

II. Joining cases (paragraph 1)

1. Timing

Cases may be joined “**at any time**”, except for those for which an oral hearing 2
has already taken place and which are thus ready for decision⁶⁵².

2. Ex officio or upon application. a) General. Whether the GC intends to join cases 3
on its own motion or upon application, it must **hear the parties** to the respective
cases before rendering a decision on joining them. Despite this requirement,
however, the GC is not bound by the views of the parties⁶⁵³.

b) Ex officio

Quite often cases are joined upon the GC’s own motion⁶⁵⁴, be it by informing the 4
parties in writing or in the context of an informal meeting⁶⁵⁵.

c) Upon application

Any party may apply for the joining of cases⁶⁵⁶; there is no need for a common 5
application. Said party may do so either in the context of its written pleading or by
way of a separate application⁶⁵⁷.

3. Conditions. a) Legal remedies. All cases may be joined, regardless of the nature 6
of the legal remedy, i.e. not only actions for annulment or for failure to act, but also
interim proceedings, or taxation⁶⁵⁸. It is also possible to **combine** actions for

⁶⁵¹ Case T-209/01, *Honeywell v Commission* [2005] ECR p. II-5527, para. 71.

⁶⁵² Case T-62/99, *Sodima v Commission* [2001] ECR p. II-655, para. 14.

⁶⁵³ Joined Cases T-57/92 and T-75/92, *Yorck von Wartenburg v Parliament* (not published in the ECR).

⁶⁵⁴ Joined Cases T-112/96 and T-115/96, *Séché v Commission* (not published in the ECR).

⁶⁵⁵ Joined Cases T-163/97 and T-179/97, *Nederlandische Antillen v Council and Commission* (not published in the ECR).

⁶⁵⁶ Joined Cases T-40/96 and T-55/96, *de Kerros and Kohn-Bergé v Commission* [1997] ECR SC p. II-135, para. 19.

⁶⁵⁷ Joined Cases T-129/95, T-2/96 and T-97/96, *Neue Maxhütte Stahlwerke and Lech-Stahlwerke v Commission* (not published in the ECR).

⁶⁵⁸ Joined Cases T-85/94 (92) and T-85/94 (92), *Branco v Commission* [1998] ECR p. II-2667 et seq.

annulment with actions for failure to act⁶⁵⁹; one may also combine main proceedings and interim proceedings⁶⁶⁰.

- 7 **b) Same subject-matter and connection. aa) Same subject-matter.** The prerequisites for joining cases laid down in paragraph 1 are fairly vague: the cases need to have the same “subject-matter”, i.e., their facts are either identical or sufficiently similar and they are directed against the same decision(s).
- 8 **bb) Connection. (1) GC.** The second condition is that there needs to be a “connection” between the cases, for which there is a rebuttable presumption if the subject-matter is the same.
- 9 **(2) CST.** Apart from the requirement to have a “connection” between the cases, Art. 46 (1) RP CST refers to the “interest of the **proper administration of justice**”, which seems to indicate that the latter is an additional requirement. Art. 46 (2) RP CST provides a **specific rule** for cases assigned to different formations.

c) Legal effect

- 10 Joining cases does not prevent the GC from assessing the admissibility and merits of the cases individually⁶⁶¹, since an order for joinder does **not affect the independence and autonomy** of the cases which it concerns since those cases may always be subsequently disjoined⁶⁶².
- 11 **4. Contents of the order. a) General.** If the conditions for joining cases are met, the contents of the order depend upon the stage of the proceedings at which the cases are joined, taking into account the need to ensure the proper administration of justice:

b) Common procedure and decision

- 12 If the decision to join the cases is made at a **very early stage**, possibly even before the notification of the application to the defendant, then the cases are normally joined and thus have a common written and oral procedure and final judgment⁶⁶³. Such early joinders remain the exception.

c) Common oral hearing and decision

- 13 Cases may also be joined at a **later stage** for the purpose of a common oral hearing and judgment⁶⁶⁴. The joining for the purpose of a common oral hearing necessarily takes place before the hearing and is eventually combined with measures

⁶⁵⁹ Joined Cases T-189/95, T-39/96 and T-123/96, *SGA v Commission* [1999] ECR p. II-3587.

⁶⁶⁰ Joined Cases T-492/93 and T-492/93 R, *Nutral v Commission* [1993] ECR II-1024 et seq.

⁶⁶¹ Joined Cases T-191/96 and T-106/97, *CAS Succhi di Frutta v Commission* [1999] ECR p. II-3181.

⁶⁶² Joined Cases C-280/99 P to C-282/99 P, *Moccia Irme A. O. v Commission* [2001] ECR p. II-4717, para. 66.

⁶⁶³ Joined Cases T-298/97, T-312/97, T-313/97, T-315/97, T-600/97 to T-607/97, T-1/98, T-3/98 to T-6/98, T-23/98, *Alzetta A. O. v Commission* [2000] ECR p. II-2319.

⁶⁶⁴ Case T-9/89, *Hüls v Commission* [1992] ECR p. II-499, para. 23.

of organization or inquiry⁶⁶⁵, whereas the joining of cases for the purpose of a common judgment normally takes place during the oral hearing⁶⁶⁶ or even afterwards⁶⁶⁷.

d) Common oral hearing

This alternative to a formal joining, which is common⁶⁶⁸, enables the GC to adopt 14 separate judgments⁶⁶⁹ on each case which are not necessarily handed down on the same day⁶⁷⁰. Such measure does not rule out the possibility that some or all of the cases are joined at a later stage for the purpose of a common judgment⁶⁷¹.

e) Common judgment

Cases may also be joined for the sole purpose of a common decision⁶⁷². 15

f) Disjoining cases

Joining cases is nothing definitive. For reasons of **good administration of justice** 16 the GC does not close the oral procedure in order to reserve itself the right to disjoin the cases⁶⁷³. That said, an actual disjoining of cases **rarely happens**⁶⁷⁴, since the factual basis on which the GC has decided to join the cases does not change.

g) No legal remedy

The parties have no legal remedy against orders joining or disjoining cases, since 17 they have **no legitimate interest** to challenge measures taken in the interest of economy of proceedings and good administration of justice.

III. Access to documents and confidentiality (paragraph 2)

1. General

Paragraph 2⁶⁷⁵, which was recently introduced⁶⁷⁶, defines the conditions under 18 which the parties have access to the documents of the other joined cases⁶⁷⁷, and the

⁶⁶⁵ Joined Cases T-134/94, T-136/94, T-137/94, T-138/94, T-141/94, T-145/94, T-147/94, T-1248/94, T-151/94 and T-157/94, *NHM Stahlwerke GmbH A. O. v Commission* [1997] ECR p. II-2293, para. 11.

⁶⁶⁶ Joined Cases T-89/91, T-21/92 and T-89/92, “X” v *Commission* [1993] ECR p. II-1235 para. 13.

⁶⁶⁷ Joined Cases T-80/89 etc. *BASF A. O. v Commission* [1995] ECR p. II-729, para. 14.

⁶⁶⁸ Case F-103/05, *Pickering v Commission* [2007] (not yet published in the ECR).

⁶⁶⁹ Case T-154/96, *Chvatal A. O. v Commission* [1998] ECR II-1579 and T-13/97, *Chvatal A. O. v Commission* [1998] ECR p. II-1633.

⁶⁷⁰ Case C-51/92 P, *Hercules Chemicals v Commission* [1999] ECR p. II-4235.

⁶⁷¹ Joined Cases T-204/97 and T-270/97, *EPAC v Commission* [2000] ECR p. II-2267.

⁶⁷² Joined Cases T-112/00 and T-122/00, *Iberotam A. O. v Commission* [2001] ECR p. II-97.

⁶⁷³ Joined Cases T-40/96 and T-55/96, *de Kerros and Kohn-Bergé v Commission* [1997] ECR SC p. II-135, para. 39.

⁶⁷⁴ Case T-547/93, *Lopes v ECJ* [1996] ECR SC p. II-185, 194.

⁶⁷⁵ See also paras. 85 et seq. of the “Practice Directions to the Parties”.

⁶⁷⁶ OJEU 2005 L 298/2.

⁶⁷⁷ Case C-480/99 P, *Gerry Plant A. O. v Commission* [2002] ECR p. I-265, para. 24.

protection of **confidential information**⁶⁷⁸. By definition, this provision does not apply if the parties are the same in all of the joined cases.

- 19 **2. Access to documents. a) Principle.** In the event of two or more cases being joined, the GC will not furnish the various files to the other parties on its own motion. The parties are instead given the possibility to consult the written submission at the Registry.

b) Modalities

- 20 Requiring the consultation to take place at the Registry of the GC is bound to make the exercise of the rights of defence more difficult, even for those who have an address for service in Luxembourg.

3. Confidentiality

- 21 The exception provided in paragraph 2 codifies the case law⁶⁷⁹ and concerns resolving a conflict between two opposing principles: on the one hand, the **protection of business secrets**, which is part of a system of undistorted competition, and, on the other, the principle that all parties having a potential conflict of interest must be in a position to reply to any points adversely affecting them⁶⁸⁰.

Article 51 [Referring a case to a different formation]

1. In the cases specified in Article 14(1), and at any stage in the proceedings, the Chamber hearing the case or the President of the General Court may, either on its or his own initiative or at the request of one of the parties, propose to the General Court sitting in plenary session that the case be referred to the General Court sitting in plenary session, to the Grand Chamber or to a Chamber composed of a different number of Judges. The decision to refer a case to a formation composed of a greater number of Judges shall be taken by the General Court in Plenary session, after hearing the Advocate General.

The case shall be decided by a Chamber composed of at least five Judges where a Member State or an institution of the Union which is a party to the proceedings so requests.

2. The decision to delegate a case to a single Judge in the situations specified in Article 14(2) shall be taken, after the parties have been heard, unanimously by the Chamber composed of three Judges before which the case is pending.

Where a Member State or an institution of the European Union which is a party to the proceedings objects to the case being heard by a single Judge the case shall be maintained before or referred to the Chamber to which the Judge-Rapporteur belongs.

⁶⁷⁸ See also Art. 6 (3) of the “Instructions to the Registrar”.

⁶⁷⁹ Case T-9/89, *Hüls v Commission* [1992] ECR p. II-499, para. 24.

⁶⁸⁰ Joined Cases T-1/89 to T-4/89 and T-4/89 to T-6/89, *Rhone-Poulenc A. O. v Commission* [1990] ECR p. II-637, para. 22.

Outline:

I. General	1
II. Referral (paragraph 1)	2
1. Upon application or <i>ex officio</i>	2
a) Hearing the parties	2
b) Natural and legal persons	3
c) Member States and institutions	4
2. Formation	5
a) Plenary session	5
b) Grand Chamber	6
c) Chamber of five judges	7
III. Assignment to a single judge (paragraph 2)	8
1. Restrictive conditions	8
2. CST	9

I. General

This provision implements Art.14 (1) and (2) RP GC which governs the referral of a case to a **larger** formation of Judges. 1

II. Referral (paragraph 1)

1. Upon application or *ex officio*. a) **Hearing the parties.** Prior to a referral, 2 whether it be upon the GC's own motion or on application of one or several parties, the parties are heard.

b) **Natural and legal persons**

Such natural and legal persons are neither entitled to a referral, i.e. they do **not** 3 have a subjective right to such a referral, nor does such referral require their approval.

c) **Member States and institutions**

If the case is assigned to a formation of **three Judges** the Member States and 4 institutions which are a party to the proceedings are **entitled** to request a referral to a chamber of **five Judges**⁶⁸¹. Despite enjoying a privileged status in proceedings at the EU Courts, the Member States and institutions are not entitled to request a referral to the Grand Chamber or full Court in proceedings at the GC. Any such application is interpreted as a request for a referral to a chamber of five⁶⁸².

2. Formation. a) **Plenary session.** Only in the **very early years** of the then-Court of 5 First Instance were cases ever assigned to the full Court⁶⁸³, which implied the

⁶⁸¹ Art. 51 (1) 2nd sub-para. RP C.

⁶⁸² Case T-310/06, *Hungary v Commission* [2007] ECR p. II-4619, para. 25.

⁶⁸³ Case T-24/90, *Automec v Commission* [1992] ECR p. II-2233, 2257; T-28/90 *Asia Motor France v Commission* [1992] ECR p. II-2235, 2254.

participation of a Judge exercising the function of Advocate General. Nowadays, given the GC's workload, there is hardly any room for a referral to the full Court. This is even the case in the event of proceedings of considerable importance⁶⁸⁴ or where a case raises questions of principle, if said questions have already been clarified in a preceding case⁶⁸⁵.

b) Grand Chamber

- 6 In contrast to the ECJ⁶⁸⁶, only **very few cases**⁶⁸⁷ are referred to the Grand Chamber of the GC⁶⁸⁸.

c) Chamber of five judges

- 7 It happens that cases are referred to a formation of five judges, after having been assigned to a chamber of three judges⁶⁸⁹. The opposite scenario remains the exception⁶⁹⁰.

III. Assignment to a single judge (paragraph 2)

1. Restrictive conditions

- 8 In practice, a referral to a single judge remains very rare⁶⁹¹, due to the strict conditions and the reasons of exclusion outlined in Art. 14 (2) and the principle of unanimity in Art. 51 (2), sub-paragraph 1 RP GC. In contrast to natural and legal persons, the **Member States and institutions** are privileged⁶⁹² in that they may veto such referral.

2. CST

- 9 The CST has an equivalent provision in its rules of procedure⁶⁹³, but rarely makes use of it⁶⁹⁴.

⁶⁸⁴ See e.g. Case T-77/02, *Schneider v Commission* [2002] ECR p. II-4201.

⁶⁸⁵ Joined Cases T-134/94, T-136/94, T-137/94, T-138/94, T-141/94, T-145/94, T-147/94, T-148/94, T-151/94, and T-157/94, *NHM Stahlwerke GmbH A. O. v Commission* [1997] ECR p. II-2293, para. 9.

⁶⁸⁶ 11,40 % in 2011, down from 14,36 % in 2010.

⁶⁸⁷ See e.g. T-69/00, *Fiamm and Fiamm Technologies v Council and Commission* [2005] ECR p. II-5393; T-383/00, *Beamglow v Parliament, Council and Commission* [2005] ECR p. II-5459, T-320/00, *Cartondruck v Council and Commission* [2005] ECR p. II-27.

⁶⁸⁸ No case in 2011, and 0,38 % in 2010.

⁶⁸⁹ Joined Cases T-17/89, T-21/89 and T-25/89, *Brazelli A. O. v Commission* [1992] ECR p. II-293, 306; T-120/99, *Kik v OHIM* [2001] ECR p. II-2235, 2240; Joined Cases T-222/99, T-327/99 and T-329/99, *Martinez A. O. v Parliament* [2001] ECR p. II-2835, para. 14.

⁶⁹⁰ Case T-70/94, *Comafrika and Dole Fresh Fruit Europe v Commission* [1996] ECR p. II-1741, 1754; T-533/93, *Bouma v Council and Commission* [2001] ECR p. II-203, 211.

⁶⁹¹ No case in 2011 and 0.57 % in 2010.

⁶⁹² Art. 51 (1) 2nd sub-para. RP GC.

⁶⁹³ Art. 14 RP CST.

⁶⁹⁴ No case in 2011 and 0,78 % in 2010.

Article 52 [Preliminary report]

1. Without prejudice to Article 49, the President shall,
- (a) after the rejoinder has been lodged, or
 - (b) where no reply or no rejoinder has been lodged within the time-limit fixed in accordance with Article 47(2), or
 - (c) where the party concerned has waived his right to lodge a reply or rejoinder, or
 - (d) where the General Court has decided that there is no need, in accordance with Article 47(1), to supplement the application and the defence by a reply and a rejoinder, or
 - (e) where the General Court has decided that it is appropriate to adjudicate under an expedited procedure in accordance with Article 76 a (1),
- fix a date on which the Judge-Rapporteur is to present his preliminary report to the General Court.

2. The preliminary report shall contain recommendations as to whether measures of organization of procedure or measures of inquiry should be undertaken and whether the case should be referred to the General Court sitting in plenary session, to the Grand Chamber or to a Chamber composed of a different number of Judges.

The General Court shall decide, after hearing the Advocate General, what action to take upon the recommendations of the Judge-Rapporteur.

Outline:

I. Date (paragraph 1)	1
1. Normal procedure.....	1
2. Accelerated procedure.	2
II. Preliminary report (paragraph 2)	3
1. Contents	3
2. Purely internal document.....	4
3. Report for the hearing.....	5
4. CST.....	6

I. Date (paragraph 1)

1. Normal procedure

The Judge-Rapporteur may, as one would expect, submit his preliminary report 1 only **after** completion of the **written procedure**. The exact moment in time of this submission depends upon the evolution of said procedure (see paragraph 1, lit. a) to d), but is no later than upon notification of the rejoinder, if any.

2. Expedited procedure

- 2 In the event of an expedited procedure,⁶⁹⁵ the preliminary report must be submitted **before** the conclusion of the written procedure⁶⁹⁶.

II. Preliminary report (paragraph 2)

1. Contents

- 3 The contents and purpose of the preliminary report go well beyond the wording of paragraph 2. A preliminary report contains a detailed analysis of the admissibility of the legal remedy, if applicable. It also contains an analysis of the merits of each application, and, if necessary, recommendations regarding measures of organization⁶⁹⁷ and/or of inquiry⁶⁹⁸ and other procedurally relevant measures⁶⁹⁹.

2. Purely internal document

- 4 The preliminary report is a purely internal working document, intended for the judges of the respective formation only and therefore strictly **confidential**⁷⁰⁰. The parties do **not** have a right of access to the preliminary report, let alone a right to comment upon it, nor does the GC refer to it in its judgments, which implies that it is not published.

3. Report for the hearing

- 5 The report for the hearing is **communicated** to the parties, in contrast to the preparatory report. It summarizes the facts, the legal arguments and the pleas sought in each case⁷⁰¹. For some interveners this is the only document available in order for them to take part in the oral hearing⁷⁰².

4. CST

- 6 Unlike proceedings at the GC, the preliminary report in staff matters before the CST shall also contain recommendations as to the possibility of an **amicable settlement** of the dispute⁷⁰³.

⁶⁹⁵ Art. 76 a RP GC.

⁶⁹⁶ Art. 52 (1) e) RP GC.

⁶⁹⁷ Art. 64 RP GC.

⁶⁹⁸ Art. 65 et seq. RP GC.

⁶⁹⁹ Such as joining cases (Art. 50 RP GC) or assigning the case to a different formation of Judges (Art. 51 RP GC).

⁷⁰⁰ *K. Lenaerts*, CDE 2000, 323, para. 30.

⁷⁰¹ Case C-161/97 P, *Kernkraftwerke Lippe-Ems v Commission* [1999] ECR p. II-2057, para. 58.

⁷⁰² Art. 116 (6) RP GC.

⁷⁰³ Art. 45 (2) RP CST.

Article 53 [Opening the oral procedure]

Where the General Court decides to open the oral procedure without undertaking measures of organization of procedure or ordering a preparatory inquiry, the President of the General Court shall fix the opening date.

Outline:

I. Date of opening of oral procedure	1
1. Oral procedure.....	1
2. Measures of organization/of inquiry	2
3. Oral hearing.....	3
a) GC	3
aa) Agenda	3
bb) Duration of the hearing.....	4
b) CST	5
II. Postponing the date of the oral hearing.....	6
1. General.....	6
2. Reasoned request	7
3. Measures of caution.....	8

I. Date of opening of oral procedure

1. Oral procedure

Depending upon the circumstances, the oral procedure starts with either measures of organization or measures of inquiry⁷⁰⁴, followed by the oral hearing, if required, as the end of the oral hearing normally closes the oral procedure. The oral procedure remains **open**, however, if as a result of the oral hearing the parties need to provide the GC e.g. with answers to measures of organization of the procedure which were adopted at the oral hearing.

2. Measures of organization/of inquiry

In proceedings at the GC, measures of organization (see Art. 64 RP GC) are not frequent, especially when compared to the frequency of such proceedings at the CST, who often adopts such measures, mostly by putting **written questions** to one or all parties and **requesting** them to hand in certain **documents**. Measures of inquiry remain very rare in both instances.

3. Oral hearing. a) GC. aa) Agenda. The Registry of the GC informs the parties of the date of the oral hearing **several weeks** in advance. Normally, the hearing takes place in the morning, starting at 9:30 a.m., on a **Tuesday, Wednesday or Thursday**.

⁷⁰⁴ In practice, since in law such measures may be adopted at any stage of the proceedings, see Art. 49 RP GC.

Informal meetings, e.g. in view of preparing an oral hearing covering several days, may take also place on Mondays or even Fridays.

bb) Duration of the hearing

- 4 In many if not most cases an oral hearing takes no longer than **three hours**. If several cases are joined for the purpose of the oral hearing or if the case(s) are very voluminous, the oral hearing may take a **full day**, sometimes even **several days**. This often happens in major competition⁷⁰⁵ or merger cases⁷⁰⁶. In very exceptional circumstances the oral hearings in such cases may be spread over **several weeks**⁷⁰⁷; if this is the case, the organizational aspects of such extended oral hearings are then discussed with the parties beforehand, by way of informal meetings at the GC, usually organized by the Judge Rapporteur⁷⁰⁸.

b) CST

- 5 In the case of the CST, hearings may also take place on Mondays and, more rarely, on Friday, including in the afternoon, usually at 15.00 h.

II. Postponing the date of the oral hearing

1. General

- 6 Parties should be aware that once they have been notified of the date of the oral hearing it is quite **difficult** to postpone it, since every change in the agenda of the GC not only requires the availability of the Judges, but also e.g. the interpreters, as the case may be.

2. Reasoned request

- 7 Such a request is only likely to be successful if the applicant puts forward **pertinent and convincing reasons**, such as personal reasons, where the date(s) can either not or only with major difficulty be postponed (marriage, attending a graduation of one's child, funeral, etc.). From experience, the mere fact that the date of the hearing coincides with the holidays of a lawyer⁷⁰⁹ and/or his client is normally not sufficient for postponing the date of the oral hearing. The parties may also decide to submit a **joint application** for the postponement of the oral hearing⁷¹⁰. If a party is informed of the date of the oral hearing with **some delay** – which occurs very rarely – this may justify a request for finding a new date⁷¹¹.

⁷⁰⁵ Case T-9/89, *Hüls v Commission* [1992] ECR p. II-499, para. 27.

⁷⁰⁶ Case T-5/02, *Tetra Laval v Commission* [2002] ECR p. II-4381, para. 77.

⁷⁰⁷ Joined Cases T-25/95 et seq., *Cimenteries A. O. v Commission* [2000] ECR p. II-491.

⁷⁰⁸ Case T-9/89, *Hüls v Commission* [1992] ECR p. II-499, para. 21.

⁷⁰⁹ Case T-630/11 P, *Strobl v Commission* [2013].

⁷¹⁰ Case T-210/95, *EFMA v Council* [1999] ECR p. II-3291, para. 24.

⁷¹¹ Joined Cases T-141/99, T-142/99, T-150/99 and T-151/99, *Vela and Tecnagrind v Commission* [2002] ECR p. II-4547, para. 82.

3. Measures of caution

To avoid such uncertainties, it is recommended to inform the Registry of the GC 8 as soon as possible of those days or periods which are not eligible for a hearing in question, due e.g. to other professional or personal obligations.

Article 54 [Opening of the oral procedure in certain cases]

Without prejudice to any measures of organization of procedure or measures of inquiry which may be arranged at the stage of the oral procedure, where, during the written procedure, measures of organization of procedure or measures of inquiry have been instituted and completed, the President shall fix the date for the opening of the oral procedure.

Normally, the GC will only adopt measures of organization⁷¹²/of inquiry⁷¹³, if at all, once the written procedure is closed. But since such measures may be adopted at **any stage** of the procedure (see Art. 49 RP GC), the GC does also (even though rather rarely) adopt such measures in the course of the written proceedings. In such cases, the date for the opening of the oral procedure is determined once these measures have been completed.

CHAPTER 2 ORAL PROCEDURE

Preliminary

Outline:

I. Purpose	1
1. General.....	1
2. Applicant	2
3. Interveners.....	3
4. GC.....	4
II. Oral hearing: rule and exceptions	5
1. General.....	5
a) GC	6
b) CST.....	7
2. Art. 111 RP GC.....	8
3. Art. 113 RP GC.....	9
4. Art. 114 RP GC.....	10
III. Attending the oral hearing	11
1. Notice by the Registrar	11
a) Parties' representatives.....	11
b) Parties	12
2. Waiving the right to attend.....	13
a) No room for a consensual solution.....	13
b) Duty to inform the GC.....	14
c) Request for reopening the oral procedure	15

⁷¹² Art. 64 RP GC.

⁷¹³ Art. 65 et seq. RP GC.

I. Purpose

1. General

- 1 The **oral hearing** is the important and in most instances central element of the **oral procedure** (see Art. 53 RP GC). It provides each party with an opportunity to **amplify or further explain** their factual and legal pleas and, subsequently, to answer the GC's questions⁷¹⁴. Every party needs to remain within the limits of Art. 48 RP GC, i.e. not submitting new legal pleas, and must also respect the allocated speaking time.

2. Applicant

- 2 The oral hearing provides the **applicant** with an opportunity to react to the rejoinder, or, if only one exchange of pleadings took place, to address the statement of defence. During the oral hearing stage, parties may comment upon each other's reply to measures of organization, if necessary.

3. Interveners

- 3 Those interveners who for reasons of non-compliance with the relevant time-limits⁷¹⁵ could not submit written pleadings are **fully dependent** upon the oral hearing.

4. GC

- 4 From the perspective of the GC the *effect utile* of the oral hearing is first and foremost to clarify any doubts and possible confusions regarding the facts or procedural and substantive aspects of each case by questioning the Agents and lawyers⁷¹⁶.

II. Oral hearing: rule and exceptions

1. General

- 5 For reasons of economy of procedure and good administration of justice, not each and every court case necessitates an oral hearing (see 2–4) hereafter) and some legal remedies, such as the taxation of costs, do not include any hearing at all.

⁷¹⁴ Para. 115 of the "Practice Directions to Parties".

⁷¹⁵ Art. 116 (6) RP GC.

⁷¹⁶ Art. 58 RP GC.

Likewise, in some other instances, such as interim proceedings, a hearing remains the exception.

a) GC

In proceedings before the GC, the parties have **no** possibility to **waive** an oral 6 hearing.

b) CST

By contrast, where there has been a **second exchange** of pleadings⁷¹⁷, which tends 7 to be an exception, and if the CST considers that it is **unnecessary** to hold a hearing, it may, with the **agreement** of the parties, decide to proceed to judgment **without** a hearing⁷¹⁸. After such a second exchange, nothing prevents the parties from suggesting to the CST that in their view a hearing is unnecessary. Also, if the representatives of all the parties have indicated that they will not be present at the hearing, the CST may decide that the oral procedure is closed⁷¹⁹.

2. Art. 111 RP GC

In the (nowadays very rare) event of an obvious lack of competence or a (more 8 common) manifest inadmissibility and/or lack of substance, the GC may decide the case **without** an **oral hearing**.

3. Art. 113 RP GC

The **same** is true if the GC finds that there is an **absolute bar to proceeding** with 9 an action, or if prior to an oral hearing it declares that the action has become devoid of purpose and that there is thus no need to adjudicate.

4. Art. 114 RP GC

For some special types of proceedings the oral hearing is either at the discretion 10 of the Judge (such as the interim proceedings or the plea of inadmissibility within the meaning of **Art. 114 RP GC**) or is not provided for from the outset, such as in the procedure of taxation of costs or legal aid.

III. Attending the oral hearing

1. **Notice by the Registrar.** a) **Parties' representatives.** By informing the parties of 11 the date of the oral hearing, the GC's Registry requests the agents and/or lawyers, i.e. not the parties proper, to **attend** the oral hearing.

⁷¹⁷ Art. 41 RP CST.

⁷¹⁸ Art. 48 (2) RP CST.

⁷¹⁹ Art. 50 (2) RP CST.

b) Parties

- 12 Parties may of course attend the oral hearing, especially since the hearing is public. The GC may additionally order them or their legal representative to do so, although such an order remains the exception and generally only occurs in certain staff cases⁷²⁰, which are now covered by the jurisdiction of the CST.
- 13 **2. Waiving the right to attend. a) No room for a consensual solution.** Even should all parties consider an oral hearing unnecessary, under the current RP GC there is still **no possibility** for them to waive an oral hearing. Such waiver is possible under the RP CST⁷²¹, provided there have been two exchanges of written submissions, but the CST is ultimately not bound by such consensus between the parties. That said, the GC will take note of any such communication by the parties⁷²².

b) Duty to inform the GC

- 14 If a party decides **not to attend** the oral hearing it must, for reasons of professional deontology and basic politeness, inform the Registrar beforehand in writing within a reasonable delay⁷²³. This enables the Judges and the other party to adapt their planning accordingly. Otherwise, the party concerned risks having to bear the **costs** of the oral hearing⁷²⁴. The GC might decide otherwise if the party concerned is able to prove that it was prevented from attending and/or informing the GC for reasons of **force majeure**⁷²⁵, i.e. for causes that could not be anticipated and/or are beyond the parties control. If a party does not attend the oral hearing without informing the Registry beforehand the oral hearing will take place anyway⁷²⁶, provided that party has been properly informed of the date of the oral hearing. As an alternative, the parties may consider a request for suspending the oral hearing⁷²⁷.

c) Request for reopening the oral procedure

- 15 If a party has been duly summoned to an oral hearing but failed to attend, then a request to reopen the hearing can only succeed if the party can qualify his circumstances as a case of **force majeure**⁷²⁸. A case in which the Court has duly summoned the party's lawyer to the oral hearing by complying with Art. 100 RP GC, and the latter has failed to forward the summoning letter to his client⁷²⁹ does not qualify as **force majeure**.

⁷²⁰ Art. 64 (3) lit. e) RP GC.

⁷²¹ Art. 50 (2) RP CST.

⁷²² Case T-55/99, *CETM v Commission* [2000] ECR p. II-3207, paras. 18 to 20.

⁷²³ Case T-91/92, *Daemen v Commission* [1993] ECR p. II-1491, para. 7.

⁷²⁴ Case T-393/03, *Castets v Commission* [2005] ECR SC p. II-507.

⁷²⁵ For more on *force majeure*, see the commentary on Art 45(2) Statute ECJ.

⁷²⁶ Case T-235/94, *Galtieri v Parliament* [1996] ECR SC p. II-129, para. 15.

⁷²⁷ Case T-104/02, *Gondrand v Commission* [2004] ECR p. II-3211, para. 15.

⁷²⁸ Case T-12/90, *Bayer v Commission* [1991] ECR p. II-219, para. 44.

⁷²⁹ Case T-235/94, *Galtieri v Parliament* [1996] ECR SC p. II-129, para. 17.

Article 55 [Sequence of oral hearings]

1. The General Court shall deal with the cases before it in the order in which the preparatory inquiries in them have been completed. Where the preparatory inquiries in several cases are completed simultaneously, the order in which they are to be dealt with shall be determined by the dates of entry in the register of the applications initiating them respectively.

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

The President may in special circumstances, after hearing the parties and the Advocate General, either on his own initiative or at the request of one of the parties, defer a case to be dealt with at a later date. On a joint application by the parties the President may order that a case be deferred.

Outline:

I. Sequence of cases (paragraph 1)	1
1. No indication as to the average duration	1
2. No published statistics	2
3. No time-frame	3
II. Giving priority or deferring a case to a later date (paragraph 2)	4
1. General.....	4
2. Giving priority (sub-paragraph 1)	5
a) Application	5
b) Special circumstances	6
c) Examples.....	7
d) Legal consequence.....	8
3. Deferral (sub-paragraph 2)	9

I. Sequence of cases (paragraph 1)

1. No indication as to the average duration

The parameters referred to in this provision do not enable the parties to calculate 1 the average or even the approximate “waiting period” between the end of the written procedure and the date of the oral hearing. Nor does this provision provide an indication as to the time span between the oral hearing and the date on which the judgment is handed down.

2. No published statistics

The statistics published by the GC in its annual report indicate the average 2 duration of the proceedings according to the various legal remedies, i.e. the average number of months between the filing of various sorts of applications and the date on which the judgment or order was handed down. Regrettably, there are no figures

regarding the average time span between (1) the end of the written procedure and the oral hearing and (2) the date of the hearing and the date of the handing down of the decision.

3. No time-frame

- 3 Neither Art. 55 (1) nor any other provision of the RP or the Statute ECJ provide that the judgments need to be handed down within a given time-limit following the oral hearing⁷³⁰. The **expedited procedure** in Art. 76 a provides an exception to Art. 55 (1) RP GC.

II. Giving priority or deferring a case to a later date (paragraph 2)

1. General

- 4 The RP GC provide **two instruments** in order for parties to accelerate their case: First, the parties may apply for the case to be given **priority** over others⁷³¹, although such requests are rather rare in practice⁷³². Second, they can lodge an application for an **expedited procedure**⁷³³. However, such an application is only the admissible at the stage of the application or, at the very latest, during the statement of defence.

- 5 **2. Giving priority (sub-paragraph 1). a) Application.** Any party may individually apply for such a decision, which may also be sought as an **alternative** to an application for an expedited procedure within the meaning of Art. 76 a RP GC⁷³⁴. The wording of sub-paragraph 2 seems to allow the GC to act on its own motion.

b) Special circumstances

- 6 This requirement's degree of abstractness ("special circumstances") ensures that it remains extraordinarily vague. The applicant must demonstrate that his is a "**special case**", which means that he needs to prove that he has a particular **interest** in his case being treated faster than others. This requirement is thus clearly less demanding than what is required for a submission for an expedited procedure (Art. 76 a RP GC).

c) Examples

- 7 A case is likely to be granted priority if the judgment appears to be relevant for e.g. future **state aid matters**⁷³⁵. Such priority is also appropriate if it ensures a **proper administration** of justice.

⁷³⁰ Case C-185/95 P, *Baustahlgewebe v Commission* [1998] ECR p. I-8417, para. 52.

⁷³¹ Art. 55 (2) 1st sub-para. RP GC; see also Art. 53 (3) RP ECJ.

⁷³² See e.g. Case T-13/99, *Pfizer v Council* [2002] ECR p. II-3305, para. 66.

⁷³³ Art. 76 a RP GC.

⁷³⁴ Case T-289/03, *BUPAUA v Commission* [2008] ECR p. II-81, paras. 58–59.

⁷³⁵ Case T-110/98, *RBJ Mining v Commission* [1999] ECR p. II-2585, 2598–2600.

d) Legal consequence

In contrast to the expedited procedure referred to in Article 76 a RP GC, giving a case priority does not accelerate its written procedure, but instead accelerates its following oral phase⁷³⁶.

3. Deferral (sub-paragraph 2)

In practice, a formal deferral of a case for a later decision “in specific cases” is rare⁷³⁷. The parties may instead opt for a suspension of the proceedings (see Art. 77 RP GC) in case they wish to wait for e.g. an appeal judgment likely to have an impact on the case concerned.

Article 56 [Directing the proceedings]

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

I. General

Article 56 et seq. RP GC provide the most important parameters of the oral hearing, which are complemented by paragraphs 115 to 135 of the “Practice Directions to parties”.

II. Oral hearing

1. Dates. a) Oral hearing. The vast majority of oral hearings require one single session, which normally takes no more than half a day and usually starts in the morning.

b) Preparing an oral hearing

In particularly voluminous cases, the oral hearing may take two or even more (normally subsequent) days and is organized beforehand by way of an **informal meeting** with the parties, which takes place some weeks before the actual hearing⁷³⁸.

⁷³⁶ Case T-64/99, *RBJ Mining v Commission* [2001] ECR p. II-2547, para. 16.

⁷³⁷ Such application remained unsuccessful in Case F-126/05, *Borbély v Commission* [2006] (not yet published in the ECR).

⁷³⁸ Case T-9/89, *Hüls v Commission* [1992] ECR p. II-499, 519; Joined Cases T-68/89, T-77/89 and T-78/89, *SIV A. O. v Commission* [1992] ECR p. II-1403, 1427; Case T-141/94, *Thyssen Stahl v Commission* [1999] ECR p. II-347, 389.

c) Amicable settlement

- 4 Prior to or even after the oral hearing, the GC may suggest an informal meeting in order to suggest or facilitate an amicable settlement of proceedings. The latter remains very rare in cases before the GC, but matters in proceedings at the CST⁷³⁹.
- 5 **2. Opening and directing the oral hearing. a) Organizational aspects.** The President of the chamber opens and directs the proceedings, including the maintenance of order during the hearing and all ancillary organizational aspects.

b) Substantive issues

- 6 However, Art. 58 governs the more substantive aspects of the oral hearing, in particular the right to put questions to the agents and lawyers. Under this provision, all the judges of the respective Chamber may, *de jure*, put questions to the parties. In practice, however, the Judge-Rapporteur will normally, though not always, ask most of the questions.

Article 57 [Hearing in camera]

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

1. General

- 1 This provision has lost much of its relevance ever since the CST became operational. It is based on the principle that oral hearings are **public**, which is a fundamental principle in all legal systems governed by the rule of law. Given the particular importance of this principle⁷⁴⁰, the public is excluded from attending the hearing only in **exceptional** cases, namely when the protection of the **personal** interests of an individual party clearly outweighs the need for transparency of the judiciary.

2. Cases

- 2 “Personal interests” pertain to the interest of a natural person, not e.g. the economic interest of legal persons. Thus, prior to the shift of staff case jurisdiction to the CST, the GC would hear cases in camera when they involved e.g. certain **medical issues**⁷⁴¹ or questions of **sexual orientation**⁷⁴². In such cases, and indeed many others, the name of the party concerned is made anonymous, i.e. replaced by a letter of the alphabet.

⁷³⁹ T-48/97, *Frederiksen v Parliament* [1999] ECR SC p. II-867, para. 36.

⁷⁴⁰ Art. 6 ECHR.

⁷⁴¹ Joined Cases T-121/89 and T-13/90, *X v Commission* [1992] ECR p. II-2195, 2204; T-10/93, *A v Commission* [1994] ECR p. II-179, para. 12.

⁷⁴² Case T-549/93, *D v Commission* [1995] ECR SC p. II-43, 47.

3. Duration

A hearing in camera may not necessarily include the entire duration of the 3 hearing, bearing in mind the principle of **proportionality**, and may thus be limited to e.g. a hearing of witnesses⁷⁴³.

Article 58 [Questions]

The President may in the course of the hearing put questions to the agents, advisers or lawyers of the parties.

The other Judges and the Advocate General may do likewise.

Outline:

I. General	1
II. Overview on the course of the oral hearing.....	2
1. The various steps of the oral hearing	2
2. The preliminary meeting.....	3
a) Organizational aspects.....	4
b) Comments on the report for the hearing.....	5
aa) General	5
bb) Agenda	6
cc) Comments	7
c) Questions by the Judges at that stage	8
d) Measures of organization.....	9
e) Suggestions by the parties.....	10
2. Oral pleadings	11
a) Sequence of pleadings.....	11
aa) Applicant/intervener(s)	11
bb) Defendant/intervener(s)	12
cc) Expedited proceedings	13
b) Duration of pleadings.....	14
aa) Normal duration	14
bb) Request for longer speaking time	15
cc) Examples	16
dd) Respecting the speaking time	17
c) Stylistic aspects.....	18
aa) Free lecture	18
bb) Linguistic aspects	19
(1) Adapting to the constraints of simultaneous interpretation..	19
(2) Speaking techniques.	20
d) Contents	21
aa) General	21
(1) Free exercise of the rights of defence.	21
(2) Avoid repetitions.....	22
bb) <i>Effet utile</i> of the oral pleadings	23
e) Other aspects.....	25
aa) Submission of documents	25
bb) Private expert-witness.....	26
3. Question time.....	27
a) General.....	27
b) Timing	28

⁷⁴³ Case T-169/95, *Quijano v Commission* [1997] ECR SC p. II-273, para. 19.

aa) Rule: after the end of the oral pleadings	28
bb) Exceptions	29
(1) Prior to the hearing.....	29
(2) During the preliminary meeting or at the beginning of the pleadings.	30
(3) Questions during the pleadings.....	31
(4) Written questions.....	32
(5) Request for documents.....	33
c) Number and contents of questions	34
aa) Number	34
bb) Contents.....	35
cc) CST	36
d) Answers	37
aa) General.....	37
bb) Reflection time	38
cc) The other party	39
4. Reply and rejoinder	40
a) General.....	40
b) Contents	41
5. Closure of the oral hearing	42
a) Rule.....	42
b) Exception	43

I. General

- 1 The RP GC provide detailed rules pertaining to the **written part** of the procedure⁷⁴⁴, but contain only few parameters regarding the **oral hearing**⁷⁴⁵. It is furthermore striking that there is no provision within the chapter on the oral hearing (Art. 55 to 63 RP GC) governing the **oral pleadings** of the parties. It would seem that the majority of the provisions in Art. 55 et seq. express the **perspective of the Judges**, as illustrated by Art. 58 RP GC, which incidentally highlights the importance of questioning during the oral hearing.

II. Overview on the course of the oral hearing

1. The various steps of the oral hearing

- 2 A hearing usually includes the following stages: the preliminary meeting; the oral pleadings of the parties; and the questions of the judges, followed by an oral reply and rejoinder by the parties, if they decide to provide such replies. This sequence is pre-determined and cannot be changed, e.g. upon request of the parties.

2. The preliminary meeting

- 3 The short preliminary meeting which takes place a few minutes prior to the oral pleadings is attended **only by the agents and lawyers**, i.e. **not** the parties. It serves

⁷⁴⁴ Art. 43 et seq. RP GC.

⁷⁴⁵ Para.s 97 to 106 Practice Instructions to Parties.

several purposes, which lend themselves to be addressed, prior to rather than during the oral hearing proper:

a) Organizational aspects

The GC will first inform itself as to which part(ies) attend the hearing, who will plead on behalf of which party, and how long each individual participant will have to present his case.

b) Comments on the report for the hearing. **aa) General.** The report for the hearing is drawn up by the Judge-Rapporteur⁷⁴⁶ and prepares the oral hearing by summarizing the factual and legal circumstances of the case as well as the arguments of the parties⁷⁴⁷. Pursuant to the *former* Art. 20 (4) ECJ Statute, this report needed to be read at the hearing. In practice though, this was not the case, for obvious reasons of time management and since the parties had already read the report beforehand and been given the opportunity to make comments. Thus, Art. 20 (4) Statute ECJ has been recently amended accordingly.

bb) Agenda

The report for the hearing is sent to the parties approximately four to six weeks before the date of the oral hearing, which provides them with the opportunity to make any comments they deem appropriate. Important or substantial comments should be made in **writing** well before the oral hearing, while less important ones may be communicated orally during the preliminary meeting or in the context of the pleadings.

cc) Comments

The parties may draw the Judges' attention to typographical and/or translation **errors**⁷⁴⁸, and, more importantly, to a possibly incorrect or incomplete representation of the parties. Under **no** circumstances may a party take advantage of this opportunity in order to **replicate** to arguments of the other party, let alone put forward **new arguments**⁷⁴⁹, since this is clearly not the purpose of making comments on the report of the hearing. The comments made regarding the report for the hearing are only taken into account during the judgment if they are deemed relevant⁷⁵⁰.

c) Questions by the Judges at that stage

The preliminary meeting provides the Judges and in particular the Judge-Rapporteur with an opportunity to ask questions at this preliminary stage; this, however, remains the exception. More importantly, the President will normally, though not necessarily always, put the parties "into the atmosphere" by making a

⁷⁴⁶ Para.s 129 and 130 of the Practice Directions to Parties.

⁷⁴⁷ Case C-161/97 P, *Kernkraftwerke-Lippe-Ems v Commission* [1999] ECR p. I-2057, para. 58.

⁷⁴⁸ The report for the hearing is a translation of the original document, which is drafted in French.

⁷⁴⁹ Joined Cases T-120/01 and T-300/01, *De Nicola v EIB* [2004] ECR SC p. II-1671, para. 261.

⁷⁵⁰ Case F-121/07, *Strack v Commission* [2011] ECR SC-0000, para. 42.

fairly general comment indicating how clear-cut the case is and/or whether the chamber will have questions. He may also indicate whether or not these questions will be numerous, but there is no scheme and lawyers should never venture to ask the judges whether they will have many questions and, if so, in which area.

d) Measures of organization

- 9 The preliminary meeting (as well as the subsequent part of the oral hearing) also provides an opportunity for **measures of organization**. Thus, the Judges may e.g. require a party to address or even concentrate on certain aspects of the admissibility and/or substance of the case⁷⁵¹. It would, however, be preferable to communicate such measures beforehand in writing, which is common practice at the CST, so as to enable the parties to prepare themselves more thoroughly. The judges may also request a party to start its oral pleadings by addressing certain procedural questions.

e) Suggestions by the parties

- 10 Finally, this informal meeting lends itself for any suggestion the agents, lawyers, or advisers may wish to make in connection with organizational or procedural aspects of the oral hearing by signalling, e.g. that they are accompanied by the party or its legal representative, an expert, etc.
- 11 **2. Oral pleadings. a) Sequence of pleadings. aa) Applicant/intervener(s).** Immediately after the preliminary meeting, the **applicant** is given the floor, followed by the interveners, i.e. those parties which intervene on the applicant's side, if any, who address the Court from the speaker's desk on the **right-hand side** of the courtroom. The same procedure applies in cases involving several applicants, who normally plead according to the sequence set by the case-number.

bb) Defendant/intervener(s)

- 12 Next, the **defendant's** agent and/or lawyer pleads, using the speaker's desk on the **left-hand side** of the courtroom.

cc) Expedited proceedings

- 13 In case of expedited proceedings (Art. 76 a RP GC), the GC may request the parties to submit their oral pleadings, meaning the written text, before the date of the hearing⁷⁵².
- 14 **b) Duration of pleadings. aa) Normal duration.** Normally, an oral pleading is limited to **15 minutes**⁷⁵³ for a party representative, and to **10 minutes**⁷⁵⁴ for an intervener. In the case of proceedings at the CST, the party representative is limited to **20 minutes**, unless the respective party requests a longer speaking time, or if several cases are joined, in which case the speaking time might be shorter.

⁷⁵¹ Case T-65/92, *Arauxo-Dumay v Commission* [1993] ECR p. II-597, para. 9; Case T-69/92, *Seghers v Council* [1993] ECR p. II-651, 657.

⁷⁵² Case T-5/02, *Tetra Laval v Commission* [2002] ECR p. II-4281, paras. 68 and 71.

⁷⁵³ Para. 125 "Practice Directions to Parties".

⁷⁵⁴ Para. 125 "Practice Directions to Parties".

bb) Request for longer speaking time

Such a request needs to be lodged at least two weeks **before** the date of the oral hearing⁷⁵⁵ and must remain in a realistic proportion to the **scale, complexity, and/or importance** of each case. Such requests must also be **duly reasoned**. If this is the case, the applicant may normally, in view of the particular importance of the right to be heard, expect such an application to be successful insofar as it concerns an extension, but not necessarily as regards the exact amount of additional pleading time requested. 15

cc) Examples

In complex procedures pleadings times of e.g. **thirty or forty-five minutes** are common; one hour is a more exceptional duration. If several cases have been joined for the purpose of a common hearing, the individual lawyers cannot expect to each be given such extensions. If each party is represented by **several** lawyers they have the opportunity to share the speaking time amongst themselves⁷⁵⁶. In extensive or particularly complicated procedures, the GC will define a plan together with the parties. 16

dd) Respecting the speaking time

In order to safeguard **equality of arms**, i.e. each party's right of defence, and in view of limiting the possibility of an appeal, the GC takes strict care that the parties comply with their speaking time. Speakers who go beyond their speaking time will be asked to come to their conclusion. Those who fail to do so will be, as a last resort, interrupted. 17

c) Stylistic aspects. aa) Free lecture. Pleadings should neither be read, nor “rattled off”, but presented **freely**⁷⁵⁷. For this purpose, a bullet point list of arguments might be more helpful than a fully drafted text. If the speaker uses such speaking notes a copy should be provided to the **interpreters**, either in advance or at the latest prior to the actual pleadings, the confidentiality of the document being guaranteed. It remains for the speaker whether he wishes to provide the other parties with the text of his pleadings, as is the case in some Member States, but he may not pass it on to the Judges. One should also always speak close enough to the microphone, as this aids significantly in comprehension and translation. 18

bb) Linguistic aspects. (1) Adapting to the constraints of simultaneous interpretation. Unless all agents/lawyers plead in **French**, i.e. the working language of the GC, they will need to adapt to the fact that the **interpreters**, though highly qualified, can only translate the part of the presentations which they have heard and understood completely and accurately into the Judge's language of choice. Moreover, speakers should be aware that interpreters never translate word for word, but sum up the meaning of what they hear, while sticking as closely as possible to the original text. 19

⁷⁵⁵ Para. 126 “Practice Directions to Parties”.

⁷⁵⁶ Para. 127 of the “Practice Directions to Parties”.

⁷⁵⁷ Para.s 119 to 120 “Practice Directions to Parties”.

- 20 (2) **Speaking techniques.** Thus, speakers need to **articulate** properly and avoid speaking rapidly. Sentences should preferably be **short** and the vocabulary used as **simple** as possible. Elements which are either difficult or impossible to translate, such as certain metaphors, should be excluded. Neither the fact that a number of Judges of the formation hearing the case might happen to understand English and might thus be able to follow the pleadings without interpreters nor the fact that the hearing is recorded alters the aforementioned constraints.
- 21 **d) Contents.** aa) **General.** (1) **Free exercise of the rights of defence.** The pleading party may, of course, decide whether and to what extent its oral arguments are necessary and appropriate. In some cases, a mere reference to the written submission may suffice⁷⁵⁸, even though it is highly unlikely any agent or lawyer will attend the hearing, at the cost of travel time, accommodation in Luxemburg, etc., to present a pleading which is *that* short. That said, a general reference to the written submissions at the end of an oral pleading may be useful. In any event, a party's decision to waive its right to plead orally may not be interpreted as agreeing to oral arguments of the other party⁷⁵⁹.
- 22 (2) **Avoid repetitions.** Every pleading party may trust that during the oral hearing (unlike in the Courts and Tribunals of certain Member States), the Judges are already **familiar** with the contents of the case's file as well as with the Judge-Rapporteur's report for the hearing and with the preceding preliminary report. Thus, in contrast to what may be useful or even required in the judicial systems of some Member States, there is **no added value** provided by embarking on a more or less comprehensive summary of the facts and/or a mere **repetition** or **paraphrase** of what had already been said in the written submission.
- bb) Effet utile of the oral pleadings**
- 23 Each oral pleading should complement the written submissions by providing a tangible "**added value**" while also complying with the rule prohibiting new factual and legal grounds in the course of the proceedings⁷⁶⁰.
- 24 Thus, avoiding more or less sterile repetitions leaves more room for e.g.
- **clarifying** certain aspects in the written submission, if need be;
 - **elaborating** certain legal and/or factual aspects, e.g. by taking into account relevant judgments, legislation, or legislative proposals adopted since the closure of the written procedure;
 - **anticipating**, whenever appropriate, the Judges' possible questions regarding factual and/or legal aspects of the case.
- 25 **e) Other aspects.** aa) **Submission of documents.** The RP GC do not contain an explicit provision defining the conditions for lodging new documents during the oral hearing. That said, the GC rarely adds such documents to the file during the hearing due to the need to respect the rights of defence and only provided the party concerned has good reasons for not having lodged said documents during the

⁷⁵⁸ Para. 116 of the "Practice Directions to Parties".

⁷⁵⁹ Para. 117 of the "Practice Directions to Parties".

⁷⁶⁰ Art. 48 RP GC.

written proceedings⁷⁶¹. The other party is **always heard** prior to the GC deciding to accept such documents. Such consultation of the opposing party normally takes place during the oral hearing. If the new documents are voluminous, the other party will be heard in writing. This may then lead to a reopening of the oral procedure⁷⁶².

bb) Private expert-witness

Prior to the oral hearing taking place, a party may request, if necessary, that the Registrar provide adequate technical means in order for the party to do a **presentation**⁷⁶³. A party may also wish for an expert-witness to accompany him, as this may be useful even if the GC did not adopt measures of inquiry⁷⁶⁴. Alternatively, it might be advisable to assign an adviser who might assist the agent or the lawyer on certain technical aspects of a given case.

3. Question time. a) General. From the Judges' perspective, the question time is the **heart of the oral hearing** and thus tends to take (sometimes considerably) more time than the actual pleadings. This does not, however, mean that the Judges are not interested in the pleadings. In line with his role the Judge-Rapporteur will usually ask most of the questions. Normally some (though not necessarily all) of his fellow Judges will also ask questions.

b) Timing. aa) Rule: after the end of the oral pleadings. In principle, the Judges begin asking questions after the end of the first round of oral pleadings and prior to the oral reply and rejoinder.

bb) Exceptions. (1) Prior to the hearing. Prior to the oral hearing the GC sometimes sends in writing certain questions which it wishes the parties to address⁷⁶⁵ either in writing or at the hearing⁷⁶⁶.

(2) During the preliminary meeting or at the beginning of the pleadings. Sometimes, a Judge will pose a question to a party either during the preliminary meeting or at the very beginning of the subsequent pleadings⁷⁶⁷ which the addressee is requested to answer in the context of his pleadings⁷⁶⁸.

(3) Questions during the pleadings. On very rare occasions, a Judge might pose a question **during** the pleading. Judges generally avoid questions at that stage of the hearing; however, as such questions may disrupt the lawyer concerned and may also be perceived as interfering with the rights of defence.

(4) Written questions. A Judge has also posed written questions to a party which were to be answered orally during the hearing⁷⁶⁹. Again, such a technique does not

⁷⁶¹ Case T-71/96, *Berlingieri Vinzek v Commission* [1997] ECR SC p. II-921, para. 22.

⁷⁶² Case T-106/92, *Frederiksen v Commission* [1995] ECR p. II-99, para. 16.

⁷⁶³ Art. 135 "Practice Directions to Parties".

⁷⁶⁴ Case T-29/92, *SPO A. O. v Commission* [1995] ECR p. II-289, para. 42.

⁷⁶⁵ Case T-589/93, *Ryan-Sheridan v FEACVT* [1996] ECR SC p. II-77, para. 18.

⁷⁶⁶ Case T-5/02, *Tetra Laval v Commission* [2002] ECR p. II-4381, para. 70.

⁷⁶⁷ Art. 118 "Practice Directions to Parties".

⁷⁶⁸ Case T-11/91, *Schloh v Council* [1992] ECR p. II-203, para. 15.

⁷⁶⁹ Case T-107/92, *White v Commission* [1994] ECR p. II-143.

appear to be very constructive and should be limited to what is absolutely necessary, i.e. what cannot be deferred for the time after the oral hearing. It would thus be preferable to set an appropriate time-limit for answering such questions in writing **after** the oral hearing⁷⁷⁰, which means that the oral procedure would either be closed upon receipt of the reply to the questions⁷⁷¹, or reopened at a later stage⁷⁷².

- 33 (5) **Request for documents.** Finally, the GC may request a party to provide certain documents after the end of the oral hearing within a certain time-limit⁷⁷³. In such a case, the oral procedure is closed only after receipt of those documents⁷⁷⁴.

- 34 c) **Number and contents of questions.** aa) **Number.** By contrast to the ECJ, the GC and the CST pose a number, and sometimes a great number, of questions to the parties.

bb) Contents

- 35 The questions may cover all **procedural, factual and legal aspects** that the proceedings raise. Since the GC is particularly dependent upon explanations regarding the facts of the case which are, by definition, best known by the parties, one could expect that the Judges' questions would focus on the factual aspects of the case. This is not, however, the case, as the GC commonly pose questions to the parties which address purely legal issues such as admissibility; procedural questions; and, in particular, substantive legal issues such as e.g. determining the limits of the competence of an institution, the scope and interpretations of a general principle of law, etc.

cc) CST

- 36 Art. 51 (4) RP CST is more explicit than Art. 58 RP GC, as it specifies that the President and the Judges may invite the **parties themselves** to express their views on certain aspects of the case.
- 37 d) **Answers.** aa) **General.** Ideally, the answers given in a case should **not** go beyond the question, which in practice is not always easy to comply with. Furthermore, answers given should not circumvent the question asked. In any event, answers should not, despite the possibly heated atmosphere of the hearing and the importance of the issues at stake, degenerate into a second oral pleading, as such a pleading is, in principle, a matter for the subsequent reply and rejoinder. Thus, the parties should remain as objective as possible by avoiding polemic, political, or otherwise unhelpful statements.

⁷⁷⁰ Case T-69/91, *Peroulakis v Commission* [1993] ECR p. II-185, para. 11; Case T-43/91, *Hoyer v Commission* [1994] ECR p. II-297, 302; Case T-44/91, *Smets v Commission* [1994] ECR p. II-319, 324.

⁷⁷¹ Case T-180/01, *Euroagri v Commission* [2004] ECR p. II-369, para. 30.

⁷⁷² Case T-33/91, *Williams v Court of Auditors* [1992] ECR p. II-2499, para. 12; Joined Cases T-66/96 and T-221/96, *Mellet v ECR* [1998] ECR p. II-1305, 1315.

⁷⁷³ Case T-51/90, *Moretti v Commission* [1992] ECR p. II-487, 492.

⁷⁷⁴ Case T-329/00, *Bonn Fleisch Ex- und Import v Commission* [2003] ECR p. II-291, para. 42.

bb) Reflection time

The question time is not an examination, let alone an interrogation, although 38 some may perceive it as such, depending upon the pedagogical and communicational skills of the individual Judge. Thus a lawyer should never feel intimidated and/or obliged to reply on the spot, unless he has an answer ready. He may wish to **consult his client** first, provided of course that said client is present in the courtroom. Finally, while it is undoubtedly unpleasant to be unable to answer a given question, it may be preferable to not reply, which after all is not dishonour, rather than to try to change the subject or to provide a reply which rewrites and thereby ignores the Judge's question.

cc) The other party

If need be, the other party may react to the answers given by said party in the 39 context of its reply or rejoinder. Alternatively, the Judge may invite the other party to immediately comment upon the answers given, rather than at a later stage. In the absence of such initiative from the bench, the other party remains free to ask the Judge if it may immediately comment on a given answer, rather than waiting to comment on it at a later stage of the oral hearing.

4. Reply and rejoinder. a) General. The President of the formation of Judges 40 signals that the question time has come to an end. After this, the applicant may "replicate", i.e. react to the defendant's pleadings, and the defendant may then "duplicate". This phase is not compulsory, and the parties may thus waive this right.

b) Contents

This phase is by definition **not a new phase of oral pleadings**. During this period 41 the parties should therefore neither repeat their initial pleadings nor introduce new pleadings. Rather, this phase provides the parties with an opportunity to address certain factual and/or legal aspects which the other party raised in its pleadings. This phase is also the opportunity to complement or otherwise refuse a response to a Judge's previous question while always bearing in mind that Judges are entitled to pose questions even **after** the formal end of the question time. Thus, a reply or rejoinder should be reasonably short, also because it is the last step prior to closure of the oral hearing.

5. Closure of the oral hearing. a) Rule. In most instances, the oral procedure is 42 closed at the end of the oral hearing.

b) Exception

The oral procedure may exceptionally be closed at a later stage⁷⁷⁵, should the 43 Judges e.g. request the parties to provide them with certain documents or answer certain questions within a given time-limit after the oral hearing.

⁷⁷⁵ See also the – rare – case of Art. 61 RP GC.

Article 59 [Restricted rights of the parties]

A party may address the General Court only through his agent, adviser or lawyer.

The obligation for all parties to be represented by an Agent, lawyer or adviser, depending upon their status, implies that they may not address the GC directly. This rule **also** applies should the GC have ordered a party to appear in person⁷⁷⁶. That said, a party may ask the GC to hear e.g. an expert witness accompanying the party directly, as is often seen in technically complex cases⁷⁷⁷. The Judges are not, however, bound to accept such request. In such a case, a party is well advised to have an adviser assist its agent or lawyer; this adviser may then address the GC.

Article 60 [End of the oral procedure]

Where an Advocate General has not been designated in a case, the President shall declare the oral procedure closed at the end of the hearing.

Advocates General were only designated in the very early years of the then-Court of First Instance. Closure of the oral procedure at the end of the oral hearing has therefore long since become the rule, unless the parties are requested to provide the GC with documents or written replies to additional questions after the oral hearing⁷⁷⁸.

Article 61 [Opinion of the Advocate General]

1. Where the Advocate General delivers his opinion in writing, he shall lodge it at the Registry, which shall communicate it to the parties.

2. After the delivery, orally or in writing, of the opinion of the Advocate General the President shall declare the oral procedure closed.

I. Opinion (paragraph 1)**1. General**

- 1 In practice this provision is no longer relevant, since the GC has not entrusted a Judge with the functions of Advocate General for more than twenty years.

⁷⁷⁶ Art. 64 (3) e) RP GC.

⁷⁷⁷ Joined Cases T-74/00, T-76/00, T-83/00 to T-85/00, T-132/00, T-137/00 and T-141/00, *Artegodañ A. O. v Commission* [2002] ECR p. II-4945, para. 83.

⁷⁷⁸ Joined Cases T-6/92 and T-52/92, *Reinartz v Commission* [1993] ECR p. II-1047, para. 20; T-179/00, *Menarini v Commission* [2002] ECR p. II-2879, para. 24.

2. Discretionary power

The Advocate General may decide whether he delivers his opinion orally or in 2 writing. Written opinions are notified to the parties.

II. Closure of the oral procedure (paragraph 2)

The presentation of the Opinion closes the oral procedure. The parties may not 3 comment upon such Opinion either orally or in writing.

Article 62 [Reopening order]

The General Court may, after hearing the Advocate General, order the reopen- ing of the oral procedure.

Outline:

I. Reopening on its own motion.....	1
1. General.....	1
2. Cases	2
a) Need for further clarification of the facts.....	3
b) Commenting new case law or documents.....	4
aa) New case law	4
bb) New documents.....	5
c) Other	6
d) Discontinuity of Judges.....	7
II. Upon application of a party	8
1. Conditions.....	8
2. Unsuccessful applications	9
3. Successful application.....	10
III. Attending the new oral hearing.....	11
1. Procedural reasons	
2. Substantive reasons	12

I. Reopening on its own motion

1. General

In order to keep the average duration of proceedings within reasonable limits and 1 for reasons of good administration of justice, the GC is eager to limit the proceed- ings to a single oral hearing, if at all. Thus, any reopening of the oral procedure, whether on the Court’s own motion or upon request of a party, is limited to very specific circumstances and thus remains an **exceptional** measure.

2. Cases

- 2 According to the case law, the GC is likely to reopen the oral hearing on its own motion in the following situations:

a) Need for further clarification of the facts

- 3 As a result of the oral hearing, the Judges may find that one or several decisive factual aspects either remain **unclear**⁷⁷⁹ or have **not** yet been **sufficiently clarified**⁷⁸⁰. They may also reopen the oral hearing should they have posed written questions which require a second hearing⁷⁸¹ to the parties after the first oral hearing⁷⁸².

- 4 **b) Commenting new case law or documents.** aa) **New case law.** A reopening may furthermore be necessary in order to enable the parties to comment upon a given **judgment** of the same instance or to comment on an appeal⁷⁸³ which has been handed down in the meantime and which proves to be **relevant** or even **decisive** for the outcome of the case at hand.

bb) New documents

- 5 The same is true with respect to **documents** upon which the parties were not able to comment at the oral hearing⁷⁸⁴, such as a medical opinion, which the defendant provided at the oral hearing of a staff case⁷⁸⁵.

c) Other

- 6 This may also apply during a partial withdrawal of the application occurring after the initial oral hearing⁷⁸⁶, or should a party discontinue its case⁷⁸⁷, or in order to enable the parties to comment upon documents which the GC requested after the initial hearing⁷⁸⁸.

d) Discontinuity of Judges

- 7 The GC **must** reopen the oral hearing if a Judge who took part at the oral hearing is for whatever reason prevented from taking part in the subsequent deliberation, as this Judge is then replaced by another Judge (Art. 32 (3) and 33 (2) of the RP GC)⁷⁸⁹. Nevertheless, the GC is not obliged to order that the oral procedure be reopened

⁷⁷⁹ Case F-68/09, *Barbin v Parliament* [2010] (not published in the ECR).

⁷⁸⁰ Case T-168/96, *Patronis v Council* [1997] ECR SC p. II-833, para. 12.

⁷⁸¹ Joined Cases T-24/91 and T-25/91, *Gomez Gonzales A.O v Council; Arto Hijos v Council* [1992] ECR p. II-1907; Case T-33/91, *Williams v Court of Auditors* [1992] ECR p. II-2499, 2504; T-1/92, *Tallarico v Parliament* [1993] ECR p. II-107, para. 115.

⁷⁸² Case F-5/5, *Violetti A. O. v Commission* [2007] (not yet published in the ECR), paras. 4–5.

⁷⁸³ Case T-192/04, *Flex Equipos de Descanso v OHIM* [2007] ECR p. II-2411, para. 28.

⁷⁸⁴ Joined Cases F-87/08 and T-88/08, *Schuerings A. O. v ETF* [2010] (not published in the ECR).

⁷⁸⁵ Case F-65/09, *Marcuccio v Commission* [2010].

⁷⁸⁶ Case T-23/05, *Giraudy v Commission* [2006] (not published in the ECR).

⁷⁸⁷ Case F-102/09, *Bennett v OHIM* [2011] (not published in the ECR).

⁷⁸⁸ Joined Cases T-217/03 and T-245/03, *FNCBV A. O. v Commission* [2006] ECR p. II-4987, para. 40.

⁷⁸⁹ Case 112/95, *Dehlefs A. O. v Council and v Commission* [1998] ECR p. II-3819, para. 25.

based upon its alleged duty to raise issues concerning the regularity of the procedure⁷⁹⁰.

II. Upon application of a party

1. Conditions

If necessary, the parties may apply for a reopening of the hearing following an already reopened hearing⁷⁹¹. The conditions for such an application are, however, very demanding. According to case law, the GC must accede to such a request only if the party concerned wishes to present facts which may have a **decisive influence** on the outcome of the case and which said party was **unable** to present before the close of the oral procedure⁷⁹². Such an application must, rather evidently, be thoroughly reasoned.

2. Unsuccessful applications

Accordingly, requests have been rejected because the alleged new elements had **no decisive influence** on the outcome of the proceedings⁷⁹³, or because the new elements concerned circumstances which only existed **after** the adoption of the challenged decision and which could therefore not affect said decision's legality⁷⁹⁴.

3. Successful application

A hearing is only reopened if an agent, adviser, or lawyer was prevented from attending the oral hearing despite having been properly notified due to force majeure or act of God⁷⁹⁵.

III. Attending the new oral hearing

The question of whether parties need to attend the new oral hearing depends upon the following circumstances:

1. Procedural reasons

Should the hearing be reopened on purely procedural grounds, e.g. because after the first hearing a Judge was prevented from taking part in the deliberations, the

⁷⁹⁰ Case C-199/92 P, *Hüls v Commission* [1999] ECR p. I-4287, para. 134.

⁷⁹¹ Case T-110/95, *IECC v Commission* [1998] ECR p. II-3605, para. 25.

⁷⁹² Case T-8/93, *Huet v Court of Auditors* [1994] ECR p. II-103, 109, para. 13; Case C-199/92 P, *Hüls v Commission* [1999] ECR p. I-4287, 4378; T-311/00, *British American Tobacco (Investments) v Commission* [2002] ECR p. II-2781, paras. 53 et seq.

⁷⁹³ Case T-322/01, *Roquette Frères v Commission* [2006] ECR p. II-3137, paras. 323 to 326.

⁷⁹⁴ Joined Cases T-133/95 and T-204/95, *IECC v Commission* [1998] ECR p. II-3645, 3664.

⁷⁹⁵ Case T-235/94, *Galtieri v Parliament* [1996] ECR p. II-129, 134.

second hearing will amount to an identical repetition of the first hearing. If the agents or lawyers do not wish to attend the second hearing, they should inform the GC with plenty of advance notice. In practice, the GC allows the parties to refer to their initial pleadings and to hand in copies of their oral statements without attending the new hearing⁷⁹⁶.

2. Substantive reasons

- 12 If, by contrast, an oral hearing is reopened for substantive reasons, e.g. because the parties need to be heard on a decisive aspect, it is in their natural and best interest to attend.

Article 63 [Minutes]

1. The Registrar shall draw up minutes of every hearing. The minutes shall be signed by the President and by the Registrar and shall constitute an official record.
2. The parties may inspect the minutes at the Registry and obtain copies at their own expense.

Outline:

I. Purpose of the minutes	1
1. General.....	1
2. Contents of the minutes.....	2
a) General Information	2
b) Procedurally relevant acts of the GC	3
c) Procedurally relevant acts of the parties	4
II. Access to documents	5
1. General.....	5
2. Correcting the minutes	6
3. Recordings of the hearing.....	7

I. Purpose of the minutes

1. General

- 1 The minutes of the hearing⁷⁹⁷, whether written in shorthand or typed, are not a verbatim transcript of the hearing as such a transcript is unnecessary since the hearing is recorded⁷⁹⁸. Instead, the Registrar or his representative will only put the **essential parameters** of the hearing into the minutes⁷⁹⁹.

⁷⁹⁶ Case T-175/95, *BASF v Commission* [1999] ECR p. II-158, para. 31.

⁷⁹⁷ Which are distinct from the minutes within the meaning of Art. 76 RP GC.

⁷⁹⁸ Which not only implies that the party speaking remains close enough to the microphone, but switches the latter off, whenever the other party or a Judge speaks.

⁷⁹⁹ Art. 13 (3) Instructions to the Registrar.

2. Contents of the minutes. a) General Information. This includes vital information such as the case number, the identity of the Agent and lawyer(s) who attended, the duration and place of hearing, etc.

b) Procedurally relevant acts of the GC

These include e.g. the GC's declaration that a given document submitted by a party during the oral hearing should be added to the file⁸⁰⁰, or the documentation of a particular answer given by a party to a relevant question⁸⁰¹.

c) Procedurally relevant acts of the parties

These include **confirmations**, e.g. as to the timely receipt of a specific document⁸⁰² or concerning a decisive fact⁸⁰³; **procedurally relevant acts** of a party, such as the withdrawal of a particular head of claim⁸⁰⁴; the **amendment** of an application for costs⁸⁰⁵; **waiving** a given legal ground⁸⁰⁶; explicitly accepting a request by the other party⁸⁰⁷, etc.

II. Access to documents

1. General

In the case of the GC a party wishing to “inspect” the minutes needs to do so at the Registry and must pay for any copy, while in proceedings at the CST a copy of the minutes is sent to the parties. It would be thus appropriate to apply this practice to all three judicial instances.

2. Correcting the minutes

Each party may, if necessary, request the Registry to correct the minutes should they contain a manifest error.

3. Recordings of the hearing

In contrast, the parties have no access to the taped recordings of the oral hearing which is solely for the use of the GC.

⁸⁰⁰ Case T-219/04, *Spain v Commission* [2007] ECR p. II-1323, para. 74.

⁸⁰¹ Case T-413/03, *Shandong Reipu Biochemicals v Commission* [2006] ECR p. II-2243, para. 100.

⁸⁰² Case T-219/04, *Spain v Commission* [2007] ECR p. II-1323, para. 51.

⁸⁰³ Case T-413/03, *Shandong Reipu Biochemicals v Commission* [2006] ECR p. II-2243, para. 100.

⁸⁰⁴ Case T-322/05, *Brinkmann v OHIM* [2007] ECR II-28, para. 11.

⁸⁰⁵ Joined Cases T-81/03, T-82/03 and T-103/03, *Mast-Jägermeister v OHIM* [2006] ECR p. II-5409, paras. 21 and 22.

⁸⁰⁶ Case T-311/04, *Buendia v Commission* [2006] ECR SC p. II-4137, paras. 44, 45.

⁸⁰⁷ Case T-291/03, *Consorzio per la tutela del formaggio Grana Padano v OHIM* [2007] ECR p. II-3081.

⁸⁰⁸ Joined Cases T-189/95, T-39/96 and T-12/96, *SGA v Commission* [1999] ECR p. II-3587, para. 24.

CHAPTER 3

MEASURES OF ORGANISATION OF PROCEDURE AND MEASURES OF INQUIRY

SECTION 1 – MEASURES OF ORGANIZATION OF PROCEDURE

Preliminary

I. General

- 1 Pursuant to **Art 49 RP GC** the GC may, at **any stage** of the proceedings, prescribe any measure of organization of procedure or any measure of enquiry referred to in Art. 64 and 65 of these Rules. The use of that power does not, however, have any automatic effect on the outcome of the dispute, as the GC retains absolute discretion over assessing the value to be given to the whole of the facts and evidence submitted to it or which it has itself adduced⁸⁰⁹.

II. Measures of organization of procedure

- 2 The purpose of measures of organization (Art. 64 RP GC) shall be to “*ensure that cases are prepared for hearing, procedures carried out and disputes resolved under the best possible conditions*”. Thus measures of organization are essentially designed to reconcile the need for a thorough investigation of the **facts**; the need to ensure compliance with the principle of **procedural economy**; and, last but not least, the **rights of defence**. All parties may, at any time during the proceedings, **apply** for the adoption of one or several such measures (Art. 64 (4) RP GC).

III. Measures of inquiry

- 3 By contrast, the purpose of measures of inquiry is much more specific, i.e. in order to **verify the veracity** of a given statement of fact to determine whether it is decisive for the outcome of the case⁸¹⁰ or whether or not it is proven. The GC (and also the CST) very rarely orders such measures for a number of reasons: firstly, the GC can ask for documents or any papers relating to the case by way of a **measure of organization**⁸¹¹. Secondly, measures of inquiry are subject to a complex set of rules (Art. 65 to 76 RP GC) which do not apply to measures of organization. Moreover, a

⁸⁰⁹ Case C-360/02 P, *Ripa di Meana v Parliament* [2004] ECR p. I-10339, para. 28.

⁸¹⁰ Case T-175/97, *Bareyt A. O. v Commission* [2000] ECR SC p. II-1053, paras. 89–90.

⁸¹¹ Case T-160/03, *AFCon Managements Consultants A. O. v Commission* [2005] ECR p. II-981, paras. 29–30.

measure of organization does not necessarily require adopting a formal order by the GC; such measures may also be communicated by letter of the Registrar.

IV. CST

The rules governing the measures of organization of procedure⁸¹² and measures of inquiry⁸¹³ differ to some extent from those found in the RP GC. In the case of the CST, measures of organization of procedure are always addressed to the parties, whereas measures of inquiry (covered by Articles 57 and 58 of the Rules) may also be addressed to **third parties**. This criterion differs from the one found in the GC's case-law, according to which the purpose of measures of organization of procedure (covered by Article 64 of the RP GC) is to ensure efficient written and oral procedures, to facilitate the taking of evidence, and to determine the points on which the parties must present further argument or which call for measures of inquiry. In contrast, measures of inquiry (covered by Articles 65 to 67 of those Rules) are intended to prove the veracity of the facts alleged by one of the parties as support for its pleas in law⁸¹⁴.

Article 64 [Measures of organization]

1. The purpose of measures of organization of procedure shall be to ensure that cases are prepared for hearing, procedures carried out and disputes resolved under the best possible conditions. They shall be prescribed by the General Court, after hearing the Advocate General.

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

- (a) to ensure efficient conduct of the written and oral procedure and to facilitate the taking of evidence;
- (b) to determine the points on which the parties must present further argument or which 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 organization of procedure may, in particular, consist of:

- (a) putting questions to the parties;
- (b) inviting the parties to make written or oral submissions on certain aspects of the proceedings;
- (c) asking the parties or third parties for information or particulars;
- (d) asking for documents or any papers relating to the case to be produced;
- (e) summoning the parties' agents or the parties in person to meetings.

⁸¹² Art. 54 to 56 RP CST.

⁸¹³ Art. 54 and 57 to 67 RP CST.

⁸¹⁴ Case T-560/08 P, *Commission v Meierhofer* [2010] (not yet published in the ECR), para. 64.

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

Where the procedural circumstances so require, the Registrar shall inform the parties of the measures envisaged by the General Court and shall give them an opportunity to submit comments orally or in writing.

5. If the General Court sitting in plenary session or as the Grand Chamber decides to prescribe measures of organization of procedure and does not undertake such measures itself, it shall entrust the task of so doing to the Chamber to which the case was originally assigned or to the Judge-Rapporteur.

If a Chamber prescribes measures of organization of procedure and does not undertake such measures itself, it shall entrust the task to the Judge-Rapporteur.

The Advocate General shall take part in measures of organization of procedure.

Outline:

I. General	1
II. Measures “prescribed” by the GC (paragraph 1)	2
1. Letter of the Registrar	2
2. GC’s discretion	3
a) During the written proceedings	4
b) Prior to the oral hearing	5
c) During the hearing	6
III. Purpose of measures of organization (paragraph 2)	7
1. Purpose	7
2. In particular: Amicable settlement of disputes	8
a) Practical relevance	8
aa) GC	8
bb) CST	9
b) Limits	10
aa) Subject	11
bb) Other limits	12
c) Procedure	13
IV. Catalogue of measures (paragraph 3)	14
1. General	14
2. The various measures	15
a) Putting questions to the parties (lit. a)	15
aa) Date	16
bb) Time-limit for the reply	17
cc) Contents	18
(1) General	18
(2) Points of fact	19
(3) Points of law	20
b) Invitation to provide written or oral submissions on certain aspects of the proceedings (lit. b)	21
aa) General	21
bb) CST	22
c) Asking the parties or third parties for information or particulars (lit. c)	23
d) Asking for documents or any papers relating to the case to be produced (lit. d)	24
aa) Documents	24
(1) General	24
(2) Lengthy documents	25

(3) Further documents.....	26
(4) Confidentiality	27
(a) GC.....	27
(b) CST.....	28
bb) “Any papers relating to the case”	29
e) Summoning persons to meetings (lit. e)	30
aa) General	30
bb) “Parties’ agents”	31
cc) “Parties in person”	32
(1) Informal meetings	32
(a) Exploring amicable settlements	32
(b) Other subjects.	34
(2) Oral hearing.	35
f) Other measures of organization.....	36
3. Reaction of the parties.....	37
a) Absence of reaction	37
aa) No formal sanction.....	37
bb) Measures of inquiry	38
b) Late reaction.....	39
c) Rights of defence of the other party.....	40
V. Proposal by a party (paragraph 4).....	41
1. General.....	41
2. Proposal.....	42
a) Written request	42
b) At any stage of the procedure	43
3. Contents	44
a) Art. 64 (3) RP GC.....	44
b) Interest in the resolution of the dispute	45
aa) General	45
bb) Asking for documents or any papers relating to the case	46
(1) Minimum requirements.....	46
(2) Rejected proposals.	47
c) Internal documents of the institutions	48
aa) General	48
bb) Rejected requests.....	49
cc) Legal opinions.....	50
VI. Order (paragraph 5).....	51

I. General

The GC, and to an even greater extent the CST, make frequent use of this ¹ provision, in contrast to the ECJ, which finds little need to employ it given the essentially legal nature of the cases coming under its jurisdiction. Such measures are either adopted on the GC’s own motion or upon a “proposal” from one of the parties⁸¹⁵.

⁸¹⁵ Art. 64 (4) RP GC.

II. Measures “prescribed” by the GC (paragraph 1)

1. Letter of the Registrar

- 2 Unlike measures of inquiry⁸¹⁶, measures of organization are **not** addressed to the parties through a formal and reasoned **order** but through a letter sent by the Registrar.

2. GC’s discretion

- 3 The GC must use its **discretion** to decide whether and, if so, which measures it adopts at each stage⁸¹⁷ of the proceedings:

a) During the written proceedings

- 4 Such measures may be prescribed after the notification of an application, in preparation for the statement of defence⁸¹⁸, or after the statement of defence⁸¹⁹, in preparation for the reply⁸²⁰. A measure of organization after the statement of defence remains, however, rather exceptional.

b) Prior to the oral hearing

- 5 In most instances, the GC adopts such measures **after** the closure of the written procedure and shortly before the date of the oral hearing. This is particularly the case if it asks for the parties to produce documents or papers relating to the case⁸²¹, or if it requests parties to concentrate their pleadings on certain procedural aspects⁸²².

c) During the hearing

- 6 On rare occasions, the GC requests a party to provide it with a given document **during** the hearing⁸²³. This then defers the formal closure of the oral proceedings until receipt of those documents⁸²⁴.

⁸¹⁶ Art. 66 (1) RP GC.

⁸¹⁷ Art. 49 RP GC.

⁸¹⁸ Case T-114/02, *Babyliiss v Commission* [2003] ECR p. II-1279, para. 63.

⁸¹⁹ Case T-60/94, *Pierrat v ECJ* [1995] ECR p. II-77, para. 16; Case T-310/00, *MCI v Commission* [2004] ECR p. II-3253, para. 22.

⁸²⁰ Case T-172/00, *Pierard v Commission* [2001] ECR SC p. II-429, para. 18.

⁸²¹ Case T-187/95, *R v Commission* [1997] ECR SC p. II-729, para. 22.

⁸²² Joined Cases T-305/94, T-306/94, T-307/94, T-313/94, T-314/94, T-315/94, T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/95, *Limburgse Vinyl Maatschappij A.O. v Commission* [1999] ECR p. II-930, para. 13.

⁸²³ Case T-506/93, *Moat v Commission* [1995] ECR SC p. II-147, 150, para. 13; Case T-197/00, *Onidi v Commission* [2002] ECR SC Ip. I-325, para. 33.

⁸²⁴ Case T-276/94, *Buick v Commission* [1995] ECR SC p. II-667, para. 14.

III. Purpose of measures of organization (paragraph 2)

1. Purpose

Paragraph 2 describes in a **non-exhaustive** list (“in particular”) the purpose of the measures of procedure, which complements the general provision found in paragraph 1. This list provides a helpful indication for all parties who consider proposing⁸²⁵ the adoption or modification of one or several measures of organization listed in Art. 64 (3) RP GC.

2. In particular: Amicable settlement of disputes. a) **Practical relevance.** aa) GC. 8 In proceedings at the GC, the possibility of an “amicable settlement of disputes” plays a **very minor role**, if any, in damages claims⁸²⁶.

bb) CST

By contrast, the RP CST⁸²⁷ contains a full chapter on this matter⁸²⁸. Nevertheless, 9 successful amicable settlements are far from frequent⁸²⁹.

b) Limits

The concept of ending a contentious matter through an amicable settlement is 10 inherently demanding and thus limited by a number of parameters.

aa) Subject

Certain subjects do not lend themselves to amicable settlements, such as cases of 11 alleged moral harassment, in which such negotiations are likely to worsen the conflict. From the defendant’s point of view, some contentious matters raise questions of principle, while others have **financial implications** which go beyond the individual case. In either situation, the case in question would require guidance by way of a judgment.

bb) Other limits

The judiciary may not, obviously, misuse this concept for reasons of convenience, 12 e.g. in order to reduce its workload or to avoid having to draft a judgment. From the perspective of the Judges, the option of an amicable settlement may sometimes result in a certain dilemma since they are, on the one hand, bound to explore the possibilities of such settlement, while, on the other hand, they need to show sufficient restraint as they may otherwise appear to be biased⁸³⁰. One must also be aware of some applicants’ temptation to seek disproportionate amounts of financial

⁸²⁵ Art. 64 (4) RP GC.

⁸²⁶ Joined Cases T-8/95 and T-9/95, *Pelle A. O. v Commission* [2007] ECR p. II-4117, para. 98.

⁸²⁷ See also Art. 7 (4) of the Annex of the Statute ECJ.

⁸²⁸ Art. 68 to 70 RP CST.

⁸²⁹ See e.g. Case F-98/06, *Lohiniva v Commission* [2007] (not published in the ECR).

⁸³⁰ Art. 18 Statute ECJ.

compensation or other unrealistic concessions during such negotiations, which prove to be natural obstacles to amicable settlements.

c) Procedure

- 13 While an informal meeting to begin negotiations may take place at any stage of the proceedings, it seems appropriate to delay this meeting at least until the end of the first exchange of written submissions. The resulting settlement may be concluded either during an informal meeting prior to⁸³¹ or after⁸³² the oral hearing itself, or on the basis of⁸³³ or subsequent⁸³⁴ to a proposal of amicable settlement by the CST. The contents of the settlement are not published if a party opposes their publication⁸³⁵. Should a settlement be reached, the applicant will subsequently withdraw his application⁸³⁶.

IV. Catalogue of measures (paragraph 3)

1. General

- 14 The measures listed in paragraph 3 are **not exhaustive** (cf the phrase “in particular”). Accordingly, the GC may request the parties’ views concerning e.g. a possible witness statement⁸³⁷. In practice, the GC may prescribe **several measures** at the same time⁸³⁸, depending on the complexity of the proceedings. Among these measures, the GC most often either poses questions to the parties⁸³⁹ or ask the parties to produce certain documents⁸⁴⁰.
- 15 **2. The various measures. a) Putting questions to the parties (lit. a).** It is no coincidence that this, the most important measure of organization, is mentioned first. The wording quite obviously does not imply that questions are systematically put to all parties.

aa) Date

- 16 In many instances, written questions are furnished to the parties together with the report for the hearing, i.e. several weeks before the date of the oral hearing.

⁸³¹ Which means that there is no oral hearing, Case F-92/06, *Antas v Council* [2007] (not published in the ECR).

⁸³² Case F-127/06, *H v Council* [2007] (not published in the ECR).

⁸³³ Case F-88/06, *Pantalís v Commission* [2007] ECR SC p. II-A-1-807.

⁸³⁴ Case F-78/05, *Rounis v Commission* [2007] (not published in the ECR).

⁸³⁵ Case F-92/06, *Antas v Council* [2007] (not published in the ECR).

⁸³⁶ Case F-11/06, *Larsen v Commission* [2007] ECR p. II-A-1-531, para. 4.

⁸³⁷ Joined Cases T-97/99 and T-99/99, *Chamier A. O. v Parliament* [2001] ECR SC p. II-1, para. 12.

⁸³⁸ Joined Cases T-80/89 et al., *BASF v Commission* [1995] ECR p. II-729, 744, 745.

⁸³⁹ Art. 64 (3) (a) RP GC.

⁸⁴⁰ Art. 64 (3) (d) RP GC.

bb) Time-limit for the reply

The GC determines the time-limit within which the party needs to reply. A request for extension of time is not excluded, as long as it does not challenge the date for the oral hearing.

cc) Contents. (1) General. The party concerned needs to keep its reply within the limits of the question(s) posed, i.e. such answer should not be **misused** for addressing unrelated subjects, let alone for replicating or duplicating arguments which the other party has put forward in its written submissions. That said, a party may use its reply to abandon a legal ground it has put forward in its original pleadings, if need be.

(2) Points of fact. Written questions are mainly used to investigate certain fact, which implies that the same question may be put to all the parties of the proceedings. These questions may also include a request to elaborate certain arguments, e.g. as regards an alleged infringement of the rights of defence⁸⁴¹.

(3) Points of law. The GC may also require the parties to provide their views on a given legal question, e.g. on the **admissibility** of the application⁸⁴² or the possible **impact of a given judgment** of the GC⁸⁴³ or the ECJ⁸⁴⁴ on the pending case. It on this occasion a party may withdraw a legal ground⁸⁴⁵.

b) Invitation to provide written or oral submissions on certain aspects of the proceedings (lit. b). aa) General. To some extent the more general category of “questions” within the meaning of paragraph 3 lit. a) will certainly overlap with a request to make submissions regarding “certain aspects” of the proceedings within the meaning of paragraph 3 lit. b). The latter may relate to aspects of admissibility; to the substance of the application; and/or to procedural questions, including e.g. a more specific invitation to comment on documents the other party has submitted as a result of a measure of inquiry⁸⁴⁶.

bb) CST

The Civil Service Tribunal frequently adopts measures of organization of procedure. This is due to both the specificity of its jurisdiction and to the fact that its written proceedings are normally limited to one exchange of submissions⁸⁴⁷.

c) Asking the parties or third parties for information or particulars (lit. c)

Asking parties for information overlaps to some extent with lit. a) and b), in contrast to making a similar request to “third parties”, which are usually other

⁸⁴¹ Joined Cases T-159/94 and T-160/94, *Ajinomoto and Nutrasweet v Council* [1997] ECR p. II-2461, para. 45.

⁸⁴² Case T-79/92, *Ditterich v Commission* [1994] ECR p. II-907, para. 11; Case T-100/94, *Michailidis A. O. v Commission* [1998] ECR p. II-3115, para. 28.

⁸⁴³ Case T-60/94, *Pierrat v ECJ* [1995] ECR p. II-3115, para. 28.

⁸⁴⁴ Case T-70/94, *Comafrika and Dole Fresh Fruit Europe v Commission* [1996] ECR p. II-1741, para. 25.

⁸⁴⁵ Case T-138/99, *Verheyden v Commission* [2000] ECR SC p. II-1001, para. 23.

⁸⁴⁶ Joined Cases T-80/89 etc., *BASF A. O. v Commission* [1995] ECR p. II-729, para. 11.

⁸⁴⁷ See e.g. Case F-50/09, *di Lusignano v Commission* [2010] (not published in the ECR), paras. 12 et seq.

institutions of the EU⁸⁴⁸. In the cases before the CST⁸⁴⁹, only the parties, i.e. no third parties, may be asked for information or particulars.

- 24 **d) Asking for documents or any papers relating to the case to be produces (lit. d).**
- aa) Documents. (1) General.** A request for submission of certain documents is a practical way to limit recourse to a formal and procedurally far more complex measure of inquiry to the strict minimum. Thus, the GC may request a party to e.g. prove the date upon which a given document was effectively notified⁸⁵⁰ or to provide the GC with certain documents⁸⁵¹. Such a request may be made prior to but also after the oral hearing⁸⁵².
- 25 **(2) Lengthy documents.** If a document is lengthy, the whole document or a full copy of it shall be lodged with the Registry⁸⁵³ and may be accessed by the parties concerned at the Registry in Luxembourg⁸⁵⁴ or, as the case may be, in the context of an informal meeting⁸⁵⁵. The parties are then given the possibility to comment upon said documents, either in writing or during the oral hearing⁸⁵⁶.
- 26 **(3) Further documents.** A party may add further documents to its reply as long as they are objectively connected to the documents required and thus directly relate to the case⁸⁵⁷.
- 27 **(4) Confidentiality. (a) GC.** The GC needs to balance between the right of access to documents and the need to protect confidential information.
- 28 **(b) CST.** The CST mainly protects confidentiality by only allowing the lawyer to access the file. The lawyer may consult the documents at the Registry in Luxembourg and take handwritten notes, but may make **no photocopies**⁸⁵⁸. This rules out any circumvention, e.g. by **digital photographs** or other technical means. However, this solution basically negates the concept of confidentiality, since both parties thereby have indirect access to all confidential documents. In some cases, the CST accepts to black out certain parts of the documents, e.g. the questions in a selection procedure; in other cases, however, it refuses⁸⁵⁹. In exceptional cases, the CST limits access to the Judges and the Registrar⁸⁶⁰.

⁸⁴⁸ Case T-21/90, *Generlich v Commission* [1991] ECR p. II-1323, 1328; Case T-15/93, *Vienne v Parliament* [1993] ECR p. II-1327, 1332; Case T-147/95, *Pavan v Parliament* [1996] ECR p. II-861, 865; Joined Cases T-103/98, T-104/98, T-107/98, T-113/98 and T-118/98, *Kristensen A. O. v Council* [1999] ECR p. II-1111, 1116.

⁸⁴⁹ Art. 55 (2) (c) RP CST.

⁸⁵⁰ Case T-54/91, *Almeida Antunes v Parliament* [1992] ECR p. II-1739, para. 14.

⁸⁵¹ Case T-26/91, *Kupka-Floridi v ECOSOC* [1992] ECR II-1615, para. 8.

⁸⁵² Joined Cases T-6/92 and T-52/92, *Reinartz v Commission* [1993] ECR II-1047, para. 19.

⁸⁵³ Art. 43 (5) RP GC.

⁸⁵⁴ Case T-60/94, *Pierrat v ECJ* [1995] ECR II-77, para. 16.

⁸⁵⁵ Joined Cases T-186/97 et seq., *Kaufring A. G. A. O. v Commission* [2001] ECR II-105.

⁸⁵⁶ Case T-187/95, *R. v Commission* [1997] ECR SC II-729, para. 23.

⁸⁵⁷ Case T-29/92, *SPO A.O v Commission* [1995] ECR II-289, paras. 37 et seq.

⁸⁵⁸ Decision taken by the CST in the context of Case F-63/09, *Donati v ECB*; see also case F-2/07, *Matos Martins v Commission* [2010] (not yet published in the ECR).

⁸⁵⁹ Case F-52/05, *Q v Commission* [2007] (not published in the ECR).

⁸⁶⁰ Case F-50/09, *di Lusignano v Commission* [2010] (not published in the ECR).

bb) “Any papers relating to the case”

This provision’s vague wording makes it a general clause which does not specify 29 the exact nature of the “papers” meant. Other linguistic versions, e.g. the German one, refer not to “any papers” but more specifically to “means of proof” (“Beweisstücke”). This enables the GC to limit formal measures of inquiry to a strict minimum.

e) Summoning persons to meetings (lit. e). aa) General. By definition, this provi- 30 sion allows the GC to summon the parties’ agents or lawyers as well as the parties themselves to meetings. Despite variations in wording (“summoning the parties to meetings”), the rule applying to proceedings at the CST⁸⁶¹ is the same.

bb) “Parties’ agents”

This is a generic expression which concerns the agent(s) representing the EU 31 institution or Member State, as well as its external lawyer, if any, and all other lawyers involved in the proceedings. In major cases, the Chamber or Judge-Rapporteur may request the “agents” to attend an **informal meeting** in order to discuss organizational matters such as the joining of cases⁸⁶² or the sequence of pleadings at the oral hearing⁸⁶³, if need be by way of several such informal meetings⁸⁶⁴.

cc) “Parties in person” (1) Informal meetings. (a) Exploring amicable settle- 32 ments. The importance of this provision decreased since the CST gained jurisdiction over staff matters. By summoning the parties to an informal meeting, the GC may explore the possibilities of an amicable settlement of the dispute⁸⁶⁵. On such occasion, the Judge-Rapporteur summarizes the factual and legal aspects of the case; expresses his views on the strength and weakness of the case; and calls upon the parties to comment on an amicable settlement of the dispute. The Judge may either come up with a proposal regarding an amicable settlement, which is subsequently discussed by the parties, or may allow the parties present their own views before he presents his suggestion.

Further negotiations depend on the attitude of the parties: if they need a “cool- 33 ing-off” period, the GC may suspend the hearing temporarily and can extend the deadline several times if needs be⁸⁶⁶. If the parties reject a settlement agreement outright, the proceedings will resume normally. Should the parties have reached an amicable solution, whether during the informal meeting or afterwards, the GC will remove the case from the register⁸⁶⁷.

⁸⁶¹ Art. 55 (2) (e) RP CST.

⁸⁶² Case T-369/00, *Département Loiret v Commission* [2003] ECR p. II-1789, para. 22.

⁸⁶³ Case T-5/02, *Tetra Laval v Commission* [2002] ECR p. II-4381, para. 67; Case T-34/92, *Fiatagri and New Holland v Commission* [1994] ECR p. II-905, para. 22.

⁸⁶⁴ Joined Cases T-80/89 et seq., *BASF A. O. v Commission* [1995] ECR p. II-729, 744, 745.

⁸⁶⁵ Art. 64 (2) d) RP GC.

⁸⁶⁶ Case T-500/04, *Commission v HC Informations-Industrie Consulting* [2007] ECR p. II-1443, para. 28.

⁸⁶⁷ Case T-71/91, *Cordoano v ECOSOC* [1991] (not published in the ECR).

- 34 (b) **Other subjects.** The informal meeting may also be intended as a way to choose a **test case**⁸⁶⁸ out of a plurality of cases or to discuss which documents of the proceedings are to be treated as **confidential**⁸⁶⁹.
- 35 (2) **Oral hearing.** Formally summoning a party to an oral hearing is rare. During the time before the CST, this occurred mainly in staff cases before the GC⁸⁷⁰, e.g. regarding **medical issues**⁸⁷¹, **promotion procedures**⁸⁷², or **interim proceedings**⁸⁷³. If e.g. sick leave or other imperative reasons prevents the applicant from attending, his lawyer may answer the questions during the hearing on his behalf⁸⁷⁴. The GC may also withdraw such measures⁸⁷⁵.

f) Other measures of organization

- 36 This non-exhaustive catalogue leaves room for other measures of organization: the GC may decide to limit the hearing to a specific legal ground⁸⁷⁶, and may also require a party to file a written version of some of the answers given at the hearing⁸⁷⁷. While bearing in mind the need to respect the principle of adversarial procedure and the rights of defence, including Art. 6 ECHR, the GC may request the parties to present identical legal pleas together, so that it may avoid the repetition of identical pleadings. Nevertheless, each party remains free to present its own arguments⁸⁷⁸.
- 37 **3. Reaction of the parties.** a) **Absence of reaction.** aa) **No formal sanction.** Non-compliance or only partial⁸⁷⁹ compliance with a measure of organization of procedure, e.g. by **not replying** to a written questions aiming at clarifying certain factual aspects⁸⁸⁰ or **not providing** requested documents, does not entail a formal sanction. This may, however, have an impact on the **chances of success** of a party's case since both the parties and the Judges are bound by the rules governing the burden of proof as well as the ruling on **costs**⁸⁸¹.

bb) Measures of inquiry

- 38 That said, if the party concerned refuses to comply with a measure of organization, the GC may in principle adopt a measure of inquiry.

⁸⁶⁸ Case T-373/94, *Werners v Council and Commission* [2006] ECR p. II-4631, para. 38.

⁸⁶⁹ Case T-209/01, *Honeywell v Commission* [2005] ECR p. II-5527, para. 22.

⁸⁷⁰ Joined Cases T-33/89 and T-T-74/89, *Blackman v Parliament* [1993] ECR p. II-249, para. 18; Case T-102/98, *Papadeas v CoR* [1999] ECR p. II-1091, para. 15.

⁸⁷¹ Case T-10/93, *A v Commission* [1994] ECR p. II-179, 13.

⁸⁷² Case T-46/93, *Michael-Chiou v Commission* [1994] ECR SC p. II-929, para. 17.

⁸⁷³ Case T-17/00 R, *Rothley A. O. v Parliament* [2000] ECR p. II-2085, para. 28.

⁸⁷⁴ Case T-54/92, *Schneider v Commission* [1994] ECR p. II-887, para. 11.

⁸⁷⁵ Case F-126/05, *Borbély v Commission* [2007] (not published in the ECR).

⁸⁷⁶ Case T-366/00, *Scott v Commission* [2003] ECR p. II-1763, paras. 24–25.

⁸⁷⁷ Case T-58/99, *Mukand A. O. v Council* [2001] ECR p. II-2521, para. 16.

⁸⁷⁸ Joined Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to 252/99 P and T-254/99 P, *Limburgse Vinyl Maatschappij A. O. v Commission* [2002] ECR p. I-8375, para. 349.

⁸⁷⁹ Case T-137/01, *Stadtsportverband Neuss v Commission* [2003] ECR p. II-3103, para. 30.

⁸⁸⁰ Case T-506/93, *Moat v Commission* [1995] ECR SC p. II-147, para. 11.

⁸⁸¹ Case T-535/93, *F v Commission* [1995] ECR SC p. II-147.

b) Late reaction

Failure to comply with the time-limit set by the GC should not preclude the non-complying party from incorporating its reply to the written questions into its pleadings at the oral hearing. The same should apply to the submission of documents, provided that the party may give a good reason as to why it has not done so within the prescribed period⁸⁸². If the party submits a document which the GC did not require and which is totally unrelated to the request, said document will be sent back to the party⁸⁸³.

c) Rights of defence of the other party

The other party has no formal right to react in writing to the opposing counsel's replies to the measures of organization. There is thus a risk that any written submission lodged on the opposing party's own motion will be rejected as inadmissible. In view of the parties' rights of defence, the party concerned will have the possibility to comment on these responses at the oral hearing.

V. Proposal by a party (paragraph 4)

1. General

Measures of organization are either adopted *ex officio*, which is seen in the majority of cases, or upon the proposal of a party. Assessment of the appropriateness of adopting a measure of organization of procedure is a matter for the Court, not for the parties. The Court may, if it sees fit, challenge the choice made at first instance in the framework of an appeal⁸⁸⁴.

2. Proposal. a) Written request. A "proposal" – the choice of this word expresses the GC's discretionary power as to the adoption of the measure "proposed" – is ultimately understood as a unilateral **written request**⁸⁸⁵.

b) At any stage of the procedure

Such proposal may either be integrated into a written submission, e.g. the **application** (whilst being clearly distinct from any "form of order sought"⁸⁸⁶), which saves time, or handed in at a later stage by way of a **separate submission**⁸⁸⁷, which allows the other party to be heard. That said, such request should be made at an early stage of the proceedings, since the GC must determine whether the measure requested is

⁸⁸² Joined Cases T-285/02 and T-395/02, *Vega Rodríguez v Commission* [2004] ECR p. II-1527, para. 24.

⁸⁸³ Case C-39/00 P, *SGA v Commission* [2000] ECR p. I-11201, para. 37.

⁸⁸⁴ Case T-560/08 P, *Commission v Meierhofer* [2010] ECR p. II-0000, paras. 61–62.

⁸⁸⁵ Case T-367/94, *British Coal v Commission* [1997] ECR p. II-2103, para. 1.

⁸⁸⁶ Art. 44 (1) (d) and Art. 46 (1) (c) RP GC.

⁸⁸⁷ Case T-50/96, *Primex Produkte Import-Export A. O. v Commission* [1998] ECR p. II-3773, para. 30.

conducive to proper conduct of the procedure⁸⁸⁸. After the hearing has taken place, a party may ask for measures of organization of procedure only if the GC decides to reopen the oral procedure⁸⁸⁹.

- 44 **3. Contents. a) Art. 64 (3) RP GC.** The party may propose one or several measures listed in paragraph (3), with no formal limit to the number of measures proposed⁸⁹⁰, except in case of misuse. Proposals may be presented as main and alternative proposals⁸⁹¹.
- 45 **b) Interest in the resolution of the dispute. aa) General.** Given the purpose of the measures of organization (see Art. 64 (1) and (2) RP GC), the GC will assess whether adopting the measures proposed holds any promise for the resolution of the dispute⁸⁹². In short, the GC must analyze the usefulness of such measures.
- 46 **bb) Asking for documents or any papers relating to the case. (1) Minimum requirements.** The party requesting documents must identify the documents requested and provide the GC with at least some minimum information indicating the utility of those documents for the purposes of the proceedings⁸⁹³. Thus, the party needs not only to state the author, the addressee, and the date of the letter it wishes to be produced⁸⁹⁴, but must also provide the GC with at least some minimum information indicating the utility of those documents for the purposes of the proceedings⁸⁹⁵.
- 47 **(2) Rejected proposals.** The GC rejected a proposal on the grounds that it was merely an attempt to gather new factual elements for the purpose of enhancing its application⁸⁹⁶ (“**fishing expedition**”). The same applies if the GC finds that the proceedings as a whole have provided the party in question with sufficient information⁸⁹⁷.
- 48 **c) Internal documents of the institutions. aa) General.** According to settled case-law, during proceedings before the EU Courts internal documents of the institutions are not revealed to the parties concerned unless **exceptional circumstances** of the case so require. Exceptional circumstances are determined on the basis of **solid evidence** which it is up to the parties to provide⁸⁹⁸. That restriction on access to

⁸⁸⁸ Case T-141/01, *Entorn v Commission* [2005] ECR p. II-95, para. 132.

⁸⁸⁹ Case C-199/92 P, *Hüls v Commission* [1999] ECR p. I-4287, para. 126.

⁸⁹⁰ Case T-194/95, *Area Cova SA v Council* [1999] ECR p. II-2271, paras. 16–18, where the party proposed no less than 27 different measures, which it later reduced to 8.

⁸⁹¹ Case T-175/95, *BASF v Commission* [1999] ECR p. II-1581, para. 25.

⁸⁹² Case T-311/00, *British American Tobacco Investments v Commission* [2002] ECR p. II-2781, para. 50.

⁸⁹³ Which was not the case in e.g. Joined Cases T-109/02, T-118/02, T-122/02 T-125/02, T-126/02, T-128/02, T-129/02, T-132/02 and T-136/02, *Bolloré A. O. v Commission* [2007] ECR p. II-947, paras. 730–731.

⁸⁹⁴ Case C-119/97 P, *Ufex A.O v Commission* [1999] ECR p. I-1341, paras. 110–111.

⁸⁹⁵ Case C-185/95 P, *Baustahlgewebe v Commission* [1998] ECR p. I-8417, para. 93; Joined Cases T-45/98 and T-47/98, *Krupp Thyssen Stainless v Commission* [2001] ECR p. II-3757, para. 31.

⁸⁹⁶ Case T-175/97, *Bareyt A. O. v Commission* [2000] ECR SC p. II-1053, para. 91.

⁸⁹⁷ Case T-358/04, *Neumann v OHIM* [2007] ECR p. II-3329, para. 66.

⁸⁹⁸ Joined Cases 142/84 and 156/84, *BAT and Reynolds v Commission* [1986] ECR p. 1899, para. 11.

internal documents is justified by the need to ensure the proper functioning of the institution concerned⁸⁹⁹.

bb) Rejected requests

The GC thus rejected an application for the **expert accountant's report** to be 49 furnished, since this report is in any event a purely internal Commission document, which only has the weight of an opinion for the internal workings of the Commission, and whose purpose is not to set forth fresh objections or adduce fresh evidence against the undertakings⁹⁰⁰. The same applied to a document sent to the **Advisory Committee** in Anti-Dumping proceedings⁹⁰¹.

cc) Legal opinions

An institution may apply for the removal of a legal opinion of its legal service 50 from the file if that institution can prove that it is contrary to public policy, which requires that the institutions receive the advice of their legal service, given in full independence, to allow such internal documents to be produced by persons other than the services at whose request they have been prepared in proceedings before the GC⁹⁰², unless their production has been authorized by the institution concerned or ordered by the GC⁹⁰³, or the party concerned is able to show that it obtained the opinion lawfully⁹⁰⁴.

VI. Order (paragraph 5)

The details of the decision procedure are laid down in paragraph 5. If the GC 51 adopts measures of organization of the procedure on its own motion, the parties are not heard beforehand. There is no appeal against such orders.

SECTION 2 – MEASURES OF INQUIRY

Article 65 [Catalogue of measures]

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

- (a) the personal appearance of the parties;
- (b) a request for information and production of documents;

⁸⁹⁹ Joined Cases T-134/94, T-136/94 to T-138/94, T-141/94, T-145/94, T-147/94, T-148/94, T-151/94, T-156/94 and T-157/94, *NMH Stahlwerke and Others v Commission* [1997] ECR p. II-2293, para. 36.

⁹⁰⁰ Case T-9/99, *HFB A. O. v Commission* [2002] ECR p. II-1487, para. 40 and the case law quoted.

⁹⁰¹ Case T-132/01, *Euroalligies A. O. v Commission* [2003] ECR p. II-2359, para. 94.

⁹⁰² Case T-18/10 R, *Inuit Tapiriit A. O. v Parliament and Council* [2010] ECR p. II-75, paras. 19–21.

⁹⁰³ Case T-357/03, *Gollnisch A. O. v Parliament* [2005] ECR p. II-1, para. 34.

⁹⁰⁴ Joined Cases T-228/99 and T-233/99, *Westdeutsche Landesbank Girozentrale and Land Nordrhein-Westfalen v Commission* [2003] ECR p. II-435, para. 91 and the case law quoted.

- (c) oral testimony;
- (d) the commissioning of an expert's report;
- (e) an inspection of the place or thing in question.

Outline:

I. Introduction	1
1. Purpose	1
2. Catalogue of measures.....	2
3. CST.....	3
II. Measures of inquiry	4
1. Overview.....	4
2. Personal appearance of the parties (lit. a)	5
3. Request for information and production of documents (lit. b)	6
a) General.....	6
b) Request for information	7
c) Request for production of documents.....	8
4. Oral testimony of witnesses and commissioning of an expert's report (lit. c and d)	9
5. Inspection of the place or thing in question (lit. e)	10

I. Introduction

1. Purpose

- 1 Unlike what is provided in Art. 64 (1) and (2) concerning measures of organization, there is **no explicit indication** in Art. 65 et seq. RP GC⁹⁰⁵ as to the purpose of measures of inquiry. By their nature, such measures are designed to ascertain the **veracity of a factual statement** made by a party in support of its legal pleas⁹⁰⁶, if need be. Assessment of the appropriateness of adopting a measure of inquiry is a matter for the court, not the parties, and the latter may, if they see fit, challenge the choice made at first instance in the framework of an appeal⁹⁰⁷.

2. Catalogue of measures

- 2 The **catalogue** of five measures of inquiry in Art. 65 is **limitative**, in contrast to what is provided in Art. 64 (3) concerning measures of organization. The adoption of a given measure of inquiry does not, however, rule out other such measures as well as measures of organization of the procedure from being adopted simultaneously⁹⁰⁸.

3. CST

- 3 Art. 57 (b) and (c) RP CST is both **more specific** and **broad**er than Art. 65 (b) RP GC.

⁹⁰⁵ See also Art. 14 of the Instructions to the Registrar.

⁹⁰⁶ Case T-175/97, *Bareyt A. O. v Commission* [2000] ECR SC p. II-1053, para. 90.

⁹⁰⁷ Case T-560/08 P, *Commission v Meierhofer* [2010] ECR p. II-0000, paras. 61–62.

⁹⁰⁸ Joined Cases T-33/89 and T-74/89, *Blackman v Parliament* [1993] ECR p. II-249, para. 257.

II. Measures of inquiry

1. Overview

Ordering the personal appearance of a party (lit. a), or requesting information 4 and production of documents (lit. b) does not result in a complex procedure, in contrast to the hearing of witnesses and experts (see lit. (c) and (d)), which is governed by a number of provisions (Art. 68 to 76 RP GC). The inspection of the place or thing in question (lit. e) hardly ever applies in practice.

2. Personal appearance of the parties (lit. a)

The parties are, by definition, always **entitled** to attend the oral hearing, whether 5 or not the oral hearing is public, even though they may only address the GC through their agent, adviser or lawyer (Art. 59 RP GC). If the GC orders the personal appearance of the parties, which is an **exceptional measure**, it may also do so by way of measures of organization of the procedure⁹⁰⁹.

3. Request for information and production of documents (lit. b). a) General. 6

There is an overlap between these measures and those provided for in 64 (3) lit. c) and d) RP GC, which is why the GC tends to use the more **informal** measure of organization of the procedure⁹¹⁰. Should the party concerned refuse to comply, then the GC may order a measure of inquiry within the meaning of Art. 65 RP GC⁹¹¹.

b) Request for information

It would seem that this alternative covers a request for information vis-à-vis the 7 parties, albeit not necessarily addressed to all of them, since this provision does not provide for the possibility of asking third parties for information, unlike Art. 64 (3) (c) RP GC.

c) Request for production of documents

This alternative covers only documents that are relevant to the actual subject- 8 matter of the dispute⁹¹². In the context of an application regarding public access to documents, this pertains to those documents forming the subject-matter⁹¹³, such as the consultation of the Committee on VAT⁹¹⁴. It is settled case-law that during proceedings before the EU Courts, internal Commission documents are not to be

⁹⁰⁹ See also Art. 64 (3) e) RP GC.

⁹¹⁰ Case T-145/98, *ADT Projekt v Commission* [1999] ECR p. II-2627, para. 39; Case T-32/91, *Solvay v Commission* [1995] ECR p. II-1825, para. 14.

⁹¹¹ Case T-145/98, *ADT Projekt v Commission* [1999] ECR p. II-2627, para. 41; Case T-32/91, *Solvay v Commission* [1995] ECR p. II-1825, para. 16.

⁹¹² Case T-367/94, *British Coal v Commission* [1997] ECR p. II-2103, para. 24.

⁹¹³ Case T-111/00, *British American Tobacco International (Investments) v Commission* [2001] ECR p. II-3000, para. 15.

⁹¹⁴ Case T-36/00, *Elder v Commission* [2001] ECR p. II-607, 609.

communicated to the applicants unless the circumstances of the case are exceptional and the applicants make a plausible case for the need to do so⁹¹⁵. That restriction on access to internal documents is justified by the need to ensure the proper functioning of the institution concerned⁹¹⁶.

4. Oral testimony of witnesses and commissioning of an expert's report (lit. c and d)

- 9 These two categories of measures are the most tangible difference between measures of inquiry and measures of organization of the procedure, which do not provide such instruments. It is within the very nature of both measures that they entail a number of obligations with respect to persons who are hitherto not involved and possibly not even aware of the proceedings before the GC. This is one of the reasons why so many provisions are required (Art. 68 to 76 RP GC) in order to lay down the procedural details governing the testimony of witnesses.

5. Inspection of the place or thing in question (lit. e)

- 10 It is no coincidence that this measure comes last, since it is **very rarely** relevant. This might have to do with the fact that the various categories of cases coming under the jurisdiction of the GC do not lend themselves to such measure of inquiry. Requests for the adoption of such measures have, so far, not been successful⁹¹⁷.

Article 66 [Order]

1. The General Court, after hearing the Advocate General, shall prescribe the measures of inquiry that it considers appropriate by means of an order setting out the facts to be proved. Before the General Court decides on the measures of inquiry referred to in Article 65(c), (d) and (e) the parties shall be heard.

The order shall be served on the parties.

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

I. The order (paragraph 1)

1. Broad discretion of the Judges

- 1 According to settled case-law, it is for the GC to appraise the usefulness of measures of inquiry for resolving disputes, i.e. whether a measure is **relevant** and **necessary** for the purpose of ruling in the case. This implies a **broad discretionary** power for the GC. Against this background, the GC will then choose one or several

⁹¹⁵ Case T-9/99, *HFB A.O. v Commission* [2002] ECR p. II-1487, para. 40 and the case law quoted.

⁹¹⁶ Case T-157/94, *NMH Stahlwerke GmbH A.O v Commission* [1997] ECR p. II-2293, para. 36.

⁹¹⁷ Case T-138/98, *ACAV A.O. v Council* [2000] ECR p. II-341, para. 71; Case T-250/02, *Autosalone Ispra v EAEC* [2005] ECR p. II-5227, para. 100.

measures of inquiry and one or more factual circumstances which are relevant for the case and thus need to be proved. The GC will not accede to the parties' request for measures of inquiry as the evidence in the file and the explanations tendered at the hearing may be sufficient to enable it to render judgment in the case at issue⁹¹⁸. The GC finds these to be sufficient in the vast majority of cases.

2. Procedure

In the case of measures of inquiry within the meaning of Art 65 lit. c), d) and e) 2 the parties shall be **heard** prior to the adoption of any order, because those means of inquiry are outside the sphere of the parties. The right to be heard may be exercised by reacting in a written submission, e.g. the statement of defence.

3. No appeal

There is no specific legal remedy against an order prescribing a measure of 3 inquiry. That said, legal questions arising in the context of a measure of inquiry may be part of the subject-matter of an appeal⁹¹⁹.

II. Rebuttal evidence and amplification of previous evidence (paragraph 2)

This provision is an exception to Art. 48 (1) RP GC and means that in the event 4 of a measure of inquiry the other party remains free to submit evidence in rebuttal, while the other party retains the ability to broaden the evidence it submitted.

Article 67 [Applying the order]

1. Where the General Court sitting in plenary session or as the Grand Chamber orders a preparatory inquiry and does not undertake such an inquiry itself, it shall entrust the task of so doing to the Chamber to which the case was originally assigned or to the Judge- Rapporteur.

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

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

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

3. Subject to the provisions of Article 116(2) and (6), the General Court shall take into consideration only those documents which have been made available to the lawyers and agents of the parties and on which they have been given an opportunity of expressing their views.

Where it is necessary for the General Court to verify the confidentiality, in respect of one or more parties, of a document that may be relevant in order to rule in a case, that document shall not be communicated to the parties at the stage of such verification.

⁹¹⁸ Case T-139/01, *Comafrika A. O. v Commission* [2005] ECR p. II-409, paras. 169–171.

⁹¹⁹ Case C-199/02 P, *Hüls v Commission* [1999] ECR p. I-4278.

Where 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.

- 1 Paragraph 1, which is about an internal division of labour amongst the various formations of Judges, is similar to Art. 64 (5) RP GC. Paragraph 3 strengthens the rights of defence and the protection of confidentiality of documents, which is especially important regarding public access to documents⁹²⁰.
- 2 Art. 44 of the RP CST contains an analogous provision to Art. 67 (3) RP GC, but unlike Art 67 (3), Art 44 is not part of the section on the measures of inquiry⁹²¹.

SECTION 3 – THE SUMMONING AND EXAMINATION OF WITNESSES AND EXPERTS

Article 68 [Witnesses]

1. The General Court may, either on its own motion or on application by a party, and after hearing the Advocate General and the parties, order that certain facts be proved by witnesses. The order shall set out the facts to be established.

The General Court may summon a witness on its own motion or on application by a party or at the instance of the Advocate General.

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

2. The witness shall be summoned by an order containing the following information:

- (a) the surname, forenames, description and address of the witness;
- (b) an indication of the facts about which the witness is to be examined;
- (c) where appropriate, particulars of the arrangements made by the General Court for reimbursement of expenses incurred by the witness, and of the penalties which may be imposed on defaulting witnesses.

The order shall be served on the parties and the witnesses.

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

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

4. 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 of this Article and in Article 71.

⁹²⁰ Case T-36/00, *Elder v Commission* [2001] ECR p. II-607, 610.

⁹²¹ See in this respect Case T-560/08 P, *Commission v Meierhofer* [2010] (not yet published in the ECR), paras. 59 et seq.

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

The other Judges and the Advocate General may do likewise.

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 71, 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.’

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

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

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

The minutes shall constitute an official record.

Outline:

I. Examination of witnesses ex officio or on application (paragraph 1)....	1
1. <i>Ex officio</i>	1
2. Application by a party	2
a) Admissibility	2
aa) Contents.....	2
bb) Inadmissible applications.....	3
(1) Missing indications.	3
(2) After the oral hearing.	4
b) Substance	5
aa) General	5
bb) Successful applications.....	6
cc) Unsuccessful application.....	7
c) Date of summoning.....	8
II. Details of the summoning of witnesses (paragraphs 2 to 5).....	9
1. Relevance for witnesses.....	9
2. Relevance for the parties	10
III. Minutes (paragraph 6)	11

I. Examination of witnesses ex officio or on application (paragraph 1)

1. *Ex officio*

The power to summon a witness on its own motion⁹²² expresses the GC’s duty to 1 investigate the facts. Nevertheless, in practice the GC rarely employs this provision⁹²³.

⁹²² Case T-26/91, *Kupka-Floridi v ECOSOC* [1992] ECR p. II- 1615, para. 8; Case T-106/92, *Frederiksen v Parlament* [1995] ECR p. II-99, para. 16.

⁹²³ Case T-94/96, *Hagleitner v Commission* [1998] ECR SC p. II-1467, para. 69.

- 2 **2. Application by a party. a) Admissibility. aa) Contents.** If the applicant applies for the examination of a witness with a separate document⁹²⁴ within that document he needs to **state precisely** about which **facts** and for which reasons the **witness** should be examined (Art. 68 (1), 3rd sub-paragraph). This is even more mandatory if the persons are members of the applicant's board or directorate.
- 3 **bb) Inadmissible applications. (1) Missing indications.** An application is inadmissible if the persons designated as witnesses have not been indicated in the application (see Art. 44 (1) (e) RP GC)⁹²⁵ and/or if the party fails to indicate the exact facts concerning which those persons should be heard as witnesses⁹²⁶.
- 4 **(2) After the oral hearing.** If a request for measures of inquiry is made after the oral procedure is closed, it can be admitted only if it relates to facts which may have a **decisive influence** on the outcome of the case and which the party concerned could **not put forward** before the close of the oral procedure⁹²⁷.
- 5 **b) Substance. aa) General.** The GC alone may assess whether the information available concerning the cases before it must be supplemented⁹²⁸ in order to appraise the usefulness of measures of inquiry for the purpose of resolving the dispute⁹²⁹.

bb) Successful applications

- 6 The GC may grant such application e.g. if a given measure of organization of the procedure turns out to be insufficient⁹³⁰ or if an expert's report to be inconclusive⁹³¹.

cc) Unsuccessful application

- 7 The GC dismisses an application for summoning witnesses if it has been able to determine the matter at hand based on the submissions, pleas in law, and arguments presented during the written and oral procedure as well as in light of the documents produced⁹³². Such application loses its object if the other party provided a given document in its statement of defence⁹³³.

⁹²⁴ Case T-155/04, *SELEX v Commission* [2006] ECR p. II-4797, para. 22.

⁹²⁵ Case T-9/99, *HFB A. O. v Commission* [2002] ECR p. II-1487, paras. 37–38.

⁹²⁶ Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, *Dansk Rørindustri A.O v Commission* [2005] ECR p. I-5425, paras. 57 and 60.

⁹²⁷ Case C-199/92 P, *Hüls v Commission* [1999] ECR p. I-4287, para. 127 et seq.

⁹²⁸ Joined Cases C-57/00 P and C-61/00 P, *Freistaat Sachsen v Commission* [2003] ECR p. I-9975, para. 47.

⁹²⁹ Case T-23/03, *CAS v Commission* [2007] ECR p. II-289, para. 323.

⁹³⁰ Case T-106/02, *Frederiksen v Parliament* (not published in the ECR), para. 5.

⁹³¹ Joined Cases T-33/89 and T-74/89, *Blackman v Parliament* [1993] ECR p. II-249, 257.

⁹³² Case T-146/00, *Ruf v OHIM* [2001] ECR p. II-1797, paras. 64–65.

⁹³³ Case T-53/91, *Mergen v Commission* [1992] ECR p. II-2041, para. 26.

c) Date of summoning

The summoning takes place either during the oral hearing⁹³⁴ or, if the order is 8 adopted as a result of the hearing, at a subsequent oral hearing⁹³⁵. If a witness is unavailable, he remains at liberty to give a written statement⁹³⁶.

II. Details of the summoning of witnesses (paragraphs 2 to 5)

1. Relevance for witnesses

These provisions specify the procedural details of summoning of witnesses, ranging 9 from the contents of the GC's order (paragraph 2)⁹³⁷ to the oath, if required (paragraph 5). Further details are laid down in Art. 14 of Instructions to the Registrar.

2. Relevance for the parties

The parties are given notice to attend the sitting at which the witness gives his 10 evidence to the GC. This makes party attendance at such a sitting *de facto* compulsory. Non-attendance of a party does not, however, entail any financial sanction while a witness's failure to attend incurs a fine (see Art. 69 (2)). Should the President allow it, representatives of the party may ask the witnesses questions; the parties themselves, on the other hand, may not do so (Art. 68 (4) 4th sub-paragraph).

III. Minutes (paragraph 6)

The minutes of a witness examination are intended to reproduce **exactly** the 11 testimony given by each witness⁹³⁸, in contrast to the minutes of e.g. an oral hearing, which does not reflect the exact contents of the parties' pleadings⁹³⁹.

Article 69 [Obligation to attend]

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

2. If a witness who has been duly summoned fails to appear before the General Court, the latter may impose upon him a pecuniary penalty not exceeding

⁹³⁴ Case T-34/92, *Fiatagri and New Holland Ford v Commission* [1994] ECR p. II-905, para. 22.

⁹³⁵ Case T-94/96, *Hagleitner v Commission* [1998] ECR SC p. II-1467; Case T-311/00, *British American Tobacco (Investments) v Commission* [2002] ECR p. II-2781, para. 11.

⁹³⁶ Case T-311/00, *British American Tobacco (Investments) v Commission* [2002] ECR p. II-2781, paras. 13 to 16.

⁹³⁷ Which differs in the case of the CST since its orders also contain "the date and place of the hearing" (see Art. 59 (2) (b) RP CST).

⁹³⁸ See also Art. 13 (4) of the Instructions to the Registrar.

⁹³⁹ Art. 63 (1) RP GC.

EUR 5 000 and may order that a further summons be served on the witness at his own expense.

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

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

4. Penalties imposed and other measures ordered under this Article shall be enforced in accordance with Articles 280 TFEU and 299 TFEU and Article 164 TEAEC.

The GC has concluded that, in the rare cases in which the GC orders that certain facts be proved by witnesses, this measure is **relevant** and **necessary** in order to rule on the case. Hence any witness duly summoned must appear for examination (paragraph 1) and risks a pecuniary penalty if he fails to appear or refuses to give evidence or take oath (paragraph 2).

Article 70 [Expert's report]

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

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

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

3. At the request of the expert, the General Court may order the examination of witnesses. Their examination shall be carried out in accordance with Article 68.

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

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

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

6. Subject to the provisions of Article 71, 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.'

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

Outline:

I. Introduction	1
1. Expert's report	1
2. Expert used by a party	2
II. Ordering an expert's report (paragraph 1)	3
1. Ex officio or upon application	3
2. Appointing an expert	4
a) Procedure	4
b) Substantial criteria	5
c) Order	6
aa) Adoption	6
bb) Time-limit	7
III. Duties of experts and rights of the parties (paragraphs 2–6)	8
1. Experts	8
2. Parties	9

I. Introduction

1. Expert's report

Ordering an expert's report (and examining witnesses) cannot be undertaken 1 through measures of organization of the procedure; these measures **require** a **measure of inquiry**. Art. 14 of the Instructions to the Registrar lays down further procedural details. Such a report is intended to clarify more or less **complex factual issues**⁹⁴⁰.

2. Expert used by a party

Any party remains free to provide the GC with a **privately** commissioned expert's 2 report⁹⁴¹, with the understanding that such document is then part of that party's submission.

II. Ordering an expert's report (paragraph 1)

1. Ex officio or upon application

Comparing paragraph 1 with Art. 68 suggests that the parties may not apply for 3 the ordering of an expert witness, unlike in the case of witnesses. But in practice, an expert's report may be ordered on the GC's own motion⁹⁴² or upon application of a party⁹⁴³. Such an application needs to include a minimum number of indications

⁹⁴⁰ Case T-36/89, *Nijman v Commission* [1991] ECR p. II-699, 703; Case T-169/89, *Frederiksen v Parliament* [1991] ECR II-1403, 1423; Case T-90/95, *Gill v Commission* [1991] ECR p. II-1231, 1241.

⁹⁴¹ Joined Cases T-57/04 and T-71/04, *Budejovický Budvar O.A. v OHIM* [2007] ECR p. II-1829, para. 169.

⁹⁴² Case T-169/89, *Frederiksen v Parliament* [1991] ECR p. II-1403, para. 40.

⁹⁴³ Case T-31/03, *Grupo Sada v OHIM* [2005] ECR p. II-1667, para. 11.

concerning the necessity of an expert's view as well as an identification of the exact nature of the question(s).

- 4 **2. Appointing an expert. a) Procedure.** The GC does not require any formal agreement between the parties concerning the choice of expert, but may ask said parties to provide suitable names of experts and suggestions regarding the wording of the questions to be examined⁹⁴⁴, with the understanding that the GC is not bound by such proposals. If the parties cannot agree on a given expert, the GC shall designate one on its own motion⁹⁴⁵.

b) Substantial criteria

- 5 According to the case-law, in the absence of any evidence capable of casting doubt on its validity, the contested decision, like all other Community measures, must be **presumed valid**. Consequently, if the applicant is unable to produce evidence capable of shaking that presumption, the GC should not order measures of inquiry⁹⁴⁶. The GC may not order an expert report concerning facts which the deciding authority must determine and to which the GC cannot substitute its own assessment of the facts⁹⁴⁷.
- 6 **c) Order. aa) Adoption.** Normally the GC adopts its decision during the written procedure. If it designates an expert at a later stage, this can lead to the reopening of the oral hearing⁹⁴⁸. The GC may designate one or more⁹⁴⁹ experts.

bb) Time-limit

- 7 The time-limit set for the preparation of the report depends on the circumstances; in a complex case, the GC ordered the expert to provide his opinion within seven months⁹⁵⁰.

III. Duties of experts and rights of the parties (paragraphs 2–6)

1. Experts

- 8 The expert, who might have to take the oath (paragraph 6), shall be under the **supervision** of the Judge-Rapporteur (paragraph 2, 1st sub-paragraph) and may give his opinion only on points which the Judges have expressly referred to him (paragraph 4).

⁹⁴⁴ Case T-36/89, *Nijman v Commission* [1991] ECR p. II-699, para. 11.

⁹⁴⁵ Case T-169/89, *Frederiksen v Parliament* [1991] ECR p. II-1403, 1422.

⁹⁴⁶ Case T-266/94, *Skibsvaerftsforeningen A.O v Commission* [1996] ECR p. II-1399, para. 200.

⁹⁴⁷ Case T-234/95, *Dradenauer Stahlgesellschaft v Commission* [2000] ECR p. II-2603, para. 146.

⁹⁴⁸ Joined Cases T-32/89 and T-39/89, *Manopoulos v ECJ* [1990] ECR p. II-281, 288.

⁹⁴⁹ Joined Cases T-33/89 and T-74/89, *Blackman v Parliament* [1993] ECR p. II-249.

⁹⁵⁰ Case T-36/89, *Nijman v Commission* [1991] ECR p. II-699, paras. 12–13.

2. Parties

The Judges may order the expert to be examined. As the parties have been given 9 notice to attend (paragraph 5), they are entitled to ask the expert questions and to submit their observations on the expert's report within the period appointed for that purpose⁹⁵¹. If the parties find that the expert's opinion goes beyond the points which have been expressly referred to him (paragraph 4), they must express this finding immediately. Any such plea of inadmissibility raised at the stage of the oral hearing is too late and thus inadmissible⁹⁵².

Article 71 [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 the first subparagraph of Article 68(5) and the first subparagraph of Article 70(6) or in the manner laid down by their national law.

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

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

Article 72 [Perjury]

1. The General Court may, after hearing the Advocate General, decide to report to the competent authority referred to in Annex III to the Rules supplementing the Rules of Procedure of the Court of Justice of the Member State whose courts have penal jurisdiction in any case of perjury on the part of a witness or expert before the General Court, account being taken of the provisions of Article 71.

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.

Art. 71 and 72 set the details of the oath taken by a witness or expert. Cases of perjury are sanctioned according to the legislation of the home state of the witness or expert.

⁹⁵¹ Case T-169/89, *Frederiksen v Parliament* [1991] ECR p. II-1403, para. 41.

⁹⁵² Case T-36/89, *Nijman v Commission* [1991] ECR p. II-699, paras. 30 to 31.

Article 73 [Objecting to a witness or expert]

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

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

This provision goes well beyond the classical definition of bias and reflects the fact that the witnesses and experts may contribute significantly to the truth-determining and decision-making processes during a trial. On that basis, a party may not only object to witnesses or experts on the grounds of “incompetence” or “unworthiness”, but also “for any other reason”. This **broad wording** is likely to include the classical reasons of bias such as a conflict of interest, and thus does not cover “any other reason”. In practice this provision is unlikely to play a major role.

Article 74 [Travel and subsistence expenses]

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

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

This provision is identical to Article 73 RP ECJ and is further detailed in Art. 13 and 15 of the Instructions to the Registrar. In practice, the GC applies the criteria of taxation of costs⁹⁵³, which is why travel and subsistence expenses are reimbursed, while other expenses are not⁹⁵⁴.

Article 75 [Letters rogatory]

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

2. Letters rogatory shall be issued in the form of an order which shall contain the name, forenames, description and address of the witness or expert, set out the facts on which the witness or expert is to be examined, name the parties, their

⁹⁵³ Art. 91 RP GC.

⁹⁵⁴ Joined Cases T-33/89 and T-74/89, *Blackman v Parliament* [1993] ECR p. II-249, para. 101.

agents, lawyers or advisers, indicate their addresses for service and briefly describe the subject-matter of the proceedings.

Notice of the order shall be served on the parties by the Registrar.

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

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

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

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

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

The possibility of issuing letters rogatory has so far remained very theoretical, but might become more relevant given the territorial expansions of the European Union.

Article 76 [Minutes]

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

2. The parties may inspect the minutes and any expert's report at the Registry and obtain copies at their own expense.

Article 63 and 68 (6) RP GC govern the minutes regarding the oral hearing and the examination of witnesses. This rule generally applies to hearings connected with a measure of inquiry.

CHAPTER 3A EXPEDITED PROCEDURES

Article 76a [Conditions]

1. The General Court may, on application by the applicant or the defendant, after hearing the other parties and the Advocate General, decide, having regard to the particular urgency and the circumstances of the case, to adjudicate under an expedited procedure.

An application for a case to be decided under an expedited procedure shall be made by a separate document lodged at the same time as the application initiating the proceedings or the defence. That application 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 application an abbreviated version of the application initiating the proceedings and a list of the annexes which are to be taken into consideration only if the case is decided under an expedited procedure.

By way of derogation from Article 55, cases on which the General Court has decided to adjudicate under an expedited procedure shall be given priority.

2. By way of derogation from Article 46(1), where the applicant has requested, in accordance with paragraph 1 of this Article, that the case should be decided under an expedited procedure, the period prescribed for the lodging of the defence shall be one month. If the General Court decides not to allow the request, the defendant shall be granted an additional period of one month in order to lodge or, as the case may be, supplement the defence. The time-limits laid down in this subparagraph may be extended pursuant to Article 46(3).

Under the expedited procedure, the pleadings referred to in Articles 47(1) and 116(4) and (5) may be lodged only if the General Court, by way of measures of organization of procedure adopted in accordance with Article 64, so allows.

3. Without prejudice to Article 48, the parties may supplement their arguments and offer further evidence in the course of the oral procedure. They must, however, give reasons for the delay in offering such further evidence.

4. 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 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.

If one of the parties does not comply with any one of those conditions, the decision to adjudicate under an expedited procedure may be revoked. The proceedings shall then continue in accordance with the ordinary procedure.

Outline:

I. General	1
1. Purpose	1
2. Scope	2
a) First instance	2
b) Other legal remedies	2a
3. Effect	3
4. Similar procedures	4
5. Application	5
6. ECJ	6
7. CST	7
II. Substantial shortening the duration of proceedings.....	8
1. Introduction.....	8
2. Average duration of non-expedited proceedings	9
3. Duration in case of expedited procedure	10
III. Application (paragraph 1).....	11
1. General.....	11

2. Formal requirements.....	12
a) Parties	12
b) Application	13
aa) Separate document	13
bb) Contents.....	14
cc) Number of pages.....	15
dd) Translation.....	16
d) Timing	17
e) Special requirements regarding the application in the main proceedings.....	18
aa) Number of pages.....	18
bb) Abbreviated version	19
(1) Optional.....	19
(2) Compulsory.....	20
3. Criteria regarding the substance	21
a) General.....	21
b) “Particular urgency”	22
c) The “circumstances of the case”	23
aa) Additional requirement.....	23
bb) Case law.....	24
(1) Relevant circumstances.....	24
(2) Area of law.....	25
(3) Degree of difficulty of questions.....	26
4. Decision of the GC.....	27
a) General.....	27
b) Successful applications.....	28
c) Unsuccessful applications.....	30
aa) Examples.....	30
bb) No appeal	31
cc) New decision of the GC	32
dd) Withdrawal of application.....	33
IV. Shortened time-limits (paragraph 2)	34
1. Shorter time-limit	34
2. Reply and rejoinder	35
V. Oral hearing (paragraph 3)	36
VI. Conditions (paragraph 4)	37

I. General

1. Purpose

The “expedited procedure”⁹⁵⁵, which, contrary to the plural the chapter heading 1 indicates, includes only **one variant**, is **not** an **autonomous** legal remedy but an **ancillary procedure** intended to considerably accelerate a direct challenge which the party initiates. Expedited procedures are thus particularly relevant in all proceedings where the time factor is crucial, such as merger control cases.

2. Scope. a) First instance. A party may apply for an expedited procedure in cases 2 involving direct challenges, such as **actions for annulment**.

⁹⁵⁵ E. Barbier de la Serre, CMLR 2006, 783–815; J. Sladič, EuZW 2005, 712 et seq.

b) Other legal remedies

- 2a Pursuant to Art. 144 RP GC, this provision also applies to **appeals** against decisions of the CST. This does not rule out an application for interim relief⁹⁵⁶, but does not apply within such a procedure⁹⁵⁷. The “expedited procedure” also applies to any **interveners**, who do not, however, have an autonomous right to apply for such procedure. It does **not** apply to other ancillary proceedings, such as the **taxation of costs**.

3. Effect

- 3 Accelerating a procedure considerably shortens the average duration of the proceedings by streamlining its written part, ensuring that the oral hearing takes place at a relatively early stage, and inducing the Judge to prioritize judgment in the expedited case over other judgments.

4. Similar procedures

- 4 In contrast, Art. 55 (2) RP GC allows only one request for a decision with **priority**, which, unlike the expedited procedure, has no effect on the written proceedings.

5. Application

- 5 The GC may not initiate an expedited procedure on its own motion; it requires an **application** of a party (see paragraph 1 hereafter). But nothing prevents the GC from **suggesting** such application to the parties, when appropriate⁹⁵⁸. An applicant’s application for expedited procedure does not prevent the defendant from applying for a decision on admissibility (Art. 114 RP GC)⁹⁵⁹.

6. ECJ

- 6 **Art. 133 et seq. RP ECJ** provide an expedited procedure at the ECJ, but **differs** in some respects from its sister provision in Art. 76 a RP GC.

7. CST

- 7 The RP CST provides **no** such procedure. That said, one should keep in mind that the average duration of proceedings at the CST (23,1 months for judgments in 2011) is below or even well below the average duration of proceedings at the GC, where a second exchange of written pleadings is the rule. Thus, the only option for

⁹⁵⁶ Case T-447/04 R, *Capgemini Netherlands v Commission* [2005] ECR p. II-257.

⁹⁵⁷ Case T-345/05 R III, *V v Parliament* [2007] ECR p. II-160, para. 35.

⁹⁵⁸ Case T-95/01, *Coget A. O. v Court of Auditors* [2001] ECR SC p. I-A-191 and II-879, para. 27.

⁹⁵⁹ Case T-114/02, *Babyliss v Commission* [2003] ECR p. II-1279, para. 63.

parties in proceedings at the CST is an application for a particular case to be given **priority**⁹⁶⁰, bearing in mind that the chances of such an application’s success are slim.

II. Substantial shortening the duration of proceedings

1. Introduction

The expedited procedure **substantially** reduces the average duration of the 8 proceedings, i.e. the time span between the submission of the respective application and the handing down of the judgment.

2. Average duration of non-expedited proceedings

Area	2011	2007
Competition:	50.5	42.6
State aid:	32.8	32.4
Intellectual property:	20.3	24.5
Other direct actions:	22.8	21.5
Appeals:	18.3	7.1

9

3. Duration in case of expedited procedure

The duration in case of expedited proceedings and thus their average duration is 10 **substantially shorter** (months are rounded):

Merger control:	7 ⁹⁶¹ , 8 ⁹⁶² , 9 ⁹⁶³ , 10 ⁹⁶⁴ , and 20 ⁹⁶⁵ months;
Competition (Art. 102 TFEU):	12 months ⁹⁶⁶ ;
Public procurement:	2 ⁹⁶⁷ , 4 ⁹⁶⁸ and 10 ⁹⁶⁹ months;

⁹⁶⁰ Art. 47 (2) RP CST.
⁹⁶¹ Case T-77/02, *Schneider v Commission* [2002] ECR p. II-4201.
⁹⁶² Case T-417/05, *Endesa v Commission* [2005] ECR p. II-2533.
⁹⁶³ Case T-282/06, *Sun Chemical v Commission* [2007] ECR p. II-2149.
⁹⁶⁴ Case T-119/02, *Philips v Commission* [2002] ECR p. II-1433.
⁹⁶⁵ Case T-464/04, *Impala v Commission* [2006] ECR p. II-2289.
⁹⁶⁶ Case T-170/06, *Alrosa v Commission* [2007] ECR p. II-2601.
⁹⁶⁷ Case T-211/02, *Tideland v Commission* [2002] ECR p. II-3781.
⁹⁶⁸ Joined Cases T-376/05 and T-383/05, *TEA-CEGOS A. O. v Commission* [2006] ECR p. II-205.
⁹⁶⁹ Case T-333/07, *Entrance Services v Parliament* [2008] (not published in the ECR).

Environmental law:	5 ⁹⁷⁰ , 7 ⁹⁷¹ and 11 ⁹⁷² months;
Agricultural matter:	12 months ⁹⁷³ ;
Anti-Dumping:	7 months ⁹⁷⁴ ;
Common foreign and security policy:	4 ⁹⁷⁵ , 5 ⁹⁷⁶ , 13 ⁹⁷⁷ , 13 ⁹⁷⁸ , 13 ⁹⁷⁹ , 19 ⁹⁸⁰ months;
Staff matters (appeals):	9 ⁹⁸¹ months.

Thus, on average the expedited procedures take substantially less time than a normal procedure, even though there are major differences amongst expedited procedures.

III. Application (paragraph 1)

1. General

- 11 An application for an expedited procedure needs to meet specific procedural and substantive criteria, which are detailed in paragraphs 69 to 80 of the “Practice Directions to Parties”.
- 12 **2. Formal requirements. a) Parties.** In practice this special procedure is used about as often by applicants⁹⁸² as by defendants⁹⁸³. Interveners and third parties are **not entitled** to apply for an expedited procedure.
- 13 **b) Application. aa) Separate document.** The application for the expedited procedure needs to be made through a separate written submission. It may thus **not be integrated** in the application proper or into the statement of defence⁹⁸⁴. This enables the GC to translate the application into its working language within a very short period of time.

⁹⁷⁰ Case T-178/05, *United Kingdom v Commission* [2005] ECR p. II-4807.

⁹⁷¹ Case T-28/07, *Fels A. O. v Commission* [2007] ECR p. II-98.

⁹⁷² Case T-182/06, *Netherlands v Commission* [2005] ECR p. II-4807.

⁹⁷³ Case T-310/06, *Hungary v Commission* [2007] ECR p. II-4619.

⁹⁷⁴ Case T-206/07, *Foshan Shunde Yongjian Housewares v Council* [2008] ECR p. II-1.

⁹⁷⁵ Case T-86/11, *Bamba v Council* [2011] (not yet published in the ECR).

⁹⁷⁶ Case 284/08, *People’s Mojahedin Organization of Iran v Council* [2008] (not published in the ECR).

⁹⁷⁷ Case T-390/08, *Bank Melli Iran v Council* [2008] (not yet published in the ECR).

⁹⁷⁸ Case 341/07, *Sison v Council* [2007] (not yet published in the ECR).

⁹⁷⁹ Joined Cases T-246/08 and T-332/08, *Bank Melli Iran v Council* [2008] (not yet published in the ECR).

⁹⁸⁰ Case T-85/09, *Kadi v Commission* [2009] (not yet published in the ECR).

⁹⁸¹ Case T-572/08 P, *Commission v Traore* [2008] (not yet published in the ECR).

⁹⁸² Case T-5/02, *Tetra Laval v Commission* [2002] ECR p. II-4381, para. 63.

⁹⁸³ Joined Cases T-195/01 R and T-207/01 R, *Government of Gibraltar v Commission* [2001] ECR p. II-3919, para. 44.

⁹⁸⁴ Such application at the stage of the reply or the rejoinder would serve little purpose.

bb) Contents

The application for expedited procedure must contain a brief statement of the 14 reasons for the **special urgency** of the case and any other relevant circumstances. As an alternative to a request for an expedited procedure the applicant may request the GC to give the case **priority** over others (see Art. 55 (2) RP GC).

cc) Number of pages

As a rule the **application** for expedited procedure should not exceed 5 pages⁹⁸⁵. 15

dd) Translation

Even though there is no specific obligation to this effect, it is within the logic of 16 the “particular urgency”, that the applicant should annex a French translation of the application for expedited procedure, as French is the GC’s working language.

d) Timing

Unlike other ancillary proceedings, such as an application for interim proceed- 17 ings, such an application needs to be handed in **at the same time** as the application or the statement of defence⁹⁸⁶. An application for expedited procedure lodged during the judicial holidays may evidently not be treated in an expedited manner.

e) Special requirements regarding the application in the main proceedings. 18

aa) Number of pages. Under normal circumstances an application (and the statement of defence) may not exceed 50 pages⁹⁸⁷. In case of expedited proceedings, the application may not, in principle, exceed 25 pages⁹⁸⁸. Thus, the applicant should opt for a relatively brief description of the facts, including all legal pleas he deems relevant, bearing in mind the rule that no new pleas are admissible at a later stage.

bb) Abbreviated version. (1) Optional. Since the applicant cannot, by definition, be 19 sure that his application for an expedited procedure will be successful, he is well advised to specify in the application “*the pleas in law, arguments or passages of the pleading in question (application or defence) which are put forward only in the event that the case is not decided under the expedited procedure*”⁹⁸⁹. In such a case, the party concerned should annex an **abbreviated version** of the relevant pleading to any application for a case to be decided under the expedited procedure⁹⁹⁰.

(2) Compulsory. Pursuant to Art. 76 a (4), 1st sub-paragraph, the GC may request 20 an abbreviated version of the application or statement of defence⁹⁹¹.

⁹⁸⁵ To date, the “Practice Directions to Parties” (see paras. 15 and 69 to 80) do not contain an explicit limitation of the number of pages of such application, unlike para. 45 of the ECJ’s “Practice Directions relating to direct actions and appeals”.

⁹⁸⁶ See para. 1, sub-para. 2.

⁹⁸⁷ Para. 15 of the “Practice Directions to Parties”.

⁹⁸⁸ Para. 69 of the “Practice Directions to Parties”.

⁹⁸⁹ Art. 76 a (1), sub-para. 2, 2nd sentence RP GC and para. 63 of the “Practice Directions to Parties”.

⁹⁹⁰ Para. 73 of the “Practice Directions to Parties”.

⁹⁹¹ Para. 73 et seq. of the “Practice Directions to Parties”.

- 21 **3. Criteria regarding the substance. a) General.** The expedited procedure is an exception⁹⁹² to the “normal” process and therefore subject to strict conditions, which in practice are interpreted narrowly:

b) “Particular urgency”

- 22 On the face of it, this condition⁹⁹³ resembles the urgency required for the adoption of interim measures, but is only partially analogous⁹⁹⁴, since it requires a “**particular**” urgency. Moreover, unlike in its interpretation of interim proceedings, it would seem that in the context of Art. 76 a RP GC, the GC does not distinguish between the risk of a purely financial and non-financial damage.

- 23 **c) The “circumstances of the case” aa) Additional requirement.** The wording (“**and the circumstances of the case**”)⁹⁹⁵ suggests that this is an additional requirement. But while the “particular urgency” is a *conditio sine qua non* for a successful application for an expedited procedure, it would seem that the “circumstances of the case” primarily means objective reasons **ruling out** an expedited procedure, regardless of the degree of urgency.

- 24 **bb) Case law. (1) Relevant circumstances.** The “circumstances of the case” are the only “relevant” circumstances⁹⁹⁶.

- 25 **(2) Area of law.** The GC also takes into consideration the sector concerned, e.g. merger control, and its own workload at the point in time of the application for expedited procedure.

- 26 **(3) Degree of difficulty of questions.** In one instance, the GC rejected an application for expedited procedure “because of the **complex and delicate nature** of the questions of law raised by the case”⁹⁹⁷. This tends to confirm that “circumstances of the case” pertain to reasons **excluding** an expedited procedure. In another case, the GC took account of the **quantity of annexes as a qualification for rejection**⁹⁹⁸.

- 27 **4. Decision of the GC. a) General.** The GC examines each application after hearing the parties and the Advocate General, but **without an oral hearing**. This does not, however, preclude an informal discussion of the application⁹⁹⁹. The GC usually decides on expedited procedures within a month¹⁰⁰⁰, not by way of a separate reasoned order, as one might expect, but by a simple letter. It sometimes indicates

⁹⁹² Even though Art. 76 a RP GC does not use this expression, unlike Art. 133 (1) RP ECJ.

⁹⁹³ See also Art. 133 RP ECJ.

⁹⁹⁴ Joined Cases T-195/01 R and T-207/01 R, *Government of Gibraltar v Commission* [2001] ECR p. II-3919, para. 94.

⁹⁹⁵ Which is not contained in Art. 62 a RP ECJ.

⁹⁹⁶ See para. 70 of the “Practice Directions to Parties”.

⁹⁹⁷ Case T-306/01, *Ahmed Ali Yusuf A. O. v Council and Commission* [2005] ECR p. II-3533, para. 44.

⁹⁹⁸ Case T-310/01, *Schneider v Commission* [2002] ECR II-4071, para. 63.

⁹⁹⁹ Case T-282/06, *Sun Chemical Group A. O. v Commission* [2005] ECR p. II-2149, para. 35.

¹⁰⁰⁰ Case T-151/03, *Nuova Agricast v Commission* [2005] ECR p. II-1967, para. 7.

its reasons in the judgment. The success rate of applications for expedited procedure is not directly determined by the area of law concerned, as the following overview illustrates:

b) Successful applications

To date applications for expedited procedures have been successful mainly in the 28 following areas:

- merger control¹⁰⁰¹,
- competition¹⁰⁰²,
- public procurement¹⁰⁰³,
- environment¹⁰⁰⁴,
- internal market¹⁰⁰⁵,
- fisheries policy¹⁰⁰⁶
- agriculture¹⁰⁰⁷.

The Judge may use his discretion as to whether the expedited procedure extends 29 to all the legal pleas raised in an application or only with to some, or even only to one¹⁰⁰⁸ of them.

c) Unsuccessful applications. aa) Examples. The GC has rejected applications in 30 the following areas: access to documents¹⁰⁰⁹, public procurement¹⁰¹⁰, state aid¹⁰¹¹, dumping¹⁰¹², competition/liberalization of services¹⁰¹³. An unsuccessful application means that the proceedings will follow the normal timing for cases before the GC, unless a party applies for and receives priority for his case (Art. 55 (2) RP GC).

¹⁰⁰¹ Case T-77/02, *Schneider v Commission* [2002] ECR p. II-4201, para. 30 et seq.; Case T-310/01, *Schneider v Commission* [2002] ECR p. II-4071, paras. 63 and 65; Case T-5/02, *Tetra Laval v Commission* [2003] ECR p. II-4381, para. 64; Case T-119/03, *Royal Philips v Commission* [2004] ECR p. II-3471, para. 61; Case T-114/03, *Babyliss v Commission* [2003] ECR p. II-1279, para. 67; Joined Cases T-346/02 and T-347/02, *Cableuropa A. O. v Commission* [2003] ECR p. II-4251, para. 30; Case T-87/05, *EDP v Commission* [2005] ECR p. II-3745, paras. 31–32.

¹⁰⁰² Case T-170/06, *Alrosa v Commission* [2007] ECR p. II-2601.

¹⁰⁰³ Case T-211/02, *Tideland v Commission* [2002] ECR p. II-3781, para. 12; Joined Cases T-376/05 and T-383/05, *TEA-CEGOS A. O. v Commission* [2006] ECR p. II-205, paras. 34–36.

¹⁰⁰⁴ Case T-178/05, *United Kingdom v Commission* [2005] ECR p. II-4806, paras. 18–19.

¹⁰⁰⁵ Case T-182/06, *Netherlands v Commission* [2007] ECR p. II-1983.

¹⁰⁰⁶ Case T-209/04, *Spain v Commission* [2005] ECR p. II-47, para. 20.

¹⁰⁰⁷ Case T-310/06, *Hungary v Commission* [2007] ECR p. II-4619.

¹⁰⁰⁸ Case T-466/07, *Osram v Council* [2008] (not published in the ECR).

¹⁰⁰⁹ Case T-76/02, *Mara Messina v Commission* [2003] ECR p. II-3203, para. 11; Case T-47/01, *Co-Frutta v Commission* [2003] ECR p. II-4441, para. 19; Case T-2/03, *Verein für Konsumenteninformation v Commission* [2005] ECR p. II-1121, para. 26; Joined Cases T-391/03 and T-70/04, *Franchet A. O. v Commission* [2006] ECR p. II-2023, para. 26; Case T-237/02, *Technische Glaswerke Ilmenau v Commission* [2006] ECR p. II-5131, para. 13.

¹⁰¹⁰ Case T-148/04, *TQ3 Travel Solutions v Commission* [2005] ECR p. II-2627, para. 20.

¹⁰¹¹ Case T-198/01, *Technische Glaswerke Ilmenau v Commission* [2004] ECR p. II-2717, para. 30; T-210/02, *British Aggregates Association v Commission* [2006] ECR p. II-2789; Case T-289/03, *BUPA v Commission* [2007] ECR p. II-81, para. 53.

¹⁰¹² Case T-132/01, *Euroalliaes v Commission* [2003] ECR p. II-2359, para. 17.

¹⁰¹³ Case T-313/02, *Meca-Medina A. O. v Commission* [2004] ECR p. II-3291, para. 22.

bb) No appeal

- 31 The unsuccessful party cannot appeal against the GC's decision rejecting its application for expedited proceedings. The rules of procedure do not provide any other legal remedy in response to such a rejection. This may have to do with the fact that the GC's decision is the result of an **assessment of facts** ("particular urgency", etc.) and that an expedited procedure is thus not a legal remedy proper. There is therefore hardly a reason to change the status quo.

cc) New decision of the GC

- 32 A decision rejecting an application for expedited procedure does not exclude a subsequent positive decision¹⁰¹⁴.

dd) Withdrawal of application

- 33 Even a successful application may be withdrawn, but at some point transition to a "normal" procedure is no longer possible.

IV. Shortened time-limits (paragraph 2)**1. Shorter time-limit**

- 34 While in Art. 55 (2), the relevant case is merely given **priority**, a successful application for expedited procedure results in a shortening of the time-limit for the statement of defence from two months to **one month**, though such time-limits can be extended on request.

2. Reply and rejoinder

- 35 Following the same logic, a reply and rejoinder and a statement of intervention are **absolute exceptions** in expedited proceedings.

V. Oral hearing (paragraph 3)

- 36 The acceleration of the procedure does not result in a suppression of the oral hearing. Quite the opposite: since the parties are normally not entitled to a second exchange of written submissions (reply and rejoinder) in expedited proceedings, the hearing provides the party an opportunity to supplement its arguments, provided that the parties remain within the limits of Art. 48 RP GC¹⁰¹⁵. The oral hearing is normally preceded by an **informal meeting**.

¹⁰¹⁴ T-310/01, *Schneider v Commission* [2002] ECR p. II-4071, para. 35.

¹⁰¹⁵ Joined Cases T-346/02 and T-347/02, *Cabeleuropa A. O. v Commission* [2003] ECR p. II-4251, para. 32.

VI. Conditions (paragraph 4)

In case of a positive decision on expedited proceedings, the GC may prescribe **conditions** as to the **volume** and the **presentation** of the written pleadings. In practice, however, the GC proceeds the other way round, i.e. only when the conditions prescribed are fulfilled, e.g. to present a summary of the application, will it grant an expedited procedure¹⁰¹⁶.

CHAPTER 4

STAY OF PROCEEDINGS AND DECLINING OF JURISDICTION BY THE GENERAL COURT

Article 77 [Staying the proceedings]

Without prejudice to Article 123(4), Article 128 and Article 129(4), 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 joint request of the parties;

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

Outline:

I. General	1
1. Purpose	1
2. <i>Lex generalis</i>	2
3. Ex officio or upon application	3
II. Cases	4
1. Art. 54 (3) Statute ECJ (lit. a)	4
a) Main proceedings	4
aa) No matter which legal remedy	4
bb) Rights of defence	5
cc) Duration of the stay	6
b) No stay in interim proceedings	7
2. Appeal regarding a part of the action at first instance (lit. b)	8
3. Joint request of the parties (lit. c)	9
a) Joint request	9
b) Examples	10
4. Proper administration of justice (lit. d)	11

¹⁰¹⁶ Case T-310/01, *Schneider v Commission* [2002] ECR p. II-4071, paras. 63 and 65; T-87/05, *EDP v Commission* [2005] ECR p. II-3745, paras. 31 and 32.

I. General

1. Purpose

- 1 Staying the proceedings means “freezing” the case for reasons of the **proper administration of justice**. Thus the decision to stay a case is not in the hands of the parties, but needs to be ordered by the GC. Pursuant to Art. 77, there are **four categories** of reasons for staying a pending case, lit. a) to c) being specific cases, while the newly added lit. d) provides a general clause.

2. *Lex generalis*

- 2 Article 77 is *lex generalis* and thus only applies in so far as no specific rule exists, as in the case of exceptional review procedures such as third-party proceedings¹⁰¹⁷, the revision of judgments,¹⁰¹⁸ and the interpretation of such judgments¹⁰¹⁹.

3. Ex officio or upon application

- 3 A case is stayed upon the GC’s **own motion** or upon a **common application** of the parties. The letter does not require a commonly signed document; two distinct submissions reflecting a consensus between the parties suffices.

II. Cases

- 4 1. Art. 54 (3) Statute ECJ (lit. a). a) **Main proceedings**. aa) **No matter which legal remedy**. The question of whether it is appropriate to stay a case typically arises¹⁰²⁰ whenever the ECJ and the GC “*are seized of cases in which the same relief is sought, the same issue of interpretation is raised or the validity of the same act is called in question*” (see Art. 54 (3) Statute ECJ). Staying a case pending at the GC is possible regardless of whether the legal remedies at both instances are identical and thus regardless of whether the proceedings at the ECJ are an **action for annulment**¹⁰²¹, a **referral for preliminary ruling**¹⁰²², or an **appeal**¹⁰²³.

bb) Rights of defence

- 5 The parties shall be **heard** prior to the GC staying proceedings, and, on completion of proceedings before the ECJ, shall also be heard on the question of the

¹⁰¹⁷ Art. 123 (4) RP GC.

¹⁰¹⁸ Art. 128 RP GC.

¹⁰¹⁹ Art. 129 (4) RP GC.

¹⁰²⁰ See also Art. 80 RP GC.

¹⁰²¹ Case T-63/91, *White v Commission* (not published in the ECR).

¹⁰²² Case T-44/98, *Emesa Sugar v Commission* [2001] ECR p. II-3578, paras. 36–37.

¹⁰²³ Joined Cases T-611/97, T-619/97, T-627/97, *Transfluvia v Council and Commission* [2000] ECR p. II-2405, para. 7.

progress of the proceedings¹⁰²⁴. The fact that they are being heard does not provide the parties with any subjective rights as to the stay of the proceedings.

cc) Duration of the stay

Since the duration of the stay of proceedings depends upon the duration of the proceedings at the ECJ, any such stay may apply for some time, sometimes even years¹⁰²⁵.

b) No stay in interim proceedings

Neither the Statute ECJ nor the RP GC contain any specific provision under which the GC may stay proceedings for interim relief or decline jurisdiction concerning an application in order to stay a measure, when a parallel application for stay of the same measure is pending before the ECJ. The ordering of such a measure is, in principle, incompatible with the emergency nature and purpose of interim relief¹⁰²⁶.

2. Appeal regarding a part of the action at first instance (lit. b)

This provision intends to prevent the GC from hearing a case which is based on an appeal pending at the ECJ and which might thus result in **dissenting judgments**¹⁰²⁷.

3. Joint request of the parties (lit. c). a) Joint request. This provision, which requires consensus between the parties, is of great practical significance. It is **stricter** than Art. 55 (1) RP ECJ in that it requires a “joint” request or suspension, with the understanding that as there is no need for a commonly signed document¹⁰²⁸, separate submissions suffice as long as they express the required consensus between parties. It is clear, however, that the GC is not bound by such agreement even though such an agreement increases the probability of a stay.

b) Examples

In practice, the GC has stayed cases in order to await the outcome of another case pending before the same jurisdiction, either because the case was **closely linked**¹⁰²⁹ or because it raised **analogous questions of law**¹⁰³⁰. The same rule applies in order to enable the parties to reach an **amicable settlement**¹⁰³¹. These same provisions¹⁰³² apply to the CST¹⁰³³.

¹⁰²⁴ Case T-99/97, *Stols v Council* [2001] ECR SC p. II-1061, para. 16.

¹⁰²⁵ Approximately 5 years in Case T-533/93, *Bouma v Council and Commission* [2001] ECR p. II-203, 211.

¹⁰²⁶ Case T-76/96 R, *National Farmer's Union v Commission* [1996] ECR p. II-815, paras. 31–32.

¹⁰²⁷ Case T-485/93, *Société Louis Dreyfus v Commission* [2000] ECR p. II-3659, para. 28.

¹⁰²⁸ Case F-124/05, *A. v Commission* [2007] (not yet published in the ECR).

¹⁰²⁹ Case T-97/94, *Coussios v Commission* [1998] ECR p. II-1879.

¹⁰³⁰ Case T-49/97, *TAT European Airlines v Commission* [2000] ECR p. II-51.

¹⁰³¹ Case T-46/90, *Devillez A. O. v Parliament* [1993] ECR p. II-699, 705.

¹⁰³² Art. 71 RP CST.

¹⁰³³ See e.g. Case F-38/11, *Alari v Parliament* [2011] (not published in the ECR).

4. Proper administration of justice (lit. d)

- 11 This general clause, which is also found in the RP CST¹⁰³⁴, has been recently inserted into Art. 77. By expressing this important and yet unwritten principle of law, this clause provides the GC with a high degree of flexibility when applying Art. 77 RP GC.

Article 78 [Decision to stay]

The decision to stay the proceedings shall be made by order of the President after hearing the parties and the Advocate General; the President may refer the matter to the General Court. A decision ordering that the proceedings be resumed shall be adopted in accordance with the same procedure. The orders referred to in this Article shall be served on the parties.

1. Decision of the President

- 1 The President of the respective chamber of Judges decides whether a given case should be stayed. Such orders are never published in the ECR, but are instead found on the Court's website.

2. Hearing the parties

- 2 The parties are considered to be heard since they are given the possibility to express their views in writing; there is no oral hearing. Hearing the parties is redundant in the event of a joint request within the meaning of Art. 77 lit. c) RP GC.

3. No appeal

- 3 Orders by which proceedings are stayed cannot be challenged through an appeal or any other legal remedy.

Article 79 [Duration of the stay]

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

While proceedings are stayed time shall, except for the purposes of the time-limit prescribed in Article 115(1) for an application to intervene, cease to run for the purposes of prescribed time-limits for all parties.

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

¹⁰³⁴ Art. 71 (1) d) RP CST.

From the date of resumption time shall begin to run afresh for the purposes of the time-limits.

I. Taking effect of the stay (paragraph 1)

1. Coming into force

Unlike a judgment, orders of stay do not necessarily come into force on the day 4 of their adoption, since the GC may set a different date of effectiveness. When being heard (Art. 78) the parties may suggest a date if necessary.

2. Legal effect of a stay

A “stay” means that until further notice the proceedings concerned remain 5 exactly in the state where they were at the time of the stay. This means that during the stay neither the parties nor the GC may adopt any procedural acts relating to the stayed proceedings. Consequently, the time-limits remain “frozen” during the stay.

3. Exception for interveners

The exception for interveners is justified, since during the six-week time-limit¹⁰³⁵ 6 they do not yet have the status of a party.

II. End of the stay (paragraph 2)

In general, the GC shall for reasons of legal certainty indicate the end of the stay 7 in its order.

Article 80 [Decision declining 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 way of an order which shall be served on the parties.

I. Lex specialis

This provision implements Art. 54 (3) Statute ECJ and is *lex specialis* to Art. 78 1 RP GC. Art. 54 (3) Statute ECJ concerns the comparatively rare case of an action of annulment pending at the GC which aims to annul of a legal act which is simul-

¹⁰³⁵ Art. 115(1) RP GC.

taneously being challenged through an action of annulment at the ECJ. This also occurs if the object of the two cases is not the same, as long as both cases aim at annulling the same legal act.

II. Order adopted by GC

- 2 Unlike what is provided in Art. 78 RP GC, the GC, not the President, adopts this order. Art. 80 does not provide for parties' need to be heard, even though hearing parties is common practice¹⁰³⁶. Prior to staying the procedure, the GC needs to verify whether the ECJ has already stayed the proceedings on the basis of Article 54 (3) Statute ECJ.

CHAPTER 5 JUDGMENTS

Preliminary

I. Judgments

- 1 The fifth chapter concerns judgments: their compulsory contents (Art. 81); their delivery (Art. 82) and legal effects (Art. 83); their correction (Art. 84) and completion as regards the operative part on costs (Art. 85), if necessary, and their publication (Article 86).

II. Orders

- 2 The current version of the RP GC does **not** provide an equivalent provision regarding orders, in contrast to the RP CST¹⁰³⁷ and the recently adopted recast of the RP ECJ. Thus, Art. 81 RP GC also apply, at least *de facto*, to orders of the GC.

Article 81 [Judgments]

The judgment shall contain:

- a statement that it is the judgment of the General Court,
- the date of its delivery,
- the names of the President and of the Judges taking part in it,
- the name of the Advocate General, if designated,
- the name of the Registrar,
- the description of the parties,

¹⁰³⁶ Case T-41/97, *Antillean Rice Mills v Council and Commission* (not published in the ECR).

¹⁰³⁷ Art. 81 and 82 RP CST.

- the names of the agents, advisers and lawyers of the parties,
- a statement of the forms of order sought by the parties,
- a statement, where appropriate, that the Advocate General delivered his opinion,
- a summary of the facts,
- the grounds for the decision,
- the operative part of the judgment, including the decision as to costs.

Outline:

I. Introduction	1
II. Content of the judgments	2
1. “Summary of the facts”	2
a) General	2
b) “Summary”	4
2. Order sought by the parties	5
3. Grounds for the decision	6
a) General	6
b) Separate chapter	7
c) Degree of detail	8
aa) Clarity	8
bb) Limits	9
4. Operative part of the judgment	10

I. Introduction

This catalogue of requirements applies to **all types** of judgments, including 1 interlocutory judgments¹⁰³⁸, which means that any infringement included in this provision may be subject to an **appeal**. The archives of the Registry store original of GC judgments and orders by chronological order. A certified copy is furnished to the parties¹⁰³⁹.

II. Content of the judgments

1. “Summary of the facts” a) **General**. Until the early 1990 s, the chapter regarding 2 the facts of the case was rather exhaustive since for the ECJ published both the judgments and the **reports for the hearings**. This granted third parties an indirect access to the contents of the written submissions. Today, due to concerns about financial and time constraints, the report for the hearing is **no longer published**.

While this may be justifiable in order to limit **costs** (translation and publication 3 costs) it would require no particular effort to publish the report for the hearing on the ECJ’s **website** together with the judgment.

¹⁰³⁸ Joined Cases T-79/96, T-260/97 and T-117/98, *Camar and Tico v Commission and Council* [2000] ECR p. II-2193.

¹⁰³⁹ Art. 15 of the “Instructions to the Registrar”.

b) “Summary”

- 4 Judgments need to contain a “summary of the facts” which, as the term suggests, is limited to that which it needs in order to be **sufficiently detailed**, since these facts provide a basis for the subsequent **legal assessment** of the facts, which may be reviewed by way of an appeal.

2. Order sought by the parties

- 5 This part is purely descriptive, since the parties determine the forms of order they will seek.

- 6 **3. Grounds for the decision.** a) **General.** The obligation to state reasons is an **essential procedural requirement**, which is the central part of justifying the operative part of the Judgment. The parties will assess whether the judgment is convincing or not on the basis of this reasoning, and will also determine whether or not there is room for **appeal** based on these reasons. The grounds of the judgment (and its operative part) are also of particular importance whenever the defendant loses the case either partly or entirely and must thus **implement** the judgment. It is thus clear, although this gets muddled in practice, that the obligation to state reasons is **distinct** from the question of whether the reasons given are legally sound, which pertains to the substantive legality of the contested measure¹⁰⁴⁰.

b) Separate chapter

- 7 In its judgment, the GC first summarizes the parties’ views regarding a given legal ground, which the Judges then assess. The same procedure applies if a given legal ground comprises several aspects, as is often the case.
- 8 c) **Degree of detail.** aa) **Clarity.** Thus, according to settled case-law, the summary of grounds for judgment must **clearly** and **unequivocally** disclose the GC’s thinking, so that the persons concerned can **understand** the justification for the decision taken and so that the ECJ can exercise its power of **review** if necessary¹⁰⁴¹. This also implies that the GC needs to assess **all the legal grounds** raised by a party¹⁰⁴².

bb) Limits

- 9 However, the GC is not obliged to respond in detail to **every** single argument advanced by the applicant¹⁰⁴³, particularly if the argument was **not** sufficiently clear and precise¹⁰⁴⁴ or if it has been raised inadmissibly in the course of the proceed-

¹⁰⁴⁰ Case T-515/09 P, *Marcuccio v Commission* [2010] (not published in the ECR), para. 30.

¹⁰⁴¹ Case C-202/07 P, *France Télécom v Commission* [2009] ECR p. I-2369, para. 29 and the case-law cited.

¹⁰⁴² Case T-9/09 P, *Marcuccio v Commission* [2010] ECR p. II-0000, para. 30.

¹⁰⁴³ Case T-248/08 P, *Doktor v Council* [2010] ECR p. II-0000, para. 64.

¹⁰⁴⁴ Case C-274/99 P, *Connolly v Commission* [2001] ECR p. II-1611, para. 121; Case C-197/99 P, *Belgium v Commission* [2003] ECR p. I-8461, para. 81.

ings¹⁰⁴⁵. Under certain circumstances, the GC may refer to the reasoning contained in another judgment¹⁰⁴⁶. In the interest of good administration of justice, the Judge may also abstain from assessing the admissibility of an application, if it is in any event unfounded¹⁰⁴⁷. Merely asserting a principle is not enough for a ruling to be considered a proper judgment, however¹⁰⁴⁸.

4. Operative part of the judgment

The operative part of the judgment, including the part on costs, forms the **core** of 10 any judgment. This operative part together with the grounds for the decision play an important role whenever the party concerned needs to implement the judgment.

Article 82 [Delivery of the judgments]

1. The judgment shall be delivered in open court; the parties shall be given notice to attend to hear it.

2. The original of the judgment, signed by the President, by the Judges who took part in the deliberations and by the Registrar, shall be sealed and deposited at the Registry; the parties shall be served with certified copies of the judgment.

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

I. Judgments

The delivery of the judgment in open Court takes place in many instances at 9:30 1 am by reading the **operative part** of the judgment which often takes place prior to an oral hearing in another case. In practice, the parties who have been given notice to attend the delivery do **not need to attend**. They may always call the Registry in order to learn about the operative part of the judgment over the telephone, while bearing in mind that the Registry will not accept any requests of sending judgments by telefax or Email. On the other hand, the full judgment is normally available on the Court's website later in the morning of the day on which it has been delivered.

II. Orders

Orders, unlike judgments, are not delivered in open court, no matter how 2 relevant they are. That said, they are notified to the parties, which may take several

¹⁰⁴⁵ Joined Cases C-395/96 P and C-396/96 P, *Compagnie Maritime Belge Transports* [2000] ECR p. I-1365, para. 106–108.

¹⁰⁴⁶ Case T-112/97, *Monsanto v Commission* [1999] ECR p. II-1277, paras. 63 to 65.

¹⁰⁴⁷ Case F-54/10, *Verheyden v Commission* [2011] ECR SC p. II-0000, para. 31.

¹⁰⁴⁸ Case C-90/09 P, *General Química and Others v Commission* [2011] ECR p. I-0000, paras. 59, 61–62.

days. The Court's website provides a section of those documents, which are **not published** in the ECR and turn out to be a precious source of information.

Article 83 [Binding judgment]

Subject to the provisions of the second paragraph of Article 60 of the Statute, the judgment shall be binding from the date of its delivery.

Outline:

I. General	1
II. Duration of the procedure	2
1. Principle of reasonable duration	2
a) General.....	2
b) Reasonableness.....	3
c) Consequences of an unreasonable duration	4
aa) Lawfulness of the challenged decision.	4
bb) Damages	5
2. Individual cases	6
a) Beyond a reasonable period.....	6
b) Within a reasonable period	7

I. General

- 1 Pursuant to this provision, a judgment shall be **binding** from the **date of its delivery**, unless a party has lodged an appeal **and** successfully requested a suspensory effect (Art. 60 Statute ECJ). If several applications pending before the GC are all directed against the same legal act, the GC is not required to hand down its judgments regarding all applications at the same time. Art. 50 RP GC expressly provides that the GC may exercise its discretion regarding whether cases which have the same subject are to be joined. The GC may always remove such order afterwards¹⁰⁴⁹.

II. Duration of the procedure

- 2 **1. Principle of reasonable duration.** a) **General.** The duration of the proceedings, i.e. the period between the filing of the application and the handing down of the ruling, is, unlike time-limits, not subject to a written procedural rule. Thus, the general principle of Community law providing that everyone is entitled to a **fair hearing**, which is inspired by Article 6(1) of the ECHR, and includes in particular the right to legal process within a **reasonable period**¹⁰⁵⁰, applies.

¹⁰⁴⁹ Case C-51/92 P, *Hercules Chemicals v Commission* [1999] ECR p. I-423, para. 85.

¹⁰⁵⁰ Case T-66/01, *Imperial Chemical Industries v Commission* [2010] ECR p. II-0000, para. 114.

b) Reasonableness

The reasonableness of a period is to be appraised in view of the specific **circumstances** of each case and, in particular, the **importance** of the case for the person concerned, as well as its **complexity** and the **conduct** of the applicant and of the competent authorities¹⁰⁵¹. That list of criteria is not exhaustive, and assessing whether a period is reasonable does not require a systematic examination of each circumstance of the case in the light of each criterion. Rather, a period is deemed reasonable should the duration of the proceedings appear justified in the light of one of said criteria¹⁰⁵². Thus, the GC may deem that the complexity of a case justifies a duration which is *prima facie* too long¹⁰⁵³.

c) **Consequences of an unreasonable duration.** aa) **Lawfulness of the challenged decision.** The party concerned needs to provide evidence that the duration of the procedure had an **effect** on the lawfulness of the contested decision and thus on the outcome of the case¹⁰⁵⁴.

bb) Damages

If proven, the GC's failure to adjudicate within a reasonable time can give rise to a claim for damages brought against the European Union under the provisions of Article 268 TFEU in conjunction with the second paragraph of Article 340 TFEU¹⁰⁵⁵.

2. **Individual cases.** a) **Beyond a reasonable period.** A period of about five years and six months in a competition case may be considered an **unreasonable period**¹⁰⁵⁶.

b) Within a reasonable period

A duration of about four years and three months in a complex trial may be considered reasonable¹⁰⁵⁷.

Article 84 [Rectifying judgments]

1. Without prejudice to the provisions relating to the interpretation of judgments, the General Court may, on its own motion or on application by a party made within two weeks after the delivery of a judgment, rectify clerical mistakes, errors in calculation and obvious slips in it.

¹⁰⁵¹ Case C-185/95 P, *Baustahlgewebe v Commission* [1998] ECR p. II-8471, para. 29.

¹⁰⁵² Case C-194/99 P, *Thyssen Stahl v Commission* [2003] ECR p. II-10821, paras. 154 to 156; Case C-195/99 P, *Krupp Hoesch v Commission* [2001] ECR p. I-10937, paras. 121 to 123; Case C-199/99 P, *Corus v Commission* [2001] ECR p. I-11177, paras. 41 to 43.

¹⁰⁵³ Case T-66/01, *Imperial Chemical Industries v Commission* [2010] ECR p. II-0000, para. 114.

¹⁰⁵⁴ Case T-66/01, *Imperial Chemical Industries v Commission* [2010] ECR p. II-0000, para. 116.

¹⁰⁵⁵ Case C-385/07P, *Der Grüne Punkt – Duales System Deutschland v Commission* [2009] ECR p. I-0000, para. 195.

¹⁰⁵⁶ Case C-185/95 P, *Baustahlgewebe v Commission* [1998] ECR p. II-8471 et seq.

¹⁰⁵⁷ Joined Cases C-403/04 P and C-405/04 P, *Sumitomo Metal Industries A.O. v Commission* [2007] ECR p. II-729, paras. 115–122.

2. The parties, whom the Registrar shall duly notify, may lodge written observations within a period prescribed by the President.

3. The General Court shall take its decision in closed session.

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

Outline:

I. General	1
1. Judgments and orders	1
2. Written submissions	2
II. Application (paragraph 1)	3
1. Conditions	3
a) Time-limit	3
aa) GC	3
bb) CST	4
b) Application	5
2. Errors and mistakes likely to be rectified	6
a) Clerical mistakes	6
b) Errors in calculation	7
c) Obvious slips	8
d) Omissions	9
III. Right to be heard (paragraph 2)	10
IV No oral hearing (paragraph 3)	11
V. Annexing the rectification order (paragraph 4)	12

I. General

1. Judgments and orders

- 1 Clerical mistakes and similar manifest errors (such as errors in rejecting an application as inadmissible, despite not being explicitly mentioned in Art. 84 RP GC)¹⁰⁵⁸ in judgments or orders¹⁰⁵⁹ may be corrected on the GC's own motion or upon application by one or both parties. The changes may pertain to the reasoning and/or the operative part¹⁰⁶⁰ of the GC's decision, but may also concern to seemingly less important elements, such as a view expressed by a party¹⁰⁶¹.

2. Written submissions

- 2 Parties enjoy the same right concerning their written submission, with the understanding that such "corrigendum", which may be sent to the GC at any time during the proceedings, may not change the substance of such submissions.

¹⁰⁵⁸ Joined Cases T-219/09 and T-326/09, *Albertini and Others v Parliament* [2011] (not published in the ECR).

¹⁰⁵⁹ See e.g. T-287/01, *Biolettrica v Commission* [2006] (not published in the ECR).

¹⁰⁶⁰ Case T-352/09, *Novácke chemické závody v Commission* [2010] (not published in the ECR).

¹⁰⁶¹ Case T-351/02, *Deutsche Bahn AG v Commission* [2006] (not published in the ECR).

II. Application (paragraph 1)

1. Conditions. a) Time-limit. aa) GC. The time-limit of **two weeks** (plus¹⁰⁶² 10 3 calendar days on account of distance)¹⁰⁶³ begins as of the date upon which the judgment was **handed down**, i.e. not as of the date of notification to the parties. This time-limit applies only to **parties**, and thus does not restrict the GC from acting on its own motion after this time period. Non-compliance with this time-limit results in the application being rejected as inadmissible¹⁰⁶⁴.

bb) CST

In proceedings at the **CST**, the time-limit is **one month**¹⁰⁶⁵ (plus 10 calendar days 4 on account of distance). It is unclear why this time-limit is twice as long as the one applying to proceedings at the GC.

b) Application

Any application under this provision must not only comply with the aforemen- 5 tioned time-limit, but must also be signed by a lawyer; unsigned or otherwise informal applications are inadmissible¹⁰⁶⁶.

2. Errors and mistakes likely to be rectified. a) Clerical mistakes. This category 6 includes misspelled words¹⁰⁶⁷, grammatical mistakes¹⁰⁶⁸, inversions of numbers¹⁰⁶⁹, errors regarding the exact name of the parties¹⁰⁷⁰ or their agents¹⁰⁷¹, as well as more substantive changes, e.g. concerning numbers of rectifications¹⁰⁷², deletions¹⁰⁷³, or removal of negations¹⁰⁷⁴.

b) Errors in calculation

This term is both self-explanatory and extremely rare in practice. 7

¹⁰⁶² Art. 102 (2) RP GC.

¹⁰⁶³ Case T-138/01 R, *F. v Court of Auditors* [2003] ECR SC p. II-987.

¹⁰⁶⁴ Case T-169/08, *DEI v Commission* [2010] (not published in the ECR).

¹⁰⁶⁵ Art. 84 (1), 1st sub-para. RP CST.

¹⁰⁶⁶ Case T-138/01 R, *F. v Court of Auditors* [2003] ECR SC p. II-987, paras. 2–3.

¹⁰⁶⁷ Case T-323/02 REC, *La Baronia de Turis v OHIM* [2006] ECR p. II-2085.

¹⁰⁶⁸ Case T-174/05, *Elf Aquitaine v Commission* [2009] (not published in the ECR).

¹⁰⁶⁹ Joined Cases T-259/02 to T-264/02 and T-271/02, *Raiffeisen Zentralbank Österreich A. O. v Commission* [2006] ECR p. II-5167.

¹⁰⁷⁰ Case T-113/06, *Fjord Seafood Norway and Others v Council* [2010] (not published in the ECR).

¹⁰⁷¹ Joined Cases T-254/00, T-270/00 et T-277/00, *Hotel Cipriani v Commission* [2009] (not published in the ECR).

¹⁰⁷² Cases T-385/07, *FIFA v Commission* (not yet published in the ECR).

¹⁰⁷³ Case T-55/08, *UEFA v Commission* (not yet published in the ECR).

¹⁰⁷⁴ Case T-68/08, *FIFA v Commission* (not yet published in the ECR).

c) Obvious slips

- 8 This category is a **general clause** which covers a broad variety of inaccuracies, such as a missing word which distorts the sense of the sentence¹⁰⁷⁵; the omission of an entire sentence, which might not be always easily detectable; errors resulting from word-processing¹⁰⁷⁶; mistaken dates¹⁰⁷⁷; an erroneous indication of the name of the Registrar¹⁰⁷⁸; translation errors¹⁰⁷⁹; a confusion between “inadmissible” and “unfounded”¹⁰⁸⁰; etc.

d) Omissions

- 9 Omissions may be rectified in so far as it is obvious that e.g. one or several words are missing. That said, a rectification may not result in the addition of e.g. new sentences, let alone entire paragraphs unless one sentence is missing in a given **linguistic version** of the judgment¹⁰⁸¹.

III. Right to be heard (paragraph 2)

- 10 Hearing the parties during the rectification of obvious errors or mistakes is by definition more *pro forma* than anything else, since they usually have no objection to the correction¹⁰⁸².

IV No oral hearing (paragraph 3)

- 11 Given the purely technical nature of such rectification and given the fact that the parties are already heard in writing¹⁰⁸³, any further procedural step, whether a written submission and/or an oral hearing, would be manifestly disproportionate if not absurd.

V. Annexing the rectification order (paragraph 4)

- 12 Instead of withdrawing the judgment concerned and replacing it by a rectified version, it is more economical to adopt a rectification order and then annex it to the judgment or order concerned.

¹⁰⁷⁵ Case T-43/02, *Jungbunzlauer v Council* [2007] ECR p. II-3435.

¹⁰⁷⁶ Case T-351/02, *Deutsche Bahn v Commission* [2006] ECR p. II-1047.

¹⁰⁷⁷ Case T-208/10, *Cree Inc. v OHIM* [2011] (not published in the ECR).

¹⁰⁷⁸ Case T-195/03, *Thommes v Commission* (not yet published in the ECR).

¹⁰⁷⁹ Case T-43/02, *Jungbunzlauer v Council* [2007] ECR p. II-3435.

¹⁰⁸⁰ Case T-487/08, *Kureha v OHIM* [2011] (not published in the ECR).

¹⁰⁸¹ Case T-351/02, *Deutsche Bahn AG v Commission* [2006] (not published in the ECR).

¹⁰⁸² Case T-32/04 REC, *Lichtwer Pharma v OHIM* [2007] (not published in the ECR), para. 3.

¹⁰⁸³ Para. 2.

Article 85 [Supplementing the part on costs]

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

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

After these observations have been lodged, the General Court shall decide both on the admissibility and on the substance of the application.

I. General

This provision only allows for **supplementing**¹⁰⁸⁴ the **operative part** in so far as it relates to **costs** and thus reflects the fact that the parties may not lodge an appeal limited to the part of the judgment pertaining to costs. 1

II. Upon application

1. General

Unlike the correction of mistakes and inaccuracies (Art. 84 RP GC), the GC may 2 not on its own motion supplement the operative part regarding the costs. Such a supplement requires an **application** by a party, i.e. not necessarily both parties, which depends on the following two conditions:

2. Omission to give a decision on costs

An omission to give a decision on costs is a very rare event and is not equivalent 3 to adopting a decision on costs which turns out to be erroneous or otherwise unjust.

3. Time-limit

The party concerned needs to apply within a time-limit of **one month**¹⁰⁸⁵ (plus 4 10 calendar days on account of distance), which begins as of the notification¹⁰⁸⁶ of the judgment¹⁰⁸⁷ or order concerned to the parties. Such application is, however, inadmissible if the party has not previously applied for costs¹⁰⁸⁸ and thus merely seeks to correct this omission, or if the party aims at a substantive amendment of the part on costs.

¹⁰⁸⁴ Art. 67 et seq. RP GC.

¹⁰⁸⁵ Plus ten days on account of distance; see Art. 102 (2) RP GC.

¹⁰⁸⁶ Thus, it is not the date on which the judgment was handed down which matters, as provided in Art. 84 RP GC.

¹⁰⁸⁷ Case T-50/89, *Sparr v Commission* [1990] ECR p. II-539, para. 7.

¹⁰⁸⁸ Case T-50/89, *Sparr v Commission* [1990] ECR p. II-539, para. 9.

Article 86 [Publication of the case-law]

The Registrar shall arrange for the publication of cases before the General Court.

I. European Court Report

- 1 The Registrar is responsible¹⁰⁸⁹ for publishing the judgments and orders, which are **destined for publication** in the European Court Report (ECR). Since 1993, the GC, like the ECJ, has its own series of ECRs. Unlike the publication on the ECJ's website, however, the ECR is, somewhat inevitably, **not up to date**. That said, an early attempt to streamline the ECR in the early 1990s, which consisted of publishing certain judgments in an abbreviated version, i.e. without indicating the grounds¹⁰⁹⁰, has been quickly abandoned. Ultimately and inevitably the European Court Report is bound to have difficulties competing the publication of judgments and orders on the internet, for reasons of easier and faster availability as well as costs. More over and by definition, only a fraction of all judgements and orders are published in the ECR.

II. Website

- 2 For practitioners, it is particularly relevant that the GC has since 1997 published its judgments and orders on the ECJ's website. Likewise, the CST has published its judgments on the website since its founding in 2004. Many judgments dating back to prior to 2007 are now also published on the same website and, besides, may be found on the "Eur-Lex" website.

CHAPTER 6
COSTS

Preliminary

I. Introduction

- 1 Chapter 6 mainly focuses on the rules concerning the allocation of the procedure costs. Allocation of costs at the GC is based on the principle that the losing party is to pay the costs of the procedure; nevertheless, a number of exceptions exist which enable the GC to achieve a relatively high degree of **individual justice**. The GC shall apply provisions on costs as they were applicable at the time of the closure of the oral procedure, not at the time of the handing down of the judgment¹⁰⁹¹.

¹⁰⁸⁹ Art. 17 (3) Instructions to the Registrar.

¹⁰⁹⁰ See e.g. T-125/89, *Filtrona v Commission* [1990] REC p. II-393 et seq.

¹⁰⁹¹ Case T-23/90, *Peugeot v Commission* [1991] ECR II-653, paragraph 80.

II. Scope of action

The decision as to costs is by nature **ancillary**, as it is to a large extent determined ² by the **outcome** of the proceedings. It is also an area of law where the GC (like the other EU jurisdictions) enjoys a high degree of **sovereignty**, since a decision on costs may not be challenged either by an appeal or by any other legal remedy. Nevertheless, there is room for the parties to influence the decision on costs where the GC has discretion, such as in Art. 87 (3).

Article 87 [Allocation of costs]

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

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

Where there are several unsuccessful parties the General Court shall decide how the costs are to be shared.

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

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

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

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

The General Court may order an intervener other than those mentioned in the preceding subparagraph to bear his own costs.

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

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

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

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

Outline:

I. General	1
1. Allocation of costs.....	1
2. CST	2

II. Final judgment or order which closes the proceedings (paragraph 1) ...	3
III. Principle (paragraph 2)	4
1. Unsuccessful party pays	4
2. Application for costs	5
3. Several parties	6
4. CST	7
IV. Exceptions (paragraph 3)	8
1. General	8
2. Each party succeeds on some and fails on other heads (sub-paragraph 1, 1 st alternative)	9
a) Sharing costs	9
b) Each party bearing its own costs	10
3. Exceptional circumstances (sub-paragraph 1, 2 nd alternative)	11
a) General	11
aa) GC	11
bb) CST	12
b) Examples	13
aa) Competition	13
bb) Merger control	14
cc) Anti-dumping	15
4. “Unreasonably or vexatiously caused costs” (sub-paragraph 2)	16
a) General	16
b) Little practical relevance	17
c) Burden of proof	18
d) Definition	19
aa) Unreasonably caused costs	20
bb) Vexatiously caused costs	21
e) Examples	22
aa) Applicant	22
bb) Defendant	23
(1) General	23
(2) Contributing to the dispute	24
(3) Lack of reasoning	25
f) CST	26
5. Further exceptions	27
V. Interveners (paragraph 4)	28
1. Rule	28
2. Exception applying to Member States and EU institutions	29
3. Other interveners	30
VI. Discontinuing or withdrawing from proceedings (paragraph 5)	31
1. Discontinuing or withdrawing from proceedings (1 st sub-paragraph)	31
a) Discontinuing proceedings	31
aa) Art. 99 RP GC – informing the GC	31
bb) Art. 87 (5) <i>lex specialis</i>	32
b) Rule (1 st sentence)	33
c) Exception (2 nd sentence)	34
aa) Successful application	35
bb) Unsuccessful application	36
d) Special circumstances	37
e) Withdrawing from proceedings	38
2. Agreement on the costs (2 nd sub-paragraph)	39
a) General	39
b) Binding agreement	40
3. No application for costs (3 rd sub-paragraph)	41
VII. Case not proceeding to judgment (paragraph 6)	42
1. Case not proceeding to judgment	42
a) General	42
b) Defendant	43

c) Applicant	44
2. Decision on costs	45
a) General	45
b) Defendant bears the costs	46
c) Applicant bears the costs	47
d) Each party bears its own costs	48
3. Order	49

I. General

1. Allocation of costs

The ruling on costs only regulates the allocation of costs, i.e. the cost **burden** as 1 such, **not the amount** of reimbursable costs¹⁰⁹². The parties must subsequently agree amongst one another which expenses are to be reimbursed and by what amount. If they fail to reach a consensus, parties may apply for a taxation of costs¹⁰⁹³.

2. CST

Specific – whilst not fundamentally different – **rules** apply in proceedings at the 2 CST (Art. 87 to 89 RP CST).

II. Final judgment or order which closes the proceedings (paragraph 1)

By definition, costs must be concentrated on the **final** judgment or the order 3 which closes the proceedings. Thus, an order rejecting an application for a decision on admissibility (Art. 114 RP GC) or for interim proceedings does not contain any ruling on costs, which remain reserved for the final judgment.

III. Principle (paragraph 2)

1. Unsuccessful party pays

A party is **unsuccessful** if it loses the case completely or essentially¹⁰⁹⁴. The latter 4 is the case if the “defeat” is such that there is **no basis** for cost sharing within the meaning of paragraph 3, sub-paragraph 1. In all these circumstances the unsuccessful party bears the cost, except in cases such as those provided in paragraph 3, sub-paragraph 2 and Article 88.

¹⁰⁹² Case T-124/93, *Werner v Commission* [1995] ECR p. II-91, paragraph 10.

¹⁰⁹³ Art. 91 and 92 RP GC.

¹⁰⁹⁴ Case T-32/91, *Solvay v Commission* [1995] ECR p. II-1825, 1845.

2. Application for costs

- 5 The GC does not rule on costs **ex officio**, i.e. without a formal request by the successful party, which may still be articulated during the oral hearing¹⁰⁹⁵. Should the successful party omit to ask for costs, it will bear its own costs¹⁰⁹⁶.

3. Several parties

- 6 If several parties are unsuccessful (see the identical Art. 89 (1) RP CST) they will normally need to bear the costs **jointly**¹⁰⁹⁷.

4. CST

- 7 **Art. 87 (1) RP CST** contains the same rule, which has nevertheless been softened by an “**equity clause**” found in Art. 87 (2) which enables the CST, “if equity so requires”, to decide that “*an unsuccessful party is to pay only part of the costs or even that he is not to be ordered to pay any*”. One of the challenges of the CST is to always ensure the right balance between the rule and the exception, i.e. not to blur the difference between both.

IV. Exceptions (paragraph 3)

1. General

- 8 This seemingly complex provision enables the Judges to adapt, as much as possible, the ruling on costs to the circumstances of each **individual** case. This means that the GC may also apply paragraph 3 e.g. when it rejected an application as inadmissible under Art. 111 RP GC at a point in time when in the absence of a statement of defence the defendant did not and could not make any claim regarding costs within the meaning of paragraph 2.¹⁰⁹⁸

- 9 **2. Each party succeeds on some and fails on other heads (sub-paragraph 1, 1st alternative). a) Sharing costs.** Cases in which a party is successful to a considerable extent¹⁰⁹⁹ are suitable for a sharing of the costs. Since such cost sharing is by definition not a mathematical exercise, the sharing of costs is expressed in **fractions**, such as one third, one fourth, or one fifth at the most, rather than in percentages.

¹⁰⁹⁵ Case T-64/89, *Automec v Commission* [1990] ECR p. II-369, 391; Case T-13/92, *Moat v Commission* [1993] ECR p. II-287, 301.

¹⁰⁹⁶ Joined Cases T-68/89, T-77/89 and T-78/89, *SIV A. O. v Commission* [1992] ECR p. II-1403, 1553; Case T-7/92, *Asia Motor A. O. v Commission* [1993] ECR p. II-669.

¹⁰⁹⁷ Joined Cases T-148/98 and T-162/98, *Evans A. O. v Commission* [1999] ECR p. II-2837, paragraph 50.

¹⁰⁹⁸ Case T-346/03, *Krikorian v Commission* [2003] ECR p. II-6037, paragraphs 28–29.

¹⁰⁹⁹ Joined Cases T-305/94 etc. *Limburgse Vinyl Maatschappij A. O. v Commission* [1999] ECR p. II-931, paragraph 1269.

b) Each party bearing its own costs

In contrast, the GC tends to order each party to bear its own costs if on the whole 10
each party succeeds and loses more or less equally¹¹⁰⁰.

3. Exceptional circumstances (sub-paragraph 1, 2nd alternative). a) General. 11
aa) GC. This general clause with its characteristically vague wording only rarely
applies to cases before the GC. It enables the GC to apply what amounts to a
financial sanction upon the party concerned, whenever such sanction appears
justified according to the specific circumstances of the case.

bb) CST

The RP CST¹¹⁰¹ do not contain such provision. 12

b) Examples. aa) Competition. In a major competition case, the **successful appli-** 13
cants were ordered to pay their own costs, which were bound to entail payment of a
very substantial amount. The then-CFI held that even though the applicants won the
case, they had raised an excessively large number of legal grounds in four applications
comprised of over 2000 pages¹¹⁰² and approximately 100 files of annexes, which in
the CFI's view amounted to a misuse¹¹⁰³.

bb) Merger control

In the context of an action challenging a merger control decision rendered by 14
way of expedited proceedings¹¹⁰⁴, the **successful applicant** had to bear a portion of
the costs, since the CFI considered that both his application and his subsequent
written submissions were too extensive and that he had therefore unnecessarily
delayed the rest of the proceedings¹¹⁰⁵.

cc) Anti-dumping

In an anti-dumping action, each party had to bear its own costs, as the defendant, 15
who ultimately won the case, could have avoided the Court action altogether by
filing a given piece of information in a timely manner¹¹⁰⁶. In a case in which the
question raised had not yet been the subject of a decision of the EU Courts, the
losing party was given derogation from the rule in paragraph 2 and only had to bear
its own costs¹¹⁰⁷.

¹¹⁰⁰ Case T-359/99, *DKV v OHIM* [2001] ECR p. II-1645, paragraph 51.

¹¹⁰¹ See Art. 89 (2) RP CST.

¹¹⁰² This case dates back to the time when there were no upper limits as to the number of pages
an application may normally comprise.

¹¹⁰³ Joined Cases T-191/98, T-212/98 to T-214/98, *Atlantic Container A. O. v Commission* [2003]
ECR p. II-3275, paragraph 1646.

¹¹⁰⁴ Art. 76 a RP GC.

¹¹⁰⁵ Cases T-464/04, *Impala v Commission* [2006] ECR II-2289, para. 544 et seq.

¹¹⁰⁶ Case T-147/97, *Champion Stationery Mfg A. O. v Council* [1998] ECR p. II-4137, paragraph 91.

¹¹⁰⁷ Case T-209/00, *Lamberts v European Ombudsman and Parliament* [2001] ECR p. II-765,
paragraph 21.

- 16 4. “Unreasonably or vexatiously caused costs” (sub-paragraph 2). a) General. Even more than the “exceptional circumstances” within the meaning of the first paragraph, both of the alternatives presented here are based on what could be described as the “polluter pays principle”.

b) Little practical relevance

- 17 This provision lost much of its relevance. Firstly, it remains irrelevant with respect to **unsuccessful parties**, even though these parties may have caused costs in an unreasonable or vexatious manner, since by virtue of the rule in paragraph 2 unsuccessful parties bear the costs anyway. Secondly, this provision played a certain role regarding the potential allocations of costs to **successful parties** during the time in which the GC had jurisdiction for **staff cases**, which has since been transferred to the CST¹¹⁰⁸. Under this provision, costs include not only those incurred by the judicial instance, but also pre-litigation costs, if applicable¹¹⁰⁹. However, staff matters are an exception to this rule; in such cases, the costs for pre-contentious steps such as administrative complaints, etc. remain excluded¹¹¹⁰.

c) Burden of proof

- 18 The other party must prove that the application is **unreasonable and/or vexatious**. If a claim based on Art. 87 (3), sub-paragraph 2 RP GC does not indicate any unreasonable or vexatious costs the GC will normally **not investigate** them on its own motion¹¹¹¹. In some rare instances, the GC applied this rule on its own initiative, i.e. although neither party had made such a request¹¹¹².

d) Definition

- 19 Both alternatives are not only rather abstract, but also tend to **overlap**; it is thus difficult to distinguish between them.

aa) Unreasonably caused costs

- 20 This alternative concerns those situations in which a party could have **objectively** avoided the Court case.

bb) Vexatiously caused costs

- 21 This mainly arises when a party **misuses** the right to judicial protection, e.g. by ignoring previous judgments in the same matter and/or committing libel and slander vis-à-vis de defendant.

- 22 e) Examples. aa) Applicant. Cases in which proceedings are considered “unreasonable” and/or vexatious are mainly, if not exclusively, a matter of ill-advised applicants. Thus, the GC is likely to derogate from the rule in Art. 87 (2) if it considers e.g.

¹¹⁰⁸ See Art. 86 et seq. RP CST.

¹¹⁰⁹ Case T-35/00, *Goldstein v Commission* [2000] ECR p. II-2919, paragraph 14.

¹¹¹⁰ Case 54/77, *Herpels v Commission* [1978] ECR 585.

¹¹¹¹ Case T-260/94, *Air Inter v Commission* [1997] ECR p. II-997, paragraph 149.

¹¹¹² Case T-241/03, *Marcuccio v Commission* [2006] ECR p. II-A-2-517, paragraphs 64–65.

the case to be a “misuse”¹¹¹³ or if an action appears to be “particularly ill-judged”¹¹¹⁴ and the “very facts giving rise to this dispute show the applicant’s conduct to have been vexatious”¹¹¹⁵.

bb) Defendant. (1) General. The case law confirms what one would expect: the GC 23 does not find EU institutions’ acts to have caused “vexatious” costs, but the Court did find, in certain cases, that institutions contributed to the dispute, i.e. failed to avoid it.

(2) Contributing to the dispute. This alternative is likely to apply if the GC finds 24 that the defendant adopted a “particularly regrettable conduct in this matter”¹¹¹⁶, which either “favoured”¹¹¹⁷ or “contributed”¹¹¹⁸ objectively to the creation of the dispute. This does not require an intentional act or series of acts; it suffices that the defendant acted **negligently**. This may be found to be the case if the defendant demonstrates a “**lack of diligence**” in the course of the decision-making process which causes the challenged act¹¹¹⁹; if during said procedure the defendant left the applicant in a **state of uncertainty** for a long period¹¹²⁰; if the defendant committed “numerous mistakes” in a public procurement matter¹¹²¹; or if he omitted to properly notify an important decision to the applicant¹¹²². Likewise the GC may take account of contradictions between the defendant’s observations in the written proceedings and the analyses made in the challenged decision¹¹²³.

(3) Lack of reasoning. The defendant may have contributed towards creating the 25 conditions for the dispute to arise if **the challenged decision** is reasoned in an “ambiguous”¹¹²⁴ or “insufficient”¹¹²⁵ manner, or in view of the “**less than perfect nature of the drafting of the contested decision**”¹¹²⁶, or if the decision is worded in a misleading way¹¹²⁷.

f) CST

The wording of Art. 88 RP CST is **broad**er than that found in Art. 87 (3), 2nd 26 sub-paragraph RP GC, since it uses a generic term (“**conduct**” of a party), and since it refers to unreasonable or vexatious costs as two **special examples**.

¹¹¹³ Case T-174/95, *Svenska Journalistförbundet v Council* [1998] ECR p. II-2289, paragraph 140.

¹¹¹⁴ Case T-35/00, *Goldstein v Commission* [2000] ECR p. II-2919, paragraph 14.

¹¹¹⁵ Case T-35/00, *Goldstein v Commission* [2000] ECR p. II-2919, paragraph 14.

¹¹¹⁶ Case T-311/00, *British American Tobacco v Commission* [2002] ECR p. II-2781, paragraph 66.

¹¹¹⁷ Case T-7/96, *Perillo v Commission* [1997] ECR p. II-1061, paragraphs 48–49.

¹¹¹⁸ Case T-336/94, *Efisol v Commission* [1996] ECR p. II-1343, paragraph 38.

¹¹¹⁹ Case T-73/95, *Oliveira v Commission* [1997] ECR p. II-381, paragraph 51.

¹¹²⁰ Case T-81/95, *Interhotel v Commission* [1997] ECR p. II-81-82.

¹¹²¹ Case T-40/01, *Scan Office Design v Commission* [2002] ECR p. II-5043, paragraph 125.

¹¹²² Case T-288/04, *Van Nuyghem v Committee of Regions* [2007] (not published in the ECR), paragraph 56.

¹¹²³ Case T-464/04, *Impala v Commission* [2006] ECR II-2289, paragraph 553.

¹¹²⁴ Case T-471/93, *Tiercé Ladbroke v Commission* [1995] ECR p. II-2537, paragraph 68.

¹¹²⁵ Case T-158/94, *Brunagel v Parliament* [1996] ECR SC p. II-1131, paragraph 119.

¹¹²⁶ Case T-60/03, *Regione Siciliana v Commission* [2005] ECR p. II-4139, paragraph 21.

¹¹²⁷ Case T-7/94, *Adriaenssens A. O. v Commission* [1997] ECR SC p. I-A-1, paragraph 6.

5. Further exceptions

- 27 Art. 87 (5) RP GC provides a further exception should a recipient of legal aid be unsuccessful. In such a case, the GC may derogate from the normal rules regarding costs “if equity so requires”.

V. Interveners (paragraph 4)

1. Rule

- 28 Paragraph 4 implicitly confirms that the rule in Art. 87 (2) RP GC applies to **all interveners unless they are Member States or EU institutions**¹¹²⁸: Given the ancillary status of interveners, the decision on costs regarding interveners follows the same logic as the decision regarding the party supported: If the party supported is unsuccessful, the intervener will be ordered to bear its own costs and the costs that the successful party incurred due to the intervention, if the latter applies for it¹¹²⁹. The unsuccessful party will bear the costs of the party intervening on behalf of the successful party, if the intervener applies for it¹¹³⁰. If the intervener does not apply for costs, it will bear its own costs¹¹³¹.

2. Exception applying to Member States and EU institutions

- 29 The exception in paragraph 1 providing that intervening Member States and institutions¹¹³² bear **their own costs** is intended to protect the unsuccessful party, since neither Member States nor EU institutions need to prove an “interest” in intervening in a given case and are thus considered “born” interveners. For this reason such entities always bear their own costs, no matter whether they are successful¹¹³³ or not¹¹³⁴. Moreover, intervening Member States and institutions will, if unsuccessful and if necessary, jointly bear¹¹³⁵ the successful party’s costs resulting from the intervention¹¹³⁶.

3. Other interveners

- 30 The third sub-paragraph provides that the GC may apply the exception laid down in sub-paragraphs 1 and 2 to “other” interveners, i.e. those who are neither a

¹¹²⁸ Art. 89 (4) RP CST provides that “interveners shall bear their own costs”.

¹¹²⁹ Joined Cases T-132/96 and T-143/96, *Freistaat Sachsen A. O. v Commission* [1999] ECR p. II-3663, paragraph 310.

¹¹³⁰ Case T-110/97, *Kneissl Dachstein v Commission* [1999] ECR p. II-2881, paragraph 137.

¹¹³¹ Case T-110/98, *RJB Mining v Commission* [2000] ECR p. II-2971, paragraph 53.

¹¹³² And the Member States of the EEA-Agreement and the EFTA-Surveillance-Authority mentioned in paragraph 2.

¹¹³³ Case T-50/96, *Primex A. O. v Commission* [1998] ECR p. II-3773, 3817.

¹¹³⁴ Case T-184/97, *BP Chemicals v Commission* [2000] ECR p. II-3145, paragraph 83.

¹¹³⁵ Case T-46/97, *SIC v Commission* [2000] ECR p. II-2125, paragraph 112.

¹¹³⁶ Case T-184/97, *BP Chemicals v Commission* [2000] ECR p. II-3145, paragraph 83.

Member State of the EU or the EEA-Agreement, nor an EU institution. This may be the case if the “other intervener” did not hand in a written submission and at the hearing merely declared to adhere to the pleading of the party he supported¹¹³⁷.

VI. Discontinuing or withdrawing from proceedings (paragraph 5)

1. Discontinuing or withdrawing from proceedings (1st sub-paragraph). a) Dis- 31
continuing proceedings. aa) Art. 99 RP GC – informing the GC. A party wishing to discontinue or withdraw from proceedings (both verbs are synonyms, as e.g. the French version illustrates (“se désister”) needs to comply with the procedural requirements laid down in Art. 99 RP GC. The GC will then order the case to be removed from the Register and will give a decision as to the costs in accordance with Art. 87 (5) RP GC, since the GC’s decision on costs in the event of withdrawal from proceedings must be based solely on the Rules of Procedure, and in particular on Article 87(5)¹¹³⁸.

bb) Art. 87 (5) *lex specialis*

Art. 87 (5)¹¹³⁹ is *lex specialis* vis-à-vis Art. 87 (2) RP GC, subject to the special but 32
now obsolete Art. 88 RP GC, which applies to staff cases. However, in case of an absence of a clear and unconditional withdrawal, the GC may base the decision on costs on Art. 87 (6) RP GC, rather than on Art. 87 (5) RP GC¹¹⁴⁰.

b) Rule (1st sentence)

The party which discontinues or withdraws from proceedings shall be treated as 33
if his application had been fully **unsuccessful**, even if – purely in theory – he would have otherwise been partly or fully successful. Thus, the party bears its own costs and the other party’s costs, provided the other side applies for it.

c) Exception (2nd sentence)

The second sentence provides an exception which, even though worded differ- 34
ently (“appears justified by the **conduct** of that party”)¹¹⁴¹ is a partial echo of Art. 87 (3), 2nd sub-paragraph 2, RP GC. Thus the applicant must demonstrate and prove that the application was justified, at least in part if not fully, by the conduct of the other party¹¹⁴².

aa) Successful application

The defendant bears the costs if it submits an offer for compensation to the 35
applicant after the latter has lodged its application¹¹⁴³.

¹¹³⁷ Case T-368/94, *Blanchard v Commission* [1996] ECR SC p. II-1, paragraph 128.

¹¹³⁸ Case T-124/93, *Werner v Commission* [1995] ECR p. II-91, paragraph 9.

¹¹³⁹ Art. 89 (5) RP CST is identical.

¹¹⁴⁰ Case T-73/91, *Gavilan v Parliament* [1992] ECR p. II-1555, paragraph 26.

¹¹⁴¹ Case T-124/93, *Werner v Commission* [1995] ECR p. II-91, 99.

¹¹⁴² Case T-19/96, *Carvel and Guardian Newspaper v Council* [1996] p. II-1519, 1527.

¹¹⁴³ Case T-124/93, *Werner v Commission* [1995] ECR p. II-91, paragraphs 6 and 8.

bb) Unsuccessful application

- 36 If, at the time of lodging his application, the defendant has already informed the applicant that he accepts the applicant's claim, the applicant knows that he must withdraw his application. Under these circumstances, the defendant has given no cause for the Court action¹¹⁴⁴. The same is true in the event of a withdrawal of the application further to the defendant's declaration as to the consequences it would draw out of an annulment of the challenged regulation¹¹⁴⁵.

d) Special circumstances

- 37 Art. 87 (5) sub-paragraph 1 does not prevent the GC from taking into consideration all circumstances of the case and ordering each party to bear its own costs¹¹⁴⁶.

e) Withdrawing from proceedings

- 38 If a party withdraws from e.g. interim proceedings, the decision on costs remains reserved in the order of removal until the GC hands down its judgment in the main proceedings.

- 39 **2. Agreement on the costs (2nd sub-paragraph).** a) **General.** This provision¹¹⁴⁷ applies both if the applicant acts unilaterally, i.e. discontinues or withdraws from proceedings (Art. 87 (5) RP GC), and if the parties reach a settlement of their dispute (Art. 98 RP GC).

b) Binding agreement

- 40 In both instances, the GC is **bound** by the will expressed by the parties, with the understanding that an agreement on costs concluded between the parties within the meaning of the second subparagraph of Article 87(5) is relevant only if it is expressly confirmed to the GC in written statements made by both parties in connection with withdrawing the proceedings. The GC may not enquire, in the context of its decision on costs under Article 87(5), whether any other agreement on costs may possibly have been reached between the parties independent of such statements¹¹⁴⁸.

3. No application for costs (3rd sub-paragraph)

- 41 The third subparagraph of Art. 87(5)¹¹⁴⁹ provides that an order that a party is to bear its own costs can also be made even without an application by the other party. If an applicant withdraws his action without making an application for costs, it may

¹¹⁴⁴ Case T-19/96, *Carvel and Guardian Newspaper v Council* [1996] p. II-1519, paragraphs 29 et seq.

¹¹⁴⁵ Case T-541/93, *Coughlin v Council and Commission* [1994] ECR p. II-1235, paragraph 12–16; Case T-524/93, *Hennessy v Council and Commission* [1995] ECR p. II-61, paragraphs 8–12; Case T-525/93, *Griffin and Nash v Council and Commission* [1995] ECR p. II-71, paragraphs 8–12; Case T-538/93, *Houlihan v Council and Commission* [1995] ECR p. II-81, paragraph 8–12.

¹¹⁴⁶ Case T-281/93 etc., *Walsh A. O. v Council and Commission* [1994] ECR p. II-657, 665.

¹¹⁴⁷ Art. 89 (7) RP CST is identical.

¹¹⁴⁸ Case T-124/93, *Werner v Commission* [1995] ECR p. II-91, paragraph 9.

¹¹⁴⁹ Art. 89 (3) RP CST is identical.

be inferred that he is waiving any claim that the defendant should bear his own costs, but not that he is prepared to pay the defendant's costs as well¹¹⁵⁰.

VII. Case not proceeding to judgment (paragraph 6)

1. Case not proceeding to judgment. a) General. Art. 87 (5) applies when a case is brought to an end as a result of a unilateral (Art. 99 RP GC) or bilateral (Art. 98 RP GC) agreement between the parties. By contrast, Art. 87 (6)¹¹⁵¹ applies when a case does not proceed to judgment, i.e. there is no need to adjudicate, because the action has become devoid of purpose (see Art. 113 RP GC). This may be the case for a variety of reasons, which are not necessarily the result of a unilateral or common decision of the parties resulting in an application of Art. 87 (5). Hence, in contrast to the rather rigid rule in Art. 87 (5), the costs shall be at the discretion of the GC:

b) Defendant

There is no need to proceed to judgment if the defendant e.g. paid the amount claimed by the applicant subsequent to the application¹¹⁵².

c) Applicant

An action may become devoid of purpose because the applicant withdrew a plea sought¹¹⁵³ or reached an amicable settlement¹¹⁵⁴. The same is true if the applicant loses his interest to act due to an event occurring after the application¹¹⁵⁵, or because in the meantime the applicant passed away¹¹⁵⁶ and the heirs do not continue the proceedings¹¹⁵⁷ or do not inform the GC of their desire to do so accordingly¹¹⁵⁸.

2. Decision on costs. a) General. By virtue of its "discretion" the GC may take due account of all the reasons and circumstances which result in the case not proceeding to judgment and which thus determine the costs independently of any claims of the parties in this regard.

b) Defendant bears the costs

The GC may e.g. take account of the fact that the defendant's conduct contributed to or caused the applicant to take him to Court¹¹⁵⁹. The same may apply if in the course of the proceedings the defendant replaces the challenged act by a new

¹¹⁵⁰ Joined Cases T-124/93, etc., *Brandt A. O. v Commission* [1994] ECR p. II-1133, paragraph 6.

¹¹⁵¹ Art. 89 (6) RP CST is identical.

¹¹⁵² Case T-81/91, *Feltz v Parliament* [1992] ECR p. II-1827, paragraph 25.

¹¹⁵³ Case T-317/03 *Volkswagen v OHIM* [2006] ECR p. II-12, paragraphs 2–3.

¹¹⁵⁴ Case T-7/02, *Zapf Creation v OHIM* [2003] ECR p. II-271, paragraphs 10–12.

¹¹⁵⁵ Case T-184/01, *IMS Health v Commission* [2005] ECR p. II-817, paragraph 49; Case T-28/02, *First Data Corp. A. O. v Commission* [2005] ECR p. II-4119, paragraph 36.

¹¹⁵⁶ Case T-138/11, *Brouha Nathanael Ahouma v Council* [2011] (not published in the ECR).

¹¹⁵⁷ Case T-81/98, *Boyes v Commission* [1999] ECR p. II-3501, 3507.

¹¹⁵⁸ Joined Cases T-201/00 and T-384/00, *Ajour A. O. v Commission* [2002] ECR SC p. II-885, paragraph 25.

¹¹⁵⁹ Joined Cases T-89/91, T-21/92 and T-89/92, "*X*" v *Commission* [1993] p. II-1235, paragraph 53.

decision¹¹⁶⁰. The defendant may also bear all costs if he withdraws the challenged act for reasons raised in the application¹¹⁶¹.

c) Applicant bears the costs

- 47 The applicant may bear part¹¹⁶² or even all costs¹¹⁶³ if he does not discontinue the proceedings even though the defendant fulfilled everything the applicant claimed.

d) Each party bears its own costs

- 48 In some instances the GC may decide that each party bears its own costs¹¹⁶⁴.

3. Order

- 49 The GC's discretionary power and the absence of any appeal which is focused solely against the order adopted by the GC, including its decision on costs¹¹⁶⁵ (which is also the case with orders in taxation matters) does not relieve the GC from its obligation to provide **reasons**. The mere reference to "the circumstances of this case"¹¹⁶⁶ has no added value.

Article 88 [Staff cases]

Without prejudice to the second subparagraph of Article 87(3), in proceedings between the Union and its servants the institutions shall bear their own costs.

I. Essentially obsolete provision

1. Applicants

- 1 Art. 87 (2) RP GC, which provides that the unsuccessful party bear the costs, does **not apply** to officials or temporary agents in **staff cases** at first instance. If such officials or agents are unsuccessful, as a rule, they only bear their **own costs**, by virtue of the specific provision in Art. 88 RP GC. Since the creation of the CST, with its exclusive jurisdiction over staff cases at first instance, a different set of rules regarding costs applies.

¹¹⁶⁰ Case T-25/96, *Arbeitsgemeinschaft Deutscher Luftfahrt-Unternehmen and Hapag-Lloyd Fluggesellschaft v Commission* [1997] ECR p. II-363, paragraph 23.

¹¹⁶¹ Case T-178/99, *Elder v Commission* [1999] ECR p. II-3509, paragraph 24.

¹¹⁶² Case T-81/91, *Feltz v Parliament* [1992] ECR p. II-1827, paragraph 26.

¹¹⁶³ Case T-392/94, *Phelan v Council* [1996] ECR SC p. II-295, 299.

¹¹⁶⁴ Case T-208/95, *Miwon v Commission* [1996] ECR p. II-635; Case T-26/97, *Antillean Rice v Commission* [1997] ECR p. II-1347.

¹¹⁶⁵ Art. 58 (2) Statute ECJ.

¹¹⁶⁶ Joined Cases T-204/97 and T-270/97, *EPAC v Commission* [2000] ECR p. II-2267, paragraph 161.

2. Institutions

Article 88 is only relevant in the event of appeals brought by institutions (see 2 Art. 148 (2) RP GC).

II. CST

1. Applicable rule

For all applications lodged after the 1st November 2007, the date on which the RP 3 CST came into force, there is a new rule, meaning that the **unsuccessful** party bears **all costs**¹¹⁶⁷. That said, this rule, which is equivalent to the one in Art. 87 (2) subparagraph 1 RP GC, has been softened – apparently for political reasons – by an **equity clause**¹¹⁶⁸.

2. Comment

This reform was long overdue. The initial idea of this provision might have been 4 to protect staff, since they are in a weaker position compared to their employer. While this is certainly true, it is equally true that the amount of remuneration of the EU officials and temporary agents and much more so the existence of **judicial insurance schemes** raised doubts concerning the need for such a privileged status regarding costs. The creation of a new rule may also have been fuelled by the fact that the CFI showed remarkable restraint, more than the ECJ when it was the only judicial instance, when it came to making use¹¹⁶⁹ of the option to make the applicant bear costs which are either unreasonable or vexatious¹¹⁷⁰. Could one object that the new rule is **unfair** because the defendant may decide to make use of an **external lawyer**, in which case the applicant will, as a rule, have to pay those costs as well, whilst in other cases, where the defendant's legal service takes care of the case, the institution's costs are insignificant? Not really, for a number of reasons:

Firstly, the applicants remain privileged since the EU institutions do not charge 5 any costs for the remuneration of their Agents instructed to represent them in legal proceedings apart from travel and accommodation costs relating to an oral hearing in Luxembourg, if applicable. It is furthermore part of the applicants' privilege to not have to pay any **judicial costs**, i.e. costs for making use of the CST. This is a major difference compared to what applies in some Member States.

Secondly, pursuant to Art. 19 Statute ECJ, EU institutions, which include agencies 6 and other EU bodies¹¹⁷¹, are to be represented before the Courts of the EU by an

¹¹⁶⁷ Art. 87 (1) RP CST.

¹¹⁶⁸ Art. 87 (2) RP CST.

¹¹⁶⁹ And not always consistent, as illustrated by e.g. Cases T-24/96, "*U*" v *Cedefop* [1997] ECR SC p. II-749 and T-85/96, *Clarke v Cedefop* [1997] ECR SC p. II-755, where the applicants had to bear all costs, for good reasons, while in the parallel Case T-93/96, *Presle v Cedefop* [1997] ECR SC p. II-1111, the applicant had only to bear his own costs.

¹¹⁷⁰ Art. 87 (3), 2nd sub-paragraph, RP GC.

¹¹⁷¹ Case F-55/08, *De Nicola v EIB* [2011] (not yet published in the ECR), paragraph 26 and the case law cited.

Agent appointed for each case. Such Agent may be assisted by an external adviser or by an external lawyer. This is a prerogative which is not altered by mere circumstance and which the institution is free to exercise or not¹¹⁷². Thus, the mere fact that some institutions make a more or less occasional and thus seemingly random use of this right, whilst others rely more or even systematically¹¹⁷³ on it does not constitute a misuse, nor does it turn the CST's rules on costs into something unfair.

- 7 Thirdly, fees paid by institutions and agencies to their external lawyers, which in many instances are lump sum arrangements, are well below the normal market rates.
- 8 Fourthly, isn't it rather normal that taking an institution or agency to Court comes at a price?
- 9 Finally, the "equity clause" enables the CST to soften the effects of the rule on costs, where appropriate. One should also bear in mind that the applicant may ask for taxation, should he disagree with the amount of the costs. Pursuant to the more recent case-law, the institution must prove that fees paid to its lawyer were "essential" for the purpose of the proceedings and must prove which amount is recoverable¹¹⁷⁴, which is commented in paragraph 26 et seq. Art. 91 RP GC belows.

Article 89 [Costs of enforcement of a judgment]

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

I. Principle

- 1 Art. 91 RP GC defines, in rather abstract terms, the costs of the proceedings which are deemed to be recoverable, whilst Art. 89 RP GC¹¹⁷⁵ concerns the next stage, i.e. the **recovery of the costs** necessarily incurred for the purposes of enforcing a judgment or order of the GC. Both provisions are based on the criterion of "necessity".

II. Enforcement

- 2 Since there are no EU rules governing the enforcement of judgments or orders of the GC, the relevant provisions of the **Member State** where the enforcement takes place apply¹¹⁷⁶. Thus, the amount of recoverable costs is determined by the applicable national law, which means that there is **no taxation** procedure in this respect¹¹⁷⁷.

¹¹⁷² Case F-55/08, *De Nicola v EIB* [2011] (not yet published in the ECR), paragraph 29.

¹¹⁷³ Case F-55/08, *De Nicola v EIB* [2011] (not yet published in the ECR), paragraph 34.

¹¹⁷⁴ Case F-55/08, *De Nicola v EIB* [2011] (not yet published in the ECR), paragraphs 30 et seq.

¹¹⁷⁵ Art. 90 RP CST is identical.

¹¹⁷⁶ Art. 280 and Art. 299 TFEU.

¹¹⁷⁷ Art. 91 and 92 RP GC.

Article 90 [Judicial costs]

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, 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 scale of charges referred to in Article 24(5).

Outline:

I. Rule	1
II. Exceptions.....	2
1. General.....	2
2. Avoidable costs	3
a) GC	3
aa) Limited scope of the exception	3
bb) Comment	4
(1) Justification for absence of judicial costs?.....	4
(2) Judicial costs in cases of manifestly inadmissible or abusive proceedings	5
(a) The problem.....	5
(b) Possible solutions.	7
b) CST	8
aa) Manifest abuse of process	8
bb) Extending the provision to the GC?	9
3. Cost of writing and translation costs.....	10

I. Rule

Proceedings before the GC are, as a rule, **free of charge**, in contrast to what 1 applies in many if not most Member States.

II. Exceptions

1. General

The reimbursement of avoidable costs (lit. a), as well as costs for copying or 2 translation carried out at the request of a party (lit. b), are further detailed in Art. 17 of the “Instructions to the Registrar”, but remain of little importance in practice.

2. Avoidable costs. a) GC. aa) **Limited scope of the exception.** This exception, 3 which, due to its exceptional nature is to be interpreted narrowly, applies only to costs which were “caused” by a party and deemed to be “avoidable”. In the fourth recital of its “Practice Directions to parties” the GC explicitly stresses the possibility of having recourse to this provision if lawyers or agents do not comply with the Practice Directions.

- 4 **bb) Comment. (1) Justification for absence of judicial costs?** The question arises whether the use of the judicial system of the EU should remain free of charge in terms of judicial costs. Why should a party pay no financial contribution whatsoever, while using a very costly two tier judicial system for cases of – quite often – major financial and/or economic importance? This question arises even more urgently in the case of companies or natural persons who do not pay their taxes in the EU.
- 5 **(2) Judicial costs in cases of manifestly inadmissible or abusive proceedings.**
- (a) **The problem.** So far, the GC has made little to no use of this provision, due to its limited scope. In its current form, this provision cannot be applied to applicants who have lodged, sometimes even repeated, **manifestly inadmissible** applications. The GC's unpublished orders, which are available on the ECJ's website, include an impressive number of decisions rejecting applications as manifestly inadmissible, whether because they disregard time-limits, because they are not represented by an independent lawyer, because they do not comply with the requirements in Art. 43 and 44 RP GC, etc. One of the reasons why every party needs to be represented by an Agent or, in the case of natural and legal persons, a **lawyer**, is precisely so that one avoids as much as possible a do-it-yourself approach to the EU courts, which is bound to produce errors. If a lawyer fails to live up to these expectations by disregarding elementary procedural rules, e.g. by lodging an action for annulment **two**¹¹⁷⁸, **three**¹¹⁷⁹, **four**¹¹⁸⁰, **five**¹¹⁸¹ or even **ten to thirteen years**¹¹⁸² after the time-limit has elapsed, there is no reason whatsoever why the EU budget, meaning essentially the European tax payer, should bear all the costs such cases generate in terms of manpower, logistical means, etc. The same question arises with respect to e.g. the large number of actions for annulment lodged by natural persons against a **Member State**¹¹⁸³ (including sometimes even cities¹¹⁸⁴), even though it is clear that the GC has no jurisdiction for such actions. Subsequently, a number of these cases

¹¹⁷⁸ Case T-227/08, *Brehm v Commission* [2008] (not published in the ECR).

¹¹⁷⁹ Case T-79/11, *Ing. Nando Groppo Srl. A. O. v Parliament and Council* [2011] (not published in the ECR).

¹¹⁸⁰ Case T-175/07, *TEA v Commission* [2007] (not published in the ECR); Case T-176/07, *S.A.B.A.R v Commission* [2007] (not published in the ECR).

¹¹⁸¹ Case T-64/10, *Dorval SAS v Commission* [2010] (not published in the ECR).

¹¹⁸² Case T-311/10, *Platis v Council and Grece* [2010] (not published in the ECR).

¹¹⁸³ See e.g. Case T-157/11, *Adamut A. O. v Romania* [2011] (not published in the ECR); Case T-155/11, *Bana A. O. v Romania* [2011] (not published in the ECR); Case T-73/11, *ANCMRR v Romania* [2011] (not published in the ECR); Case T-47/11, *Mandu v Romania* [2011] (not published in the ECR); Case T-261/10, *Brinkmann v Germany* [2010] (not published in the ECR); Case T-8/10, *Michelová v Czech Republik* [2010] (not published in the ECR); Case T-3/10, *Peréz Guerra v BNP Paribas and Spain* [2010] (not published in the ECR); Case T-496/09, *Bell v Belgium* [2010] (not published in the ECR); Case T-459/09, *Hendel v Poland* [2009] (not published in the ECR); Case T-456/09, *Bakonyi v Hungary* [2009] (not published in the ECR); Case T-442/09, *Torre v Spain* [2009] (not published in the ECR); Case T-441/09, *Lagier v France* [2009] (not published in the ECR); Case T-416/09, *Castellano v Switzerland, France and Italy* [2009] (not published in the ECR); Case T-413/09, *Brain Invest v Sweden* [2009] (not published in the ECR); Case T-354/09, *Goldmann v Bulgaria* [2009] (not published in the ECR); Case T-287/09, *Radke Solution+Technologie EURL v Germany* [2009] (not published in the ECR); Case T-141/09, *Molter v Germany* [2009] (not published in the ECR); Case T-397/08, *Ferrazzano v Italy* [2008] (not published in the ECR), etc.

¹¹⁸⁴ Case T-81/11, *Kremser v Frankfurt am Main* [2011] (not published in the ECR); T-528/08, *Delice v Commission and Erlangen* [2008] (not published in the ECR).

result in a manifestly inadmissible or unfounded **appeal**¹¹⁸⁵, thus creating an unnecessary workload at the ECJ, which only exacerbates the problem.

These cases are not only recurrent, but, even more worryingly, also suffer from the **same defects** as a large number of manifestly inadmissible applications for legal aid which are lodged by the applicants themselves, i.e. **without** the assistance of a lawyer. The judicial instances of the EU, including the GC, should not have to waste their time and energy with **manifestly inadmissible** cases which could have been avoided had the lawyers involved done their **elementary homework**. Failure to do so should not be to the detriment of the Courts in general and the European tax payer in particular.

(b) **Possible solutions.** Should a general obligation to pay judicial costs not be an option, one ought to reflect on an amendment of the current provision, which might allow the GC to charge judicial costs to those parties which have lodged manifestly inadmissible or abusive applications. It is understood that this charge could be nowhere near the actual *pro rata* costs, but would need to be a **lump sum** which takes account of general principles of law such as equal treatment and proportionality. The party concerned would thereby suffer no hardship, at least in those cases where it can take the lawyer in regress, which needs to be covered by insurance.

b) **CST. aa) Manifest abuse of process.** Art. 94 (a) RP CST specifies that “avoidable costs” are “in particular” those “where the action is **manifestly an abuse of process**”, in which case the CST may order the party to refund said costs, up to a maximum of EUR 2000. Such manifestly abusive cases may include renewing a case¹¹⁸⁶ which has already been deemed inadmissible¹¹⁸⁷; bringing a case which involves the identical legal or practical question as a case that has just been considered or is in the process of being considered by the Court¹¹⁸⁸; bringing a case which lacks any legal foundation¹¹⁸⁹; bringing a case which takes a contentious approach to a question which could easily be resolved through non-contentious means¹¹⁹⁰; bringing a case which prolongs this contentious approach despite the Court’s reprimand¹¹⁹¹; and bringing an excessive amount of unfounded cases which are continually raised before the Court despite the Court’s continuous rejections of said cases¹¹⁹². Against this background, it would seem that the current limit of 2.000 € is merely a first step and calling for a stronger deterrent for serial applicants.

¹¹⁸⁵ Case C-661/09 P, *Molter v Germany* [2010] (not published in the ECR); Case C-142/10 P, *Pérez Guerra v BNP Parisbas and Spain* [2010] (not published in the ECR).

¹¹⁸⁶ EUR 1.500 in Case F-2/10, *Marcuccio v Commission* [2010] (not published in the ECR) and EUR 2.000, i.e. the maximum amount, in Case F-21/10, *Marcuccio v Commission* [2011] (not published in the ECR).

¹¹⁸⁷ Case F-71/09, *Caminiti v. Commission* [2011], not yet published in the ECR, paragraphs 67–70.

¹¹⁸⁸ Case F-3/08, *Marcuccio v. Commission* [2009], not yet published in the ECR, paragraphs 43 and 44.

¹¹⁸⁹ Case F-102/08, *Marcuccio v. Commission* [2010], not yet published in the ECR, paragraphs 44 and 45.

¹¹⁹⁰ Case F-14/10, *Marcuccio v. Commission* [2011], not yet published in the ECR, paragraphs 85 and 86.

¹¹⁹¹ Case F-69/10, *Marcuccio v. Commission* [2011], not yet published in the ECR, paragraphs 29–34.

¹¹⁹² Case F-3/11, *Marcuccio v. Commission* [2012], not yet published in the ECR, paragraphs 48–55.

This leads to the question whether this upper-limit should be removed, or substantially increased. Since this is about a financial issue, legal certainty is of the essence, which is why the first alternative might not be feasible in practice, also from a more political point of view. This being said, the second alternative could become an effective deterrent, if the CST could charge judicial costs of, e.g. up to 7.000 € or even 10.000 €. Also, such increase of the financial “sanction” might be simpler than a system whereby a serial applicant would have, as of certain number of avoidable applications, to apply for leave prior to lodging an application. That said, only the Judge of the CST may levy this fine; if an institution alleges that a case is of a manifestly abusive nature but if the legal matter in question is nevertheless sufficiently vague as to cause confusion, then said case is not eligible for this fine¹¹⁹³.

bb) Extending the provision to the GC?

- 9 One might consider extending this provision, found in Art 94 RP CST, to the RP GC as well, as both instances face cases which are manifestly abusive of the Court’s time and resources. The irresponsible use of the EU Courts ought to always be discouraged, preferably through a financial burden, so as to avoid the abuse of this system while promoting more efficient, effective justice for all other cases.

3. Cost of writing and translation costs

- 10 An applicant who chooses e.g. English or Danish or any language other than French as the language of the proceedings does not have to contribute financially to the translation of his written submission into French, the working language of the GC.

Article 91 [Recoverable costs]

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

- (a) sums payable to witnesses and experts under Article 74;
- (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.

Outline:

I. General	1
1. GC.....	1
2. CST.....	2
II. Sums payable to witnesses and experts (a).....	3
1. General.....	3
2. Art. 74 RP GC	4
III. Expenses necessarily incurred (point b)	5
1. General.....	5
2. Expenses incurred “by the parties”	6

¹¹⁹³ Case F-86/08, *Voslamber v. Commission* [2009], not yet published in the ECR, paragraphs 79–81.

a) Wording	6
b) Fees paid by third parties	7
3. “For the purpose of the proceedings”	8
a) Only the contentious phase	8
b) Not the pre-contentious phase	9
aa) Rule	9
bb) Exceptions	10
(1) Intellectual property rights	10
(a) Board of appeal	10
(b) Translation costs	11
(c) Opposition Division	12
(d) Final decisions of the Office	13
(2) Legal aid	14
c) Other pre-contentious expenses	15
aa) Legal opinions, etc.	15
bb) Correspondence	16
d) After the end of the contentious proceedings	17
aa) No reimbursement	17
bb) Enforcing a judgment	18
e) Extra judicial settlement	19
4. Remuneration of agents	20
a) Not recoverable	20
b) Comment	21
5. Remuneration of advisers	23
6. Remuneration of lawyers	24
a) General	24
aa) External lawyers	24
(1) GC	25
(2) CST	26
(3) Comment	27
bb) Other parties	31
cc) Internal lawyer	32
dd) Reimbursable amount	33
b) Criteria of assessment	34
aa) Case law	34
bb) Irrelevant elements	35
(1) National scales	35
(2) Other	36
c) “Purpose and nature of the dispute”	37
d) “Significance from the point of view of EU law”	38
aa) New questions	38
bb) Hourly rates	39
(1) Upper segment	40
(2) Middle segment	41
(3) Lower segment	41
(4) Hourly rates not considered to be necessary	42
e) Degree of difficulty	43
aa) Facts	44
bb) Legal aspects	45
(1) New questions	45
(2) Lower degree of difficulty	46
f) Amount of work	47
aa) Main party	47
(1) Number of hours	47
(a) No matter how many lawyers	47
(b) Barristers and solicitors	48
(c) Hours objectively necessary	49
(2) Number and contents of written submissions/oral hearings	50

(a) Link to the proceedings.....	50
(b) Written submissions.....	51
(c) Oral hearing.....	52
(3) Circumstances likely to justify a reduction of the recoverable amount.....	53
(4) Circumstances likely to justify an increase of the recoverable amount.....	54
(5) Miscellaneous situations.....	55
bb) Intervener.....	56
(1) Rule/Exception.....	56
(2) Fees.....	57
g) Economic interest of the parties.....	59
aa) General.....	59
bb) Considerable financial interest.....	60
7. Travel and subsistence expenses.....	61
a) Recoverable.....	61
aa) Proven costs.....	61
bb) Lump sum.....	62
cc) Lawyer's fees during travel time?.....	63
b) Non-recoverable.....	64
aa) Lawyer.....	64
bb) Party.....	65
8. Other expenses.....	66
a) General.....	66
b) Address for service.....	67
aa) Luxembourg.....	67
bb) Lawyer or agent.....	68
c) Experts.....	69
aa) Rule.....	69
bb) Exceptions.....	70
d) Translations.....	71
aa) General.....	71
bb) Intellectual property rights.....	72
e) Interest.....	73
f) VAT.....	74
g) Other expenses.....	75
aa) Photocopies.....	76
(1) Institutions.....	76
(2) Other parties.....	77
bb) European Ombudsman.....	78
cc) Bank guarantee.....	79
dd) Premiums for litigation insurance.....	80
ee) Flat rate.....	81
ff) Other.....	82

I. General

1. GC

- 1 The decision as to the allocation of costs given in any final judgment or in the order which closes the proceedings (Art. 87 et seq. RP GC) only determines which of the parties bears “the costs” of the proceedings or, as the case may be, how they are shared. Said decision does **not** determine which **expenses**, meaning fees and costs, the party entitled to recover its costs may claim from the party which has

been ordered to pay the costs¹¹⁹⁴. The **substantive criteria** which apply are laid down in Art. 91, while Art. 92 provides the **legal remedy**, which in this case is the taxation procedure¹¹⁹⁵.

2. CST

Pursuant to **Art. 91 (b) RP GC**, in order to be recoverable, expenses need to be **“necessarily incurred”**, while according to **Art. 91 (b) RP CST** the expenses need to be **“essential”**. This difference in wording is not as explicit in other linguistic versions, such as the **French** versions of Art. 91 (b) RP GC and Art. 91 (b) RP CST, which both mention **“frais indispensables”**, or the **German** version, which refers to **“Aufwendungen der Parteien, die für das Verfahren notwendig waren”**¹¹⁹⁶ and **“Aufwendungen der Parteien... sofern sie notwendig waren”**¹¹⁹⁷.

II. Sums payable to witnesses and experts (a)

1. General

In practice, this provision is **hardly relevant**, since measures of inquiry (Art. 65 et seq.) in general and the examination of witnesses and experts in particular¹¹⁹⁸ remain rare. Next, it is clear from lit. (a) that since the sums in question are only those defined within the meaning of **Art. 74**, any amount paid to an expert a party has unilaterally commissioned, e.g. for the purpose of a contribution to a written submission or oral pleadings, is not covered by this alternative. This does not exclude, however, such costs being recovered under (b).

2. Art. 74 RP GC

This provision is **limitative** in that it covers only **travel and subsistence expenses** of witnesses and experts¹¹⁹⁹. This entails a compensation for loss of earnings¹²⁰⁰ for witnesses while it implies a compensation of experts’ fees.

III. Expenses necessarily incurred (point b)

1. General

This provision (“in particular”) contains a **non-exhaustive list** of expenses which the parties may incur and which are **recoverable**, provided they were **“necessarily**

¹¹⁹⁴ B. Wägenbaur, EuZW 1997, 197 et seq.

¹¹⁹⁵ See also the analogous Art. 144 and 145 RP ECJ.

¹¹⁹⁶ Lit. I translation: Expenses of the parties necessary for the proceedings.

¹¹⁹⁷ Lit. I translation: Expenses of the parties in so far as they were necessary for the proceedings.

¹¹⁹⁸ Art. 68 et seq. RP GC.

¹¹⁹⁹ Case T-311/00, *British American Tobacco v Commission* [2002] ECR p. II-2781, paragraph 67.

¹²⁰⁰ Joined Cases T-33/89 and T-74/89, *Blackman v Parliament* [1993] ECR p. II-249, 285.

incurred ... for the purpose of the proceedings". Thus, the mere fact that a given expense falls under one of the categories of expenses referred to in (b) does by no way mean that the actual amount spent is *ipso jure* recoverable.

- 6 2. Expenses incurred "by the parties" a) **Wording.** In many instances, the party pays its lawyer's fees out of its own pocket. But contrary to what the wording suggests, this provision does **not** require proof that the party **effectively** paid the fees out of its own pocket, since the taxation does not relate to the fees the party paid to its lawyer¹²⁰¹. Thus, a party might decide to draft its own written submissions whilst using the letter-head of a law firm and having a lawyer sign. But if there is a suspicion of **fraud**, the institution must inform the national bar of which that lawyer is a member¹²⁰².

b) Fees paid by third parties

- 7 This provision also applies to amounts paid by **third parties** for the purposes of the proceedings¹²⁰³, e.g. by a trade union in staff cases¹²⁰⁴. The same applies to **insurance schemes** covering judicial costs: while the person insured only needs to pay the insurance premiums, the insurance company will recuperate whichever part of the expenses it covered will be considered to be "necessarily incurred".
- 8 3. "For the purpose of the proceedings" a) **Only the contentious phase.** "The proceedings" refers to the contentious phase before the GC, which starts with the submission of the application to the GC and ends with the final judgment or order which closes the proceedings. This is confirmed by **Art. 90 RP GC**, which refers to "**proceedings before the General Court**"¹²⁰⁵. Prior to the date on which the case became pending, the applicant may only recover the costs necessary for the drafting of the application¹²⁰⁶. In the event of a **default judgment**, only the procedure concerning the written observations as to the application to set aside such judgment is taken into account¹²⁰⁷.
- 9 b) **Not the pre-contentious phase.** aa) **Rule.** Costs incurred for more or less **informal contact** between lawyers and an institution preceding the contentious phase are not recoverable¹²⁰⁸. The same is true for fees and expenses spent on pre-contentious proceedings, such as **administrative complaints**¹²⁰⁹ or **dispute settle-**

¹²⁰¹ Case F-5/08 DEP, *Brune v Commission* [2012] (not published in the ECR), paragraph 18.

¹²⁰² Case F-5/08 DEP, *Brune v Commission* [2012] (not published in the ECR), paragraph 18.

¹²⁰³ Case T-34/02 DEP, *Le Levant 015 and Others v Commission* [2010] ECR SC p. II-0000, paragraphs 25–27.

¹²⁰⁴ Case T-373/04 DEP, *Guggenheim v Cedefop* (not published in the ECR), paragraph 24.

¹²⁰⁵ Case T-80/97 DEP, *Starway v Council* [2002] ECR p. II-1, paragraph 25.

¹²⁰⁶ Joined Cases T-177/94 (92), T-377/94 (92) and T-99/95 (92), *Altmann A. O. v Commission* [1998] ECR SC p. I-A-299, 302; Joined Cases T-155/03, T-157/03 and T-331/03, *Cwik v Commission* [2005] ECR p. II-1865, paragraph 199.

¹²⁰⁷ Case T-56/02 OP-DEP, *Bayrische Hypo- und Vereinsbank v Commission* [2009] (not published in the ECR), paragraph 41.

¹²⁰⁸ Case T-34/02 DEP, *Le Levant 015 and Others v Commission* [2010] ECR p. II-0000, paragraphs 31–33, 35.

¹²⁰⁹ Case T-84/91 Dépens, *Meskens v Parliament* [1993] ECR p. II-757, paragraph 14.

ment procedures¹²¹⁰ in **staff matters**, which are, “in principle”¹²¹¹, not recoverable. In the same line, the GC held that the administrative phase preceding **competition cases**¹²¹², a complaint to the **European Ombudsman**¹²¹³, or for the purposes of a request for access to **public documents** (even if the latter takes place in parallel to and for the purposes of the contentious proceedings) are not part of the contentious phase before the GC. Thus, such expenses, whether lawyer’s or expert’s fees¹²¹⁴, are **not recoverable**, regardless of whether or not such proceedings *de facto* required these services. The fact that such expenses may have reduced the amount of work generated by the contentious phase remains irrelevant¹²¹⁵.

bb) Exceptions. (1) Intellectual property rights. (a) Board of appeal. In proceedings relating to intellectual property rights, costs necessarily incurred by the parties for the purposes of the proceedings before the Board of Appeal are recoverable (Art. 136 (2) RP GC).

(b) Translation costs. Costs incurred for the purposes of the production, prescribed by the second subparagraph of Art. 131(4) RP GC, of translations of pleadings or other documents into the language of the case are also to be considered recoverable costs¹²¹⁶.

(c) Opposition Division. It is clear from Art. 136(2) RP GC that the GC does not have jurisdiction over the costs of the proceedings before the Opposition Division of OHIM, any application being in so far inadmissible¹²¹⁷.

(d) Final decisions of the Office. Pursuant to Art. 86 of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1), ‘any final decision of the Office fixing the amount of costs shall be enforceable’. It follows that there is no need to rule on the costs before OHIM since costs have already been fixed in the decision, which is enforceable and which the intervener can therefore have enforced against the applicant¹²¹⁸.

(2) Legal aid. Costs incurred for an application for legal aid are equally reimbursable¹²¹⁹.

c) Other pre-contentious expenses. aa) Legal opinions, etc. While it may be tempting, for some to integrate costs generated by e.g. legal opinions or other preparatory work into the list of expenses incurred for the drafting of the application proper without labelling them as such, this is bound to inflate the total costs for

¹²¹⁰ Joined Cases T-7/98 DEP, T-208/98 DEP and T-109/99 DEP, *De Nicola v EIB* [2004] ECR SC p. II-973, paragraphs 29–30.

¹²¹¹ Case F-23/09, *Cerafogli v ECB* [2010] ECR SC p. II-0000, paragraph 63.

¹²¹² Case T-65/96 DEP, *Kish Glass v Commission* [2001] ECR p. II-3261, paragraph 27.

¹²¹³ Case T-294/04, *Internationaler Hilfsfond v Commission* [2005] ECR p. II-2719, paragraph 52.

¹²¹⁴ Case T-65/96 DEP, *Kish Glass v Commission* [2001] ECR p. II-3261, paragraph 27.

¹²¹⁵ Case T-34/02 DEP, *Le Levant 015 and Others v Commission* [2010] ECR p. II-0000, paragraphs 31–33, 35.

¹²¹⁶ Case T-429/08 DEP, *Grain Millers v OHIM* [2011] (not published in the ECR), paragraph 16.

¹²¹⁷ Case T-429/08 DEP, *Grain Millers v OHIM* [2011] (not published in the ECR), paragraph 18.

¹²¹⁸ Case T-270/06 DEP, *Lego Juris A/S v OHIM* [2010] (not published in the ECR), paragraphs 34 and the case-law cited.

¹²¹⁹ Case F-12/07, *O'Connor v Commission* [2007] (not published in the ECR), paragraph 33.

the application. Furthermore, such circumvention may well be spotted and contested by the other party.

bb) Correspondence

- 16 Expenditure for correspondence with the relevant institution or body prior to the contentious case is also not reimbursable¹²²⁰, even if proven that this correspondence was meant to prevent the matter becoming contentious¹²²¹. This cannot be circumvented by claiming compensation by way of damages in a damage claim¹²²².
- 17 d) **After the end of the contentious proceedings. aa) No reimbursement.** For the same reasons, any expenses after the **end of the oral procedure** of a given case¹²²³, such as for an assessment of the judgment handed down or for measures taken in order to implement the judgment, are not reimbursable¹²²⁴.

bb) Enforcing a judgment

- 18 The reimbursement of costs necessarily incurred for the purpose of the execution of a judgment of the GC is covered by **Art. 89 RP GC**.

e) Extra judicial settlement

- 19 Lawyers' fees relating to negotiations in order to arrive at an extra-judicial settlement cannot be considered to be expenses necessarily incurred for the purposes of the proceedings within the meaning of Art. 91 RP GC¹²²⁵.
- 20 **4. Remuneration of agents. a) Not recoverable.** Pursuant to the case law, the remuneration paid to an agent of an EU institution or body or of Member State is **not recoverable**, since their participation in proceedings at the GC forms part of their duties as officials or temporary agents¹²²⁶.

b) Comment

- 21 The aforementioned case law raises the question of what is then to be understood by "**remuneration of agents**" if not their monthly salary, bearing in mind that those officials or temporary agents do not receive any (additional) remuneration for appearing in proceedings at the GC. Thus, it would seem, *a contrario*, that the remuneration of an agent is only reimbursable if that agent is not an official or temporary agent, but a third person empowered to appear in Court on behalf of the institution or Member State. This, however, remains purely theoretical, since an

¹²²⁰ Case T-226/01, *CAS Succhi di Frutta v Commission* [2006] ECR p. II-2763, paragraph 69.

¹²²¹ Case T-251/00 DEP, *Lagardère v Commission* [2004] ECR p. II-4217, paragraphs 21 and 22.

¹²²² Case T-140/04, *Ehcon v Commission* [2005] ECR p. II-3287, paragraph 79.

¹²²³ Case T-38/95 DEP, *Groupe Origny v Commission* [2002] ECR p. II-217, paragraph 29.

¹²²⁴ Case T-171/00 DEP, *Spruyt v Commission* [2002] ECR SC p. I-A-225, I-A-226.

¹²²⁵ Case T-383/03 DEP, *Hynix Semiconductor v Council* [2009] (not published in the ECR), paragraph 47 and the case-law cited.

¹²²⁶ Case C-409/96 P-DEP, *Commission v Sveriges Betodlares Centralförening A.O.* [1999] ECR p. I-4939, 4945 confirming case 126/76, *Dietz v Commission* [1979] ECR 2131.

institutional party to the proceedings will always use its own staff. In many instances, said institutional party will use one or several members of their respective legal service.

In any event, it is more than doubtful whether the current case law, which 22
 departs from what is provided in a number of Member States' laws, should apply
under all circumstances, e.g. including with respect to applications which turn out
 to be **manifestly inadmissible and/or unfounded**, in particular in the event of a
 plurality of such applications lodged by the same applicant in the same matter.
 While such situations remain the exception, as one would expect, one might still ask
 whether officials or temporary staff should be paid by public funds if they are
 required to waste their time in dealing with such cases brought by private indi-
 viduals, in particular if these cases' frequency amounts to a misuse on the part of
 that private individual.

5. Remuneration of advisers

This category remains theoretical since EU institutions are represented by one or 23
 more agents assisted by an external lawyer, as the case may be, who are only rarely
 represented by advisers.

6. Remuneration of lawyers. a) General. aa) External lawyers. EU institutions and 24
 bodies¹²²⁷ as well as Member States *may* use external lawyers in addition to their
 agents.

(1) GC. Pursuant to the case-law of the GC, an institution is free to entrust the 25
 protection of its interest to an external lawyer, and it thus does not have to justify
 the involvement of outside counsel. The remuneration of such counsel falls within
 the expenses necessarily incurred for the purpose of the proceedings, which is
 confirmed by the GC's consistent case-law¹²²⁸ in both matters before the GC as well
 as staff matters (before the CST)¹²²⁹.

(2) CST. In a recent order of 27 September 2011 in case F-55/08, *De Nicola v* 26
EIB,¹²³⁰ the CST departed from the GC's and the ECJ's consistent line of case law
 by holding that fees paid by an institution to its external lawyer do not in all
 situations constitute recoverable costs which the institution is not required to prove
 were essential. This results in a **double test** (see De Nicola, paragraphs 37 and 40):
 Firstly, the institution needs to **prove**, on a case by case basis, the necessity of
 instructing a lawyer. Secondly, provided the institution has adduced the evidence,
 the CST may determine the amount up to which the lawyers' fees can be recovered
 from the party ordered to pay the costs.

(3) **Comment.** This new line of case-law raises questions of compatibility with 27
 Art. 19 Statute ECJ. In paragraphs 30 and 31 of its order, the CST refers to the

¹²²⁷ As they are permitted to do under Art. 19 Statute ECJ.

¹²²⁸ Case T-303/04 DEP, *Evropaiki Dynamiki v Commission* [2008] (not published in the ECR),
 paragraph 44 and the case-law cited.

¹²²⁹ Regarding external lawyers acting for an institution Case T-167/94 (92), *Nölle v Council and
 Commission* [1997] ECR p. II-2379, paragraph 20 and the case law cited.

¹²³⁰ Case F-55/08 DEP, *De Nicola v EIB* [2011] (not published in the ECR), paragraphs 24 et seq.

wording of Art. 91 (b) of its Rules of Procedure and a number of taxation orders from both the ECJ and the GC, and then concludes, in paragraph 32, that it **cannot** be inferred from those orders “*that the fees paid by an institution to its lawyer constitute in all situations recoverable costs which the institution is not required to prove were essential in accordance with Article 91 (b) of the Rules of Procedure*”.

- 28 It is striking, however, that the CST does not address Art. 19 Statute ECJ, i.e. the very provision of primary law which is at the basis of the ECJ’s and GC’s case law.
- 29 Secondly, the order in *De Nicola v EIB* seems to misrepresent the order in e.g. *Dietz v Commission*¹²³¹, where the ECJ held that where institutions “*arrange to be represented by a lawyer or appoint as agent a person who is not a member of their staff and who must be paid, it is clear that such remuneration comes within the concept of expenses necessarily incurred for the purpose of the proceedings.*” In a recent order¹²³², the GC held, even more explicitly, the following: “*Where an institution decides, as it is permitted to do under the first paragraph of Article 19 of the Statute of the Court of Justice, that the agent appointed by it is to be assisted by a lawyer, the remuneration of that lawyer necessarily constitutes expenses necessarily incurred for the purpose of the proceedings within the meaning of Article 91(b) of the Rules of Procedure (order of 11 December 2009 in Case T-132/98 DEP Groupe Perry and Isibiris v Commission, not published in the ECR, paragraph 23).*”¹²³³ For that very reason, the ECJ rejected the view of an applicant that an institution appointing an external lawyer was “not objectively justified”¹²³⁴.
- 30 Given this background, one may not require the institution to adduce “*evidence of the necessity of instructing a lawyer*”, as required in case *De Nicola v EIB*. Besides, there is no need for such a change of case-law since the CST may still assess whether the amount claimed by the institution is essential¹²³⁵. Finally, the fact that taxation orders cannot be challenged by way of an appeal or another legal remedy results in a co-existence of dissenting case law from the GC and the CST. Regarding an appeal against a decision of the CST, the GC considers that the remuneration of the institution’s external lawyer constitutes expenses necessarily incurred for the purpose of an appeal against a decision of the CST¹²³⁶, whilst in proceedings at first instance the CST requires a justification. In the end, much will depend upon the way the CST will apply its new case-law, should it be maintained.

bb) Other parties

- 31 In contrast to EU institutions and Member States, the other parties, i.e. natural and legal persons, *must* be represented by an external lawyer. The lawyers’ remuneration falls within the category of “expenses necessarily incurred by the parties for the purpose of the proceedings” within the meaning of Art. 91(b) RP

¹²³¹ Case 126/76 DEP, *Dietz v Commission* [1976] ECR p. 2132.

¹²³² Case T-239/08 DEP, *Comtec Translation Ltd v Commission* [2011] (not published in the ECR), paragraph 21 and the case-law cited.

¹²³³ See also Case T-264/07 DEP, *CSL Behring GmbH v Commission and EMA* [2012] (not published in the ECR), paragraphs 15 and 16.

¹²³⁴ Case C-323/06 P-DEP, *Commission v Kallianos* [2012] (not published in the ECR), paragraph 11.

¹²³⁵ See in this respect Case T-498/09 P-DEP, *Kerstens v Commission* [2012] (not published in the ECR), paragraphs 20 and 28.

¹²³⁶ Case T-498/09 P-DEP, *Kerstens v Commission* [2012] (not published in the ECR), paragraph 20 and the case-law cited.

GC¹²³⁷. In either case, the parties have the free choice of external lawyer, as long as they may appear at a Court or Tribunal of a Member State¹²³⁸.

cc) Internal lawyer

The remuneration paid to in-house counsel, a member of the legal service of a legal person, or a member of said legal person's board is **not reimbursable**.

dd) Reimbursable amount

A dispute between the parties normally revolves around the question of the exact amount of lawyers' fees considered to be "necessarily incurred". Parties should always keep in mind that according to settled case-law, the Community judicature is not empowered to tax the fees payable by the parties to their own lawyers, but is only empowered to determine the part of that remuneration which may be recovered from the party ordered to pay the costs¹²³⁹.

b) Criteria of assessment. **aa) Case law.** The GC "must consider all the facts of the case, taking into account the **purpose** and **nature** of the proceedings, their **significance** from the point of view of Community law, as well as the **difficulties** presented by the case, the amount of **work** generated by the dispute for the agents and advisers involved, and the **financial interest** which the parties had in the proceedings"¹²⁴⁰.

bb) Irrelevant elements. **(1) National scales.** According to the case law, the GC is not obliged to take account of any national scales of lawyers' fees or any agreement in relation to fees concluded between the party concerned and his agents or advisers¹²⁴¹. Thus, the GC is not bound by a fee arrangement between the party and its lawyer. Nor does it need to take account of national legislation, e.g. the German "BRAGO"¹²⁴², a governmental decree¹²⁴³ or directive¹²⁴⁴, or a statement by a national law society or bar association¹²⁴⁵ with respect to the amount of fees a lawyer may charge.

(2) Other. An applicant is not entitled to rely on what was said in the judgment, on views expressed by the Commission or by the former House of Lords following that judgment, or, more generally, on the need for effective judicial review in order to

¹²³⁷ Case T-124/93, *Werner v Commission* [1995] ECR p. II-91, paragraph 10.

¹²³⁸ Case T-95/98 DEP, *Gogos v Commission* [2001] ECR p. II-571, paragraph 24.

¹²³⁹ Case T-65/96 DEP, *Kish Glass v Commission* [2001] ECR p. II-3261, paragraph 18 and the case law cited.

¹²⁴⁰ Joined Cases T-18/89 and T-24/89, *Tagaras v ECJ* [1992] ECR p. II-153, paragraph 13; Case T-2/93 DEP, *Air France v Commission* [1995] ECR p. II-533, paragraph 16.

¹²⁴¹ Case F-7/08 DEP, *Schönberger v Parliament* [2010] (not published in the ECR), paragraph 24.

¹²⁴² Case T-120/89 (92), *Stahlwerke Peine Salzgitter v Commission* [1996] ECR p. II-1547, paragraph 26.

¹²⁴³ Case T-8/03 DEP, *El Corte Inglés v OHIM* [2007] (not published in the ECR), paragraph 14.

¹²⁴⁴ Joined Cases T-43/91 (92), T-44/91 (92), T-51/91 (92) and T-52/91 (92), *Hoyer-Smets v Commission* [1995] ECR p. I-A-151, 153.

¹²⁴⁵ Joined Cases T-23/90 and T-9/92, *Peugeot v Commission* [1995] ECR p. II-2059, paragraph 19.

obtain more than that to which it is entitled under Art. 91(b) RP GC¹²⁴⁶. The institution cannot use the fees it pays to its own external lawyers as a yardstick for determining the amount to be reimbursed to the other party¹²⁴⁷.

c) “Purpose and nature of the dispute”

37 In practice, this first criteria referred to in the case law quoted above is so closely linked to the other criteria, in particular the significance from the point of view of EU law, that it plays no autonomous role.

38 d) “Significance from the point of view of EU law” aa) New questions. In that regard, the Judges will take into account whether or not the case raises significant new and important **legal questions**¹²⁴⁸ that were not discussed during the administrative phase¹²⁴⁹. It also considers whether the case involves complex **economic issues**¹²⁵⁰.

bb) Hourly rates

39 It would seem that the GC links the **necessity of the hourly rate** to the significance of the case from the point of view of EU law, the financial interest the party had in the interest of the case¹²⁵¹, the complexity¹²⁵² of the contentious matter, and the number of hours necessary for the purposes of the proceedings concerned¹²⁵³. The GC may also compare the hourly rate charged by the same lawyer in analogous cases¹²⁵⁴:

40 (1) **Upper segment.** The complexity of a case may justify the intervention of “highly specialized lawyers” working many hours at very high hourly rates.

In *Lagardère v. Commission*, (2004), where fees were expressed in USD, the CFI accepted the following rates:

partner:	USD 550 and USD 765,
experienced lawyer: between	USD 360 and USD 480,
trainee lawyers: between	USD 120 and USD 190 ¹²⁵⁵ .

¹²⁴⁶ Case T-342/99 DEP, *Airtours v Commission* [2004] ECR p. II-1785, paragraphs 14–15.

¹²⁴⁷ Case T-23/03 DEP, *CAS v Commission* [2009] (not published in the ECR), paragraph 61.

¹²⁴⁸ Case T-120/89 (92), *Stahlwerke Peine Salzgitter v Commission* [1996] ECR p. II-1547, paragraph 30.

¹²⁴⁹ Case T-251/00 DEP, *Lagardère v Commission* [2004] ECR p. II-4217, paragraph 26.

¹²⁵⁰ Case T-290/94 (92), *Kayserberg v Commission* [1998] ECR p. II-4105, paragraph 18.

¹²⁵¹ Case T-239/08 DEP, *Comtec Translations v Commission* [2011] (not yet published in the ECR), paragraph 36.

¹²⁵² Case T-455/05 DEP, *Componenta v Commission* [2010] (not published in the ECR), paragraph 56.

¹²⁵³ Case T-93/06 DEP, *Mühlens v OHIM* [2010] (not published in the ECR), paragraph 22 and the case-law cited.

¹²⁵⁴ Case T-23/03 DEP, *CAS SpA v Commission* [2009] (not published in the ECR), paragraph 39.

¹²⁵⁵ Case T-251/00 DEP, *Lagardère v Commission* [2004] ECR p. II-4217, paragraph 26.

(2) **Middle segment.** According to the GC an hourly rate of EUR 300¹²⁵⁶ or of EUR 285¹²⁵⁷ is only justified for a “highly experienced” professional, who is capable of working very quickly and efficiently¹²⁵⁸.

(3) **Lower segment.** An hourly rate of EUR 200¹²⁵⁹ or EUR 225¹²⁶⁰ in a staff case; of EUR 124 in a public procurement case¹²⁶¹; of EUR 250 in a customs case¹²⁶²; and of EUR 265¹²⁶³ or EUR 230 for an intervener¹²⁶⁴ in proceedings relating to intellectual property rights have been accepted.

(4) **Hourly rates not considered to be necessary.** In a case relating to genetically modified corn, the GC ruled that an average hourly rate of EUR 400 was not necessary and accepted a rate of EUR 260¹²⁶⁵. In a state aid case, rates of EUR 420 and EUR 460 were considered to be largely in excess of what may be considered appropriate in the case of a “particularly experienced” lawyer¹²⁶⁶.

e) Degree of difficulty

This criterion is closely linked to the significance which a case presents for the further clarification and establishment of EU law and jurisprudence:

aa) Facts

In this regard, the GC may take into account the complexity of the facts¹²⁶⁷ of the case and/or a lack of order and clarity in the file of the defendant¹²⁶⁸.

bb) Legal aspects. (1) New questions. The GC will take into account whether the case concerns a **new, possibly complex legal question** raised by e.g. the issue of collective dominant position¹²⁶⁹ or the interference of an institution prior to and during the applicant’s performance of a subsidized project¹²⁷⁰. It will also consider

¹²⁵⁶ Joined Cases T-5/02 DEP and T-80/02 DEP, *Tetra Laval v Commission* [2011] (not published in the ECR), paragraph 78.

¹²⁵⁷ Case T-221/05 DEP, *Huvis v Council* [2010] (not published in the ECR), paragraph 42.

¹²⁵⁸ Case T-233/99 DEP, *Land Nordrhein-Westfalen v Commission* [2006] (not published in the ECR), paragraph 39.

¹²⁵⁹ Case T-66/04 DEP, *Gogos v Commission* [2010] (not published in the ECR), paragraph 26.

¹²⁶⁰ Case F-100/05 DEP, *Chatziioannidou v Commission* [2007] (not published in the ECR) paragraph 29.

¹²⁶¹ Case T-239/08 DEP, *Comtec Translations v Commission* [2011] (not yet published in the ECR), paragraph 35.

¹²⁶² Case T-23/03 DEP, *CAS v Commission* [2009] (not published in the ECR), paragraph 39.

¹²⁶³ Case T-429/08 DEP, *Grain Millers v OHIM* [2011] (not published in the ECR), paragraph 47.

¹²⁶⁴ Case T-27/09 DEP, *Stella Kunststofftechnik v OHIM* [2010] (not published in the ECR), paragraph 21.

¹²⁶⁵ Case T-139/07 DEP, *Pioneer Hi-Bred International v Commission* [2011] (not published in the ECR), paragraph 40 and 42.

¹²⁶⁶ Case T-455/05 DEP, *Componenta v Commission* [2010] (not published in the ECR), paragraph 60.

¹²⁶⁷ Case T-80/97 DEP, *Starway v Council* [2002] ECR p. II-1, paragraphs 26–31; Case T-38/95 DEP, *Groupe Origny v Commission* [2002] ECR p. II-217, paragraphs 32, 33, 37.

¹²⁶⁸ Case T-78/89 Dépens, *PPG Industries Glass v Commission* [1993] ECR p. II-573, paragraph 43.

¹²⁶⁹ Case T-342/99 DEP, *Airtours v Commission* [2004] ECR p. II-1785 paragraphs 21–24.

¹²⁷⁰ Case T-331/94 DEP, *IPK-München v Commission* [2006] ECR p. II-51, paragraph 54.

whether there are any precedents for resolving such a case found in the case law¹²⁷¹. The case's difficulty may also relate to questions of **admissibility**¹²⁷².

- 46 (2) **Lower degree of difficulty.** The degree of difficulty is considered lower if the substantive questions which the application at issue raised were, to a large extent, the subject-matter of prior cases which the applicant had brought before the Court and which thus provided the party with some knowledge of the substance of the case at issue¹²⁷³.
- 47 f) **Amount of work.** aa) **Main party.** (1) **Number of hours.** (a) **No matter how many lawyers.** In the more distant past, the CFI, the predecessor of the GC, held that in principle only one lawyer per case is necessary¹²⁷⁴ unless the complexity or volume of the case¹²⁷⁵ justifies an involvement of two or more lawyers¹²⁷⁶. Today, the number of lawyers involved in a case is no longer most important, but instead one must "primarily"¹²⁷⁷ consider the **total number of hours** the party claims to be necessary for the case¹²⁷⁸.
- 48 (b) **Barristers and solicitors.** The party must decide whether it will involve both a barrister and solicitor, as is compulsory in several common law jurisdictions, including England and Wales, but not in proceedings before EU courts¹²⁷⁹. Should a party decide to involve both a solicitor and a barrister, the GC will assess whether this choice has not produced any **unnecessary duplication of costs**¹²⁸⁰. This is particularly relevant if several barrister and/or solicitors are involved¹²⁸¹.
- 49 (c) **Hours objectively necessary.** In order to determine whether or not a cost is necessary, one must not consider whether the number of hours is justified from an accounting point of view¹²⁸², but whether the total number of hours indicated by the party was **objectively necessary**¹²⁸³. This requirement is bound to result in an approximation. For instance, the GC held that 42 hours for assessing an application

¹²⁷¹ Case T-178/98 DEP, *Fresh Marine v Commission* [2004] ECR p. II-3127, paragraph 33.

¹²⁷² Case T-33/01 DEF, *Infront WEM AG v Commission* [2008] (not published in the ECR), paragraph 26.

¹²⁷³ Case T-64/99 DEP, *UK Coal v Commission* [2001] ECR p. II-2549, paragraph 30.

¹²⁷⁴ Joined Cases T-177/94 (92), T-377/94 (92) and T-99/95 (92), *Altmann A. O. v Commission* [1998] ECR SC p. I-A-299, 303.

¹²⁷⁵ Case T-178/98 DEP, *Fresh Marine v Commission* [2004] ECR p. II-3127, paragraph 35.

¹²⁷⁶ Case T-120/89 (92) *Stahlwerke Peine Salzgitter v Commission* [1996] ECR p. II-1547, paragraph 30; Case T-447/93 (92) *AITEC v Commission* [1996] ECR p. II-1631, paragraph 21.

¹²⁷⁷ Case T-33/01 DEF, *Infront WEM AG v Commission* [2008] (not published in the ECR), paragraph 28.

¹²⁷⁸ Case T-157/01 DEP, *Danske Busvognmænd v Commission* [2007] (not published in the ECR), paragraph 29.

¹²⁷⁹ Case T-161/07 DEP, *Group Lottuss Corporation SL v OHIM* [2011] (not published in the ECR), paragraphs 23 et seq.

¹²⁸⁰ Case T-342/99 DEP, *Airtours v Commission* [2004] ECR p. II-1785, 1804–1807. Case T-161/07 DEP, *Group Lottuss Corporation SL v OHIM* [2011] (not published in the ECR), paragraphs 23 et seq.

¹²⁸¹ Case T-161/07 DEP, *Group Lottuss Corporation SL v OHIM* [2011] (not published in the ECR), paragraphs 23 et seq.

¹²⁸² Case T-383/03 DEP, *Hynix Semiconductor v Council* [2009] (not published in the ECR), paragraph 45.

¹²⁸³ Joined Cases T-177/94 (92), T-377/94 (92) and T-99/95 (92), *Altmann A. O. v Commission* [1998] ECR SC p. I-A-299, 302; Case T-65/96, *Kish Glass v Commission* [2001] ECR p. II-3261,

comprised of 34 pages and some annexes is excessive¹²⁸⁴, as is 9 hours for assessing a statement of defence of 24 pages¹²⁸⁵.

(2) **Number and contents of written submissions/oral hearings.** (a) **Link to the proceedings.** The GC also takes into account whether and to which extent the number of hours in question is **directly linked** to the proceedings at the GC¹²⁸⁶. The GC will thus include activities such as of e.g. studying of the case-file¹²⁸⁷ and the research of case-law and legislation, provided they relate to the case¹²⁸⁸. According to well-established case-law, lawyers' fees relating to periods where no procedural act occurred¹²⁸⁹ are not considered necessary for the purpose of the proceedings.

(b) **Written submissions.** The GC will furthermore take account of the number of written submissions, e.g. whether the proceedings were limited to a formal application for a decision on admissibility (Art. 114 (1) RP GC)¹²⁹⁰, the number of written pleadings submitted by the party concerned¹²⁹¹, i.e. the absence of a reply and rejoinder¹²⁹² and whether a reply¹²⁹³ was merely repetitive¹²⁹⁴. The **length** of the written submissions is normally not a reliable indicator as to the amount of work objectively necessary.¹²⁹⁵

(c) **Oral hearing.** The GC will consider whether an oral hearing has taken place¹²⁹⁶; the time required for preparing this hearing¹²⁹⁷ and whether a party's lawyer attended the oral hearing¹²⁹⁸; and the ratio between the hours charged for the hearing and the actual duration of that hearing¹²⁹⁹.

(3) **Circumstances likely to justify a reduction of the recoverable amount.** The recoverable amount is generally reduced if several cases are joined, or if the cases resemble each other so much that they entail a "considerable" reduction of the work

paragraph 28; Joined Cases T-226/00 DEP and T-227/00 DEP, *Nan Ya Plastics v Council* [2003] ECR p. II-685, paragraph 44.

¹²⁸⁴ Case T-95/06 DEP, *Agrarias de la Comunidad Valenciana v OCVV* [2009] (not published in the ECR), paragraph 55.

¹²⁸⁵ Case T-95/06 DEP, *Agrarias de la Comunidad Valenciana v OCVV* [2009] (not published in the ECR), paragraph 58.

¹²⁸⁶ Case T-23/03 DEP, *CAS SpA v Commission* [2009] (not published in the ECR), paragraph 35.

¹²⁸⁷ Case T-239/08 DEP, *Comtec Translations v Commission* [2011] (not yet published in the ECR) paragraph 31.

¹²⁸⁸ Case T-33/01 DEF, *Infront WEM AG v Commission* [2008] (not published in the ECR), paragraph 32.

¹²⁸⁹ Case T-455/05 DEP, *Componenta v Commission* [2010] (not published in the ECR), paragraph 44.

¹²⁹⁰ Case T-460/93 DEP, *Tête A. O. v EIB* [1995] ECR p. II-229, paragraph 12.

¹²⁹¹ Case T-84/91 Dépens, *Meskens v Parliament* [1993] ECR p. II-757, paragraph 15.

¹²⁹² Case T-27/09 DEP, *Stella Kunststofftechnik v OHIM* [2010] (not published in the ECR), paragraph 19.

¹²⁹³ Case T-84/91 Dépens, *Meskens v Parliament* [1993] ECR p. II-757, paragraph 13.

¹²⁹⁴ Case T-271/94 (92), *Branco v Commission* [1998] ECR p. II-3761, paragraph 24.

¹²⁹⁵ Case T-85/04, *Strack v Commission* [2012] (not published), paragraph 27.

¹²⁹⁶ Joined Cases T-226/00 DEP and T-227/00 DEP, *Nan Ya Plastics v Council* [2003] ECR p. II-685, paragraph 41.

¹²⁹⁷ Case T-95/06 DEP, *Federación de Cooperativas Agrarias de la Comunidad Valenciana v OHIM* [2009] (not published in the ECR), paragraph 60.

¹²⁹⁸ Case T-263/03 DEP, *Müllhens v OHIM* [2009] (not published in the ECR), paragraph 20.

¹²⁹⁹ Case T-23/03 DEP, *CAS SpA v Commission* [2009] (not published in the ECR), paragraph 36.

required¹³⁰⁰. The recoverable amount will also normally be reduced if the case at issue resembles another case which is based on the same facts and which resulted in a taxation order¹³⁰¹ or economies of scale¹³⁰². Likewise, the fact that the lawyers already discussed certain legal questions in the context of national proceedings¹³⁰³; during the administrative phase¹³⁰⁴; prior to the adoption of the challenged decision¹³⁰⁵; or during the proceedings preceding an application to set aside a judgment by default¹³⁰⁶, which makes them familiar with the relevant elements of the contentious matter¹³⁰⁷ and thus “inevitably” reduces the number of hours of work required for the drafting of the application¹³⁰⁸, can also cause a reduction of the recoverable amount. This also applies to a lawyer acting for an institution which provided him its assistance¹³⁰⁹. In cases involving several applicants, the GC also takes into account whether the applicants worked together in preparing the application and other pleadings, and if those pleadings were lodged jointly, not by separate documents, even if each of the applicants was represented by different lawyers¹³¹⁰. Costs for a transfer between several applicants’ lawyers are not reimbursable¹³¹¹. The same is true for putting in order an application¹³¹².

- 54 (4) **Circumstances likely to justify an increase of the recoverable amount:** An additional amount of work resulting from a lack of clarity in the arguments of the other party¹³¹³, the shortening of a written pleading which is imputable to the other party¹³¹⁴, or the fact that the case involves a large number of applicants from different nationalities¹³¹⁵ may all increase the recoverable amount in a case. The amount of time required for the preparation of the oral hearing¹³¹⁶ and for the journey to Luxembourg in order to attend the oral hearing¹³¹⁷ is likely to increase

¹³⁰⁰ Joined Cases T-43/91 (92), T-44/91 (92), T-51/91 (92) and T-52/91 (92), *Hoyer-Smets v Commission* [1995] ECR SC p. I-A-151, 154; Joined Cases T-177/94 (92), T-377/94 (92) and T-99/95 (92), *Altmann A. O. v Commission* [1998] ECR SC p. I-A-299, 303.

¹³⁰¹ Case T-448/93 (92), *British Cement Association v Commission* [1998] (not published in the ECR), paragraphs 13–14.

¹³⁰² Case T-429/08 DEP, *Grain Millers v OHIM* [2011] (not published in the ECR), paragraph 48 and the case law cited.

¹³⁰³ Case T-214/04 DEP, *The Royal County of Berkshire Polo Club v OHIM* [2007] (not published in the ECR), paragraph 20.

¹³⁰⁴ Case T-251/00 DEP, *Lagardère v Commission* [2004] ECR p. II-4217, paragraphs 29–30.

¹³⁰⁵ Case T-115/94 (92), *Opel Austria v Council* [1998] ECR p. II-2739, paragraph 30.

¹³⁰⁶ Case T-54/02 OP-DEP, *Bayrische Hypo- und Vereinsbank v Commission* [2009] (not published in the ECR), paragraph 53 and the case-law cited.

¹³⁰⁷ Case T-34/02 DEP, *Le Levant 015 and Others v Commission* [2010] ECR p. II-0000, paragraphs 42–44, 46.

¹³⁰⁸ Case T-273/03 DEP, *Merck Sharp & Dohme A. O. v Commission* [2007] (not published in the ECR), paragraph 27.

¹³⁰⁹ Case T-132/98 DEP, *Groupe Perry and Isibiris v Commission* [2009] (not published in the ECR), paragraph 30.

¹³¹⁰ Case T-251/00 DEP, *Lagardère v Commission* [2004] ECR p. II-4217, paragraphs 29–30.

¹³¹¹ Case T-54/02 OP-DEP, *Bayrische Hypo- und Vereinsbank v Commission* [2009] (not published in the ECR), paragraph 55.

¹³¹² Case T-27/02 DEP, *Kronofrance v Commission* [2010] (not published in the ECR), paragraph 47.

¹³¹³ Case T-271/94 (92), *Branco v Commission* [1998] ECR p. II-3761, paragraph 24.

¹³¹⁴ Case T-383/03 DEP, *Hynix Semiconductor v Council* [2009] (not published in the ECR), paragraph 46.

¹³¹⁵ Case T-285/03 DEP, *Agraz A. O. v Commission* [2008] (not published in the ECR), paragraph 41.

¹³¹⁶ Case T-271/94 (92), *Branco v Commission* [1998] ECR p. II-3761, paragraph 24.

¹³¹⁷ Joined Cases T-18/89 and T-24/89, *Tagaras v ECJ* [1992] ECR p. II-153, paragraph 14.

the recoverable costs. Likewise, the need to change the lawyer, e.g. between the written and the oral proceedings¹³¹⁸ is likely to increase recoverable costs.

(5) **Miscellaneous situations.** The fact that the lawyers of the party concerned were already familiar with the legal issues of the case due to the preceding administrative procedure, does not necessarily reduce the amount recoverable if the case raised complex factual and legal issues and was important from the perspective of EU law¹³¹⁹. Furthermore, the GC recognizes fact that a written submission is short but concise does not automatically mean that it did not require much time¹³²⁰. If a party changed its lawyer during the proceedings¹³²¹, the party ordered to pay costs cannot bear the costs of involving this new lawyer except those corresponding to the time which that new lawyer spent on the file, other than time necessarily required in familiarizing himself with that file¹³²².

bb) Intervener. (1) **Rule/Exception.** According to the case law, one must take account of the fact that, as a **general rule**, the main party's work, on behalf of whom an intervener intervenes, significantly aids the intervener's procedural task¹³²³. As an intervention is, by its nature, subordinate to the main action, such intervention cannot therefore be considered to present as many difficulties as the main action, save in **exceptional cases**¹³²⁴. The mere fact that the main proceedings were conducted as expedited proceedings is not likely to have a substantial bearing on the amount of work of the intervener¹³²⁵.

(2) **Fees.** The fees of an intervener's lawyer cannot therefore, as a **rule**, be higher than those of the main party. The fees paid by an institution to an external lawyer to whom the institution provided substantial assistance cannot serve as a reference for assessing the amount of the fees of another party¹³²⁶. Determining whether lawyer's fees paid by an intervener are necessary depends upon the extent to which the intervener's lawyer makes "**autonomous and useful observations**"¹³²⁷. Thus, one must consider whether the intervening party contributed arguments of conclusive importance to the decision which differ substantially from those in the main party's submissions¹³²⁸; whether and to which extent such arguments were relevant and assisted in clarifying the issues raised by the dispute¹³²⁹; and also to which extent the judgment refers to the arguments of the intervener¹³³⁰.

¹³¹⁸ Case T-66/04 DEP, *Gogos v Commission* [2010] (not published in the ECR), paragraph 29 and the case-law cited.

¹³¹⁹ Case T-2/93 (92), *Air France v Commission* [1996] ECR p. II-235, paragraph 23.

¹³²⁰ Case F-100/05 DEP, *Chatzioannidou v Commission* [2007] (not published in the ECR), paragraph 24.

¹³²¹ Case T-300/97 DEP, *Latino v Commission* [2004] ECR p. II-125, paragraphs 12, 15 and 19.

¹³²² Case T-337/94, *Enzo-Gutzeit v Commission* [2000] ECR p. II-479, paragraphs 20 and 21.

¹³²³ Case T-65/96 DEP, *Kish Glass v Commission* [2001] ECR p. II-3261, paragraph 20.

¹³²⁴ Case T-97/95 (92), *Sinochem v Council* [1999] ECR p. II-743, paragraph 17.

¹³²⁵ Case T-417/05 DEP, *Endesa v Commission* [2008] (not published in the ECR), paragraph 46.

¹³²⁶ Case T-2/95, *Industrie des poudres sphériques v Council* [2000] ECR p. II-463, paragraphs 23 and 25.

¹³²⁷ Case T-2/93 (92), *Air France v Commission* [1995] ECR p. II-533, paragraph 19.

¹³²⁸ Joined Cases T-23/90 DEP and T-9/92 DEP, *Peugeot v Commission* [1995] ECR p. II-2059, paragraph 30.

¹³²⁹ Case T-290/94 (92), *Kayserberg v Commission* [1998] ECR p. II-4105, paragraph 19.

¹³³⁰ Case T-246/99 DEP, *Tirrenia di Navigazione and Others v Commission* [2011] (not published in the ECR), paragraph 14.

58 The intervener achieves the very opposite if he confines himself to **reiterating** the arguments of the party he supports¹³³¹. Expenses incurred by an intervener in connection with the drafting of the supported party's replies to written questions posed by the GC are not recoverable, unless it has reached an agreement to that effect with the party in question¹³³². Also, if the intervener's lawyer has become very familiar with the issues in this case because he has always acted for the intervener in proceedings between said intervener and the applicant at the level of a Member State, such familiarity must, according to the GC, inevitably have a moderating effect on the number of hours necessary to prepare the defence of the intervener's interests¹³³³.

59 **g) Economic interest of the parties. aa) General.** The direct or indirect **financial interests** at stake normally determine the extent of a natural or legal person's economic interest. The significance of a party's financial interest is reduced if other cases involving the same party broadly took into account the interest asserted in the case at issue¹³³⁴. The GC will also verify whether the economic interest is merely of a normal level for the proceedings at stake, such as that found in trade mark cases¹³³⁵. **Non-economic interests** are not taken into account.

bb) Considerable financial interest

60 The GC has held that there is a considerable economic interest e.g. in the case of

- a fine of ECU¹³³⁶ **1.7 Mio**¹³³⁷,
- if the case is about a serious infringement of **Art. 102 TFEU**¹³³⁸,
- if a case concerns **television transmission rights** for major sports events such as the FIFA world cup¹³³⁹,
- in the event of a takeover valued at around **GBP 850 Mio**¹³⁴⁰,
- a state aid case involving **EUR 70 Mio**¹³⁴¹,
- or a damages claim of some **431.000 NOK**¹³⁴².

By contrast, a challenged decision's alleged effect on the volume of sales is bound to be purely speculative¹³⁴³.

61 **7. Travel and subsistence expenses. a) Recoverable. aa) Proven costs.** The travel and subsistence expenses of agents, advisers, and lawyers for **travelling** from their

¹³³¹ Case T-65/96 DEP, *Kish Glass v Commission* [2001] ECR p. II-3261, paragraph 22.

¹³³² Case T-290/94 (92), *Kayserberg v Commission* [1998] ECR p. II-4105, paragraph 22.

¹³³³ Case T-214/04 DEP, *The Royal County of Berkshire Polo Club v OHIM*, [2007] (not published in the ECR), paragraph 20.

¹³³⁴ Case T-64/99 DEP, *UK Coal v Commission* [2001] ECR p. II-2549, paragraph 31.

¹³³⁵ Case T-234/06 DEP, *Klosterbrauerei Weissenohe* [2011] (not yet published in the ECR), paragraph 12.

¹³³⁶ The former European currency unit.

¹³³⁷ Case T-78/89 Dépens, *PPG Industries Glass v Commission* [1993] ECR p. II-573, paragraph 44.

¹³³⁸ Case T-65/96 DEP, *Kish Glass v Commission* [2001] ECR p. II-3261, paragraph 23.

¹³³⁹ Case T-33/01 DEP, *Infront WEM AG v Commission* [2008] (not published in the ECR), paragraph 27.

¹³⁴⁰ Case T-342/99 DEP, *Airtours v Commission* [2004] ECR p. II-1785, paragraph 27.

¹³⁴¹ Case T-27/02 DEP, *Kronofrance v Commission* [2010] (not published in the ECR), paragraph 39.

¹³⁴² NOK: Norwegian crowns; Case T-178/98 DEP, *Fresh Marine v Commission* [2004] ECR p. II-3127, paragraph 37.

¹³⁴³ Case T-273/03 DEP, *Merck Sharp & Dohme and Others v Commission* [2007] (not published in the ECR), paragraph 28.

offices to Luxembourg and back are recoverable¹³⁴⁴. These expenses include arriving from a city other than the one where he has his offices, if the lawyer had already arranged meetings when the date for the hearing was set¹³⁴⁵. This is not the case for travel outside that which enables lawyers to attend the hearing before the GC¹³⁴⁶.

bb) Lump sum

In the absence of any evidence for travel and subsistence expenses, the GC will provide a lump sum, which varies e.g. whether it is a simple staff case¹³⁴⁷ or a merger case¹³⁴⁸.

cc) Lawyer's fees during travel time?

The CST held that in addition to the costs of travelling, a lawyer may charge fees for the time spent travelling to and from Luxembourg, though at a half rather than a full rate¹³⁴⁹.

b) Non-recoverable. aa) Lawyer. Travel and subsistence costs are not recoverable if they are considered to be unreasonable. This may be the case if two lawyers attend the oral hearing¹³⁵⁰. This may also be the case of exorbitant or multiple restaurant expenses¹³⁵¹, travelling by helicopter, flying in one's own secretary, etc. A party will not be able to recover the costs of a lawyer who travels to Luxembourg for the sole purpose of personally filing a written submission¹³⁵².

bb) Party

A party will not recover its travel and subsistence costs for attending an oral hearing¹³⁵³ if the GC did not order the personal appearance of that party¹³⁵⁴. However, the fees spent by a party on a lawyer do not become unrecoverable merely because the lawyer happens to be established in a distant Member State, which generates considerable travel and subsistence expenses for trips between that State and Luxembourg¹³⁵⁵. This expresses the principle of free choice of the lawyer,

¹³⁴⁴ Case T-167/94 (92), *Nölle v Council and Commission* [1997] ECR p. II-2379, paragraph 21.

¹³⁴⁵ Case F-7/08 DEP, *Schönberger v Parliament* [2010] (not published in the ECR), paragraph 37.

¹³⁴⁶ Joined Cases T-5/02 DEP and T-80/02 DEP, *Tetra Laval v Commission* [2011] (not published in the ECR), paragraph 81.

¹³⁴⁷ Case F-100/05 DEP, *Chatzioannidou v Commission* [2007] (not published in the ECR), paragraph 30.

¹³⁴⁸ Joined Cases T-5/02 DEP and T-80/02 DEP, *Tetra Laval v Commission* [2011] (not published in the ECR), paragraph 82.

¹³⁴⁹ Case F-5/08 DEP, *Brune v Commission* [2012] (not published in the ECR), paragraph 34 et seq.

¹³⁵⁰ Case T-455/05 DEP, *Componenta v Commission* [2010] (not published in the ECR), paragraph 61.

¹³⁵¹ Joined Cases T-5/02 DEP and T-80/02 DEP, *Tetra Laval v Commission* [2011] (not published in the ECR), paragraph 81.

¹³⁵² Joined Cases T-7/98 DEP and T-208/99 DEP, *De Nicola v EIB* [2004] ECR SC p. II-973, paragraph 40; Case T-331/94, *IPK-München v Commission* [2006] ECR p. II-51, paragraphs 79 and 80.

¹³⁵³ Case T-271/94 (92), *Branco v Commission* [1998] ECR p. II-3761, paragraph 20.

¹³⁵⁴ Joined Cases T-148/96 and T-174/96, *Brognieri v Commission* [1999] ECR SC p. II-329, paragraph 11.

¹³⁵⁵ Case T-95/98 DEP, *Gogos v Commission* [2001] ECR SC p. I-A-123, I-A-125.

which implies of course that a party may also recover the fees paid to a lawyer who is not established in the same Member State as the party.

66 **8. Other expenses. a) General.** Art. 91 (b) lists the most common categories of expenses and is thus not limitative (“**in particular**”). Other expenses are in principle recoverable if they have been incurred “for the purpose of the proceedings”, which does of course not mean that any amount becomes recoverable.

67 **b) Address for service. aa) Luxembourg.** The expenses incurred in establishing an address for service are, in principle, recoverable, even if an address for service in Luxembourg¹³⁵⁶ is no longer mandatory¹³⁵⁷. Given the limited value of the service provided, the recoverable costs are limited accordingly, to around several hundred Euro.

bb) Lawyer or agent

68 In addition or instead of specifying an address for service in Luxembourg, the written submission may state that the lawyer or agent agrees that service is to be furnished to him by telefax or other technical means of communication. In practice, the costs, if any, for this alternative are negligible.

69 **c) Experts. aa) Rule.** If a party decides on its own motion to hire an expert, e.g. an economist¹³⁵⁸, the related costs are in principle **not recoverable**¹³⁵⁹, since such “private” expert is not independent¹³⁶⁰, by contrast to sums paid to experts under Art. 74 RP GC¹³⁶¹.

bb) Exceptions

70 Exceptionally, such costs are recoverable, if such an expert’s opinion has been decisive for the outcome of the Court case and if the opinion thus made a measure of inquiry (Art. 65 RP GC) redundant, or if it was justified for reasons of safeguarding the rights of defence, namely in order to justify a proposal for the adoption of a measure of organization of the procedure¹³⁶². In the context of predominantly economic areas¹³⁶³, such as in the context of **merger control**, the involvement of economic advisers or experts specializing in that field may sometimes prove necessary and may entail costs which may be recovered under Article 91(b) RP GC¹³⁶⁴, including travel and subsistence expenses¹³⁶⁵.

¹³⁵⁶ Art. 44 (2) RP GC.

¹³⁵⁷ Case T-342/99 DEP, *Airtours v Commission* [2004] ECR p. II-1785, paragraph 74.

¹³⁵⁸ Case T-65/96, *Kish Glass v Commission* [2001] ECR p. II-3261, paragraph 26.

¹³⁵⁹ Case T-271/94 (92), *Branco v Commission* [1998] ECR p. II-3761, paragraph 22.

¹³⁶⁰ Case T-157/01 DEP, *Danske Busvognmænd v Commission* [2007] (not published in the ECR), paragraph 42.

¹³⁶¹ Art. 91 (a) RP GC.

¹³⁶² Case T-157/01 DEP, *Danske Busvognmænd v Commission* [2007] (not published in the ECR), paragraph 43 et seq.

¹³⁶³ Joined Cases T-85/94 DEP and Case T-85/94 OP-DEP, *Branco v Commission* [1998] ECR p. II-2667, paragraph 27, and Case T-271/94 DEP, *Branco v Commission* [1998] ECR p. II-3761, paragraph 21.

¹³⁶⁴ Case T-342/99 DEP, *Airtours v Commission* [2004] ECR p. II-1785, paragraph 55.

¹³⁶⁵ Joined Cases T-85/94 DEP and Case T-85/94 OP-DEP, *Branco v Commission* [1998] ECR p. II-2667, paragraph 24–25, and Case T-271/94 DEP, *Branco v Commission* [1998] ECR p. II-3761, paragraph 20–22.

d) Translations. aa) General. Art. 90 (b) RP GC only relates to those translations 71 carried out by the GC's linguistic division at the request of a party¹³⁶⁶. Costs for translations undertaken by a private firm upon request of a party, e.g. a translation of the challenged decision¹³⁶⁷, are not recoverable¹³⁶⁸, unless said translation reduces the time spent on the case, e.g. because a party is represented before the GC by the same lawyers as those who represented it in the proceeding before the Commission, which facilitated the work done by those lawyers and reduced the time which they had to spend on the case¹³⁶⁹.

bb) Intellectual property rights

Pursuant to Art. 136 (2) RP GC, costs necessarily incurred by the parties for the 72 purposes of the proceedings before the Board of Appeal¹³⁷⁰ and costs incurred for the purposes of the production, prescribed by the second subparagraph of Article 131(4), of translations of pleadings or other documents into the language of the case, shall be regarded as recoverable costs¹³⁷¹. But if by virtue of Art. 131 (2) and 133 (2) RP GC a party is to receive a translation carried out by the GC's linguistic division, it may not recover costs for a translation it requested by a service provider¹³⁷².

e) Interest

An applicant may not claim interest on the sums paid by it to its lawyers, either 73 from the date of payment of those sums or from that of delivery of the judgment of the GC, as recoverable costs¹³⁷³.

f) VAT

If the applicant is a taxable person, he is entitled to recover from the tax 74 authorities VAT paid on goods and services he purchased. VAT thus does not represent an expense for him and, accordingly, he cannot claim reimbursement of VAT on costs which are recoverable from the other party under Art. 91(b) RP GC. There can be no reimbursement of VAT on legal fees and disbursements, if the applicant was able to deduct the amounts paid in that respect and thus was not required to bear those amounts himself¹³⁷⁴. Thus, VAT is recoverable for those persons who may not claim reimbursement from the tax authorities¹³⁷⁵.

¹³⁶⁶ Joined Cases T-7/98 DEP, T-208/98 DEP and T-109/99 DEP, *De Nicola v EIB* [2004] ECR p. II-973, paragraph 41.

¹³⁶⁷ Case T-2/95 (92), *Industries des poudres sphériques v Council* [2000] ECR p. II-463, paragraph 33.

¹³⁶⁸ See the exception in Art. 136 (2) RP GC.

¹³⁶⁹ Case T-2/93 DEP, *Air France v Commission* [1996] ECR p. II-235, paragraph 26.

¹³⁷⁰ Case T-270/09 DEP, *PVS – Privatärztliche Verrechnungsstelle Rhein-Ruhr GmbH v OHIM* [2012] (not published in the ECR), paragraph 8 and the case-law cited.

¹³⁷¹ Case T-429/08 DEP, *Grain Millers v OHIM* [2011] (not published in the ECR), paragraph 16.

¹³⁷² Case T-35/07 DEP, *Leche Celta v OHIM* [2011] (not published in the ECR), paragraph 33.

¹³⁷³ Case T-78/89 Dépens, *PPG Industries Glass v Commission* [1993] ECR p. II-573, paragraphs 28 et seq.

¹³⁷⁴ Case T-342/99 DEP, *Airtours v Commission* [2004] ECR p. II-1785, paragraph 79.

¹³⁷⁵ Joined Cases T-7/98 DEP, T-208/98 DEP and T-109/99 DEP, *De Nicola v EIB* [2004] ECR p. II-973, paragraph 37.

g) Other expenses

75 Other expenses are recoverable either partly or in full. The party needs to provide the details of such expenses, e.g. relating to offices expenses, the link to the proceedings, and the relevant evidence. In case the party does not provide any details of such expenses, the GC is likely to reject these expenses¹³⁷⁶. By contrast, if the applicant provides the details but omits to attach the relevant evidence, then the GC may define a lump sum, e.g. 5 % of the fees as an acceptable amount of costs¹³⁷⁷ which the GC applies as well¹³⁷⁸.

76 aa) **Photocopies. (1) Institutions.** The concept of expenses necessarily incurred by the parties for the purpose of the proceedings provided for in Art. 91(b) RP GC cannot cover the costs which a party has had to incur due to its **internal organization**, such as an EU institution's obligation to provide copies of its written submissions to all Member States¹³⁷⁹.

77 (2) **Other parties.** The photocopying costs for providing the GC with five copies of each original written submission are reimbursable¹³⁸⁰. However, under certain circumstances, costs for extensive photocopying of documents for the purpose of providing explanations at the oral hearing are not necessarily recoverable¹³⁸¹, in particular if the printing costs are high¹³⁸².

bb) European Ombudsman

78 Costs for an appeal to the European Ombudsman are neither necessarily incurred¹³⁸³, nor do they qualify for a damage claim¹³⁸⁴.

cc) Bank guarantee

79 The same is true for the expenses incurred by the applicant in providing a **bank guarantee**¹³⁸⁵ in competition cases. Bank fees are not automatically considered necessary for the proceedings¹³⁸⁶.

dd) Premiums for litigation insurance

80 These expenses are not recoverable either¹³⁸⁷.

¹³⁷⁶ Case T-498/09 P-DEP, *Kerstens v Commission* [2012] (not published in the ECR), paragraph 42 and the case-law cited.

¹³⁷⁷ Joined Cases T-79/96 DEP and T-260/97 DEP, *Kamar v Council and Commission* [2006] (not published in the ECR), paragraph 71.

¹³⁷⁸ Case F-14/08 DEP, *X v Parliament* [2009] (not published in the ECR), paragraphs 32–34.

¹³⁷⁹ Case T-97/95 (92) II, *Sinochem v Council* [2000] ECR p. II-1715, paragraph 17.

¹³⁸⁰ Case T-23/03 DEP, *CAS v Commission* [2009] (not published in the ECR), paragraph 46.

¹³⁸¹ Case T-97/95 (92), *Sinochem v Council* [2000] ECR p. II-1715, paragraph 17.

¹³⁸² Joined Cases T-5/02 DEP and T-80/02 DEP, *Tetra Laval v Commission* [2011] (not published in the ECR), paragraph 81.

¹³⁸³ Case T-372/02, *Internationaler Hilfsfonds v Commission* [2003] ECR p. II-4389, paragraph 51.

¹³⁸⁴ Case C-331/05 P, *Internationaler Hilfsfond v Commission* [2007] ECR p. I-5475, paragraphs 19 et seq., 27.

¹³⁸⁵ Case T-77/92, *Parker Pen v Commission* [1994] ECR p. II-549, paragraph 101 et seq.

¹³⁸⁶ Case T-234/06 DEP, *Klosterbrauerei Weissenhohe* [2011] (not yet published in the ECR), paragraph 21.

¹³⁸⁷ Case T-78/99 (92), *Elder v Commission* [2000] ECR p. II-3717, paragraph 13.

ee) Flat rate

If the applicant does not provide precise enough information regarding copying, express courier, and general office expenses, the GC may estimate these costs or accept a flat rate of 5 % on the legal fees deemed to have been necessarily incurred¹³⁸⁸.

ff) Other

“Administrative costs” of lawyers¹³⁸⁹; contacts between lawyers and a city council; contacts between a chamber of commerce and an expert, if the report of the latter has been declared inadmissible by the GC¹³⁹⁰.

Article 92 [Taxation]

1. If there is a dispute concerning the costs to be recovered, the General Court hearing the case shall, on application by the party concerned and after hearing the opposite party, make an order, from which no appeal shall lie.

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

Outline:

I. Introduction	1
1. General	1
2. Taxation	2
II. Statistics and critical assessment	3
1. Statistics	3
2. Critical assessment	4
III. Dispute concerning the costs	8
1. General	8
2. Dispute	9
a) Existence of a dispute	9
b) Absence of reaction	10
c) Absence of consensus	11
d) Absence of dispute	12
e) No dispute if costs have already been fixed	13
IV. Application by a party	14
1. General	14
a) No formal pre-contentious proceedings	14
b) Application	15
c) Written proceedings	16
d) Discontinuing the proceedings	17
2. No time-limit	18
a) Reasonable time period	18
b) Statistics	19
3. Contents of the application	20

¹³⁸⁸ Joined Cases T-79/96 DEP and T-260/97 DEP, *Camar v Council and Commission* [2006] (not published in the ECR), paragraphs 44, 45.

¹³⁸⁹ Case T-93/06 DEP, *Mühlens v OHIM* [2010] (not published in the ECR), paragraph 25.

¹³⁹⁰ Case T-455/05 DEP, *Componenta v Commission* [2010] (not published in the ECR), paragraphs 42–43.

a) Petitem.....	20
b) Indicating the details.....	21
aa) General.....	21
bb) Lawyers' fees.....	22
(1) As detailed as possible.....	22
(2) Sufficient.....	23
(3) Insufficient.....	24
cc) Other expenses.....	25
c) Providing adequate evidence.....	26
aa) Lawyer's fees.....	26
(1) Invoices.....	26
(2) Other evidence.....	27
bb) Other expenses.....	28
4. Hearing the other party.....	29
5. Costs of the taxation proceedings.....	30
a) No separate order.....	30
b) Amount indicated in the order.....	31
V. Enforcement.....	32

I. Introduction

1. General

- 1 The taxation of costs is one of the few, if not the only legal remedy, which are **not mentioned** in the Statute ECJ, let alone in the TFEU. Art. 92 RP GC provides few parameters, since the case law has defined the relevant details, by applying a “**strict test**” when assessing the fees recoverable¹³⁹¹. This is thus a specific legal remedy which **rules out** any circumvention, such as an application for **damages** with the same object¹³⁹².

2. Taxation

- 2 A taxation procedure, like the preceding **negotiation** between parties, is to a large extent based on assumptions if not **approximations**, e.g. when it comes to the number of hours, the hourly rates, etc. considered to be “necessarily incurred for the purpose of the proceedings”. Thus, even though the GC’s reasoning tends to be rather and sometimes remarkably detailed when compared to the early orders of the ECJ, the GC’s reasoning nevertheless remains rather general when it comes to explaining e.g. why the GC considers 140 hours to be necessary when one party claims 650 hours and the other is only ready to accept 100 hours¹³⁹³. Parties thus need to be aware of the fact that taxation of costs is **structurally imprecise** no matter the degree of precision of the figures provided by the parties. Such taxation is also definitive, as there is no appeal against taxation orders.

¹³⁹¹ Case T-76/02 DEP, *Messina v Commission*, [2004] (not published in the ECR).

¹³⁹² Case T-366/10 P, *Marcuccio v Commission* [2011] (not published in the ECR), paragraph 22.

¹³⁹³ See e.g. Case T-239/01 DEP, *SGL Carbon v Commission* [2009] (not published in the ECR), paragraph 35.

II. Statistics and critical assessment

1. Statistics

Prior to entering into any bilateral negotiation regarding the amount of recover- 3
able expenses, the parties should have a clear idea concerning the main principles
governing the concept of “costs necessarily incurred”. A taxation procedure almost
always¹³⁹⁴ results in the amount taxed being lower – quite often **substantially lower**
– than the one claimed by the party and at the same time higher than what had
been proposed by the debtor. The following chart provides an overview comprised
of the amount claimed by one party, the amount proposed by the other party and
the amount taxed by the GC in certain types of cases:

SUBJECT	CLAIMED (C)	PRO- POSED	TAXED (T)	RATIO (T/C)
Merger				
T-5/02 etc. DEP ¹³⁹⁵	1,893,395 €	220,000 €	240,000 €	13 %
T-310/00 DEP ¹³⁹⁶	938,000 €	175,000 €	175,000 €	19 %
T-251/00 DEP ¹³⁹⁷	408,224 €	43,250 €	94,500 €	23 %
T-342/99 DEP ¹³⁹⁸	1,717,985 £	170,000 £	489,615 £	28 %
State Aid				
T-228/99 DEP ¹³⁹⁹	3,027,062 €	105,000 €	353,500 €	12 %
T-455/05 DEP ¹⁴⁰⁰	171,007 €	21,400 €	60,000 €	35 %
T-27/02 DEP ¹⁴⁰¹	99,168 €	23,660 €	40,250 €	41 %
T-324/00 DEP ¹⁴⁰²	312,909 €	13,000 €	139,332 €	45 %
T-318/00 DEP ¹⁴⁰³	214,341 €	13,000 €	98,194 €	46 %

¹³⁹⁴ A rare case of the amount claimed and the amount taxed being the same is Case T-33/08, *Bastos Viegas v OHIM* [2010] (not yet published in the ECR).

¹³⁹⁵ Joined Cases T-5/02 DEP and T-80/02 DEP, *Tetra Laval v Commission* (not published in the ECR), paragraphs 10 and 11.

¹³⁹⁶ Case T-310/00 DEP, *Verizon Business Global v Commission* (not published in the ECR), paragraph 13.

¹³⁹⁷ Case T-251/00 DEP, *Lagardère and Canal+ v Commission* (not published in the ECR), paragraphs 4 and 5.

¹³⁹⁸ Case T-342/99 DEP, *Airtours v Commission* (not published in the ECR), paragraph 6.

¹³⁹⁹ Case T-228/99, DEP, *WestLB v Commission* [2006] (not published in the ECR).

¹⁴⁰⁰ Case T-455/05 DEP, *Componenta v Commission* (not published in the ECR), paragraph 4.

¹⁴⁰¹ Case T-27/02 DEP, *Kronofrance v Commission* (not published in the ECR), paragraph 6.

¹⁴⁰² Case T-324/00 DEP, *CDA Datenträger Albrechts v Commission* (not published in the ECR), paragraph 15.

¹⁴⁰³ Case T-318/00 DEP, *Freistaat Thüringen v Commission* (not published in the ECR), paragraph 14.

SUBJECT	CLAIMED (C)	PRO- POSED	TAXED (T)	RATIO (T/C)
Cartel				
T-56/02 DEP ¹⁴⁰⁴	160,598 €	26,010 €	28,500 €	18 %
T-54/02 DEP ¹⁴⁰⁵	74,815 €	26,010 €	28,500 €	38 %
T-38/95 DEP ¹⁴⁰⁶	223,991 €	91,469 €	106,714 €	48 %
T-337/94 (92) ¹⁴⁰⁷	7,728,960 BEF	—	4,5 Mio. BEF	58 %
Anti-Dumping				
T-221/05 DEP ¹⁴⁰⁸	93,866 €	35,000 €	37,905 €	40 %
T-80/97 DEP ¹⁴⁰⁹	123,327 €	36,540 €	58,032 €	47 %
T-178/98 DEP ¹⁴¹⁰	41,792 €	18,592 €	22,613 €	54 %
T-226/00 etc. DEP ¹⁴¹¹	74,368 €	30,000 €	43,000 €	58 %
Customs				
T-23/03 DEP ¹⁴¹²	94,647 €	20,000 €	41,801 €	44 %
Agriculture				
T-146/03 DEP ¹⁴¹³	52,311 €	16,833 €	32,000 €	61 %
Contracts				
T-331/94 DEP ¹⁴¹⁴	38,374 €	13,000 €	34,260 €	88 %
European funds				
T-61/00 DEP ¹⁴¹⁵	7,369 €	—	7,289 €	99 %
Medicinal products				
T-19/02 DEP ¹⁴¹⁶				
T-273/03 DEP ¹⁴¹⁷	96,056 €	27,000 €	30,000 €	31 %
T-74/00 DEP ¹⁴¹⁸	151,347 €	—	100,000 €	66 %
Broadcasting rights				
T-33/01 DEP ¹⁴¹⁹	19,094 €	4,000 €	8,000 €	42 %

¹⁴⁰⁴ Case T-56/02 OP-DEP, *Bayerische Hypo- und Vereinsbank v Commission* (not published in the ECR), paragraph 14.

¹⁴⁰⁵ Case T-54/02 OP-DEP, *Bayerische Hypo- und Vereinsbank (formerly Vereins- und Westbank) v Commission* (not published in the ECR), paragraph 15.

¹⁴⁰⁶ Case T-38/95 DEP, *Groupe Origny v Commission* (not published in the ECR), paragraph 9.

¹⁴⁰⁷ Case T-337/94 (92), *Enso-Gutzeit v Commission* (not published in the ECR), paragraph 4; ~ 191,595,91 €.

¹⁴⁰⁸ Case T-221/05 DEP, *Huvis v Council* (not published in the ECR), paragraph 7.

¹⁴⁰⁹ Case T-80/97 DEP, *Starway v Council* (not published in the ECR), paragraph 11.

¹⁴¹⁰ Case T-178/98 DEP, *Fresh Marine v Commission* (not published in the ECR), paragraph 8.

¹⁴¹¹ Joined Cases T-226/00 DEP and T-227/00 DEP, *Nan Ya Plastics v Council* (not published in the ECR), paragraph 10.

¹⁴¹² Case T-23/03 DEP, *CAS v Commission* (not published in the ECR), paragraph 11.

¹⁴¹³ Case T-146/03 DEP, *Asociación de Estaciones de Servicio de Madrid and Federación Catalana de Estaciones de Servicio v Commission* [2008] (not published in the ECR), paragraph 5.

¹⁴¹⁴ Case T-331/94 DEP, *IPK-München v Commission* (not published in the ECR), paragraph 8.

¹⁴¹⁵ Case T-61/00 DEP, *APOL v Commission* [2006] (not published in the ECR).

¹⁴¹⁶ Case T-19/02 DEP, *Commission and EMEA* [2006] (not published in the ECR).

¹⁴¹⁷ Case T-273/03, DEP, *Merck Sharp & Dohme and Others v Commission* [2007] (not published in the ECR).

¹⁴¹⁸ Case T-74/00 DEP, *Artogodan v Commission* [2006] (not published in the ECR).

¹⁴¹⁹ Case T-33/01 DEP, *Infront WEM AG v Commission* [2008] (not published in the ECR).

SUBJECT	CLAIMED (C)	PRO- POSED	TAXED (T)	RATIO (T/C)
Intervention				
T-132/01 DEP ¹⁴²⁰	142,312 GBP	15,000 GBP	30,526 GBP	21 %
T-225/01 DEP ¹⁴²¹	3,600 €	—	3, 000 €	83 %
Intervention OHIM		6,000–		
T-270/06 DEP ¹⁴²²	293,885 €	13,000€	31,000 €	11 %
T-234/06 DEP ¹⁴²³	21,513 €	3,500 €	6,000 €	28 %
T-35/07 DEP ¹⁴²⁴	21,230 €	—	10,000 €	47 %
T-214/04 DEP ¹⁴²⁵	17,669 GBP	6,450 GBP	10,000 GBP	57 %
T-429/08 DEP ¹⁴²⁶	5,008 €	1,307 €	3,563 €	71 %
Staff Cases				
F-14/08 DEP ¹⁴²⁷	12,940 €	—	5,670 €	44 %
F-6/07 DEP ¹⁴²⁸	26,253 €	11,000 €	11,640 €	44 %
F-7/08 DEP ¹⁴²⁹	17,222 €	—	12,750 €	74 %
F-100/05 DEP ¹⁴³⁰	11,889 €	6,000 €	10,222 €	85 %

2. Critical assessment

First, it needs to be stressed that the criteria the GC applies, most of which date 4 back to the time when the ECJ was the single EU jurisdiction, have the merit of making the taxation more objective and, to some extent, more predictable. The GC's task is far from easy; the parties will normally have very dissenting views as to the amounts they consider being recoverable. Sometimes, the amounts claimed are rather reasonable, in particular if the party concerned decides from the outset not to claim all the fees it actually paid its lawyers. Other parties claim the full sum despite knowing that this is not realistic. Sometimes amounts claimed seem to have been defined in the light of the ruling on costs.

That said, some of the criteria which the GC applies raise questions marks. 5 No one would contest that it is possible to estimate, even if only approximately, the

¹⁴²⁰ Case T-132/01 DEP, *Euroalliances and Others v Commission* [2006] (not published in the ECR).

¹⁴²¹ Case T-225/01 DEP, *Gobierno Foral de Navarra v Commission* [2007] (not published in the ECR).

¹⁴²² Case T-270/06 DEP, *Lego Juris v OHIM – Mega Brands* (not published in the ECR), paragraph 7.

¹⁴²³ Case T-234/06 DEP, *Torresan v OHIM – Klosterbrauerei Weissenhohe* (not published in the ECR), paragraph 5.

¹⁴²⁴ Case T-35/07 DEP, *Leche Celta v OHIM – Celia* (not published in the ECR), paragraph 10.

¹⁴²⁵ Case T-214/04 DEP, *Royal County of Berkshire Polo Club v OHIM* [2007] (not published in the ECR).

¹⁴²⁶ Case T-429 DEP, *F v OHIM – Grain Millers* [2011] (not published in the ECR), paragraph 7.

¹⁴²⁷ Case F-14/08 DEP, *X v Parliament* (not published in the ECR), paragraph 9.

¹⁴²⁸ Case F-6/07 DEP, *Suvilas v Council* (not published in the ECR), paragraph 7.

¹⁴²⁹ Case F-7/08 DEP, *Schönberger v Parliament* (not published in the ECR), paragraph 8.

¹⁴³⁰ Case F-100/05 DEP, *Chatziioannidou v Commission* (not published in the ECR), paragraph 8.

number of hours considered necessary for drafting written submissions in the light of criteria such as the number of pages, degree of difficulty, etc. But this is different when it comes to the **hourly rate**:

- 6 The GC faces the dilemma of having to verify the necessity of an hourly rate which otherwise would be at the discretion of the parties. However, such rates tend to be determined by the **market** more than anything else, which means that much of what is considered to be necessary is not determined by the lawyer or his client. Thus upon which objective basis can one argue that a given hourly rate charged by lawyer is “not necessary”? Such findings should be restrained to cases where the hourly rate is **manifestly** above the usual market level for the particular legal area concerned. It is not very convincing if the GC finds, e.g. in *Osram v Council*, that while the average weighted hourly rate of approximately EUR 315 “seems excessive”, the average hourly rate of EUR 300, which the applicant regards as appropriate in the present case, “is reasonable and must therefore be accepted”¹⁴³¹. Does lowering an hourly rate by 5 % makes it go from “excessive” to “reasonable”?
- 7 A further question pertains to the fact that the GC commonly determines the degree of necessity of the hourly rate charged by the lawyer’s **degree of professional experience**, which implies his ability to work **very efficiently and quickly**¹⁴³². This element incontestably plays a role, but the overheads a law firm must bear also determine an hourly rate. Those overheads are in turn determined by the firm’s size, location, and similar factors. Thus, firms involved in e.g. competition or merger cases are bound to have a certain size and number of staff and thus a larger amount of overhead. Fee earners within these firms need to cover the costs thus generated, which in turn tends to inflate those firms’ hourly rate. Substantially reducing said rate when determining taxation could amount to negating economic realities and denying the fact that major cases e.g. in the area of merger and competition involve many more lawyers and much more manpower than that which appears on the statement of fees. One must recognize that due to the complexity of merger and competition cases, only those with such costly infrastructure and manpower could be mandated with merger and competition cases in the first place.

III. Dispute concerning the costs

1. General

- 8 A taxation of costs by the GC may be applied for concerning any proceedings at the GC resulting in a decision on costs, whether a judgment or order, regardless of the nature of the legal remedy, thus including **appeals**¹⁴³³, **default judgments**¹⁴³⁴, etc.

¹⁴³¹ Case T-466/07 DEP II, *Osram v Council* [2011] (not published in the ECR), paragraph 30.

¹⁴³² Case T-33/01 DEF, *Infront WEM AG v Commission* [2008] (not published in the ECR), paragraph 31.

¹⁴³³ Case T-498/09 P-DEP, *Kerstens v Commission* [2012] (not published in the ECR).

¹⁴³⁴ Case T-56/02 OP-DEP, *Bayrische Hypo- und Vereinsbank v Commission* [2009] (not published in the ECR).

2. Dispute. a) Existence of a dispute. An application for taxation is only admissible 9 if there is a “dispute” between the parties¹⁴³⁵. There cannot be a **dispute** between the parties as long as the party concerned has not provided the debtor with a detailed list of expenses it considers to be recoverable, followed by a more or less extensive exchange of correspondence. In many instances, the parties reach an extrajudicial consensus and the matter is then closed.

b) Absence of reaction

If the debtor does not react to the requests of the other party, does not negotiate, 10 and ultimately does not pay, he **implicitly contests** the recoverable amount, which means that there is a **dispute**¹⁴³⁶.

c) Absence of consensus

The same is true if the parties negotiate but fail to reach either a partial or a full 11 agreement.

d) Absence of dispute

There is no dispute within the meaning of Art. 92 RP GC, though if the party 12 concerned criticizes the **operative part** of a judgment relating to the costs of the proceedings, meaning that an application for taxation of costs is inadmissible¹⁴³⁷. Such an application is thus just as inadmissible as an action for annulment by which an applicant intends to challenge a letter by the Commission relating to the amounts it considers being recoverable¹⁴³⁸ or an action for damages based on Art. 91 RP GC, since that article has the same object as an application based on Art. 92 RP GC¹⁴³⁹. In other words, the taxation of costs is a specific legal remedy which may thus not be circumvented by way of other legal remedies¹⁴⁴⁰.

e) No dispute if costs have already been fixed

There is no need to rule on the costs before OHIM should the Board of Appeal 13 have already fixed them in a decision relating to the proceedings before the Grand Board of Appeal of OHIM, which are enforceable and which the intervener can therefore have enforced against the applicant¹⁴⁴¹.

¹⁴³⁵ Case T-323/10 DEP, *Chickmouza Chabou v OHIM* [2012] (not published in the ECR), paragraphs 6 et seq.

¹⁴³⁶ Case T-271/94 (92), *Branco v Commission* [1998] ECR p. II-3761, 3767.

¹⁴³⁷ Joined Cases T-33/89 and T-74/89 DEP, *Blackman v Parliament* [1993] ECR p. II-837, paragraph 5.

¹⁴³⁸ Case T-77/98, *Eppe v Commission* [1998] ECR p. II-1347, 1350.

¹⁴³⁹ Case F-78/09, *Marcuccio v Commission* [2010] ECR SC p. II-0000, paragraphs 20, 22.

¹⁴⁴⁰ Case T-38/10 P, *Marcuccio v Commission* [2010] ECR p. II-0000, paragraphs 277–28.

¹⁴⁴¹ Case T-270/06 DEP, *Lego Juris v OHIM* [2011] (not published in the ECR), paragraphs 33 et seq.

IV. Application by a party

- 14 **1. General. a) No formal pre-contentious proceedings.** The applicant does not have to initiate any pre-contentious proceedings prior to applying for taxation. This is also the case in staff matters¹⁴⁴².

b) Application

- 15 The GC may not initiate taxation of costs on its own motion¹⁴⁴³. This procedure requires an **application**, which is inadmissible as long as the case is pending at the GC¹⁴⁴⁴. The party must be represented by an agent or lawyer.

c) Written proceedings

- 16 There is only one exchange of **written submissions** in such cases; measures of organization of the procedure and of inquiry are extremely rare; and there is **no oral hearing**.

d) Discontinuing the proceedings

- 17 As with any other application, an application for taxation of costs may lose its object¹⁴⁴⁵ or may be discontinued¹⁴⁴⁶.

- 18 **2. No time-limit. a) Reasonable time period.** Unlike the vast majority of other legal remedies, the law does not provide for any time-limit in such cases. It is normal¹⁴⁴⁷, however, that the cost creditor awaits the expiry of the appeal period¹⁴⁴⁸ prior to requesting the other party to reimburse its expenses¹⁴⁴⁹. The parties then subsequently benefit from a reasonable time period in order to negotiate the various expenses, if need be.

b) Statistics

- 19 Since an application for taxation of costs is the ultimate means, a party may go to Court on such grounds many months after the judgment was handed down. A

¹⁴⁴² Case F-55/08, *De Nicola v EIB* [2011] (not published in the ECR), paragraphs 24 and the case-law cited.

¹⁴⁴³ Except in case of legal aid, see Art. 97 (2) RP GC.

¹⁴⁴⁴ Joined Cases T-260/97 DEP and T-79/96 DEP, *Camar v Council and Commission* [2006] (not published in the ECR), paragraph 32.

¹⁴⁴⁵ Case T-284/06 DEP, *Gualtieri v Commission* [2011] (not published in the ECR), paragraphs 1 et seq.; Case T-206/07 DEP, *Foshan Shunde Yonjian Housewares and Hardware v Council* [2009] (not published in the ECR).

¹⁴⁴⁶ Case T-598/97 DEP, *BSC Footwear Supplies v Council* [2005] (not published in the ECR).

¹⁴⁴⁷ In this sense Case T-315/02 DEP, *Klitgaard v Commission* [2006] (not published in the ECR), paragraph 21.

¹⁴⁴⁸ Two months plus ten days on account of distance as of the notification of the judgment or order.

¹⁴⁴⁹ Case T-2/93 (92), *Air France v Commission* [1996] ECR p. II-235, paragraph 12.

period of 8 months¹⁴⁵⁰, one year¹⁴⁵¹, or more¹⁴⁵² before taking such a case to Court is not uncommon.

3. Contents of the application. a) Petitum. The applicant must clearly indicate¹⁴⁵³ 20 which costs are in question and under which aspect there is an unresolved dispute between the parties which requires a taxation of costs¹⁴⁵⁴. An application which merely seeks to question a ruling on the costs is inadmissible¹⁴⁵⁵, bearing in mind that there is no appeal permitted for such a ruling¹⁴⁵⁶. Any application aiming at obtaining a **down-payment** with respect to costs considered to be recoverable is unfounded¹⁴⁵⁷.

b) Indicating the details. aa) General. In most instances, the dispute mainly if not 21 exclusively concerns the amount of fees paid to lawyers, i.e. to which extent these fees are an expense “*necessarily incurred for the purpose of the proceedings*”. Thus, while the applicant needs to indicate any expense claimed with a sufficient degree of **detail and evidence**¹⁴⁵⁸, this is all the more the case with respect to such substantial amounts, the necessity of which the GC needs to assesses in the light of a multitude of criteria.

bb) Lawyers’ fees. (1) As detailed as possible. The extent to which the GC can 22 assess the value of a lawyer’s work depends, quite obviously, on the degree of **detail and accuracy** of the information provided in the application¹⁴⁵⁹, in order to allow the judges to assess the actual workload of the lawyer(s)¹⁴⁶⁰. Parties should bear in mind that a lack of detailed information makes it **especially difficult** to verify which costs were incurred for the purpose of the proceedings before the GC and, likewise, to decide which of those were necessary for that purpose. Ambiguity or lack of detail in declaring these costs requires the Judges to apply a strict yardstick when assessing the fees recoverable in the case¹⁴⁶¹.

¹⁴⁵⁰ T-78/89 *Dépens, PPG Industries Glass v Commission* [1993] ECR p. II-573, paragraphs 17, 21.

¹⁴⁵¹ Case T-2/93 (92), *Air France v Commission* [1996] ECR p. II-235, paragraph 12.

¹⁴⁵² Joined Cases T-5/02 DEP and T-80/02 DEP, *Tetra Laval v Commission* [2011] (not published in the ECR).

¹⁴⁵³ Case T-78/99, *Elder v Commission* [2000] ECR p. II-3717, 3723.

¹⁴⁵⁴ Joined Cases T-163/94 (92) and T-165/94 (92), *NTN Corporation and Koyo Seiko v Council* (not published in the ECR), paragraphs 13 and 14.

¹⁴⁵⁵ Joined Cases T-33/89 DEP and T-74/89 DEP, *Blackman v Parliament* [1993] ECR p. II-837, paragraphs 5 and 6.

¹⁴⁵⁶ Art. 58 (2) Statute ECJ.

¹⁴⁵⁷ Case T-5/95 R, *Amicale des résidents du square d’Auvergne v Commission* [1995] ECR p. II-255, paragraph 20.

¹⁴⁵⁸ Case T-234/06 DEP, *Klosterbrauerei Weissenhohe* [2011] (not yet published in the ECR), paragraph 13.

¹⁴⁵⁹ Joined Cases T-177/94 (92), T-377/94 (92) and T-99/95 (92), *Altmann A. O. v Commission* [1998] ECR SC p. I-A-299, 301 et seq.; Joined Cases T-226/00 DEP and T-227/00 DEP, *Nan Ya Plastics v Council* [2003] ECR p. II-685, paragraphs 34–35.

¹⁴⁶⁰ Case T-120/89 (92), *Stahlwerke Peine Salzgitter v Commission* [1996] ECR p. II-1547, paragraphs 31 et seq.

¹⁴⁶¹ Case T-429/08 DEP, *Grain Millers v OHIM* [2011] (not published in the ECR), paragraph 46 and the case-law cited.

- 23 (2) **Sufficient.** The information is accurate if the party concerned provides the GC with a precise¹⁴⁶² **breakdown of hourly rates** and the **time spent on each item**¹⁴⁶³.
- 24 (3) **Insufficient.** The mere fact that the party attaches an accurate list of hours worked by a lawyer and his assistants does not in itself provide evidence that all hours were necessary for the purpose of the proceedings¹⁴⁶⁴. Additionally, the mere statement that the work undertaken by the lawyer amounted to **approximately 45 working days** is not sufficiently accurate¹⁴⁶⁵. A party is likely to recover considerably less fees if it merely indicates the **overall amounts of work** carried out, rather than stating the total number of hours worked as well as its hourly rates, or if it fails to distinguish the expenses incurred for the various cases in which it is involved¹⁴⁶⁶. Furthermore, a party should not trust that the GC will search for and identify those documents that could compensate for the lack of precise information and detailed explanations in the application itself among that applications' annexes, as that is not the task of the GC¹⁴⁶⁷.

cc) Other expenses

- 25 The requirement of a detailed breakdown of costs also applies to other costs, even though they seem less important, such as **photocopies, telecommunications and courier services**¹⁴⁶⁸.
- 26 c) **Providing adequate evidence.** aa) **Lawyer's fees.** (1) **Invoices.** The applicant should submit copies of the **invoices** which its lawyers draw up concerning their fees and an indication of the criteria on which the fees were calculated and of the amount thereof. Otherwise, the GC might request the applicant to do so¹⁴⁶⁹. This implies that the invoices must be **sufficiently precise**, bearing in mind that a lack of invoices or other documents proving that the party did effectively pay fees to its lawyer is not an obstacle to taxation of costs¹⁴⁷⁰.
- 27 (2) **Other evidence.** Alternatively, the party should provide the GC with a breakdown of hourly rates and the time spent on each item¹⁴⁷¹.

¹⁴⁶² Case T-234/06 DEP, *Klosterbrauerei Weissenhohe* [2011] (not yet published in the ECR), paragraph 16.

¹⁴⁶³ Case T-214/04 DEP, *The Royal County of Berkshire Polo Club v OHIM* [2007] (not published in the ECR), paragraph 18.

¹⁴⁶⁴ Case T-233/99 DEP, *Land Nordrhein-Westfalen v Commission* [2006] (not published in the ECR), paragraph 35.

¹⁴⁶⁵ Case T-120/89 (92), *Stahlwerke Peine Salzgitter v, Commission* [1996] ECR p. II-1547, paragraph 31.

¹⁴⁶⁶ Joined Cases T-5/02 DEP and T-80/02 DEP, *Tetra Laval v Commission* [2011] (not published in the ECR), paragraphs 69 to 72.

¹⁴⁶⁷ Case T-310/00 DEP, *Verizon v Commission* [2008] (not published in the ECR).

¹⁴⁶⁸ Joined Cases T-226/00 DEP and T-227/00 DEP, *Nan Ya Plastics v Council* [2003] ECR p. II-685, paragraphs 45–47.

¹⁴⁶⁹ Case T-78/89 Dépens, *PPG Industries Glass v Commission* [1993] ECR p. II-573, paragraph 22.

¹⁴⁷⁰ Case T-176/04 DEP II, *Marcuccio v Commission* [2011] (not published in the ECR), paragraph 27 and the case-law cited.

¹⁴⁷¹ Case T-176/04 DEP II, *Marcuccio v Commission* [2011] (not published in the ECR), paragraph 27 and the case-law cited.

bb) Other expenses

Travel and subsistence expenses may not simply be claimed; the party claiming them needs to provide **adequate evidence**¹⁴⁷². Nevertheless, there are cases where such costs have been reimbursed even though the party did not provide such evidence¹⁴⁷³. Expenses for photocopying, travel, and accommodation which are not disputed by the other party shall be reimbursed even if the lawyer's fees turn out to be only partly recoverable¹⁴⁷⁴. **Hypothetical, i.e. theoretical** costs are never recoverable¹⁴⁷⁵.

4. Hearing the other party

The other party is given a time-limit for submitting its written observations. There is **no second exchange** of submissions, nor is there an **oral hearing** on taxation of costs. In its written pleadings, the opposing party, in many instances an EU institution will tend to put forward an amount **as low as possible**, which is sometimes unrealistically or even ridiculously low, for the sake of counter-balancing the opposite tendency of the applicant.

5. Costs of the taxation proceedings. a) No separate order. When determining recoverable costs, the GC¹⁴⁷⁶ and the CST¹⁴⁷⁷, take account of all the circumstances of the case up until the point at which they determine said costs. This is why it is not necessary to give a **separate** decision on the costs incurred by the parties in connection with proceedings for the taxation of costs, as such a separate decision would risk inciting a new request for taxation of these new costs¹⁴⁷⁸.

b) Amount indicated in the order

More recently, the CST¹⁴⁷⁹ sometimes indicates the amounts of fees it considers necessary for the purposes of the taxation proceedings. In practice, this amount is very low, however (e.g. 500 €¹⁴⁸⁰, 380 €¹⁴⁸¹, 200 €¹⁴⁸² and even 0 €¹⁴⁸³), and simply

¹⁴⁷² Joined Cases T-43/91 (92), T-44/91 (92), T-51/91 (92) and T-52/91 (92) *Hoyer-Smets v Commission* [1995] ECR SC p. I-A-151, 153.

¹⁴⁷³ Case T-234/06 DEP, *Klosterbrauerei Weissenhohe* [2011] (not yet published in the ECR), paragraph 20.

¹⁴⁷⁴ Case T-342/99 DEP, *Airtours v Commission* [2004] ECR p. II-1785, paragraphs 75 and 76.

¹⁴⁷⁵ Case T-243/01 DEP, *Sony Computer Entertainment Europe v Commission* [2005] ECR p. II-1121, paragraph 33.

¹⁴⁷⁶ Case T-64/99 DEP, *UK Coal v Commission* [2001] ECR p. II-2549, paragraph 33.

¹⁴⁷⁷ Case F-7/08 DEP, *Schönberger v Parliament* [2010] (not published in the ECR), paragraphs 45–48.

¹⁴⁷⁸ See e.g. Case F-92/09 DEP, *U v Parliament* [2011] (not published in the ECR), paragraphs 63 et seq.

¹⁴⁷⁹ See e.g. Case F-92/09 DEP, *U v Parliament* [2011] (not published in the ECR), paragraphs 63 et seq.

¹⁴⁸⁰ Case F-55/08 DEP, *De Nicola v EIB* [2011] (not published in the ECR), paragraph 56.

¹⁴⁸¹ Case F-5/08 DEP, *Brune v Commission* [2012] (not published in the ECR), paragraph 40.

¹⁴⁸² See e.g. Case F-92/09 DEP, *U v Parliament* [2011] (not published in the ECR), paragraph 66.

¹⁴⁸³ Case F-14/08 DEP, *X v Parliament* [2009] (not published in the ECR), paragraph 41.

disregards the fact that in some instances applicants hand in applications for taxation of epic length such as in case *Guggenheim v Cedefop*.

V. Enforcement

- 32 A taxation order from the GC constitutes the legal basis for the party's right to the whole of that sum¹⁴⁸⁴. There is neither an appeal nor any other legal remedy against such a taxation order.

Article 93 [Currency]

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

2. Where expenses to be refunded have been incurred in a currency other than the euro or where the steps in respect of which payment is due were taken in a country of which the euro is not the currency, conversions of currency shall be made at the official rates of exchange of the European Central Bank on the day of payment.

This provision, which was amended in 2005, i.e. some years after the creation of the Euro, applies to all debtors, including those established outside the Euro zone.

CHAPTER 7 LEGAL AID

Introduction

1. Modernized rules

- 1 Legal aid in proceedings before the EU courts is of limited importance when compared to proceedings before national Courts and Tribunals. The purpose of the provisions relating to legal aid, which were modernized in 2005 by taking into account modifications and developments found in the case law, is to provide to the public a **more effective access** to the GC. The procedural rules for legal aid as it applies to the GC are laid down in Art. 94 to 97 RP GC and detailed in paragraphs 103 to 114 of the “**Practice Directions to Parties**”. Orders handed down concerning applications for legal aid carry the acronym “AJ” (“assistance judiciaire”).

2. Legal aid application form

- 2 Every application for legal aid must be made using the legal aid application form, which is available on the ECJ's website. This website provides the applicant with

¹⁴⁸⁴ Case T-460/93 DEP, *Tête A. O. v EIB* [1995] ECR p. II-229, paragraph 13.

very useful information ranging from the procedural requirements of an application for legal aid to the limits of the GC's jurisdiction, which the broader public largely ignores. The application need not be made through a lawyer (Art. 95 (1), 1st sub-paragraph), by contrast to the subsequent proceedings.

3. Scope of the aid

Pursuant to Art. 94 (1), 2nd sub-paragraph legal aid covers "*in whole or in part the costs involved in legal assistance and representation by a lawyer*", which, in the same vein as Art. 91 RP GC, does not mean that legal aid will cover any fees of any amount. If granted, legal aid is considered a **contribution** in order to ease the financial burden of the party concerned.

4. Effect of an order granting legal aid

An order granting legal aid does not prejudice the question of admissibility of the application in the main proceedings, since an application for legal aid does not have the same object as the main proceedings¹⁴⁸⁵.

5. Need for easier access to relevant information. a) **Laymen.** While the ECJ's website provides useful and rather detailed information regarding legal aid, which a clear improvement when compared to earlier versions, it is primarily designed for use by **lawyers**. Lawyers are generally accustomed to navigating through a multitude of links, while a layman applying for legal aid, in many instances without a lawyer's assistance, may have difficulties navigating the ECJ's website.

b) Possible solutions

It would thus be advisable to put a **link** on the "**home page**" of the ECJ's website providing **direct access** to (1) Art. 94 to 97 of RP GC; (2) the relevant paragraphs 105 to 114 of the "**Practice Directions to Parties**"; and (3) e.g. two lists of orders handed down concerning legal aid, the first list detailing the orders granting legal aid, the second one detailing those orders which rejected the application as either inadmissible or unfounded.

Such measures are neither costly nor technically complicated and would ease access to the rules governing legal aid for those for whom these rules are relevant. By the same token, such measures might reduce the number of manifestly inadmissible or unfounded applications for legal aid.

Article 94 [Procedural and substantive conditions]

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

¹⁴⁸⁵ Case T-73/10 P, *Apostolov v Commission* [2010] ECR p. II-0000, paragraph 26.

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

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

The economic situation shall be assessed, taking into account objective factors such as income, capital and the family situation.

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

Outline:

I. Effective access to justice (paragraph 1)	1
1. General.....	1
2. Further application for legal aid	2
II. Economic situation (paragraph 2)	3
1. Burden of proof.....	3
2. Cases	5
a) Financial need.....	5
b) No financial need.....	6
3. Amounts granted.....	7
a) General.....	7
b) Statistics.....	9
III. Application manifestly inadmissible/unfounded (paragraph 3)	10
1. Application inadmissible or manifestly unfounded	10
2. Examples.....	11
a) “Wrong” defendant	12
b) Manifestly inadmissible legal remedy	13
3. Procedure.....	14

I. Effective access to justice (paragraph 1)

1. General

- 1 In this context, the “*guarantee of effective access to justice*” is more of a political postulate than anything else, since this objective is subject to paragraphs 2 and 3 setting out the substantive conditions for the granting of legal aid. The GC, not the lawyer, must determine the amount of “the costs involved in legal assistance and representation by a lawyer”.

2. Further application for legal aid

- 2 The fact that an application for legal aid remained unsuccessful at one point in time does not prevent the party concerned from lodging a further application if relevant facts changed. A successful application may be followed by a further application¹⁴⁸⁶, e.g. for reasons of change of legal representation¹⁴⁸⁷.

¹⁴⁸⁶ Case T-309/10 AJ II, *Klein v Commission* [2011] (not yet published in the ECR).

¹⁴⁸⁷ Case T-127/09 AJ, *Abdulrahim v Council and Commission* [2010] (not published in the ECR), paragraph 3.

II. Economic situation (paragraph 2)

1. Burden of proof

Legal aid is only available to **natural persons** (Art. 94 (2), 1st sub-paragraph), 3 thus **excluding legal persons**¹⁴⁸⁸. The applicant (who may be either the applicant or defendant in the main proceedings) must prove that his “economic situation” (Art. 95 et seq. of the RP CST refer to the “financial situation”, which seems to be a synonym) prevents him from covering the costs of the proceedings, meaning the lawyer’s fees. The applicant’s economic situation is determined not only by his income, whether due to professional activity or any other source such as an real estate or an invalidity pension¹⁴⁸⁹, but also his personal financial assets or **family situation**, such as e.g. a husband’s stock portfolio¹⁴⁹⁰.

If the applicant dies in the course of the proceedings and if his successors do not 4 resume proceedings, the application is devoid of purpose. This does not, however, preclude the applicant from being granted retroactive legal aid so as to guarantee him effective access to justice¹⁴⁹¹.

2. Cases. a) **Financial need.** The GC has granted legal aid to an applicant who 5 earned the statutory minimum wage in Belgium (644.48 €/month in 2007)¹⁴⁹². That said, the CST has awarded legal aid in cases where the applicant’s income was significantly higher¹⁴⁹³.

b) No financial need

There is no prospect of obtaining legal aid if the applicant’s monthly **net income** 6 is around 3100 €¹⁴⁹⁴ or if his annual **taxable income** is approximately 34.000 €¹⁴⁹⁵.

3. **Amounts granted.** a) **General.** The amount of legal aid granted also depends on 7 the nature of the proceedings and the area of law concerned. As an “aid” and thus a contribution to the applicant’s costs, such legal aid will hardly ever cover the full amount of lawyer’s fees. When granting legal aid, the GC specifies that the lawyer’s fees and costs may not “in principle” be higher than the amount granted. This leaves room for a further application should the facts change.

It follows both from the broad logic and from the wording of Articles 94 and 95 8 of the RP GC that a grant of legal aid is as a rule restricted to the costs of proceedings incurred either at the same time as or after the application for aid is made. On

¹⁴⁸⁸ Case T-235/09, *Commission v Edificios Inteco* [2010] (not published in the ECR).

¹⁴⁸⁹ Case F-20/07 AJ, *Marcuccio v Commission* [2007] (not published in the ECR), paragraph 4.

¹⁴⁹⁰ Case T-190/10 AJ II, *Hackett v Parliament* (not published in the ECR), paragraph 11.

¹⁴⁹¹ Case T-4/10 AJ, *Al Saadi v Commission* [2011] (not published in the ECR), paragraph 25.

¹⁴⁹² Case F-12/07 AJ, *O’Connor v Commission* [2007] (not published in the ECR), paragraph 4.

¹⁴⁹³ Case F-95/05 AJ, *N. v Commission* [2007] (not published in the ECR), paragraph 10.

¹⁴⁹⁴ Case F-128/06 AJ, *Noworyta v Parliament* [2007] (not published in the ECR), paragraph 9.

¹⁴⁹⁵ Case T-529/10 P-AJ, *Da Silva Pinto Branco v Court of Justice* [2011] (not published in the ECR), paragraph 8.

the other hand, outside exceptional circumstances it would be in keeping with neither the letter nor spirit of those provisions and would be against the interest of the sound administration of justice for costs incurred before the date of the application of aid to be covered retrospectively by legal aid. As far as such costs are concerned, one must suppose, unless the contrary is proven, that an applicant found himself able to pay them and that he therefore has not satisfied one of the conditions for the grant of legal aid¹⁴⁹⁶.

b) Statistics

9

Area of law	Amount	Year
aa) Intellectual property rights:	EUR 4,000 ¹⁴⁹⁷	2007
	EUR 3,000 ¹⁴⁹⁸	2009
bb) Agriculture:	EUR 4,000 ¹⁴⁹⁹	2010
cc) Common foreign and security policy:		
	EUR 5,000 ¹⁵⁰⁰	2006
	EUR 4,000 ¹⁵⁰¹	2006
	EUR 5,000 ¹⁵⁰²	2006
	EUR 2,500 ¹⁵⁰³	2009 ¹⁵⁰⁴
	EUR 10,000 ¹⁵⁰⁵	2009
	GBP 5,000 ¹⁵⁰⁶	2010
	GBP 5,000 ¹⁵⁰⁷	2010
	EUR 6,000 ¹⁵⁰⁸	2010
	EUR 6,000 ¹⁵⁰⁹	2010

¹⁴⁹⁶ Case T-135/06 AJ, *Al-Faqih v Council* [2009] (not published in the ECR).
¹⁴⁹⁷ Case T-100/06 AJ, *Rajani v OHIM* [2007] (not published in the ECR).
¹⁴⁹⁸ Case T-255/08 AJ, *Padilla v OHIM* [2009] (not published in the ECR).
¹⁴⁹⁹ Case T-303/94 AJ, *De Jong v Council and Commission* [2010] (not published in the ECR).
¹⁵⁰⁰ Case T-318/01 AJ, *Othman v Council and Commission* [2006] (not published in the ECR).
¹⁵⁰¹ Case T-49/04 AJ, *Hassan v Council and Commission* [2006] (not published in the ECR).
¹⁵⁰² Case T-318/01 AJ, *Othman v Council and Commission* [2006] (not published in the ECR).
¹⁵⁰³ Case T-135/06 AJ, *Al-Faqih v Council* [2009] (not published in the ECR).
¹⁵⁰⁴ Amount limited to the costs of the oral hearing and taking account of the economies of scale achieved, since the lawyer was involved in two other, connected cases (T-135/09 and T-137/09).
¹⁵⁰⁵ Case T-127/09 AJ, *Abdulrahim v Council and Commission* [2009] (not published in the ECR).
¹⁵⁰⁶ Case T-306/10 AJ, *Yusef v Commission* [2010] (not published in the ECR).
¹⁵⁰⁷ Case T-527/09 AJ, *Ayadi v Commission* [2010] (not published in the ECR).
¹⁵⁰⁸ Case T-101/09 AJ, *Maftah v Council and Commission* [2010] (not published in the ECR).
¹⁵⁰⁹ Case T-102/09 AJ, *Elosta v Council and Commission* [2010] (not published in the ECR).

Area of law	Amount	Year
	GBP 8,651 ¹⁵¹⁰	2011
dd) Access to documents	EUR 4,000 ¹⁵¹¹	2008
ee) Staff cases:		
aaa) First Instance	EUR 2,500 ¹⁵¹²	2007
	EUR 2,000 ¹⁵¹³	2007
	EUR 2,500 ¹⁵¹⁴	2007
bbb) Appeal		
	EUR 3,000 ¹⁵¹⁵	2010
	EUR 3,000 ¹⁵¹⁶	2010
	EUR 3,000 ¹⁵¹⁷	2011
ff) Rejection of a complaint:	EUR 6,000 ¹⁵¹⁸	2011
gg) Rejection of a petition to the EP:	EUR 4,000 ¹⁵¹⁹	2010
	EUR 4,000 ¹⁵²⁰	2011
hh) Rejection of application to a Commission programme:	EUR 3,000 ¹⁵²¹	2011

¹⁵¹⁰ Case T-4/10, *Al Saadi v Commission* [2011] (not published in the ECR).

¹⁵¹¹ Case T-251/06 AJ, *Meyer-Falk v Commission* [2008] (not published in the ECR).

¹⁵¹² Case F-95/05 AJ, *N. v Commission* [2007] (not published in the ECR).

¹⁵¹³ Case T-157/96 AJ, *Affatato v Commission* [1997] ECR SC, I-A-33, 34.

¹⁵¹⁴ Case T-57/99 AJ, *Nardone v Commission* [2008] (not published in the ECR).

¹⁵¹⁵ Regarding an appeal, Case T-493/09 P-AJ, *Y v Commission* [2010] (not published in the ECR).

¹⁵¹⁶ Case T-510/090 P-AJ, *V v Commission and European Data Protection Supervisor* [2010] (not published in the ECR).

¹⁵¹⁷ Case T-317/10 P-AJ, *L v Parliament* [2011] (not yet published in the ECR).

¹⁵¹⁸ Case T-320/07 AJ II, *Jones and Jones v Commission* [2011] (not published in the ECR), which resulted in an additional 2.000 € to the 4.000 € granted in Case T-320/07 AJ, *Jones and Jones v Commission* [2009] (not published in the ECR), since the applicants had to answer a series of complex legal and factual questions.

¹⁵¹⁹ Case T-280/09 AJ, *Morte Navarro v Parliament* [2010] (not published in the ECR).

¹⁵²⁰ Case T-160/10 AJ, *J v Parliament and Commission* [2011] (not published in the ECR).

¹⁵²¹ Case T-330/10 AJ, *M v Commission* [2011] (not published in the ECR).

III. Application manifestly inadmissible/unfounded (paragraph 3)

1. Application inadmissible or manifestly unfounded

- 10 Since an application for legal aid is, by definition, made in view of a future main procedure, the GC will assess whether the action which prompts the application for legal aid is manifestly inadmissible or manifestly unfounded. Thus, paragraph 3 codifies the criteria which the case law thus far applied¹⁵²² and which are the same as those laid down in Art. 111 RP GC. The legal yardstick applied is **less strict** than e.g. in interim proceedings¹⁵²³. If the application for legal aid is made within the context of an application for interim measures, the applicant must prove that he has a *prima facie* case as regards the main application¹⁵²⁴.

2. Examples

- 11 Numerous applications are rejected as **manifestly inadmissible**, for a variety of reasons (see also Art. 111 RP GC).

a) “Wrong” defendant

- 12 The GC has no jurisdiction to hear an action brought by a natural person against:
- **International bodies**, such as the **Council of Europe**¹⁵²⁵, the **United Nations Organization**¹⁵²⁶, the “**Organization Conjointe de Coopération en matière d’Armement**”¹⁵²⁷, etc.
 - **Judicial bodies**, such as the **Court of First Instance**¹⁵²⁸, the **European Court of Human Rights**¹⁵²⁹, the **Federal German Constitutional Court**¹⁵³⁰, etc.
 - **States**, be it **Member States**¹⁵³¹ or **Third-party States**¹⁵³².
 - **Other persons**, whether **natural**¹⁵³³ or **legal**¹⁵³⁴.
 - **Other bodies**, such as **NASA**¹⁵³⁵, etc.

¹⁵²² Case T-30/96, *Gomes de Sá Pereira v Council* [1996] ECR p. II-785, paragraph 33.

¹⁵²³ “*fumus boni juris*”.

¹⁵²⁴ Case T-13/91 R, *Harrison v Commission* [1991] ECR p. II-179, paragraph 27.

¹⁵²⁵ Case T-75/11 AJ, *AH v Parliament and Others* [2011] (not published in the ECR).

¹⁵²⁶ Case T-54/10 AJ, *Wnuk v UNO and Others* [2010] (not published in the ECR).

¹⁵²⁷ Case T-288/09 AJ, *Mangini v OCCAR* [2009] (not published in the ECR).

¹⁵²⁸ Case T-476/10 AJ, *N v Court of First Instance* [2011] (not published in the ECR).

¹⁵²⁹ Case T-83/06 AJ, *Roy v European Court of Human Rights and Germany* [2007] (not published in the ECR), paragraph 4; Case T-350/06 AJ, *Tsorakis v Commission and European Court of Human Rights* [2007] (not published in the ECR).

¹⁵³⁰ Case T-210/11 AJ, *AP v Bundesverfassungsgericht* (not published in the ECR).

¹⁵³¹ Case T-23/06 AJ, *Aidoo v Germany* (not published in the ECR), paragraph 6; Case T-110/06 AJ, *Bangert v Germany* (not published in the ECR), paragraphs 6–7.

¹⁵³² Case T-507/09 AJ, *Liu v United States and Others* [2010] (not published in the ECR).

¹⁵³³ Case T-494/09 AJ, *Mezidi v Mezidi* [2009] (not published in the ECR).

¹⁵³⁴ Case T-271/11 AJ, *BC v HSBC Bank* [2011] (not published in the ECR).

¹⁵³⁵ Case T-54/10 AJ, *Wnuk v UNO and Others* [2010] (not published in the ECR).

b) Manifestly inadmissible legal remedy

An applicant may not apply for a preliminary ruling by the ECJ¹⁵³⁶, or seek legal aid for proceedings before a Court or Tribunal of a Member State in order to achieve such referral at national level¹⁵³⁷. The same is true for an intended application for failure to act¹⁵³⁸ aimed at opening the Commission’s infringement proceedings against a Member State¹⁵³⁹, including even more manifest cases such as non-compliance with the time-limit¹⁵⁴⁰.

3. Procedure

If an application is rejected because it appears to be manifestly inadmissible or manifestly unfounded¹⁵⁴¹, the other party is not consulted or heard in the matter¹⁵⁴². The time period between the application and the order is about one¹⁵⁴³ to two¹⁵⁴⁴ months.

Article 95 [Relevant documents]

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

The application need not be made through a lawyer.

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

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

3. The General Court may provide, in accordance with Article 150, for the compulsory use of a form in making an application for legal aid.

Outline:

I. Application (paragraph 1).....	1
1. Application form	1
2. No time-limit.....	2

¹⁵³⁶ Case T-27/06 AJ, *Bapack Ngue v Germany* [2007] (not published in the ECR), paragraph 7.
¹⁵³⁷ Case T-134/07 AJ, *Widhalm* [2007] (not published in the ECR), paragraph 5.
¹⁵³⁸ Case T-98/07 AJ, *Hoffmann v Commission* [2007] (not published in the ECR), paragraph 6.
¹⁵³⁹ Case T-382/05 AJ, *Platte v Commission* [2005] (not published in the ECR), paragraphs 6 et seq.
¹⁵⁴⁰ Case T-299/07 AJ, *Ringhead v Commission* [2007] (not published in the ECR), paragraphs 6–7.
¹⁵⁴¹ See e.g. Case T-390/05 AJ, *Kumar v Commission* [2005] (not published in the ECR).
¹⁵⁴² Art. 96 (1) RP GC.
¹⁵⁴³ Case T-13/06 AJ, *Sama v Germany* [not published in the ECR]; Case T-7/06 AJ, *Babatunde v Germany* [not published in the ECR].
¹⁵⁴⁴ Case F-142/06 AJ, *Bligny v Commission* [2007] (not published in the ECR).

3. No lawyer.....	3
4. Applicants	4
II. Evidence regarding economic situation (paragraph 2, 1 st sub-paragraph)	5
1. General.....	5
2. Income	6
3. Assets.....	7
4. Family situation	8
III. Subject-matter of the case (paragraph 2, 2 nd sub-paragraph).....	9
IV. Application form (paragraph 3).....	10

I. Application (paragraph 1)

1. Application form

- 1 Applications for legal aid¹⁵⁴⁵ must¹⁵⁴⁶ imperatively be made using the **form** found on the ECJ's **website**. Applications made using any other method will not be considered.

2. No time-limit

- 2 The applicant may lodge the application for legal aid either prior to or after the action has been brought and may do so until the GC hands down a judgment or an order in the main proceedings, with the understanding that the latter application needs to be made through a lawyer. In some instances, such applications were made at a **very late stage**, e.g. seven days before the oral hearing¹⁵⁴⁷.

3. No lawyer

- 3 The application for legal aid need not be made through a lawyer, whether it is lodged before or after the action has been brought¹⁵⁴⁸. Nevertheless, such application may well have been drafted and signed by a lawyer.

4. Applicants

- 4 Applicants include: the (future) applicant in the main proceedings, as well as any potential interveners¹⁵⁴⁹.

¹⁵⁴⁵ Paragraphs 103 to 114 of the "Practice Directions to Parties".

¹⁵⁴⁶ Paragraphs 103 to 85 of the "Practice Directions to Parties".

¹⁵⁴⁷ Case T-137/06, *Abdrabbah v Council* [2009] (not published in the ECR), paragraph 19.

¹⁵⁴⁸ Case T-157/96 AJ, *Affatato v Commission* [1997] ECR SC I-A-33, 34.

¹⁵⁴⁹ Case T-19/91, *Société d'hygiène dermatologique de Vichy v Commission* [not published in the ECR].

II. Evidence regarding economic situation (paragraph 2, 1st sub-paragraph)

1. General

The applicant must prove his economic situation on the basis of facts such as his **income** and **assets** as well as his family situation. He must attach all relevant documents to the application form.

2. Income

The applicant may prove his level of income by e.g. a pertinent document from the competent **fiscal authority**¹⁵⁵⁰ or of a **bank**¹⁵⁵¹, **provided, of course, that the document in question pertains to applicant's own account**¹⁵⁵²; a document from a **social benefits authority**¹⁵⁵³; from a national **legal aid authority**¹⁵⁵⁴; a written confirmation from an **employer** that the applicant receives **no wages**¹⁵⁵⁵ (which may, however, not suffice as such)¹⁵⁵⁶, etc.

3. Assets

The applicant must also indicate his assets, which is not complicated in the case of e.g. **real estate** or **shares**. Clarifying any uncertainties or doubts concerning the value and proper indication of assets is the responsibility (and thus at the expense of) the applicant¹⁵⁵⁷.

4. Family situation

This rather vague term seems to relate primarily to the income and/or assets of the spouse or partner.

III. Subject-matter of the case (paragraph 2, 2nd sub-paragraph)

If the application is made before the action has been brought, the applicant must briefly, but still in a detailed manner¹⁵⁵⁸, state the subject-matter of the proposed action; the facts of the case; and the arguments in support of the action. This is

¹⁵⁵⁰ Case T-101/92, *Stagakis v Parliament* [1993] ECR II-63, paragraphs 2–3.

¹⁵⁵¹ Case T-100/06 AJ, *Rajani v OHIM* [2007] (not published in the ECR).

¹⁵⁵² Case T-206/09 AJ, *Maslyukov v OHMI* [2009] (not published in the ECR), paragraph 8.

¹⁵⁵³ Case T-92/92 AJ, *Loic Lallemand-Zeller v Commission* [1993] ECR p. II-31, 33.

¹⁵⁵⁴ Case T-25/99 AJ, *Roberts v Commission* (not published in the ECR).

¹⁵⁵⁵ Case T-219/96 AJ, *Y v Parliament* (not published in the ECR).

¹⁵⁵⁶ Case F-101/06 AJ, *Atanasov v Commission* [2007] (not published in the ECR), paragraphs 10–11.

¹⁵⁵⁷ Case T-121/99 AJ, *Irving v Commission* (not published in the ECR).

¹⁵⁵⁸ Case T-55/11 AJ, *AD v Parliament and Others* [2011] (not published in the ECR).

obviously not the case if the type of action the applicant seeks to bring before the Court cannot be clearly understood from the legal aid application form¹⁵⁵⁹.

IV. Application form (paragraph 3)

- 10 Any application for legal aid must be submitted using the prescribed form¹⁵⁶⁰ i.e. not, as hitherto, by way of special pleadings. Normally, such application may not be supplemented by handing in additional information at a later stage, unless this is specifically requested by the GC¹⁵⁶¹.

Article 96 [Specific procedure]

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

2. The decision on the application for legal aid shall be taken by the President by way of an order. He may refer the matter to the General Court.

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

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

If the person has not indicated his choice of lawyer or if his choice is unacceptable, the Registrar shall send a copy of the order granting legal aid and a copy of the application to the competent authority of the Member State concerned mentioned in Annex II to the Rules supplementing the Rules of Procedure of the Court of Justice. The lawyer instructed to represent the applicant shall be designated having regard to the suggestions made by that authority.

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

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

5. If the circumstances which led to the grant of legal aid should alter during the proceedings, the President may at any time, on his own motion or on

¹⁵⁵⁹ Case T-590/08 AJ, *Landolfo v ECB* [2011] (not published in the ECR), paragraph 5.

¹⁵⁶⁰ Art. 150 RP GC; www.curia.europa.eu.

¹⁵⁶¹ Paragraph 111 of the Practice Directions to Parties.

application, withdraw legal aid, having heard the person concerned. He may refer the matter to the General Court.

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

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

Outline:

I. Hearing the other party (paragraph 1)	1
1. Rule.....	1
2. Exception	2
II. Obligation to state reasons (paragraph 2).....	3
III. Designating a lawyer (paragraph 3)	4
IV. Suspending effect (paragraph 4)	5
1. Classical legal remedies.....	5
2. Application by analogy	7
V. Withdrawal of legal aid (paragraph 5).....	8
VI. No appeal (paragraph 6).....	9

I. Hearing the other party (paragraph 1)

1. Rule

Hearing the other party through written observations is not merely a matter of 1 rights of defence, but is also potentially useful in determining an appropriate amount of legal aid¹⁵⁶². This is particularly the case in staff matters at the CST, since the employer is the source of the applicant’s income, allowances and other indemnities.

2. Exception

The other party is **not heard**¹⁵⁶³ if it is clear from the information produced by 2 the applicant that said applicant does not qualify for legal aid in view of his economic situation and/or since his application appears to be either manifestly inadmissible or manifestly unfounded.

II. Obligation to state reasons (paragraph 2)

In most instances, orders are taken by the President. Since 2006, an order 3 refusing legal aid shall state the reasons upon which that refusal is based. This does not mean, however, that orders which grant legal aid are not obliged to give reasons for so granting.

¹⁵⁶² Case T-92/92 AJ, *Lallemand-Zeller v Commission* [1993] ECR p. II-31, 33.
¹⁵⁶³ Paragraph 1 thus codifies the case law (see e.g. Case T-257/99 AJ, *Francisco Alvarez Sagrario v Commission*, not published in the ECR).

III. Designating a lawyer (paragraph 3)

- 4 This provision has remained essentially unchanged and the **consensual** designation of a lawyer takes precedence over any unilateral designation by the GC. Normally, the applicant must indicate his choice of lawyer¹⁵⁶⁴. That said, the GC does not necessarily designate a lawyer who resides in the same location as the applicant; it may instead choose a lawyer established in Luxembourg¹⁵⁶⁵.

IV. Suspending effect (paragraph 4)

1. Classical legal remedies

- 5 Paragraph 4, which provides that an application for legal aid shall suspend the period prescribed for the bringing of the action¹⁵⁶⁶, implying that said period does not start afresh, codifies the pre-existent case law¹⁵⁶⁷, and thus ensures the *effet utile* of the application¹⁵⁶⁸. The applicant should submit his application for legal aid as early as possible, so that the time remaining after notification of the order granting legal aid is long enough to enable him to prepare his action¹⁵⁶⁹.
- 6 Where the form is lodged by fax or email, the signed original must reach the Registry of the GC no more than 10 days after the form is lodged by fax or email in order for the date of lodgement of the fax or email to be considered when determining the suspension of the time-limit for bringing an action¹⁵⁷⁰.

2. Application by analogy

- 7 Art. 96 (4) RP GC applies by analogy to proceedings before the GC after its decision has been reviewed by the ECJ and the case referred back to the GC, as pertains to the time-limit in Art. 121 c (1) RP GC¹⁵⁷¹.

V. Withdrawal of legal aid (paragraph 5)

- 8 A change in circumstances¹⁵⁷² is not the only case which “may” lead to a withdrawal of legal aid. Legal aid is non-negotiably withdrawn should one discover

¹⁵⁶⁴ See e.g. Case T-330/10 AJ, *M v Commission* [2011] (not published in the ECR).

¹⁵⁶⁵ Case T-92/92 AJ, *Lallemand-Zeller v Commission* [1993] ECR p. II-31, 33.

¹⁵⁶⁶ Meaning the time-limit applying to the legal remedy increased by the time-limit on account of distance, see Case T-60/08 P, *Kerelov v Commission* [2010] ECR p. II-0000, paragraphs 14–16.

¹⁵⁶⁷ Case T-92/92 AJ, *Lallemand-Zeller v Commission* [1993] ECR p. II-31, 33.

¹⁵⁶⁸ Paragraph 112 of the “Practice Directions to Parties”.

¹⁵⁶⁹ Case T-101/09, *Maftah v Commission* [2011] (not published in the ECR), paragraph 36.

¹⁵⁷⁰ Paragraph 114 of the “Practice Directions to Parties”.

¹⁵⁷¹ Case T-12/08 P-RENV-RX AJ, *M v EMEA* [2010] ECR p. II-0000, paragraphs 15 to 17.

¹⁵⁷² The same principle applies with respect to interim proceedings, see Art. 108 RP GC.

that the applicant provided false or otherwise incorrect information regarding his economic situation which may result in an obligation of reimbursement¹⁵⁷³.

VI. No appeal (paragraph 6)

Orders adopted in the context of an application for legal aid may not be 9 challenged by an appeal¹⁵⁷⁴, like many other orders of the GC (e.g. regarding measures of inquiry or the rejection of expedited proceedings). This provision illustrates that the TFEU and the Statute of the ECJ provide a *numerus clausus* of legal remedies.

Article 97 [Modalities of payment]

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

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

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.

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

4. Where the recipient of the aid is unsuccessful, the General Court may, in its decision, as to costs, 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.

I. Payment of an advance (paragraph 1)

In contrast to the former rule which this rule replaces, the GC no longer 1 automatically pays the applicant's lawyer in advance. Such payment now requires an application by the lawyer, which is then left to the GC's discretion.

¹⁵⁷³ Art. 16 Instructions to the Registrar.

¹⁵⁷⁴ See also Art. 56 Statute ECJ.

II. Recipient bears his own costs (paragraph 2)

- 2 Normally, a **taxation** of costs requires an application¹⁵⁷⁵. Paragraph 2 provides an exception which applies at the end of the proceedings should the recipient of legal aid have to bear his own costs.

III. Other party bears costs of recipient (paragraph 3)

- 3 If the other party is ordered to pay the costs, it must reimburse the amount of legal aid advanced to the recipient.

IV. Recipient bears costs (paragraph 4)

- 4 If the recipient of legal aid is unsuccessful, the normal rules on costs apply¹⁵⁷⁶, subject to the equity clause in paragraph 4.

CHAPTER 8 DISCONTINUANCE

Article 98 [Amicable settlement]

If, before the General Court has given its decision, the parties reach a settlement of their dispute and intimate to the General Court the abandonment of their claims, the President shall order the case to be removed from the register and shall give a decision as to costs in accordance with Article 87(5) having regard to any proposals made by the parties on the matter.

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

I. Definition

- 1 Such amicable settlement before the GC leads to a “consensual” discontinuation of the proceedings, while a discontinuation proper constitutes a unilateral act of the applicant¹⁵⁷⁷. In both instances¹⁵⁷⁸ the decision as to costs is given in accordance with Art. 87 (5) RP GC.

¹⁵⁷⁵ Art. 92 RP GC.

¹⁵⁷⁶ Art. 87 et seq. RP GC.

¹⁵⁷⁷ Art. 99 RP GC.

¹⁵⁷⁸ Except for the legal remedies referred to in Art. 98 (2) RP GC.

II. Costs (paragraph 1)

Should the parties come to an agreement on costs, the GC shall be bound by such agreement¹⁵⁷⁹. In the absence of such agreement, Art. 87 (5) 1st sub-paragraph RP GC applies.

III. Exception (paragraph 2)

Since such an agreement is excluded in cases of actions for annulment (Art. 263 TFEU) and actions for failure to act (Art. 265 TFEU), the scope of Art. 98 is rather limited, meaning that in such actions, the only option is to discontinue the proceedings¹⁵⁸⁰.

Article 99 [Discontinuing the proceedings]

If the applicant informs the General Court in writing that he wishes to discontinue the proceedings, the President shall order the case to be removed from the register and shall give a decision as to costs in accordance with Article 87(5).

I. Definitions

A discontinuation of the proceedings is a unilateral act by the **applicant**, since it is the *actus contrarius* of an application, by contrast to a settlement within the meaning of Art. 98 RP GC, which requires a consensus between the parties. “The proceedings” refers to every legal remedy, including e.g. an application for taxation¹⁵⁸¹.

II. Informing the GC

1. Point in time

The applicant may discontinue the proceedings either wholly or partly¹⁵⁸² at any time. The RP do not specify the latest date upon which the GC may be informed of the discontinuance of the proceedings. Such a declaration may take place at the

¹⁵⁷⁹ Art. 87 (5) 2nd sub-paragraph RP GC.

¹⁵⁸⁰ Art. 99 RP GC.

¹⁵⁸¹ Case T-57/03 DEP, *SPAG v OHIM* [2005] (not published in the ECR).

¹⁵⁸² Case T-135/99, *Taurus-Film v OHIM* [2001] ECR II-379, paragraph 13.

beginning of the proceedings, e.g. if an application for interim relief has not met with success¹⁵⁸³, or during the hearing¹⁵⁸⁴.

2. Lawyer

- 3 The applicant needs to be assisted by a lawyer even when informing the GC of a discontinuation of the proceedings. This seems very consistent with the RP and the case law, but also appears rather rigid, as no exception whatsoever applies. Thus, a party which has had a falling out with its lawyer needs to involve another lawyer simply to inform the GC of this discontinuance.

3. Written submission

- 4 The applicant must inform the GC that he wishes to discontinue the proceedings in **writing**. If the applicant partially discontinues the proceedings at the oral hearing the Registrar will record this accordingly¹⁵⁸⁵. If a party requests the GC to rule that there is no longer any need to adjudicate on the dispute and the other party states that it agrees with that request, then the GC may consider such letter to constitute a discontinuance of the proceedings for the purposes of Art. 99 RP GC¹⁵⁸⁶. Should, on expiry of the time-limit granted to the parties, the judge find that the amicable settlement was correctly implemented, but that the applicant did not honor his promise to withdraw his application for interim measures, that judge must of his own motion order that application to be removed from the register¹⁵⁸⁷.

III. Hearing the other party and costs

- 5 If the applicant discontinues the proceedings, the other parties are heard on the matter of the costs, unless the parties have come to an agreement on costs (Art. 87 (7) RP GC). The President of the chamber may always refer the matter to the GC¹⁵⁸⁸.

¹⁵⁸³ Case T-343/93 etc., *McCullough A.O. v Council and Commission* [1994] ECR p. II-667, paragraph 5.

¹⁵⁸⁴ Case T-176/96, *Volger v Parliament* [1998] ECR SC p. II-1, paragraph 21.

¹⁵⁸⁵ Art. 76 RP GC.

¹⁵⁸⁶ Case T-156/97, *Berge v Commission* [1997] ECR p. II-2097, paragraph 11.

¹⁵⁸⁷ Case T-42/98 R, *Sabbatucci v Parliament* [1998] ECR SC p. II-1353, paragraph 30.

¹⁵⁸⁸ Case T-19/96, *Carvel and Guardian Newspaper v Council* [1996] ECR p. II-1519, paragraph 22.

CHAPTER 9
SERVICE

Article 100 [Modalities of service]

1. Where these Rules require that a document be served on a person, the Registrar shall ensure that service is effected at that person’s address for service either by the dispatch of a copy of the document by registered post with a form for acknowledgement of receipt or by personal delivery of the copy against a receipt.

The Registrar shall prepare and certify the copies of documents to be served, save where the parties themselves supply the copies in accordance with Article 43(1).

2. Where, in accordance with the second subparagraph of Article 44(2), the addressee has agreed that service is to be effected on him by telefax or other technical means of communication, any procedural document including a judgment or order of the General Court may be served by the transmission of a copy of the document by such means.

Judgments and orders notified pursuant to Article 55 of the Statute to the Member States and institutions which were not parties to the proceedings shall be sent to them by telefax or any other technical means of communication.

Where, for technical reasons or on account of the length of the document, such transmission is impossible or impracticable, the document shall be served, if the addressee has failed to state an address for service, at his address in accordance with the procedures laid down in paragraph 1. The addressee shall be so advised by telefax or other technical means of communication. Service shall then be deemed to have been effected on the addressee by registered post on the tenth day following the lodging of the registered letter at the post office of the place where the 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 advised by telefax or other technical means of communication, that the document to be served has not reached him.

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

Outline:

I. General	1
II. Delivery at the address of service (paragraph 1)	2
III. Delivery to the addressee (paragraph 2)	3
1. General	3
2. Delivery by fax or email (sub-paragraph 1)	4
a) Documents	4
b) Judgments and orders	5
3. Member States and Institutions (sub-paragraph 2)	6
4. Alternative means of service (sub-paragraph 3)	7

I. General

- 1 Serving a document on a person is not a matter for the parties or a bailiff but for the **Registrar** of the GC. The details of this procedure are specified in Art. 10 of the Instructions to the Registrar.

II. Delivery at the address of service (paragraph 1)

- 2 If the party chooses an address for service outside of where the GC has its seat¹⁵⁸⁹, i.e. in Luxembourg¹⁵⁹⁰, it faces the inherent risk of a delay, plus the potential costs for such address.

III. Delivery to the addressee (paragraph 2)

1. General

- 3 In addition to or instead of specifying an address for service in Luxembourg, the applicant may state that the **lawyer** or **agent** agrees that communications and documents are to be served on him by telefax or other technical means of communication (i.e., email)¹⁵⁹¹ or e-Curia.

- 4 **2. Delivery by fax or email (sub-paragraph 1). a) Documents.** Documents such as letters from the Registrar are normally sent by telefax.

b) Judgments and orders

- 5 Since recently, the judgments and orders of the GC are also served by telefax.

3. Member States and Institutions (sub-paragraph 2)

- 6 By virtue of this provision the judgments and orders referred to in Art. 55 Statute ECJ are notified to the Member States and Institutions which were not a party to the proceedings by way of telefax or email.

4. Alternative means of service (sub-paragraph 3)

- 7 This provision pertains to the extraordinary situation in which technical reasons prevent a transmission by fax or email. The modalities of this sort of notification are not only rather complex but may also entail certain disadvantages for the addressee,

¹⁵⁸⁹ Art. 44 (2) 1st sub-paragraph RP GC.

¹⁵⁹⁰ See also Art. 99 (1) RP CST.

¹⁵⁹¹ Art. 44 (2) 2nd sub-paragraph RP GC.

even though the latter is not responsible for the technical reasons preventing said transmission by fax or email.

CHAPTER 10
TIME-LIMITS

Preliminary

Outline:

I. Introduction	1
1. Art. 6 ECHR	1
2. Strict application	2
3. Categories of time-limits	3
a) Primary law	3
b) Secondary law	4
c) Time-limits set by Judges	5
d) No regulatory time-limit	6
II. No obligation to advise addressees on the possibility of bringing an action against a decision.....	7
1. Institutions	7
2. The Registry.....	9
III. Practical dealing with time-limits.....	10
IV. Expiry of a time-limit without prejudice.....	11
1. No prejudice.....	11
2. Narrow interpretation	12
V. Equal treatment of applicants?	13

I. Introduction

1. Art. 6 ECHR

Time-limits are an essential part of the procedural rules. The principle estab- 1
lished by Art. 6 ECHR, which, as the legal order of the EU recognizes, is to ensure
that every person has a **fair trial**, does not preclude setting a time-limit for
instituting legal proceedings¹⁵⁹².

2. Strict application

The strict application of EU rules concerning procedural time-limits meets the 2
requirements of **legal certainty** and respects the need to avoid all discrimination or
arbitrary treatment in the administration of justice¹⁵⁹³.

3. Categories of time-limits. a) **Primary law**. On the one hand, time-limits include 3
those which are enshrined in primary EU law, whether the TFEU or the **Statute** of

¹⁵⁹² Case C-73/10 P, *Internationale Frucht Import Weichert v Commission* [2010], (not published in the ECR), paragraph 48.

¹⁵⁹³ Case T-126/00, *Confindustria v Commission* [2001] ECR p. II-85, paragraph 21.

the ECJ, concerning legal remedies such as an action for annulment or an appeal. These time-limits are a matter of **public policy** (“ordre public”) and are thus at neither the court’s nor the parties’ discretion¹⁵⁹⁴. This implies that the party needs to calculate the exact time-limit which pertains to its case itself.

b) Secondary law

- 4 On the other hand, the RP GC define a number of procedural time-limits, such as the time-limit for the statement of defence¹⁵⁹⁵. Such time-limits may be extended upon request if this is **explicitly provided** in the GC.

c) Time-limits set by Judges

- 5 In a number of cases the GC may use its discretion to define a time-limit, e.g. with respect to a request of extension (where applicable) or an answer to measures of organization of the procedure, such as written questions.

d) No regulatory time-limit

- 6 In the rare event of an absence of a time-limit, e.g. with respect to an application for taxation of costs, the principle of “reasonable time-limit” applies.

II. No obligation to advise addressees on the possibility of bringing an action against a decision

1. Institutions

- 7 When adopting a decision, i.e. a legal act individually and directly affecting a person, the institutions¹⁵⁹⁶ or other bodies of the EU¹⁵⁹⁷ are under **no obligation** to mention the possibility of bringing an action against the decision¹⁵⁹⁸; to detail the kind of legal remedy¹⁵⁹⁹; or to provide a potential applicant with a calculation of the time-limit¹⁶⁰⁰, in contrast to that which applies in certain Member States.
- 8 That said, aside from the question of whether any such obligation can be derived from the principle of judicial protection or derived more generally from the rule of law, it seems to be a matter of the principle of good administration to inform the addressees of individual decisions concerning the possibility of lodging e.g. an application for annulment within the relevant time-limit provided by the law.

¹⁵⁹⁴ Case T-104/99, *AS Bolderaja A. O. v Council* [2000] ECR p. II-451, paragraph 40.

¹⁵⁹⁵ Art. 46 RP GC.

¹⁵⁹⁶ Art. 13 TEU.

¹⁵⁹⁷ Such as the European Ombudsman, see Case T-33/99, *Méndez-Pinedo v ECB* [2000] ECR SC p. II-273, paragraph 36.

¹⁵⁹⁸ Case T-276/97, *Guérin Automobiles v Commission* [1998] ECR p. II-261, paragraph 20; Case T-145/98, *ADT Projekt v Commission* [2004] ECR p. II-387, paragraph 210.

¹⁵⁹⁹ Joined Cases F-116/07, F-13/08 and F-31/08, *Tomas v Parliament* [2010] ECR SC p. II-0000, paragraph 87.

¹⁶⁰⁰ Case T-146/05, *Gorostiaga Atxalandabaso v Parliament* [2005] ECR p. II-5989, paragraph 131.

2. The Registry

The Registry is not responsible for advising the parties concerning the calculation 9 of time-limits¹⁶⁰¹.

III. Practical dealing with time-limits

Art. 101 and 102 are rather complex provisions; this complexity does not make 10 an accurate calculation of the relevant time-limit any easier. This is particularly true regarding the first exchange of written submissions, especially for **applicants**, and, albeit to a much lesser extent, defendants. Thus, rather than trying to optimize the time-limit while risking a mistake or miscalculation, each party is well advised to deduct two or three days from the calculated time-limit as a **security margin**¹⁶⁰². This reduces and ideally excludes the risk of missing the time-limit. By the same token, such a margin takes away last-minute stress, which is likely to generate mistakes such as forgetting to sign the application¹⁶⁰³, committing mistakes while using the telefax, such as dialling the wrong number or sending the recto-side of the original, thus white pages¹⁶⁰⁴, etc., without having the time to verify with the Registry whether the document has safely arrived.

IV. Expiry of a time-limit without prejudice

1. No prejudice

Pursuant to Art. 45 (2) Statute ECJ, no right shall be limited due to the expiry of 11 a time-limit if the party concerned proves the existence of **unforeseeable circumstances** or of *force majeure*. This is also true in cases of “**excusable errors**”¹⁶⁰⁵.

2. Narrow interpretation

It comes as no surprise that the ECJ interprets all three of these concepts 12 narrowly (see comments re. Art. 45 (2) Statute ECJ). Apart from these three concepts, the party may not rely on any other circumstances, such as stating that the challenged decision is still being applied while lodging the application¹⁶⁰⁶.

¹⁶⁰¹ Case T-104/99, *AS Bolderaja A. O. v Council* [2000] ECR p. II-451, 459.

¹⁶⁰² B. Wägenbaur, EuZW 2002, 406, 407.

¹⁶⁰³ Case T-504/04, *Ruiz Bravo-Villasante v Commission* [2005] ECR SC p. II-1606, paragraph 36.

¹⁶⁰⁴ Case T-56/02, *Bayrische Hypo- und Vereinsbank v Commission* [2004] ECR p. II-3495.

¹⁶⁰⁵ Case T-73/10 P, *Apostolov v Commission* [2010], ECR p. II-0000, paragraph 20.

¹⁶⁰⁶ Case T-532/11, *Städter v ECB* [2011] (not published in the ECR), paragraph 9.

V. Equal treatment of applicants?

- 13 Natural or legal persons lodging an action for annulment within the meaning of Art. 263 TFEU have a time-limit of **two months**¹⁶⁰⁷ to do so¹⁶⁰⁸, while officials and temporary agents of the EU making use the legal remedy, albeit based on a different provision (Art. 270 TFEU), benefit from a time-limit of **three months**¹⁶⁰⁹. This substantial difference raises a question concerning equal treatment¹⁶¹⁰: The subjects covered by actions for annulment before the GC are often complex and of major economic importance; however, applicants are given 50 % less time than are applicants in staff cases, which nevertheless tend to be much more limited. Besides, staff cases are, as a rule¹⁶¹¹, preceded by an administrative complaint. Thus, there seems to be no objective justification for maintaining such a substantial difference between time-limits pertaining to the same legal remedy. Consequently, the time-limits for actions for annulment should be harmonized, also since the legislature has finally removed another exception from the general rule, which concerned costs in staff cases.

Article 101 [Periods of time]

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

- (a) Where a period expressed in days, weeks, months or years is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be counted as falling within the period in question;
- (b) A period expressed in weeks, months or in years shall end with the expiry of whichever day in the last week, month or year is the same day of the week, or falls on the same date, as the day during which the event or action from which the period is to be calculated occurred or took place. If, in a period expressed in months or in years, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last day of that month;
- (c) Where a period is expressed in months and days, it shall first be reckoned in whole months, then in days;
- (d) Periods shall include official holidays, Sundays and Saturdays;
- (e) Periods shall not be suspended during the judicial vacations.

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

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

¹⁶⁰⁷ Art. 263 (6) TFEU.

¹⁶⁰⁸ Plus ten calendar days on account of distance.

¹⁶⁰⁹ Art. 91 Statute of the EU officials.

¹⁶¹⁰ *B. Wägenbaur*, EuZW 2007, 321.

¹⁶¹¹ Exceptions apply with respect to annual assessment reports and decisions of juries, which may be challenged directly, i.e. without being preceded by an administrative complaint.

Outline:

I. General	1
II. Calculation of the time-limit (paragraph 1)	2
1. Beginning of the time-limit (lit. a)	2
2. End of the time-limit (lit. b)	3
3. Most important alternative: time-limit expressed in months.....	4
4. No suspension of time-limits (lit. c) – e)	5
III. Extension of the time-limit (paragraph 2)	6
1. “The period”	6
2. List of official holidays.....	7

I. General

The provisions on the time-limit for bringing an action amount to a **full set of 1 rules** which allows for the determination of not only the beginning but also the length of the time-limit, so that the application by analogy of other provisions of EU law¹⁶¹² or the legislation of Member States or Third States does not come into question. The provisions governing the calculation of time periods for each procedural step are **generally applicable** and do not depend on the type of proceedings in question or on the length of the time period allowed for commencing the proceedings¹⁶¹³.

II. Calculation of the time-limit (paragraph 1)

1. Beginning of the time-limit (lit. a)

Since the day during which the event (e.g. notification of a challengeable act)¹⁶¹⁴ 2 occurs or an action takes place is **not considered** to fall within the period in question, as the time-limit begins on the **following calendar day**. This provision is intended to enable the party concerned to benefit from the full time-limit¹⁶¹⁵ while treating all parties **equally**. Thus, the time-limit begins at the beginning of the day following the day on which the event occurred. This provision applies independently of whether or not the legal act has been notified to the party or published in the OJEU¹⁶¹⁶.

2. End of the time-limit (lit. b)

On the face of it, the provision in (b) does not seem very coherent, since it 3 provides that the day during which the action from which the period is calculated occurred determines the end of the time-limit, thus using that same day which by

¹⁶¹² Case T-126/00, *Confindustria v Commission* [2001] ECR p.II-85, paragraph 20.
¹⁶¹³ Case T-125/89, *Filtrona Española v Commission* [1990] ECR p. II-393.
¹⁶¹⁴ Case T-125/89, *Filtrona Española v Commission* [1990] ECR p. II-393.
¹⁶¹⁵ Case 152/85, *Misset v Council* [1987] ECR p. 223, paragraph 7.
¹⁶¹⁶ Case T-126/00, *Confindustria v Commission* [2001] ECR p. II-85, 93.

virtue of (a) shall not be counted as the starting point of this calculation. This day expires at 24h00 local time, i.e. **Luxembourg time**, i.e. not according to the time where the party is established, e.g. in Ireland¹⁶¹⁷.

3. Most important alternative: time-limit expressed in months

- 4 Where the period of time allowed for commencing proceedings is expressed in calendar months, that period expires at the end of the day which, in the month indicated by the time-limit, bears the same number as the day from which time was set running, i.e., in the case of a decision which has been notified, the day of notification¹⁶¹⁸.

4. No suspension of time-limits (lit. c) – e)

- 5 A time-limit is neither suspended nor interrupted by holidays, Saturdays, Sundays or judicial vacations¹⁶¹⁹.

III. Extension of the time-limit (paragraph 2)

1. “The period”

- 6 The first paragraph of Art. 101(2) RP GC only applies in cases where the time-limit (e.g. 2 months¹⁶²⁰), **including** the extension on account of distance (10 calendar days), ends on a Saturday, Sunday, or an official holiday. Only in such cases will the time-limit end on the following working day¹⁶²¹. In other words, if the time-limit of e.g. two months ends on a Saturday, a Sunday, or an official holiday, Art. 102 (2) 1st sub-paragraph RP GC does not apply¹⁶²². The extension due to distance is **not** to be regarded as **separate** from the procedural time-limit but merely as a prolongation of said time-limit¹⁶²³.

2. List of official holidays

- 7 The official holidays within the meaning of this provision are not those applying in a given Member State, but only those which are published in the OJ EU. Even holidays applying only to the institutions, such as the 9th May (“Schuman-Day”) are not an official holiday within the meaning of this provision¹⁶²⁴.

¹⁶¹⁷ Case T-469/10, *Conneely v Commission* [2011] (not published in the ECR), paragraphs 14–16.

¹⁶¹⁸ Case 152/85, *Misset v Council* [1987] ECR p. 223.

¹⁶¹⁹ 15 July to 15 September.

¹⁶²⁰ See e.g. Art. 263 TFEU.

¹⁶²¹ Case T-47/92, *Lenz v Commission* [1992] ECR p. II-2523, paragraph 34.

¹⁶²² Case T-126/00, *Confindustria v Commission* [2001] ECR p. II-85, paragraph 18.

¹⁶²³ Case T-85/97, *Horeca-Wallonie v Commission* [1997] ECR p. II-2113, paragraph 26.

¹⁶²⁴ Case T-126/00, *Confindustria v Commission* [2001] ECR p. II-85, paragraph 18.

Article 102 [Publication in the OJ]

1. Where the period of time allowed for commencing proceedings against a measure adopted by an institution runs from the publication of that measure, that period shall be calculated, for the purposes of Article 101(1) (a), from the end of the 14th day after publication thereof in the *Official Journal of the European Union*.

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

Outline:

I. Beginning of a time-limit (paragraph 1)	1
1. General.....	1
2. Publication of a measure in the OJ.....	2
a) Start of the time-limit.....	2
b) Publication.....	4
c) Example.....	5
3. Publication of a summary in the OJ.....	6
II. Other forms of publication	7
1. Introduction.....	7
2. Notification to the applicant.....	8
a) No need for taking cognizance	8
b) Modalities of notification.....	9
aa) Burden of proof.....	9
bb) Registered letter.....	10
cc) Email	11
dd) Hand delivery	12
ee) Alternative means of evidence.....	13
2. Measure coming to the knowledge of the addressee.....	14
a) General.....	14
b) Publication or notification	15
c) Taking cognizance.....	16
aa) Requirements.....	16
bb) Failure to meet the requirements.....	17
(1) Non-compliance with reasonable period.....	17
(2) No precise knowledge.	18
III. Additional period on account of distance (paragraph 2).....	19
1. General.....	19
2. Period on account of distance.....	20

I. Beginning of a time-limit (paragraph 1)

1. General

The granting of this additional period of **fourteen calendar days** reflects the fact ¹ that the measure is not notified to each party individually, but published on the Court's website and in the Official Journal. It also takes account of the fact that the paper version of the Official Journal is not available to every Member State within the whole Union at the same time, even though the OJ is now published on the

internet and thus immediately available in all official languages¹⁶²⁵. That said the publication of a notice on the application in the OJ EU does not generate an additional time-limit of 14 days for the potential intervener¹⁶²⁶.

- 2 **2. Publication of a measure in the OJ. a) Start of the time-limit.** Art. 101 (1) (a), which provides that the day during which the event occurs or the action takes place shall not be considered to fall within the period in question, also applies to this article, i.e. the publication of a measure in the OJ. Thus, the time-limit of fourteen days stated here begins as of the **next day**¹⁶²⁷. The event triggering the beginning of this time-limit is the publication in the OJEU.
- 3 This provision is not in any way altered by the fact that the applicant may not at that date have had an **interest to act**¹⁶²⁸. It is also manifestly erroneous to first calculate the period of two months applicable to actions for annulment and then add to that the period of 14 days within the meaning of Art. 102 (1) RP GC¹⁶²⁹.

b) Publication

- 4 The 14 day time-limit applies by the mere fact that the measure was published in the OJ EU; whether its publication is compulsory or is the standard practice of the institution in question is irrelevant¹⁶³⁰.

c) Example

- 5 If a measure is published in the OJ EU on 15 February 2000, the time-limit of 14 days, which begins on 16 February 2000, ends 14 days later, i.e. on 29 February 2000 at midnight¹⁶³¹.

3. Publication of a summary in the OJ

- 6 The fact that the Commission grants third parties access to the full text of a decision on its **website** in conjunction with the publication of a summary in the **OJ of the EU**, which enables third parties to identify the decision and through said access to be advised via the online version of the OJ, means that the OJ of the EU is considered a publication within the meaning of Art. 263 (6) TFEU¹⁶³².

¹⁶²⁵ <http://eur-lex.europa.eu>.

¹⁶²⁶ Case T-139/01, *Comafica and Dole Fresh Fruit Europe v Commission* [2002] ECR p. II-799, paragraph 21.

¹⁶²⁷ Case T-374/11, *Libyan Investment Authority and Others v Council* [2011] (not published in the ECR), paragraph 13; Case T-375/11, *Houej v Council* [2011] (not published in the ECR), paragraph 13; Case T-376/11, *CBL v Council* [2011] (not published in the ECR), paragraph 13; Case T-377/11, *FDES and Others v Council* [2011] (not published in the ECR), paragraph 13.

¹⁶²⁸ Case T-45/08, *Transportes Evaristo Molina v Commission* [2008] (not published in the ECR), paragraph 30.

¹⁶²⁹ Case T-101/09, *Maftah v Commission* [2011] (not published in the ECR), paragraph 30.

¹⁶³⁰ Case T-264/03, *Schmoldt A. O. v Commission* [2004] ECR p. II-1515, paragraph 55 to 61.

¹⁶³¹ Case T-126/00, *Confindustria v Commission* [2001] ECR p. II-85, paragraph 15.

¹⁶³² Case T-274/06, *El Mareny v Commission* [2007] (not published in the ECR), paragraph 31 and the case-law cited.

II. Other forms of publication

1. Introduction

According to Art. 102 (1) RP GC, the publication of a measure in the OJ is one of 7 many manners in which Court measures are communicated. Concerning actions for annulment, Art. 263 (6) TFEU provides that the application needs to be lodged with the Registry within two months “*of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.*”

2. Notification to the applicant. a) No need for taking cognizance. It is settled law 8 that where a measure is notified to the registered office of an entity, the validity of that notification is in no way conditional on its having been actually brought to the notice of the person competent to deal with it according to that undertaking’s internal rules. Furthermore, one may consider a decision to be duly notified once it has been communicated to the addressee and once the addressee is in a position to take cognizance of it¹⁶³³. In that context, an error in describing the addressee of a decision which is the subject of an action for annulment is a purely formal error which cannot prevent the application of the time-limits laid down by the Treaty, provided that the relevant measure actually reached the addressee and the latter was able to see that it was addressed to him¹⁶³⁴.

b) Modalities of notification. aa) Burden of proof. The party alleging that an 9 action is out of time must prove on what date the decision was notified¹⁶³⁵. Mere circumstantial evidence as to the reality and date of notification does not suffice¹⁶³⁶. Since this question is not always easy to determine, the GC may leave it open and instead rule on the substance¹⁶³⁷.

bb) Registered letter

According to the case-law, a registered letter with acknowledgment of receipt is a 10 suitable method of giving notice inasmuch as it enables the date from which time begins to run to be determined¹⁶³⁸. The date which triggers the beginning of the time-limit is the one on which the addressee acknowledged receipt¹⁶³⁹. There are a number of practical difficulties with this definition, however, since the addressee

¹⁶³³ Joined Cases T-374/94, T-375/94, T-384/94 and T-388/94, *European Night Services A. O. v Commission* [1998] ECR p. II-3141, paragraph 76.

¹⁶³⁴ Joined Cases T-452/93 and T-453/93, *Pevasa and Inpesca v Commission* [1994] ECR p. II-229, paragraphs 31 and 35.

¹⁶³⁵ Joined Cases T-70/92 and T-71/92, *Florimex and VGB v Commission* [1991] ECR p. II-693, paragraph 74.

¹⁶³⁶ Case F-101/08, *Pappas v Commission* [2010] (not yet published in the ECR), paragraph 47.

¹⁶³⁷ Joined Cases T-6/92 and T-52/92, *Reinartz v Commission* [1993] ECR p. II-1047, paragraph 49.

¹⁶³⁸ Case T-80/89 et al., *BASF A. O. v Commission* [1995] ECR p. II-729, paragraph 59.

¹⁶³⁹ Case T-16/09 P, *Marcuccio v Commission* [2010] ECR SC I-0000, paragraphs 63–64; Case T-157/09 P, *Marcuccio v Commission* [2010] ECR SC p. II-0000, paragraphs 69–70.

might refuse to sign the acknowledgment of receipt or pick up the registered letter, might omit to indicate the date of signature, etc.

cc) Email

- 11 Normally the institutions do not notify decisions by way of electronic mail, except concerning certain decisions addressed to their members of staff. That said, merely sending of a decision by Email is not sufficient in and of itself. One must also possess evidence that the addressee received the Email or that he opened it¹⁶⁴⁰.

dd) Hand delivery

- 12 Again, an institution will never notify a decision to a third party by hand delivery. This method is sometimes employed internally in smaller institutions or agencies for the purpose of notifying decisions to its members of staff, but is never used externally. Such a method may prove to be unreliable, especially if the addressee is merely informed by Email that he should pick up a decision¹⁶⁴¹.

ee) Alternative means of evidence

- 13 It does not matter if the precise date on which the addressee received the letter cannot be established if it follows from the addressee's subsequent correspondence that he was necessarily aware of the letter at a given date¹⁶⁴².

- 14 **2. Measure coming to the knowledge of the addressee. a) General.** Pursuant to Art. 263 (6) TFEU, the criterion of the date when a measure came to the applicant's knowledge being used as the starting point of the period for instituting proceedings is subsidiary to the criteria of publication or notification of the measure¹⁶⁴³.

b) Publication or notification

- 15 If a measure is published in the OJ EU, the time-limit provided in Art. 263 (6) TFEU along with Art. 102 (1) RP GC begins as of this publication¹⁶⁴⁴, i.e. not on the date on which the party might have learned of the decision¹⁶⁴⁵. If the applicant can foresee that the institution will publish a decision in the OJ EU due to indications¹⁶⁴⁶ that the institution has given; due to a voluntary policy¹⁶⁴⁷; or due to consistent practice¹⁶⁴⁸ which that institution has adopted, then this moment of

¹⁶⁴⁰ Case F-101/08, *Pappas v Commission* [2010] (not yet published in the ECR), paragraph 47 and the case-law cited.

¹⁶⁴¹ Case T-288/04, *Van Nuyghem v Committee of Regions* [2007] (not published in the ECR), paragraph 56.

¹⁶⁴² Joined Cases T-452/93 and T-453/93, *Pevasa and Inpesca v Commission*, [1994] ECR p. II-299, paragraph 36.

¹⁶⁴³ Case T-89/96, *British Steel v Commission* [1999] ECR p. II-2089, paragraphs 34; Case T-264/03, *Schmoldt A. O. v Commission* [2004] ECR p. II-1515, paragraph 52.

¹⁶⁴⁴ Case T-296/97, *Alitalia v Commission* [2000] ECR p. II-3871, paragraphs 61, 63.

¹⁶⁴⁵ Case T-190/00, *Regione Siciliana v Commission* [2003] ECR p. II-5015, paragraph 31.

¹⁶⁴⁶ Case T-140/95, *Ryanair v Commission* [1998] ECR p. II-3327, paragraphs 25–27.

¹⁶⁴⁷ Case T-110/97, *Kneissl v Commission* [1999] ECR p. II-2881, paragraphs 41 to 43; Case T-123/97, *Salomon v Commission* [1999] ECR p. II-2925, paragraphs 42 to 44.

¹⁶⁴⁸ Case T-14/96, *BAI v Commission* [1999] ECR p. II-139, paragraphs 33 to 36.

foreseeability triggers the beginning of the time-limit even if said publication is not a prerequisite for the validity of this decision¹⁶⁴⁹.

c) **Taking cognizance.** aa) **Requirements.** It is settled law that, where the act in question is not published or notified, the period within which proceedings are to be instituted cannot begin until the third party concerned has **precise knowledge** of the content and grounds of the act in question, always provided, however, that he **asks** for the full text of the act in question¹⁶⁵⁰ within a **reasonable period**¹⁶⁵¹. This requirement reflects the need for **legal certainty**¹⁶⁵². The applicant may not lodge his application prior to this point, let alone “at any time”¹⁶⁵³.

bb) **Failure to meet the requirements.** (1) **Non-compliance with reasonable period.** The application is inadmissible if the request for obtaining the full text of the act in question is only lodged after more than **four months**¹⁶⁵⁴, since this is not compatible with the principle of legal certainty¹⁶⁵⁵.

(2) **No precise knowledge.** Nevertheless, this does not require knowledge of each and every element of the decision, but rather only of said decision’s **main contents**¹⁶⁵⁶. This is not the case e.g. if the document received only contains **brief extracts** from the decision, which are **truncated**¹⁶⁵⁷ or if the party learns of the existence of the institution’s decision via an exchange of letters with national bodies if those letters only provide a general indication concerning the contents of the decision¹⁶⁵⁸.

III. Additional period on account of distance (paragraph 2)

1. General

This notion is slightly misleading in that the extension on account of distance is not to be considered as separate from the procedural time-limit, but is merely seen as a prolongation of that time-limit, a prolongation which is granted by the law¹⁶⁵⁹.

¹⁶⁴⁹ Case T-392/05, *MMT v Commission* [2007] ECR p. II-97, paragraphs 26 to 27.

¹⁶⁵⁰ Case T-465/93, *Consorzio gruppo di azione locale “Murgia Messapica” v Commission* [1994] ECR p. II-3007, paragraph 26.

¹⁶⁵¹ Case T-200/09, *Albertis Infraestructuras v Commission* [2010] (not published in the ECR), paragraph 47 and the case-law cited.

¹⁶⁵² Case C-48/96 P, *Windpark Groothusen v Commission* [1998] ECR p. I-2873, paragraphs 25–26.

¹⁶⁵³ Case T-188/95, *Waterleiding Maatschappij “Noord-West-Brabant” v Commission* [1998] ECR p. II-3713, paragraphs 110 to 111.

¹⁶⁵⁴ Case T-155/95, *LPN and GEOTA v Commission* [1998] ECR p. II-2751, paragraphs 43 to 44.

¹⁶⁵⁵ Case C-48/96 P, *Windpark Groothusen v Commission* [1998] ECR p. I-2873, paragraph 25–26.

¹⁶⁵⁶ See in this respect Case T-468/93, *Frinil v Commission* [1994] ECR p. II-33, paragraph 32; but see also Case T-72/97, *Proderec v Commission* [1998] ECR p. II-2847, paragraphs 34 to 37.

¹⁶⁵⁷ Joined Cases T-485/93, T-491/93, T-494/93 and T-61/98, *Dreyfuss A. O. v Commission* [2000] ECR p. II-3659, 3677, paragraph 50.

¹⁶⁵⁸ Joined Cases T-432/93, T-433/93 and T-434/93, *Socurte A. O. v Commission* [1995] ECR p. II-503, paragraphs 47 to 50; Case C-143/95 P, *Commission v Socurte* [1997] ECR p. I-1, paragraphs 31 to 33.

¹⁶⁵⁹ Case T-85/97, *Horeca-Wallonie v Commission* [1997] ECR p. II-2113, 2122, paragraph 26.

It would have thus been more logical to put this provision into a separate Article, followed by what is currently Art. 101 (2) RP GC, since the latter applies only if the time-limit, when extended by ten days on account of distance, ends on a Saturday, Sunday or official holiday.

2. Period on account of distance

- 20 Until the year 2000, the extension on account of distance, which is based on Art. 45 (1) Statute ECJ, was determined according to the party's place of residence and thus ranged from 2 days to one month for the more remote Member States and overseas territories. This extension has since been replaced by a uniform period of **10 calendar days** which applies regardless of the location in which the party is established, including those who are established in Luxembourg. This new rule results in a *de facto* extension of the time-limit, since the parties may send their written submission to the Registrar by telefax or Email on the last day of the extended time-limit, provided they comply with the requirements in Art. 43 (6) RP GC.

Article 103 [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 power of signature to the Registrar for the purpose of fixing time-limits which, pursuant to these Rules, it falls to the President to prescribe, or of extending such time-limits.

I. Time-limits (paragraph 1)

1. Time-limits set by the Judges

- 1 Time-limits set by the Judges are not a matter of public order and may thus be extended upon duly reasoned application. Such time-limits include e.g. time-limits set for the reply to written questions or time-limits concerning the GC's requests for documents.
- 2 **2. Time-limits laid down by the legislature. a) Rule.** The time-limits set by the legislature, whether in the TFEU, e.g. the two months for lodging an application for annulment¹⁶⁶⁰, in the Statute ECJ, e.g. the two months for lodging an appeal¹⁶⁶¹; or in the RP GC, e.g. the six weeks for submitting a request for being admitted as an intervener¹⁶⁶², **cannot be extended.**

¹⁶⁶⁰ Art. 263 (6) TFEU.

¹⁶⁶¹ Art. 56 Statute ECJ.

¹⁶⁶² Art. 115 (1) RP GC.

b) Exception

Art. 46 (3) RP GC provides an exception to this rule, since the time-limit of two 3 months for the statement of defence found in this provision may be extended upon application. One may also extend the time-limits for the reply and rejoinder, even in the absence of an explicit provision.

II. Delegation of signatures (paragraph 2)

The President has delegated the power of signature to the Registrar within the 4 limits of Art. 11 of the Instructions to the Registrar.

TITLE III SPECIAL FORMS OF PROCEDURE

CHAPTER 1 SUSPENSION OF OPERATION OR ENFORCEMENT AND OTHER INTERIM MEASURES

Preliminary

I. No automatic suspensive effect

Title 3 begins with the most relevant amongst all “special forms of procedure”, 1 the rules governing **interim proceedings**¹⁶⁶³. In law¹⁶⁶⁴, applications brought before the EU courts do not automatically suspend a challenged decision. However, the GC may, **upon application** i.e. not on its own motion, provisionally suspend the challenged decision or adopt other provisional measures in order to guarantee – provided all conditions for interim measures are met – the **full effectiveness of the definitive future decision**. The GC may do this in order to ensure that there is no **lacuna** in the legal protection provided by the GC¹⁶⁶⁵.

II. Ancillary procedure

Thus, interim proceedings are, by their very nature, **ancillary** to the main pro- 2 ceedings which means that they provide no basis for any claim for compensation of material¹⁶⁶⁶ or moral¹⁶⁶⁷ prejudice.

¹⁶⁶³ B. Wägenbaur, EuZW 1996, p. 327 et seq.

¹⁶⁶⁴ Art. 278 and 279 TFEU.

¹⁶⁶⁵ Case C-7/04 P(R), *Commission v Akzo and Akrcos* [2004] ECR p. I-8739, para. 36.

¹⁶⁶⁶ Case T-339/03 R, *Clotuche v Commission* [2003] ECR SC p. II-1423, para. 22.

¹⁶⁶⁷ Case T-47/03 R, *Sison v Council and Commission* [2003] ECR p. II-2047, para. 41.

III. Legal framework

3 The relevant provisions include:

- Art. 278 and 279 TFEU¹⁶⁶⁸,
 - Art. 39 Statute ECJ,
 - Art. 104¹⁶⁶⁹ to 109 RP GC,
 - Art. 12 of the “Instructions to the Registrar of the General Court”
 - and paragraphs 81 to 84 of the “Practice Directions to Parties”,
- bearing in mind that the case law has defined many procedural details of this particular form of procedure.

IV. Intellectual property

4 In proceedings relating to intellectual property, there is **no need for interim relief**. Unlike the pre-contentious procedures in other areas, such as staff matters, a complaint against the decisions of the examiners, Opposition Divisions, Administration of Trade Marks and Legal Division or Cancellation Divisions has a **de jure suspensive effect**¹⁶⁷⁰, which lasts until the Judgment has become definitive in the event of a subsequent action for annulment to the GC¹⁶⁷¹.

Article 104 [Substantive criteria]

1. An application to suspend the operation of any measure adopted by an institution, made pursuant to Article 278 TFEU and Article 157 of the TEAEC, shall be admissible only if the applicant is challenging that measure in proceedings before the General Court.

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

2. An application of a kind referred to in paragraph 1 of this Article shall state the subject-matter of the proceedings, the circumstances giving rise to urgency and the pleas of fact and law establishing a *prima facie* case for the interim measures applied for.

3. The application shall be made by a separate document and in accordance with the provisions of Articles 43 and 44.

¹⁶⁶⁸ See also Art. 157 TEAEC.

¹⁶⁶⁹ Which refers to Art. 278 TFEU and Art. 157 TEAEC.

¹⁶⁷⁰ Art. 57 (1) of Council Regulation 40/94 of 20.12.1993 on the community trade mark; Art. 55 (1) of Council Regulation 6/2002 of 12.12.2001 on community design.

¹⁶⁷¹ Art. 62 (3) of Council Regulation 40/94 of 20.12.1993 on the community trade mark; Art. 60 (3) of Council Regulation 6/2002 of 12.12.2001 on community design.

Outline:

I. General	1
1. GC	1
2. CST	2
II. Admissibility (paragraph 1)	3
1. General	3
2. Application	4
a) Need for an application	4
b) Provisional measures	5
c) Main action	6
3. Reasons of inadmissibility	7
a) Deficiencies in the application/ignoring the Judges' jurisdiction	7
aa) Lack of connection with the main action	7
bb) Future decision	8
(1) Rule	8
(2) Exception	9
cc) No substitution	10
dd) No declaratory decisions	11
ee) Other cases of inadmissibility	12
(1) Enforcement of decisions	12
(2) Negative administrative decision	13
(3) Suspension of proceedings	14
(4) Measures of organization and inquiry	15
b) Insufficient contents of the application	16
c) Incorrect Party	17
d) Manifest inadmissibility of the main action	18
aa) Rule	18
bb) Exception	19
cc) Examples	20
4. Circumstances which do not preclude the admissibility	21
III. Merits of an application for interim relief (paragraph 2)	22
1. General	22
a) Three conditions	22
b) Broad discretionary power	23
2. Urgency	24
a) General	24
b) Definition	25
aa) Risk of damage	25
bb) Duration of the main action	26
c) Causality	27
d) Burden of proof	28
aa) Required	28
bb) Insufficient	29
e) Lack of urgency in case of purely financial damage	30
aa) General	30
(1) Means of redress	31
(2) Likelihood of redress	32
bb) Examples	33
cc) Exceptions	34
(1) General	34
(2) Undertakings	35
(a) Risk of bankruptcy	35
(b) Burden of proof	36
(3) Association of undertakings	37
(4) Irreversible market developments	38
(5) Tasks of general economic interest	39
(6) Threat of copyright	40

(7) Bank guarantee	41
(8) Other.....	44
f) Other cases of lack of urgency	45
aa) Prejudice inherent to the contested decision	45
(1) Anti-dumping	45
(2) Public tender procedure.....	46
(3) Staff cases.	47
bb) Non-material damage.....	48
cc) Other cases	49
3. Necessity of the application.....	50
a) Definition	50
b) Prima facie test	51
aa) Rule	51
bb) Exceptions	52
(1) Questions of principle.....	52
(2) Detailed examination.....	53
(3) Wide discretion of the authority.....	54
(4) Complex economic assessments?.....	55
4. Balance of interests.....	56
a) General.....	56
b) Contents	57
c) Interests of applicant and third parties	58
d) Areas of law	59
aa) Health protection	59
(1) Rule.	59
(2) Exception.....	60
bb) State aid	61
cc) Bank guarantees.....	62
e) Intervention	63
IV. Procedural requirements (paragraph 3)	64
1. General.....	64
2. Separate document	65
a) Contents	66
aa) Yardstick	66
(1) Application.....	66
(2) Reply.....	67
bb) Practice.....	68
(1) Presentation.....	69
(2) Inadmissible references.....	70
b) Number of pages	71
3. Art. 43 and 44 RP GC	72
4. Absence of time-limit.....	73
a) No provision	73
b) Examples.....	74

I. General

1. GC

- Admissibility in interim proceedings is not fundamentally different from that in other legal remedies. By contrast, this “summary procedure” possesses substantive requirements which are by definition both **specific** and **demanding**, as is seen in similar procedures at the national level. The case law of the EU courts has further defined much of this procedure.

2. CST

Art. 102 (1), 3rd sub-paragraph RP CST refers to a special procedure rule for 2 applications for interim proceedings when lodging a complaint within the meaning of Art. 90 (2) of the Staff Regulations.

II. Admissibility (paragraph 1)

1. General

Apart from the more “classical” conditions of admissibility which every legal 3 remedy needs to meet, every application for interim relief must also fulfill a series of **specific conditions**, which may prove to be a source of errors depending on the situation of either perceived or objective urgency.

2. Application. a) Need for an application. Since the GC does not grant interim 4 measures on its own initiative, the party concerned needs to lodge an application by using a **separate document** in accordance with Art. 43 and 44 RP GC (see Art. 104 (3) RP GC).

b) Provisional measures

The measures required must be provisional inasmuch as they must **not prejudice** 5 the points of law or fact at issue or neutralize in advance the effects of the decision which will subsequently be given in the main action¹⁶⁷².

c) Main action

An application for interim measures is always **ancillary**. Thus the applicant must 6 initiate main proceedings, e.g. by lodging an **application for annulment** of the defendant’s decision either at the **same time** or **prior** to the application for interim relief. Otherwise, the application for interim measures is manifestly inadmissible¹⁶⁷³. That said, an application for interim measures may also be lodged with respect to other legal remedies and proceedings pending at the GC, such as an **appeal**¹⁶⁷⁴, **third party proceedings**¹⁶⁷⁵, or in cases which have been **referred back** to the GC¹⁶⁷⁶. Furthermore, the request for interim measures must relate to the main proceedings; in the absence of such link it is inadmissible¹⁶⁷⁷.

¹⁶⁷² Case C-149/95 P (R), *Commission v Atlantic Container Line A. O.* [1995] ECR p. I-2165, para. 22; Case T-303/04 R II, *Evropaiki Dynamiki v Commission* [2004] ECR p. II-4621, para. 29–31.

¹⁶⁷³ Case T-292/07 R, *Berliner Institut für Vergleichende Sozialforschung v Commission* [2007] (not published in the ECR).

¹⁶⁷⁴ Case T-103/10 P (R), *Parliament v U* [2010] (not published in the ECR).

¹⁶⁷⁵ See e.g. Case T-385/05 TO R, *Portugal v Commission* [2010] (not published in the ECR).

¹⁶⁷⁶ Case T-62/06 RENV-R, *Eurallumina v Commission* [2011] (not published in the ECR).

¹⁶⁷⁷ Case T-218/11 R, *Dagher v Council and Italy* [2011] (not published in the ECR), para. 5.

- 7 **3. Reasons of inadmissibility. a) Deficiencies in the application/ignoring the Judges' jurisdiction. aa) Lack of connection with the main action.** The Judge in proceedings for interim relief may not adopt interim measures if there is **no link**¹⁶⁷⁸ or certainly if there is a **contradiction**¹⁶⁷⁹ between said measures and the plea sought in the main action. Furthermore, the President of the GC may not extend the effects of an order concerning interim proceedings to any appeal which may be brought before the ECJ. Only the ECJ has jurisdiction to rule on any application for suspension of operation of a measure made in the context of an appeal¹⁶⁸⁰.
- 8 **bb) Future decision. (1) Rule.** An application is also inadmissible if it seeks to suspend a decision to be adopted in the future, e.g. relating to the withdrawal of protection from fines, i.e. before this decision is adopted¹⁶⁸¹, challenging it prematurely via an application Art. 263 (4) TFEU¹⁶⁸².
- 9 **(2) Exception. Preventive interim relief** is, however, admissible if the future decisions immediately establish rights for third parties and would thereby produce **irreversible effects**¹⁶⁸³.

cc) No substitution

- 10 The judge hearing the interim application may not assume the role of an institution by exercising purely administrative powers unless the application presents evidence which could provide grounds upon which the judge hearing the interim application could find that exceptional circumstances justify the adoption of the measures requested¹⁶⁸⁴. The Judge may not address injunctions to a Member State¹⁶⁸⁵.

dd) No declaratory decisions

- 11 An application for “a declaration as to interpretation” is admissible in a referral for a preliminary ruling, but **not** in the context of an application for interim relief¹⁶⁸⁶. Nor may the Judge hearing the application interpret the operative part of a GC ruling, which is rather a matter for an application under Art. 129 RP GC¹⁶⁸⁷.
- 12 **ee) Other cases of inadmissibility. (1) Enforcement of decisions.** The Judge may not order the **enforcement** of a judgment by the GC, as this is exclusively a matter for the procedural rules of the Member State in which the enforcement takes place (see Art. 280 and 299 TFEU)¹⁶⁸⁸.

¹⁶⁷⁸ Case T-302/00 R, *Goldstein v Commission* [2001] ECR p. II-1127, paras. 24–25; Case T-18/01, *Goldstein v Commission* [2001] ECR p. II-1147, paragraphs 32, 33.

¹⁶⁷⁹ Case T-6/95 R, *Cantine dei colli Berici v Commission* [1995] ECR p. II-647, para. 30.

¹⁶⁸⁰ Case T-6/97 R, *Comafra and Dole Fresh Fruit Europe v Commission* [1997] ECR p. II-291, para. 27.

¹⁶⁸¹ Case T-52/96 R, *Sogecable v Commission* [1996] ECR p. II-797, paras. 39–41.

¹⁶⁸² Case T-395/94 R II, *Atlantic Container A. O. v Commission* [1995] ECR p. II-2893, para. 40.

¹⁶⁸³ Case T-395/94 R II, *Atlantic Container A. O. v Commission* [1995] ECR p. II-2893, para. 49.

¹⁶⁸⁴ Case T-52/96 R, *Sogecable v Commission* [1996] ECR p. II-797, paras. 40 et seq.

¹⁶⁸⁵ Case T-107/96 R, *Pantochim v Commission* [1996] ECR p. II-1361, paras. 43, 44.

¹⁶⁸⁶ Case T-228/95 R, *Lehrfreund v Council and Commission* [1996] ECR p. II-111, para. 60.

¹⁶⁸⁷ Case T-11/00 R, *Hautem v EIB* [2000] ECR SC p. I-A-71, I-A-72.

¹⁶⁸⁸ Case T-11/00 R, *Hautem v EIB* [2000] ECR SC p. I-A-71, I-A-72.

(2) **Negative administrative decision.** Applying for a suspension of the enforcement of a **negative decision** is equally inadmissible, since such suspension could not have any impact on the applicant's legal situation¹⁶⁸⁹. A request aiming at extending the scope of the suspension sought is likewise inadmissible¹⁶⁹⁰.

(3) **Suspension of proceedings.** The Statute of the ECJ and the RP GC do not contain any specific provision under which the GC may stay proceedings for interim relief or decline jurisdiction concerning an application to suspend the operation of a measure if a parallel application for suspension of the operation of the same measure is pending before the ECJ¹⁶⁹¹. Such a provision would indeed be contrary to the principle of the sound administration of justice¹⁶⁹².

(4) **Measures of organization and inquiry.** A request for access to files in a competition case is considered part of the measures of organization or inquiry which are a matter for the GC and thus cannot be modified by way of measures of interim relief¹⁶⁹³.

b) Insufficient contents of the application

An application for interim relief is inadmissible if the applicant states no circumstance establishing the urgency of the measures sought; if it does not contain any precise account of the facts giving rise to the proceedings; and if the pleas in law put forward are not supported by any specific arguments¹⁶⁹⁴.

c) Incorrect Party

An intervener who did not himself challenge the contested measure may not file an application for interim relief¹⁶⁹⁵.

d) **Manifest inadmissibility of the main action. aa) Rule.** In principle, the admissibility of the main action ought not to be examined in the context of proceedings for interim measures in order not to **prejudge** the outcome in the main proceedings¹⁶⁹⁶. The same standard applies to proceedings at the CST¹⁶⁹⁷.

bb) Exception

However, if the defendant argues, be it in proceedings at the GC or the CST¹⁶⁹⁸, that the application in the main action is **manifestly inadmissible** or in breach of

¹⁶⁸⁹ Case T-213/97 R, *Eurocoton A. O. v Council* [1997] ECR p. II-1609, para. 41; Case T-369/03 R, *Arizona Chemical A. O. v Commission* [2004] ECR p. II-205, para. 63; Case T-422/03 R, *Enviro Tech Europe and Enviro Tech International v Commission* [2004] ECR p. II-469, para. 58.

¹⁶⁹⁰ Case T-6/59 R, *Cantine dei colli Berici v Commission* [1995] ECR p. II-647, para. 30.

¹⁶⁹¹ Case T-76/96 R, *National Farmer's Union v Commission* [1996] ECR p. II-815, para. 31.

¹⁶⁹² Case T-76/96 R, *National Farmer's Union v Commission* [1996] ECR p. II-815, para. 32.

¹⁶⁹³ Case T-18/96 R, *SCI and FNK v Commission* [1996] ECR p. II-407, para. 41.

¹⁶⁹⁴ Case T-5/95 R, *Amicale des résidents du square d'Auvergne v Commission* [1995] ECR p. II-255, para. 14.

¹⁶⁹⁵ Case T-310/03 R, *Kreuzer Medien v Parliament and Council* [2004] ECR p. II-3243, para. 21.

¹⁶⁹⁶ Case T-149/00 R, *Innova v Commission* [2000] ECR p. II-2941, para. 18.

¹⁶⁹⁷ Case F-61/11 R, *Possanzini v Frontex* [2011] (not yet published in the ECR), paras. 17–18.

¹⁶⁹⁸ Case F-51/11 R, *Pachtitis v Commission* [2011] (not yet published in the ECR), para. 17.

ordre public rules¹⁶⁹⁹, the Judge hearing the interlocutory order will, in the case of breach of *ordre public* rules on his own motion, assess whether on the face of it¹⁷⁰⁰ the main action includes sufficient elements indicating that it is **admissible**¹⁷⁰¹. This assessment takes place regardless of whether relevant case law already exists or not concerning the point raised¹⁷⁰².

cc) Examples

- 20 Manifest inadmissibility exists if the measure challenged in the main action does not, at first sight, constitute a challengeable act in either its form or its contents¹⁷⁰³, or if it is merely a preparatory act¹⁷⁰⁴. That said, the application for interim measures loses its object if the GC rejects the main action as manifestly inadmissible on the Court's own motion, e.g. in the context of Art. 111 RP GC.

4. Circumstances which do not preclude the admissibility

- 21 An application is not inadmissible merely because it accidentally refers to an Article of the TEU, which does not exist, rather than Art. 279 TFEU¹⁷⁰⁵. The same is true if the applicant confuses Art. 278 and 279 TFEU¹⁷⁰⁶.

III. Merits of an application for interim relief (paragraph 2)

- 22 1. General. a) **Three conditions**. According to the merits of the case the Judge shall assess the case's "**urgency**"; will determine whether "the pleas of fact and law establish a **prima facie case**"; and, where appropriate and, even though this is not specified in Art. 104 (2) RP GC, "**weigh up the interests involved**"¹⁷⁰⁷.

b) Broad discretionary power

- 23 First, it is important to remember that these three conditions apply to all **economic sectors** equally¹⁷⁰⁸. Next, these conditions are **cumulative**, so that an application for interim measures must be dismissed if any one of them is absent¹⁷⁰⁹. Furthermore, in the context of that overall examination, the judge hearing the application enjoys a **broad discretion**¹⁷¹⁰ and is free to determine, according to the specific circumstances of the case, the **manner** and **order** in which those various

¹⁶⁹⁹ Case T-398/02 R, *Linea GIG v Commission* [2003] ECR p. II-1139, paras. 44–45.

¹⁷⁰⁰ Case T-37/04 R, *Região autónoma dos Açores v Council* [2004] ECR p. II-2153, paras. 108 to 110.

¹⁷⁰¹ Case T-6/95 R, *Cantine dei Colli Berici v Commission* [1995] ECR p. II-647, para. 26.

¹⁷⁰² Case C-521/04 P (R), *Tillack v Commission* [2005] ECR p. I-3103, para. 26.

¹⁷⁰³ Case T-137/96, *Valio Oy v Commission* [1996] ECR p. II-1327, paras. 34 to 41.

¹⁷⁰⁴ Case T-75/96 R, *Söktas v Commission* [1996] ECR p. II-859, paras. 28–31.

¹⁷⁰⁵ Case T-111/01 R, *Saxonio Edelmetalle v Commission* [2001] ECR p. II-2335, para. 15.

¹⁷⁰⁶ Case T-310/03 R, *Kreuzer Medien v Parliament and Council* [2004] ECR p. II-3243, para. 18.

¹⁷⁰⁷ Case T-9/99 R, *HFB A. O. v Commission* [1999] ECR p. II-2429, para. 13.

¹⁷⁰⁸ Case C-43/98 P (R), *Camar v Commission and Council* [1998] ECR p. I-1815, para. 41.

¹⁷⁰⁹ Case T-167/99 R, *Guilietti v Commission* [1999] ECR SC p. I-A-139, I-A-140.

¹⁷¹⁰ Case T-31/07 R, *DuPont de Nemours v Commission* [2007] ECR p. II-2767, para. 47.

conditions are to be examined, as no rule of Community law imposes a pre-established scheme of analysis within which the need to order interim measures must be analyzed and assessed¹⁷¹¹. Thus, the judge may take into consideration the strength or weakness of the pleas relied upon to prove a *prima facie* case in that judge's assessment of urgency. If appropriate, the judge may also take account of the balance of interests¹⁷¹².

2. Urgency. a) General. In practice, this criterion tends to present a considerable 24 hurdle and is the primary reason for an application for interim measures' failure. This requirement shall apply regardless of whether the applicant has proven the necessity of its application, i.e. has satisfied the *prima facie* case¹⁷¹³.

b) Definition. aa) Risk of damage. The urgency of an application for interim 25 measures must be assessed in relation to the necessity for an order granting interim relief in order to **prevent a serious and irreparable damage to the party** requesting the interim measure, so that the decisions on this matter cannot await the outcome of the main proceedings¹⁷¹⁴. In such cases, it is irrelevant whether a **third party**¹⁷¹⁵ or the **public**¹⁷¹⁶ is at risk of such damage.

bb) Duration of the main action

The question of whether the applicant can **await** the outcome of the main 26 proceedings **without risking** irreparable prejudice is also determined by the average duration of those main proceedings¹⁷¹⁷. The mere fact that the party in question applied for the main action to be adjudicated under an expedited procedure (Art. 76 a RP GC) cannot influence either the assessment of urgency or, should it prove necessary, balancing the interests concerned by having the Judge hear the application for interim measures regardless of whether the Judge rejected¹⁷¹⁸ or granted¹⁷¹⁹ such application.

c) Causality

Urgency in ordering an interim measure must result from the effects which the 27 contested measure produces and not from the applicant's lack of diligence. Said applicant must, if he is not to bear the loss himself, show **reasonable diligence** in limiting the extent of the loss¹⁷²⁰.

¹⁷¹¹ Case T-198/03 R, *Bank Austria Creditanstalt v Commission* [2003] ECR p. II-4879, para. 19; Case T-369/03 R, *Arizona Chemical v Commission* [2004] ECR p. II-205, para. 33.

¹⁷¹² Case C-481/01 P (R), *NDC Health and IMS Health v Commission* [2002] ECR p. I-3401, para. 63.

¹⁷¹³ Case T-86/96 R, *Arbeitsgemeinschaft Deutscher Luftfahrt-Unternehmen and Hapag Lloyd Fluggesellschaft v Commission* [1998] ECR p. II-641, para. 58 to 60.

¹⁷¹⁴ Case C-213/91 R, *Abertal A. O. v Commission* [1991] ECR p. I-5109, para. 18.

¹⁷¹⁵ Case T-117/05 R, *Rodenbröker A. O. v Commission* [2005] ECR p. II-2593, para. 75; Case T-201/04, *Microsoft v Commission* [2004] ECR p. II-4463, para. 416.

¹⁷¹⁶ Case T-316/04 R, *Wam v Commission* [2004] ECR p. II-397, para. 28.

¹⁷¹⁷ See the statistical figures published in the GC's annual report.

¹⁷¹⁸ Case T-392/02 R, *Solvay Pharmaceuticals v Council* [2003] ECR p. II-1825, para. 104.

¹⁷¹⁹ Joined Cases T-195/01 R and T-207/01 R, *Government of Gibraltar v Commission* [2001] ECR p. II-3915, para. 94.

¹⁷²⁰ Case T-350/00 R, *Free Trade Foods v Commission* [2001] ECR p. II-493, para. 59.

28 **d) Burden of proof. aa) Required.** As already indicated above the applicant and, where there are several applicants, each applicant¹⁷²¹ must **prove** that he cannot await the outcome of the main proceedings without suffering a serious and irreparable damage¹⁷²². To that end the information the applicant(s) put forward must be **substantiated by evidence** and must enable the judge hearing the application for interim measures to obtain an accurate picture of the applicant's situation. It is **not necessary** to require **absolute proof** that the damage would occur; such damage must simply be **reasonably foreseeable**¹⁷²³.

bb) Insufficient

29 In order to uphold his burden of proof by demonstrating the urgency which requires suspension of the operation, the applicant may **not merely claim** that the operation of the contested measure would produce serious and irreparable damage, or that such damage is imminent¹⁷²⁴. Furthermore, he may **not merely point** at risks which are of a purely hypothetical nature¹⁷²⁵ and/or which are based on future, uncertain events¹⁷²⁶. Likewise, claiming that a provisional measure would be "useful"¹⁷²⁷ is manifestly insufficient.

30 **e) Lack of urgency in case of purely financial damage. aa) General.** According to settled case law a purely **pecuniary damage** cannot, in principle, be regarded as **irreparable** or even as **difficult** to repair if said damage may be the subject of subsequent **compensation**¹⁷²⁸, which is normally the case.

31 **(1) Means of redress.** This case-law is based on the premise that damage of a financial nature that is not eliminated by the implementation of the judgment in the main action constitutes an economic loss which may be remedied through the redress provided for in Art. 268 and 340 TFEU¹⁷²⁹.

32 **(2) Likelihood of redress.** Concerning the likelihood of success of an action for damages which might be brought should the contested measure be annulled, the case law indicates that the **uncertainty** of obtaining compensation for pecuniary damage if an action for damages is brought **cannot in itself** be regarded as a factor which proves that such damage is irreparable. At the interlocutory stage, the possibility of subsequently obtaining compensation for pecuniary damage through an action for damages brought after annulling the contested measure is necessarily uncertain¹⁷³⁰. Additionally, it is both impossible and inappropriate for the judge hearing the application for interim relief to speculate on the likelihood of the party concerned obtaining redress in the **national courts**¹⁷³¹. However, should an appli-

¹⁷²¹ Case T-34/02 R, *B. v Commission* [2002] ECR p. II-2803, para. 97.

¹⁷²² Case T-104/95 R, *Tsimenta Chalkidos v Commission* [1995] ECR p. II-2235, para. 19.

¹⁷²³ Case T-237/99 R, *BP Nederland A. O. v Commission* [2000] ECR p. II-3849, para. 49.

¹⁷²⁴ Case T-163/00 R, *Carotti v Court of Auditors* [2000] ECR SC p. I-A-133, I-A-134.

¹⁷²⁵ Case T-543/93 R, *Gestevisión Telecinco v Commission* [1993] ECR p. II-1409, paras. 27 to 31.

¹⁷²⁶ Case T-241/00 R, *La Canne v Commission* [2001] ECR p. II-37, para. 37.

¹⁷²⁷ Case T-591/10 R, *Castiglioni v Commission* [2011] (not published in the ECR), para. 16.

¹⁷²⁸ Case T-169/00 R, *Esedra v Commission* [2000] ECR p. II-2951, para. 44.

¹⁷²⁹ Case T-184/01 R, *IMS Health v Commission* [2001] ECR p. II-3198, para. 119.

¹⁷³⁰ Case C-404/01 P (R), *Commission v Euroalliances* [2001] ECR p. I-10367, paras. 71 to 73.

¹⁷³¹ Case T-184/01 R, *IMS Health v Commission* [2001] ECR p. II-3198, para. 119.

cant be able to challenge measures before national courts, the Judge may find that this legal remedy is a more appropriate and adequate way of protecting said applicant's interests and thus that the availability of that remedy thus divests the application of urgency¹⁷³².

bb) Examples

A broad variety of damages and detriments are **purely financial**, e.g. in the context of **public procurement**, the denial of the opportunity to obtain the contract in question¹⁷³³; under certain circumstances, the mere fact that a Commission decision may affect **intellectual property rights**¹⁷³⁴ to a certain extent; additional **development costs** which, in the absence of proof to the contrary, constitute financial damage¹⁷³⁵; the recovery of an **aid** which is incompatible with the common market¹⁷³⁶; the necessity to seek a new employment after the end of an employment contract¹⁷³⁷; a **loss of customers** and thus of **earnings**¹⁷³⁸ or of **profit**¹⁷³⁹, etc.

cc) Exceptions. (1) General. There are a number of situations which are either not considered "purely financial" or where a subsequent financial compensation would be ineffective or insufficient.

(2) Undertakings. (a) Risk of bankruptcy. A threat, though financial, may not be fully compensated if, according to the circumstances of the individual case¹⁷⁴⁰, the measures in question have compelled the applicant to **cease operations completely**¹⁷⁴¹ and thus the applicant is in a financial situation **threatening its very existence** because it faces a real risk of being declared **insolvent**¹⁷⁴². A situation in which an undertaking is compelled to apply for **bankruptcy proceedings** may constitute serious and irreparable damage¹⁷⁴³, provided there is a **causal link** between a refusal to grant the measure sought and the applicant's insolvency¹⁷⁴⁴. This is the case if implementing the institution's decision regarding the amount of aid repayable would result in a situation in which the amount repayable would exceed the amount of assets of the applicant¹⁷⁴⁵.

¹⁷³² Case T-85/05 R, *Dimos Ano Liosion A. O. v Commission* [2005] ECR p. II-1721, para. 60.

¹⁷³³ Case T-185/94 R, *Geotronics v Commission* [1994] ECR p. II-519, paras. 20 to 22; Case T-148/04, *TQ3 Travel Solutions Belgium v Commission* [2004] ECR p. II-3027, paragraphs 53 to 54; Case T-125/05 R, *Umwelt- und Ingenieurtechnik Dresden v Commission* [2005] ECR p. II-1901.

¹⁷³⁴ Case T-201/04 R, *Microsoft v Commission* [2004] ECR p. II-4463, para. 473.

¹⁷³⁵ Case T-201/04 R, *Microsoft v Commission* [2004] ECR p. II-4463, para. 413, 435.

¹⁷³⁶ Case T-316/04 R, *Wam v Commission* [2004] ECR p. II-3917, para. 33.

¹⁷³⁷ Case T-373/00 R, *Tralli v ECB* [2001] ECR SC p. II-83, para. 26 et seq.; Case T-272/03 R, *Fernández Gómez v Commission* [2003] ECR SC p. II-979, paras. 29 to 33.

¹⁷³⁸ Case T-163/02 R, *Montan Gesellschaft Voss A. O. v Commission* [2002] ECR p. II-3219, paras. 28 to 31.

¹⁷³⁹ Case T-342/00 R, *Petrolessence and SG2R v Commission* [2001] ECR p. II-67, para. 46.

¹⁷⁴⁰ Case C-335/99 P (R), *HFB A. O. v Commission* [1999] ECR p. I-8705, para. 57.

¹⁷⁴¹ Case T-44/98 R II, *Emesa Sugar v Commission* [1999] ECR p. II-1427, para. 130.

¹⁷⁴² Case T-6/95 R, *Cantine dei Colli Berici v Commission* [1995] ECR p. II-647.

¹⁷⁴³ Case T-181/02 R, *Neue Erba Lautex v Commission* [2002] ECR p. II-5081, paras. 88 et seq.

¹⁷⁴⁴ Case T-398/02 R, *Linea GIG v Commission* [2003] ECR p. II-1139, para. 62.

¹⁷⁴⁵ Joined Cases T-231/94 R, T-232/94 R and T-234/94 R, *Transacciones Maritimas v Commission* [1994] ECR p. II-885, paras. 41 to 47.

- 36 (b) **Burden of proof.** The burden of proof rests upon the applicant. Depending upon the circumstances of the case, it is advisable for the party concerned to submit a document drawn up by an **independent expert** concluding that the decision in question has placed said party in a situation which threatens its economic existence¹⁷⁴⁶. In order to assess an applicant's economic circumstances, a Judge may give particular consideration to the turnover¹⁷⁴⁷ or the characteristics of the group of which, by virtue of its shareholding structure, said applicant is part¹⁷⁴⁸. Tax declarations; accounting books or similar documents¹⁷⁴⁹; and vague references to a possible bankruptcy¹⁷⁵⁰ are not sufficient means of proof.
- 37 (3) **Association of undertakings.** When a dispute concerns an infringement of competition rules caused by the decision of an association of undertakings and when, in that context, the objective interests of the association are not independent of those of its constituent undertakings, the applicant's survival cannot be assessed independently of that of those other undertakings¹⁷⁵¹. The association's members' mere unilateral refusal to provide assistance cannot preclude the Court from taking the members' financial situation into account¹⁷⁵².
- 38 (4) **Irreversible market developments.** An application for interim measures may also be urgent if the implementation of a measure whose annulment is sought may cause irreversible **market developments**¹⁷⁵³ or alter the applicant's **market share**¹⁷⁵⁴ in a stock market on which the applicant is already present, and if the resulting, though financial in nature, could be exceptionally regarded as irreparable in order to grant interim relief¹⁷⁵⁵. In this situation, the applicant must prove that the market developments to which immediate execution of the decision is likely to give rise would be very difficult if not impossible to subsequently reverse if the application in the main action were to be upheld¹⁷⁵⁶. This may be the case e.g. concerning the withdrawal of marketing authorizations for medicinal products for human use¹⁷⁵⁷.
- 39 (5) **Tasks of general economic interest.** An irreparable financial prejudice may also arise from the fact that the challenged decision hinders an operator¹⁷⁵⁸ entrusted with a task of general economic interest within the meaning of Art. 102 (2) TFEU

¹⁷⁴⁶ Case T-88/94 R, *Société commerciale des potasses et de l'azote et Entreprise minière et chimique v Commission* [1994] ECR p. II-401, paras. 27 to 37.

¹⁷⁴⁷ Case T-201/04 R, *Microsoft v Commission* [2004] ECR p. II-4463, para. 257.

¹⁷⁴⁸ Case T-13/99 R, *Pfizer Animal Health v Council* [1999] ECR p. II-1961, para. 155.

¹⁷⁴⁹ Case T-84/96 R, *Cipeke v Commission* [1996] ECR p. II-1313, paras. 40 to 46.

¹⁷⁵⁰ Case T-134/12 R, *Investigación y Desarrollo en Soluciones y Servicios v Commission* [2012] (not published in the ECR), para. 15 et seq.; Case T-163/12 R, *Ternavsky v Council* [2012] (not published in the ECR), para. 15.

¹⁷⁵¹ Case C-7/01 P (R), *FEG v Commission* [2001] ECR p. II-2559, para. 42.

¹⁷⁵² Case C-7/01 P (R), *FEG v Commission* [2001] ECR p. II-2559, para. 46.

¹⁷⁵³ Case T-139/01 R, *Comafica and Dole Fresh Fruit Europe v Commission* [2001] ECR p. II-2415, para. 94.

¹⁷⁵⁴ Case T-198/03 R, *Bank Austria Creditanstalt v Commission* [2003] ECR p. II-4879, para. 53, 54.

¹⁷⁵⁵ Case T-169/00 R, *Esedra v Commission* [2000] ECR p. II-2951, para. 45.

¹⁷⁵⁶ Case T-65/98 R, *Van den Bergh Foods v Commission* [1998] ECR p. II-2641.

¹⁷⁵⁷ Case T-141/00 R, *Trenker v Commission* [2000] ECR p. II-3313, para. 36 et seq.

¹⁷⁵⁸ Joined Cases T-79/95 R and T-80/95 R, *SNCF and British Railways v Commission* [1995] ECR p. II-1433, paras. 36–43.

from complying with its obligation until the GC takes a decision in the main proceedings¹⁷⁵⁹.

(6) **Threat of copyright.** The fundamental rationale of copyright is that it affords the creator of inventive and original works the exclusive right to profit from and utilize such works. Copyright is of fundamental importance for both the individual owner of the right and for society generally. To reduce it to a purely economic right to receive royalties dilutes the essence of the right and is in principle likely to cause potentially serious and irreparable harm to the copyright holder¹⁷⁶⁰.

(7) **Bank guarantee.** According to the case law, an application for an exemption from the obligation to provide a bank guarantee as a condition for a delayed fine will only be granted in **exceptional circumstances**¹⁷⁶¹. The RP ECJ and the RP GC expressly provide for the possibility of requiring the applicant to provide a financial guarantee, which is a general and reasonable way for the Commission to act.

Proof of such exceptional circumstances may, in principle, be established should the party seeking dispensation from providing the requisite bank guarantee provides evidence that said guarantee is impossible to provide or that such provision would imperil its existence¹⁷⁶². The same applies if the applicant ceases any economic activity¹⁷⁶³.

By contrast, merely stating that amount of the fine represents a heavy burden for the applicant¹⁷⁶⁴ is not sufficient proof of exceptional circumstances.

(8) **Other.** Other exceptions include the threat, at the stage of the ruling on the substance of the irreparable loss of seat by a **Member of the European Parliament**¹⁷⁶⁵, as well as the risk of impairment of his immunity¹⁷⁶⁶ and the enforcement of an act of Parliament on the interpretation of a provision of its rules of procedure¹⁷⁶⁷. In a **staff case**, the CST needs to ensure that the official or temporary agent remains entitled to the minimum income covering his basic needs¹⁷⁶⁸.

f) **Other cases of lack of urgency.** aa) **Prejudice inherent to the contested decision.**

(1) **Anti-dumping.** It is settled case-law that in order to suspend the imposition of a definitive anti-dumping order intended to prevent serious and irreparable injury to the party seeking suspension, that party cannot merely plead the effects inherent in the imposition of such a duty but must demonstrate the specific injury which affects it¹⁷⁶⁹.

¹⁷⁵⁹ Case T-53/01 R, *Poste Italiane v Commission* [2001] ECR p. II-1479, paras. 119 to 121.

¹⁷⁶⁰ Case T-184/01 R, *IMS Health v Commission* [2001] ECR p. II-3193, para. 125.

¹⁷⁶¹ Case T-308/94 R, *Cascades v Commission* [1995] ECR p. II-265, para. 43.

¹⁷⁶² Case T-46/03 R, *Leali v Commission* [2003] ECR p. II-4473, para. 33.

¹⁷⁶³ Case T-398/02 R, *Linea GIG v Commission* [2003] ECR p. II-1139, paras. 56 et seq.

¹⁷⁶⁴ Case T-252/03 R, *FNIGGV v Commission* [2004] ECR p. II-315, para. 32.

¹⁷⁶⁵ Case T-353/00 R, *Le Pen v Parliament* [2001] ECR p. II-125, para. 96.

¹⁷⁶⁶ Case T-17/00 R, *Rothley A. O. v Parliament* [2000] ECR p. II-2085, paras. 109 et seq.

¹⁷⁶⁷ Case T-222/99 R, *Martinez and de Gaulle v Parliament* [1999] ECR p. II-3397, paras. 79 to 91.

¹⁷⁶⁸ Case F-38/06 R, *Bianchi v ETF* [2006] ECR p. II-A-1-93, paras. 33, 36, 38, 39.

¹⁷⁶⁹ Case C-404/01 P (R), *Commission v Euroalligies A. O.* [2001] ECR p. I-10367, para. 67.

- 46 (2) **Public tender procedure.** The same is true for a participation in a public tender procedure, which by definition is highly competitive and necessarily involves risks for all participants. The elimination of a tenderer under the rules on tenders is not, in itself, prejudicial¹⁷⁷⁰.
- 47 (3) **Staff cases.** The psychological consequences and impact on an applicant's professional reputation¹⁷⁷¹ as a result of a contract ending¹⁷⁷² or a revocation of an official due to disciplinary proceedings is an inherent consequence of such decisions and thus does not generate a distinct prejudice¹⁷⁷³.

bb) Non-material damage

- 48 The contested decision's alleged non-material damage, e.g. in the form of a negative effect on an applicant's **reputation**, justified **no urgency**, since the repeal would remedy the substance of the matter sufficiently and appropriately. Likewise, a negative decision concerning public tender is not considered urgent, because competition with other bidders will necessarily involve the risk of losing a contract. Similarly, the negative psychological impact or a loss of scientific prestige resulting from the end of a contract or from disciplinary dismissal from the civil service are not considered urgent.

cc) Other cases

- 49 The following cases were **not** considered to be **urgent**: an alleged absence of legal certainty resulting from a complex anti-dumping decision¹⁷⁷⁴; the mere possibility that a Member State does not grant the state aid, despite the annulment of the decision in the main proceedings¹⁷⁷⁵; the mere fact that the decision of the institution is in breach of primary law¹⁷⁷⁶.
- 50 **3. Necessity of the application. a) Definition.** In addition to the condition of urgency above, the applicant needs to state the pleas of fact and law which establish a **prima facie case** for the interim measures for which he applies ("fumus boni juris"), without prejudging the GC's decision on the substance of the case.
- 51 **b) Prima facie test. aa) Rule.** Normally, the Judge will undertake a comprehensive examination of the **prima facie merits** of the application in the main proceedings.
- 52 **bb) Exceptions. (1) Questions of principle.** The judge hearing the application for interim measures must **not rule** on a question of principle that the Community

¹⁷⁷⁰ Case T-169/00 R, *Esedra v Commission* [2000] ECR p. II-2951, para. 48; Case T-303/04, *Evropaiki Dynamiki v Commission* [2004] ECR p. II-3889, para. 82.

¹⁷⁷¹ Case T-183/97 R, *Micheli A. O. v Commission* [1997] ECR p. II-1473.

¹⁷⁷² Case T-200/03 R, *G. v Commission* [2003] ECR SC p. II-1549, para. 62.

¹⁷⁷³ Case T-198/02, *N. v Commission* [2002] ECR SC p. II-763, paras. 50, 52.

¹⁷⁷⁴ Case T-237/99 R, *BP Nederland v Commission* [2000] ECR p. II-3849, paras. 62, 64.

¹⁷⁷⁵ Case T-237/99 R, *BP Nederland v Commission* [2000] ECR p. II-3849, paras. 56.

¹⁷⁷⁶ Case C-159/98 P (R), *Government of the Dutch Antilles v Council* [1998] ECR p. I-4147, para. 62.

court has not yet decided, as this remains a matter for the court adjudicating on the substance¹⁷⁷⁷.

(2) **Detailed examination.** Furthermore, the judge hearing the application for interim measures will **not assess** those legal questions which the court adjudicating on the substance of the case will examine and assess in detail¹⁷⁷⁸. This was the case e.g. with respect to the question of confidentiality of advice given by internal counsels¹⁷⁷⁹; certain aspects of Art. 102 (3) TFEU¹⁷⁸⁰; and the risk-benefit analysis of medicinal products¹⁷⁸¹.

(3) **Wide discretion of the authority.** In areas where the institution enjoys a wide discretion, such as in the field of the Common Fisheries Policy¹⁷⁸², the GC may only substitute its own assessment for that of the institution in **exceptional circumstances** which require a particularly sound *prima facie* case and clear urgency¹⁷⁸³.

(4) **Complex economic assessments?** Case law reveals that the Court's review of decisions based on complex economic assessments in the context of an action for annulment is **limited** to verifying whether the parties have complied with the procedural rules; whether the party's statement of reasons is adequate; whether they have adequately stated the facts; and whether any party has committed any manifest error of assessment or a misuse of powers¹⁷⁸⁴. These conditions for review **cannot** be unqualifiedly transferred to proceedings for interim relief without calling into question the conditions governing interim measures. Such transposition might reduce interim judicial protection too much and limit the broad discretion the judge hearing an application for interim relief must have in order to exercise his powers.

4. Balance of interests. a) General. This test is not specifically mentioned in Art. 104 RP GC, but instead expresses the general **principle on proportionality**. It is only relevant if the GC considers that the two other requirements, i.e. urgency and the *prima facie* test, are fulfilled.

b) Contents

A decision to suspend also presumes that the balance of the interests concerned is in favour of granting that measure¹⁷⁸⁵. This means that the judge hearing an application for interim measures must first examine whether the Court's possible annulment of the contested measure would make it possible to reverse the situation which immediate implementation of said measure would bring about and, con-

¹⁷⁷⁷ Case T-252/03 R, *Fédération nationale de l'industrie et des commerces de gros de viandes v Commission* [2004] ECR p. II-315, paras. 25 et seq.

¹⁷⁷⁸ Case T-217/03 R, *FNCBV v Commission* [2004] ECR p. II-239, para. 59; Case T-245/03 R, *ENSEA A. O. v Commission* [2004] ECR p. II-271, para. 47.

¹⁷⁷⁹ Joined Cases T-125/03 R and T-253/03 R, *Akzo Nobel Chemicals and Akros Chemicals v Commission* [2003] ECR p. II-4771, para. 98.

¹⁷⁸⁰ Case T-151/01 R, *Duales System Deutschland v Commission* [2001] ECR p. II-3295, para. 185.

¹⁷⁸¹ Case T-326/99 R, *Fern Olivieri v Commission* [2000] ECR p. II-1985, para. 144 et seq.

¹⁷⁸² Case T-37/04 R, *Região autónoma dos Açores v Council* [2004] ECR p. II-2153, para. 193.

¹⁷⁸³ Case T-350/00 R, *Free Trade Foods v Commission* [2001] ECR p. II-493, paras. 46 to 48.

¹⁷⁸⁴ Case 42/84, *Remia A. O. v Commission* [1985] ECR p. 2545, para. 34.

¹⁷⁸⁵ Case T-104/95 R, *Tsimenta Chalkidos v Commission* [1995] ECR p. II-2235, para. 19.

versely, whether suspension of said measure's operation would prevent it from being fully effective in the event of the main application's dismissal¹⁷⁸⁶.

c) Interests of applicant and third parties

58 When balancing said interests, the GC does not only take account of interests of the applicant, but also of those of third parties¹⁷⁸⁷.

59 **d) Areas of law. aa) Health protection. (1) Rule.** The requirements linked to protecting public health must in principle unquestionably be given more weight than commercial or economic interests¹⁷⁸⁸ and the protection of animal health¹⁷⁸⁹, in particular in case of deadly threats¹⁷⁹⁰.

60 **(2) Exception.** This does not, however, mean that the protection of public health always prevails over commercial or economic interests in any circumstance, especially if it appears highly probable that enacting the contested decision would entail the definitive loss of the applicant's market position, even if the court hearing the main application were to annul the decision¹⁷⁹¹.

bb) State aid

61 Concerning an application for interim measures which seeks the suspension of the Commission-imposed obligation to repay aid which the Commission has declared to be incompatible with the common market, the Community interest must normally, if not always, take precedence over the aid recipient's interest, which is to avoid enforcement of the obligation to repay said aid before judgment in the main proceedings¹⁷⁹².

cc) Bank guarantees

62 The Judge must weigh the applicants' interest in avoiding – should they be unable to arrange a bank guarantee – immediate payment of the fine against the Community's financial interest in being able to recover that sum. The Judge must also consider the public interest in preserving the effectiveness of Community competition rules as well as the deterrent effect of fines imposed by the Commission¹⁷⁹³.

¹⁷⁸⁶ Case T-41/97 R, *Antillean Rice Mills v Council* [1997] ECR p. II-447, para. 42.

¹⁷⁸⁷ Case T-6/97 R, *Comafra and Dole Fresh Fruit Europe v Commission* [1997] ECR p. II-291, para. 24 et seq.

¹⁷⁸⁸ Case T-170/99 R, *Alpharma v Council* [1999] ECR p. II-2027, para. 152.

¹⁷⁸⁹ Case T-13/99 R, *Pfizer Animal Health v Commission* [1999] ECR p. II-1961, paras. 166 et seq.; Case T-392/02, *Solvay Chemicals v Council* [2003] ECR p. II-1825, para. 127.

¹⁷⁹⁰ Case T-76/96 R, *National Farmers' Union A. O. v Commission* [1996] ECR p. II-815, paras. 102 to 105.

¹⁷⁹¹ In regard to a revocation of an admission of a plant protective agent: Case C-365/03 P (R), *Industrias Químicas del Vallés v Commission* [2003] ECR p. I-12389, para. 23.

¹⁷⁹² Case T-198/01 R, *Technische Gaswerke Illmenau v Commission* [1996] ECR p. II-2153, paras. 113 to 115.

¹⁷⁹³ Case T-245/03 R, *FNSEA A. O. v Commission* [2004] ECR p. II-271, para. 119.

e) Intervention

When the application for leave to intervene is made in proceedings for interim measures, the interest in the result of the case must be understood as being an interest in the result of the interim proceedings. It follows that, in interim relief proceedings, the Judge must appraise the interests of the parties seeking to intervene in light of the consequences which granting the interim relief sought or rejecting said relief may have on those parties' economic or legal position¹⁷⁹⁴. The Judge responsible for granting interim relief should thus broadly interpret the notion of an interest in the result of a case in order to ensure that the appraisal of the various interests in issue is not prejudiced¹⁷⁹⁵.

IV. Procedural requirements (paragraph 3)

1. General

The procedural requirements set out in paragraph 3 are **mandatory**¹⁷⁹⁶.

2. Separate document

The application for interim relief may **not be integrated** into the application in the main proceedings, which is some parties disregard¹⁷⁹⁷, but must be submitted in **separate document**¹⁷⁹⁸ written in the same language as the one used in the main proceedings. That said, there is nothing to prevent an applicant from complying with this requirement by lodging a **separate** application at any time¹⁷⁹⁹, since there is no time-limit.

a) Contents. aa) Yardstick. (1) Application. Pursuant to Art. 104(3) and Art. 44(1) RP GC, an application initiating proceedings must contain a **summary of the pleas in law** upon which the application is based¹⁸⁰⁰. That information must be sufficiently clear and precise to enable the defendant to prepare its defence and the GC to decide the case, if appropriate, without other supplementary information¹⁸⁰¹. In other words, the application must be **self-explanatory**¹⁸⁰², without any reference to the application in the main proceedings¹⁸⁰³.

¹⁷⁹⁴ Case T-201/04 R, *Microsoft v Commission* [2004] ECR p. II-2977, para. 33.

¹⁷⁹⁵ Case T-201/04 R, *Microsoft v Commission* [2004] ECR p. II-2977, para. 34.

¹⁷⁹⁶ Case T-422/03 R, *Enviro Tech Europe and Enviro Tech International v Commission* [2004] ECR p. II-469, para. 48.

¹⁷⁹⁷ Case T-73/99, *Meyer v Council and Commission* [1999] ECR p. II-1739 para. 13; Joined Cases T-298/97, T-312/97, T-313/97, T-315/97, T-600/97 to T-607/97, T-1/98, T-3/98 to T-6/98 and T-23/98, *Alzetta A. O. v Commission* [2000] ECR p. II-2319, para. 38; Case T-306/01 R, *Aden A. O. v Council and Commission* [2002] ECR p. II-2387, para. 31.

¹⁷⁹⁸ Case T-140/94, *Enrique Gutiérrez de Quijano y Llorens v Parlament* [1996] ECR p. II-689, para. 32.

¹⁷⁹⁹ Case T-146/95, *Bernardi v Parlament* [1996] ECR p. II-769, para. 29 et seq.

¹⁸⁰⁰ Para. 82 of the "Practice Directions to parties".

¹⁸⁰¹ Case T-11/06 R, *Romana Tabacchi v Commission* [2006] ECR p. II-2491, para. 47.

¹⁸⁰² Case T-175/03 R, *Schmitt v European Agency* [2003] ECR SC p. I-A-175 (I-A-176).

¹⁸⁰³ Para. 81 of the "Practice Directions to parties".

- 67 (2) **Reply.** The same criteria apply concerning the defendant's written observations (Art. 105 (1) RP GC)¹⁸⁰⁴.

bb) Practice

- 68 Despite this strict criterion, the GC has so far not been particularly formalistic:
- 69 (1) **Presentation.** The GC did not reject an application as inadmissible despite "its brevity and its **confused presentation**" since it contained a **few elements** to enable the judge hearing the application for interim relief to examine whether there was a *prima facie* case¹⁸⁰⁵.
- 70 (2) **Inadmissible references.** A reference to the pleas and arguments in an application for annulment, even if that application were attached to the application for interim measures, cannot replace a clear account of the facts, pleas and arguments within the application for interim measures itself and thus cannot compensate for the absence of that application's explanation of the grounds for the action in the main proceedings which constitute a *prima facie* case¹⁸⁰⁶. Thus, an application for interim measures which merely refers to but does not explicitly state the arguments put forward in the application in the main proceedings is clearly inadmissible¹⁸⁰⁷.

b) Number of pages

- 71 Depending on the subject and the circumstances, an application may in principle not exceed **twenty-five pages**¹⁸⁰⁸, as compared to the 50 pages applying to the application in the main proceedings. Even before the entry into force of this limit, the Judges would require parties who submitted excessively long applications to shorten them¹⁸⁰⁹.

3. Art. 43 and 44 RP GC

- 72 The fact that the judge hearing the application for interim measures has wide discretion regarding the substantive criteria in interim measures does not imply that the procedural aspects of such application are less strict than in the main proceedings. Thus an application for interim measures which is not reasoned in any particular manner and which requests that the Judge adopt "any other provisional measure which is necessary for granting interim relief"¹⁸¹⁰ as well as an application which seeks an unclear order¹⁸¹¹ is in breach of Art. 44 (1) lit. d) RP GC and is thus

¹⁸⁰⁴ Case T-306/01 R, *Aden A. O. v Council and Commission* [2002] ECR p. II-2387, para. 53.

¹⁸⁰⁵ Case T-85/05 R, *Dimos Ano Liosion A. O. v Commission* [2005] ECR p. II-1721, paras. 37 et seq.; Case T-117/05 R, *Rodenbröker A. O. v Commission* [2005] ECR p. II-2593, paras. 53 et seq.

¹⁸⁰⁶ Case T-236/00, *Stauner v Parliament and Commission* [2001] ECR p. II-15, para. 34; Case T-201/04 R, *Microsoft v Commission* [2004] ECR p. II-4463, para. 88.

¹⁸⁰⁷ Case T-171/05 R, *Nijs v Court of Auditors*, [2005] ECR SC p. II-761, paras. 20, 22.

¹⁸⁰⁸ Para. 84 of the "Practice Directions to parties".

¹⁸⁰⁹ Case T-151/01 R, *Duales System Deutschland v Commission* [2001] ECR p. II-3295, para. 51.

¹⁸¹⁰ Case T-422/03 R II, *Enviro Tech Europe and Enviro Tech International v Commission* [2004] ECR p. II-2003, para. 59.

¹⁸¹¹ Case T-76/04 R, *Bactria v Commission* [2004] ECR p. II-2025, para. 50; Case T-78/04 R, *Sumitomo Chemical v Commission* [2004] ECR p. II-2049, para. 50.

inadmissible. However, applications which are not accompanied by the documents referred to in Art. 44 (3) to (5) RP GC¹⁸¹² are not automatically inadmissible.

4. Absence of time-limit. a) No provision. The legislation does not provide any specific time-limit within which an application for interim measures needs to be lodged. The only constraint is that one must lodge such application within the time-frame of the main application¹⁸¹³. Normally, such application is lodged **simultaneously** with the main application¹⁸¹⁴, but the applicant may also introduce it at a later date.

b) Examples

The mere fact that an application for interim measures was lodged more than **three months** after the commencement of an action for annulment does not indicate an absence of urgency¹⁸¹⁵. However, if the application for interim measures is lodged **eight months** after the main proceedings, such delayed lodging is considered a demonstration of lack of urgency¹⁸¹⁶.

Article 105 [Observations of the other party]

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

2. The President of the General Court may order a preparatory inquiry.

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.

Outline:

I. Observations of the other party (paragraph 1)	1
1. Serving the application	1
2. Time-limit	2
a) No fixed period	2
b) Extension	3
3. Written observations.....	4
a) General.....	4
b) Procedural requirements	5
aa) General	5
bb) Structure	6
c) No second exchange of written submissions	7
aa) Principle.....	7
bb) Application	8

¹⁸¹² Case T-158/03 R, *Industrias Químicas del Vallés v Commission* [2003] ECR p. II-3041, paras. 43 to 45.

¹⁸¹³ Art. 104 (1) RP GC.

¹⁸¹⁴ Case T-151/01 R, *Duales System Deutschland v Commission* [2001] ECR p. II-3295, para. 50.

¹⁸¹⁵ Case T-306/01 R, *Aden A. O. v Council and Commission* [2002] ECR p. II-2387, para. 90.

¹⁸¹⁶ Case T-288/02 R, *AIT v Commission* [2003] ECR p. II-2885, para. 17.

4. Oral hearing.....	9
a) Exception	9
b) Characteristics of the oral hearing.....	10
aa) Informal procedure.....	10
bb) Questions of the Judge.....	11
cc) Preceding meetings and several hearings	12
II. Preparatory inquiry (paragraph 2, sub-paragraph 1)	13
1. Measures of inquiry.....	13
2. Measures of organization of procedure	14
III. <i>Inaudit altera parte</i> -order (paragraph 2, sub-paragraph 2)	15
1. General.....	15
2. Application.....	16
3. Examples.....	17
4. Order of limited duration.....	18

I. Observations of the other party (paragraph 1)

1. Serving the application

1 Given the de facto urgency of an application for interim measures, the Registrar shall always first serve the application on the opposite party by **telefax**, followed by a notification in accordance with Art. 100 RP GC.

2 **2. Time-limit. a) No fixed period.** Given the nature of interim proceedings, the RP do not provide a specific time-limit for notification, let alone provide for a long period such as the two months applicable for a statement of defence. Thus, the President must set a time-limit which is always comparatively short, ranging from several days to 1 or 2 weeks.

b) Extension

3 The period may be extended upon the recipient's duly reasoned request, in practice by a period between a few days and one week.

4 **3. Written observations. a) General.** The wording of Art. 105 (1) is slightly misleading, as it suggests that the responding party might submit either a written or an oral observation as alternatives. In practice, the other party will almost always been given the opportunity to submit a written observation.

5 **b) Procedural requirements. aa) General.** While the procedural requirements regarding an application for interim measures are specified in Art. 104 (3), which refers to Art. 43 and 44 RP GC, there is no equivalent provision concerning the submission of written observations of the other party. That said, inevitably these observations need to be submitted in a **separate document**, since the defendant will submit its statement of defence at a later stage, i.e. well after the end of the period which the President set for submitting the written observations.

bb) Structure

While there is no reference to Art. 46 RP GC, i.e. the provision governing the statement of defence, the defendant must provide the indications detailed in paragraph 1 lit. a) to d) of Art. 46, which include a chapter regarding his version of the facts, followed by chapters regarding the question of urgency, the *prima facie* case, and the balancing of interests.

c) No second exchange of written submissions. aa) Principle. In contrast to the main proceedings, the RP do not provide for a reply and rejoinder¹⁸¹⁷ in interim proceedings. The Judge hearing the application for interim proceedings is empowered to rule without taking account of the written pleadings or evidence submitted on the initiative of the parties after the written procedure or a possible hearing¹⁸¹⁸.

bb) Application

The applicant may seek leave for putting further arguments in writing or orally, in response to the defendant's observations. Moreover, in some cases a further exchange of written submissions may take place, e.g. if the **facts** are complex¹⁸¹⁹, or if the parties must **expand** the initial written submissions¹⁸²⁰. Should a party put forward **new documents** during the proceedings, the other party shall be given the opportunity to comment¹⁸²¹ unless these documents are confidential¹⁸²².

4. Oral hearing. a) Exception. Since there is no provision in the RP GC which might make an oral hearing in interim proceedings compulsory, the Judge may decide whether such hearing is necessary¹⁸²³. In practice, such hearing tends to be the **exception**, since the application for interim measures and the other party's reply usually gives the Judge all the "necessary information"¹⁸²⁴ in order to decide on the application.

b) Characteristics of the oral hearing. aa) Informal procedure. A hearing in interim proceedings is always informal: the Judge and the lawyers do not wear gowns, and there is no exchange of oral pleadings proper. The main purpose of such hearing is to answer the questions of the Judge.

bb) Questions of the Judge

In the event of an oral hearing, the parties must be prepared to answer questions which may, depending upon the circumstances, be given to the parties in writing beforehand¹⁸²⁵ on short notice.

¹⁸¹⁷ Case T-144/99, *Institut des mandataires agrees v Commission* [2000] ECR p. II-2041, 2076.

¹⁸¹⁸ Case F-38/12 R, *BP v FRA* [2012] (not published in the ECR), para. 13 and the case-law cited.

¹⁸¹⁹ Case T-198/01 R, *Technische Glaswerke Illmenau v Commission* [2002] ECR p. II-2153, 2168.

¹⁸²⁰ Case T-201/04 R, *Microsoft v Commission* [2004] ECR p. II-4463, para. 93.

¹⁸²¹ Case T-589/93 R, *Ryan-Sheridan v Stiftung zur Verbesserung der Lebens- und Arbeitsbedingungen* [1994] ECR SC p. II-257, 259; Case T-326/99 R, *Fern Olivri v Commission* [2000] ECR p. II-1985, 2001.

¹⁸²² Case T-169/00 R, *Esedra v Commission* [2000] ECR p. II-2951, 2960.

¹⁸²³ Case C-65/99 P (R), *Willeme v Commission* [1999] ECR p. I-1857, para. 47.

¹⁸²⁴ Case T-132/01 R, *Euroalliages A. O. v Commission* [2002] ECR p. II-777, para. 32.

cc) Preceding meetings and several hearings

- 12 On rare occasions, the Judge will organize an informal meeting **prior** to the oral hearing¹⁸²⁶ and/or several oral hearings¹⁸²⁷, depending upon the complexity of the case and/or the number of parties/lawyers involved. **After** the oral hearing, the Judge may require the parties to provide a written submission, to answer written questions,¹⁸²⁸ or to reply to a written submission by a party.

II. Preparatory inquiry (paragraph 2, sub-paragraph 1)

1. Measures of inquiry

- 13 Since measures of inquiry within the meaning of Art. 65 et seq. RP GC are rare in main proceedings anyway, they are even more **exceptional** in interim proceedings, since said measures shall in no way prejudice the decision of the Court on the substance of the case¹⁸²⁹.

2. Measures of organization of procedure

- 14 By contrast, measures of organization of procedure in interim proceedings are **frequent**, e.g. by way of written questions¹⁸³⁰, a request to provide certain documents¹⁸³¹ or suggesting an informal meeting in order to explore a possible amicable settlement¹⁸³², although the latter was mainly relevant in staff matters which are now under the jurisdiction of the CST.

III. *Inaudit altera parte*-order (paragraph 2, sub-paragraph 2)

1. General

- 15 If there are objective reasons of such importance that exceptionally they **prevail** over the **rights of defence** of the other party, the Judge may provisionally grant the interim measures requested in the application before the other side submits its written observations

2. Application

- 16 This “interim protection within the interim relief” implies that the party concerned specifically **applies** for such an order to be taken. This does **not** require a separate written submission.

¹⁸²⁵ Case T-350/00 R, *Free Trade Foods v Commission* [2001] ECR p. II-493, para. 30.

¹⁸²⁶ Case T-201/04 R, *Microsoft v Commission* [2004] ECR p. II-4463, para. 57.

¹⁸²⁷ Case T-198/01 R, *Technische Glaswerke Illmenau v Kommission* [2002] ECR p. II-2153, para. 44.

¹⁸²⁸ Case T-111/99 R, *Samper v Parliament* [1999], ECR SC p. II-609, 612.

¹⁸²⁹ Art. 39 (3) Statute ECJ.

¹⁸³⁰ Case T-146/94 R, *Williams v Court of Auditors* [1994] ECR SC p. II-571, 573.

¹⁸³¹ Case T-169/00 R, *Esedra v Commission* [2000] ECR p. II-2951, 2960.

¹⁸³² Case T-17/00 R, *Rothley A. O. v Parliament* [2000] ECR p. II-2085, 2099.

3. Examples

The Judge will adopt such *inaudit altera parte*-order, e.g. in case of *de facto* 17 urgency (e.g. being able to take part in written tests in a selection procedure, which is relevant in proceedings at the CST), in the interest of good administration of justice or to enable the Judge to assess a complex factual or legal situation¹⁸³³ in a sufficient manner¹⁸³⁴.

4. Order of limited duration

Such orders are always limited in time and are either confirmed or overturned by 18 the actual decision in the interim relief.

Article 106 [Competent Judge]

A Judge, designated for the purpose in the decision adopted by the General Court in accordance with Article 10, shall replace the President of the General Court in deciding an application in the event that the President is absent or prevented from dealing with it.

I. Rule

In general, it is the President of the GC in person who hears applications for 1 interim measures. In the event of an oral hearing, which is not the rule, the Judge Rapporteur may attend.

II. Exception

If the President is absent or prevented from addressing the application, the GC 2 will designate another Judge in accordance with Art. 10 RP GC. If the case is important or difficult, the President may designate a chamber of the GC, which may also occur if the chamber decides on questions of admissibility raised in the main proceedings¹⁸³⁵.

Article 107 [Order of the President]

1. The decision on the application shall take the form of a reasoned order. The order shall be served on the parties forthwith.

¹⁸³³ Case T-74/00 R, *Artedogan v Commission* [2001] ECR p. II-2367, para. 35.

¹⁸³⁴ Case T-184/01 R, *IMS Health v Commission* [2001] ECR p. II-2349, para. 20.

¹⁸³⁵ Joined Cases T-492/93 and T-492/93 R, *Nutral v Commission* [1993] ECR p. II-1023,1030, para. 15.

2. The enforcement of the order may be made conditional on the lodging by the applicant of security, of an amount and nature to be fixed in the light of the circumstances.

3. Unless the order fixes the date on which the interim measure is to lapse, the measure shall lapse when final judgment is delivered.

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

Outline:

I. Decision by way of order (paragraph 1).....	1
1. Order.....	1
a) Normal case.....	1
b) Provisional order.....	2
c) Order of removal.....	3
2. Providing reasons.....	4
3. Serving the order on the parties.....	5
II. Enforcement (paragraph 2).....	6
III. Effect limited in time (paragraph 3).....	7
IV. Interim effect (paragraph 4).....	8

I. Decision by way of order (paragraph 1)

- 1 **1. Order.** a) **Normal case.** If the President possesses all necessary documents, he shall either **grant** interim relief or **reject** the application by way of an order. An order granting interim relief shall not only be adopted before the handing down of the judgment in the main proceedings, as any other decision in the interim relief proceedings, but must also ensure that the judgment in the main action may be given full effect¹⁸³⁶.

b) Provisional order

- 2 If a party has submitted additional documents, the President may issue a provisional order until he has assessed the application for interim relief¹⁸³⁷.

c) Order of removal

- 3 If the application for interim measures has lost its object or has been withdrawn, the President shall issue an order removing the case, which implies that the costs remain reserved unless the application in the main proceedings has equally lost its object or has been withdrawn. Even in the context of interim relief there is room for an amicable solution¹⁸³⁸.

¹⁸³⁶ Case T-339/00 R, *Bactria v Commission* [2001], p. II-1721, para. 92.

¹⁸³⁷ Case T-12/93 R, *Comité central d'entreprise de la société Vittel A. O. v Commission* [1993] ECR p. II-449, 461; Case T-88/94 R, *Société commerciale des potasses et de l'azote v Commission* [1994] ECR p. II-263, 283.

¹⁸³⁸ Example for an unsuccessful try: Case T-17/00 R, *Rothley A. O. v Parliament* [2000], p. II-2085, para. 29 et seq.

2. Providing reasons

It is in fact most normal that an order adopted in the context of interim 4 proceedings provides reasons for its adoption. That said, the judge of the GC hearing the application cannot be required to explicitly reply to all the points of fact and law raised during the interlocutory proceedings. The Judge's reasons must simply validly justify the order given the circumstances of the case while enabling the GC to exercise its powers of review¹⁸³⁹.

3. Serving the order on the parties

Given the situation of urgency, the GC will normally notify the orders by telefax 5 or, if the addressee uses it, e-Curia. The exact date of notification is important given the time-limit for an appeal against the order.

II. Enforcement (paragraph 2)

The order's enforcement may be made conditional, meaning that the applicant 6 must lodge a security, whose amount and nature is dependent on the circumstances. This is particularly the case if there is an insolvency risk¹⁸⁴⁰.

III. Effect limited in time (paragraph 3)

Normally, the interim measures will apply until the decision in the main 7 proceedings¹⁸⁴¹ is adopted. However, these measures may also, depending on the circumstances, be limited in time and thus might expire before adoption of the main proceedings.

IV. Interim effect (paragraph 4)

In accordance with Art. 107(3) and (4) RP GC, the interim measures sought must 8 be provisional inasmuch as they must not prejudge the points of law or fact at issue in the case (Art. 39 (3) Statute ECJ), nor may they neutralize in advance the effects of the decision subsequently given in the main action¹⁸⁴². Furthermore, these

¹⁸³⁹ Case C-471/02 P (R), *Gómez-Reino v Commission* [2003] ECR p. I-3207, para. 29; Case T-201/04, *Microsoft v Commission* [2004] ECR p. II-4463, para. 73.

¹⁸⁴⁰ Joined Cases T-231/04 R, T-232/04 and T-234/04, *Transacciones Maritimas A. O. v Commission* [1994], ECR p. II-885, 902.

¹⁸⁴¹ Joined Cases T-24/92 and T-24/92 R, *Langnese-Iglo and Schöller-Lebensmittel v Commission* [1992] ECR p. II-1839, 1854.

¹⁸⁴² Case T-302/00 R, *Goldstein v Commission* [2001], ECR p. II-1127, para. 10.

measures must not fall outside the scope of the final decision which the Court reaches on the main application¹⁸⁴³.

Article 108 [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.

I. General

- 1 A “change in circumstances” primarily refers to factual circumstances capable of altering the assessment of the criterion of urgency¹⁸⁴⁴ made in each particular case. The possibility of a case to be deemed either more or less urgent during the course of the proceedings reflects the fundamentally **precarious nature** of measures granted in interim relief proceedings¹⁸⁴⁵ in Community law.

II. Difference between Arts. 108 and 109 RP GC

1. Art. 108

- 2 This provision only applies if interim relief has been **granted**, whether through suspension of a measure and/or through an interim order.

2. Art. 109

- 3 This provision only applies if a Judge has **rejected**¹⁸⁴⁶ an application for interim measures.

3. Reference to Arts. 108 and 109

- 4 On some occasions, the President’s orders explicitly refer to the possibility of an application under Art. 108 RP GC¹⁸⁴⁷, which remains applicable (“at any time”) until the judgment in the main proceedings is handed down¹⁸⁴⁸.

¹⁸⁴³ Case T-302/00 R, *Goldstein v Commission* [2001], ECR p. II-1127, para. 10.

¹⁸⁴⁴ Case T-198/01 R, *Technische Glaswerke Illmenau v Commission* [2002] ECR p. II-2153, para. 123.

¹⁸⁴⁵ Case C-440/01 P(R), *Commission v Artegoda* [2002] ECR p. I-1489, para. 62.

¹⁸⁴⁶ Case T-303/04 R II, *Evropaiki Dynamiki v Commission* [2004] ECR p. II-4621, para. 54.

¹⁸⁴⁷ Case T-104/95 R, *Tsimenta Chaldikos v Commission* [1995] ECR p. II-2235, 2246.

¹⁸⁴⁸ Case T-392/02 R, *Solvay v Council* [2003] ECR II-1825, paragraph 126.

III. “Change in circumstances”

1. Definition

The term “circumstances” is **deliberately** broad in order to cover all new factual 5 or legal situations capable of altering the conclusion reached by President of the GC concerning the urgency of the case in question. These circumstances are limited to those which are relevant for making a conclusion on the suspension of the decision or the interim measure¹⁸⁴⁹.

2. Examples

In practice, this provision primarily refers to the **factual circumstances** of the 6 case, which may have a bearing on the assessment of the criterion of **urgency**¹⁸⁵⁰.

3. Extraordinary circumstances

This provision may also apply in rather unique circumstances. For example, if the 7 President of the GC granted interim measures in a series of parallel cases and all but one of these orders were subsequently overturned on appeal due to the fact that the defendant in the non-overturned decision failed to appeal within the relevant time-limit, then the orders of the ECJ overturning the orders of the President of the GC would constitute a “change in circumstances” justifying the adaptation and overturning of that one order which was not challenged by appeal¹⁸⁵¹.

Article 109 [New facts]

Rejection of an application for an interim measure shall not bar the party who made it from making a further application on the basis of new facts.

I. General

Art. 109 RP GC differs from Art. 108 RP GC in that it applies whenever an 1 application for an interim measure has been rejected, which is rather frequent in such proceedings.

¹⁸⁴⁹ Case T-236/00 R II, *Stauner v Parliament and Commission* [2001] ECR p. II-2943, para. 49; Case C-440/01 P (R), *Commission v Artedogan* [2002] ECR p. I-1489, para. 63.

¹⁸⁵⁰ Case T-217/03 R, *FNCBV v Commission* [2004] ECR p. II-239, para. 97; Case T-11/06 R, *Romana Tabacchi v Commission* [2006] ECR p. II-2491, para. 147.

¹⁸⁵¹ Case C-440/01 P (R), *Commission v Artedogan* [2002] ECR p. I-1489, paras. 74 to 77.

II. New facts

1. Urgency

- 2 Some or even all facts relevant for assessing the criterion urgency may change after an application for interim measures has been rejected. This change may result in a different assessment of the case's urgency¹⁸⁵².
- 3 **2. Examples.** a) **Financial situation.** An applicant may claim urgency based on new facts if the evolution of his financial situation is such that he now faces the risk bankruptcy, considered an irreparable prejudice which would imply that the applicant cannot wait for the outcome in the main proceedings¹⁸⁵³.

b) Continuous disagreement

- 4 If the GC has requested the parties to reach an agreement on the precise means of implementation of a decision, a continuous disagreement between those two parties concerning such means may also be regarded as a 'new fact' within the meaning of Art. 109 RP GC¹⁸⁵⁴.

c) Other

- 5 Art. 109 also applies should the applicant be prevented from putting forward certain facts which are relevant for the assessment of the case¹⁸⁵⁵ in his initial application or during the proceedings preceding the first order.

3. Cases in which Art. 109 is not applicable

- 6 If the application for interim measures was rejected due to its **manifest inadmissibility**, any subsequent change in the circumstances of the case remains without effect, since the admissibility of the application must be assessed separately from the criterion of urgency when the party lodges the application¹⁸⁵⁶.

Article 110 [Suspension of enforcement of judgments or decisions]

The provisions of this Chapter shall apply to applications to suspend the enforcement of a decision of the General Court or of any measure adopted by

¹⁸⁵² Joined Cases T-195/01 R and T-207/01 R, *Government of Gibraltar v Commission* [2001] ECR p. II-3919, para. 116.

¹⁸⁵³ Case T-308/94 R, *Cascades v Commission* [1995] ECR p. II-265, 285; Case T-104/95 R, *Tsimenta Chalkidos v Commission* [1995] SCR p. II-2235, para. 26.

¹⁸⁵⁴ Case T-201/04, *Microsoft v Commission* [2004] ECR p. II-4463, para. 325.

¹⁸⁵⁵ Case T-303/04 R II, *Evropaiki Dynamiki v Commission* [2004] ECR p. II-4621, para. 60; Case T-171/05 R II, *Nijs v Court of Auditors* [2005] ECR SC p. II-761, 28.

¹⁸⁵⁶ Case T-326/00 R II, *Stauner v Parliament and Commission* [2001] ECR p. II-2943, para. 49.

another institution, submitted pursuant to Articles 280 TFEU and 299 TFEU and Article 164 TEAEC.

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

Art. 104 to 109 RP GC also apply to enforcement of judgments of the GC¹⁸⁵⁷ as well as to the enforcement of Council or Commission decisions which impose a payment and therefore constitute an enforceable title¹⁸⁵⁸. On the other hand, these provisions do not allow for a suspension of the effects of a judgment at first instance, as only the ECJ may do this in the context of an appeal on points of law. The ECJ's suspension may in certain instances take place alongside an application for interim relief¹⁸⁵⁹.

CHAPTER 2 PRELIMINARY ISSUES

Article 111 [Manifestly inadmissible or unfounded]

Where it is clear that the General Court has no jurisdiction to take cognisance of an action or where the action is manifestly inadmissible or manifestly lacking any foundation in law, the General Court may, by reasoned order, after hearing the Advocate General and without taking further steps in the proceedings, give a decision on the action.

Outline:

I. General	1
1. Ex officio.....	1
a) GC.....	1
b) CST.....	3
2. Similar provisions	4
3. Stage of the proceedings.....	5
a) General.....	5
b) Absence of jurisdiction	6
c) Manifest inadmissibility	7
d) Manifestly lacking any foundation in law	8
II. Manifest lack of jurisdiction	9
1. Overview.....	9
a) No jurisdiction of EU Courts.....	10
b) Jurisdiction of the Court of Justice	11
2. Examples.....	12
III. Manifest inadmissibility	13
1. Breach of procedural rules	13
2. Absence of challengeable act	14
3. Wrong defendant.....	15
4. Other	16
IV. Manifestly lacking any foundation in law	17

¹⁸⁵⁷ Art. 280 TFEU.

¹⁸⁵⁸ Art. 256 TFEU.

¹⁸⁵⁹ Case T-77/91 R, *Hochbaum v Commission* [1991], ECR p. II-1285, 1291.

V. Other categories?	18
VI. Reasoned order	19
1. Advocate General	19
2. Reasoning	20
3. Appeal	21

I. General

- 1 **1. Ex officio.** a) GC. At any stage of the proceedings, i.e. even before notifying the application to the defendant¹⁸⁶⁰, regardless of the nature of the legal remedy¹⁸⁶¹, the GC may on its own motion adopt an order rejecting an application as manifestly inadmissible or manifestly unfounded. In order to do so, the indications of manifest inadmissibility within the applicant's file must be so clear that a continuation of the proceedings or oral hearing is clearly not required. Procedural acts such as an application for decision on admissibility (Art. 114 RP GC)¹⁸⁶², a request to intervene¹⁸⁶³, or a request to adopt measures of organization (Art. 64 RP GC)¹⁸⁶⁴ do not preclude the adoption of such order. The same is true in proceedings at the CST¹⁸⁶⁵.
- 2 Applying this procedure does not inherently jeopardize a party's right to a **proper and effective judicial process**, since this provision¹⁸⁶⁶ is applicable only where it is clear that the GC has no jurisdiction over the action, or where the action is manifestly inadmissible or manifestly lacking any foundation in law. It is also worth considering that the party concerned may appeal such order¹⁸⁶⁷.

b) CST

- 3 Art. 76 RP CST¹⁸⁶⁸ is entirely equivalent to the provisions found here in Art. 111 RP GC.

2. Similar provisions

- 4 Art 114 RP GC also covers absence of jurisdiction and manifest inadmissibility; however, the GC may apply Art. 111 on its **own motion**, while Art. 114 always requires the defendant's **application**.
- 5 **3. Stage of the proceedings.** a) **General.** The stage of proceedings during which the GC may adopt an order under Art. 111 depends upon which of the three categories

¹⁸⁶⁰ Case T-397/08, *Ferrazzano v Italy* [2008] (not published in the ECR), para. 8.

¹⁸⁶¹ Case T-213/08 REV, *Marinova v Commission and Université Libre de Bruxelles* [2009] (not published in the ECR), para. 37.

¹⁸⁶² Case T-83/97, *Sateba v Commission* [1997] ECR p. II-1523 para. 17 et seq.

¹⁸⁶³ Case C-341/00 P, *CNPA A. O. v Commission* [2001] ECR p. I-5263, 5278.

¹⁸⁶⁴ Case C-547/03 P, *AIT v Commission* [2006] ECR p. I-845, para. 30.

¹⁸⁶⁵ Ase F-6/11, *M v EMEA* [2011] (not yet published in the ECR), para. 12.

¹⁸⁶⁶ See also Art. 76 RP CST and Case T-48/10 P, *Meister v OHIM* [2011] (not published in the ECR), paras. 29 et seq.

¹⁸⁶⁷ Case C-396/03 P, *Killingier v Germany* [2005] ECR p. I-4967, para. 9.

¹⁸⁶⁸ Case T-100/08 P, *Kerelov v Commission* [2010] ECR p. II-0000, paras. 25–26.

covered by this provision applies to the case in question. An application may cover several categories, e.g. could be deemed partially manifestly inadmissible, partially manifestly unfounded.

b) Absence of jurisdiction

In rare cases of manifest absence of jurisdiction, the GC will by definition hand down its order to the applicant at the very beginning of proceedings, i.e. without even serving the application on the defendant¹⁸⁶⁹.

c) Manifest inadmissibility

In cases of **manifest inadmissibility**, the GC will normally not hand down an order prior to the submission of the statement of defence or an application for a decision on admissibility, even though it could do so since Art. 111 does not require it to hear the parties. In **particularly manifest cases of inadmissibility**, however, the GC adopts an order without furnishing the application to the defendant¹⁸⁷⁰ prior to the handing in of any statement of defence¹⁸⁷¹. Such cases prevent the defendant from seeking any order regarding the costs, but, as such a situation is considered an “exceptional circumstance” within the meaning of Art. 87 (3) RP GC, he will be ordered to pay the costs.

d) Manifestly lacking any foundation in law

This category is the least straight-forward and thus most likely to require a full exchange of written submissions.

II. Manifest lack of jurisdiction

1. Overview

In practice, a manifest lack of jurisdiction, which is comprised of two categories, is rare, except in a number of cases where natural persons seek judicial assistance and thus act without a lawyer.

a) No jurisdiction of EU Courts

The first category includes those cases in which neither the GC nor the Court of Justice have jurisdiction¹⁸⁷² because the dispute is either within a national Court’s jurisdiction¹⁸⁷³ or because said dispute cannot be heard by any instance¹⁸⁷⁴.

¹⁸⁶⁹ Case T-81/11, *Kremser v Stadt Frankfurt am Main* [2011] (not published in the ECR).

¹⁸⁷⁰ Case T-244/06, *Pietschmann v Germany* [2006] (not published in the ECR) para. 9; Case T-68/07, *Landtag Schleswig Holstein v Commission* [2007] (not published in the ECR).

¹⁸⁷¹ Case T-346/03, *Krikorian v Commission* [2003] ECR p. II-6037, para. 29.

¹⁸⁷² Case T-177/94, *Altmann A. O. v Commission* [1994] ECR p. II-1245, 1262.

¹⁸⁷³ Case T-295/05, *Document Security System v ECB* [2007] ECR p. II- 2835.

¹⁸⁷⁴ Case T-46/07, *Alpha Omega Solicitors v Council of Europe* [2007] (not published in the ECR).

b) Jurisdiction of the Court of Justice

- 11 The second category is comprised of those cases in which the Court of Justice (ECJ) has jurisdiction over the case and thus said case must be referred pursuant to Art. 112 in conjunction with Article 54 (2) Statute.

2. Examples

- 12 The GC manifestly has no jurisdiction e.g. over the legal status of a party in proceedings before the ECHR¹⁸⁷⁵; over an alleged omission of the ECHR¹⁸⁷⁶; over reviewing the legality of judgments of a **national Court**¹⁸⁷⁷; over a piece of **legislation** in a Member State¹⁸⁷⁸; over an individual decision adopted by a national **administrative body**¹⁸⁷⁹; over determining whether a Member State has infringed EU law¹⁸⁸⁰; over whether a Member State is liable for damages¹⁸⁸¹; over the assessment of whether the **European Ombudsman** failed to act in a given case¹⁸⁸²; over direct applications by natural persons directed against natural persons¹⁸⁸³; etc.

III. Manifest inadmissibility

1. Breach of procedural rules

- 13 A legal remedy may be manifestly inadmissible for a variety of reasons. The presumably most obvious but certainly not most common one is that the legal remedy in question does **not exist** under EU law¹⁸⁸⁴; that the applicant is not represented by a **lawyer**¹⁸⁸⁵; or that proceedings before the CST were not preceded by a **complaint procedure**¹⁸⁸⁶, which includes complaints which were not lodged within the relevant time-limit¹⁸⁸⁷ or, worse, which were lodged only after the application had been lodged¹⁸⁸⁸. This is also true for applications lodged outside the relevant **time-limit**¹⁸⁸⁹ or applications whose contents do not meet the minimum requirements in Art. 44 RP GC¹⁸⁹⁰, which occurs more frequently.

¹⁸⁷⁵ Case T-46/07, *Alpha Omega Solicitors v Council of Europe* [2007] (not published in the ECR).

¹⁸⁷⁶ Case T-133/11, *Fundatia Pro Fundbis – 1946 Semper v European Court of Human Rights* [2011] (not published in the ECR).

¹⁸⁷⁷ Case T-77/07, *Di Pasquale v Commission* [2007] (not published in the ECR).

¹⁸⁷⁸ Case T-73/11, *ANCMRR v Romania* [2011] (not published in the ECR), para. 5.

¹⁸⁷⁹ Case T-81/11, *Kremser v Stadt Frankfurt am Main* [2011] (not published in the ECR).

¹⁸⁸⁰ Case T-108/06, *Wersal v Spain* [2006] (not published in the ECR).

¹⁸⁸¹ Case T-182/05, *Kowalski v Poland* [2005] (not published in the ECR), para. 15; Case T-203/05, *Varga v Hungary and Greece* [2005] (not published in the ECR).

¹⁸⁸² Case T-144/06, *O'Loughlin v Ombudsman and Ireland* [2006] (not published in the ECR).

¹⁸⁸³ Case T-15/10, *Noko Ngele v Commission and Others* [2011] (not published in the ECR), para. 39.

¹⁸⁸⁴ Case T-539/93, *Hogan v Parliament* (not published) para. 7.

¹⁸⁸⁵ Case T-79/99, *Euro-Lex v OHIM* [1999] ECR II-3555, 3566; Case T-357/05, *Comunidad Autónoma de Valencia v Commission* [2006] ECR p. II-2015, para. 10.

¹⁸⁸⁶ Case T-39/91, *Herrmann v CEDEFOP* [1992] ECR p. II-233, 241.

¹⁸⁸⁷ Case T-301/97, *Feral v Committee of the Regions* [1998] ECR SC p. I-A-14,5 148.

¹⁸⁸⁸ Case T-48/91, *Minic v Court of Auditors* [1991] ECR p. II-479, para. 12.

¹⁸⁸⁹ Case T-175/07, *TEA v Commission* [2007] (not published in the ECR), para. 10.

¹⁸⁹⁰ Case T-390/09, *Noko Ngele v Commission* [2009] (not published in the ECR).

2. Absence of challengeable act

A further category includes those cases whose manifest inadmissibility results primarily from their lack of a challengeable act¹⁸⁹¹. This includes e.g. an action of annulment against a **directive**¹⁸⁹² or **regulation**¹⁸⁹³, should a **natural person** lodge such an action; an action against the Commission's **reply** to an MEP's written question¹⁸⁹⁴; non-compliance with Art. 44 (1) lit. c) RP GC regarding the contents of an application¹⁸⁹⁵; and applications by natural or legal persons against the Commission's failure to initiate infringement proceedings against a Member State¹⁸⁹⁶.

3. Wrong defendant

An action for annulment is also manifestly inadmissible if it is directed against a **Member State**¹⁸⁹⁷, a **city**¹⁸⁹⁸, a **Permanent Representation** (delegation) of the Commission in a third State¹⁸⁹⁹, etc.

4. Other

An action is furthermore manifestly inadmissible if the applicant has no interest to act¹⁹⁰⁰.

IV. Manifestly lacking any foundation in law

This category primarily includes those applications¹⁹⁰¹ which prove to be manifestly unfounded. That said, only a **particularly obvious** absence of any legal foundation¹⁹⁰² serves as sufficient justification for discontinuing proceedings and handing down an order. If the GC finds that an earlier Court ruling has already rejected five out of six legal pleas in an action for annulment and that the sixth legal plea is manifestly unfounded, then the GC may reject the application as manifestly lacking any foundation¹⁹⁰³.

¹⁸⁹¹ Case C-155/98 P, *Alexopoulou v Commission* [1999] ECR p. I-4069, paras. 11, 13.

¹⁸⁹² Case T-99/94, *Asocarne v Commission* [1994] ECR p. II-871, 881.

¹⁸⁹³ Case C-263/02 P, *Jégo-Quéré v Commission* [2004] ECR p. I-3425.

¹⁸⁹⁴ Case T-105/11, *Neko Ngele v Commission* [2011] (not published in the ECR), paras. 6–7.

¹⁸⁹⁵ Case T-64/96, *DeJorio v Commission* [1997] ECR p. II-127, para. 33.

¹⁸⁹⁶ Case T-83/97, *Sateba v Commission* [1997] ECR p. II-1523, 1539.

¹⁸⁹⁷ Case T-221/11, *West Indies Pack v France* [2011] (not published in the ECR).

¹⁸⁹⁸ Case T-528/08, *Delice v Commission and Erlangen* [2009] (not published in the ECR).

¹⁸⁹⁹ Case T-264/09, *Technoprocess v Commission and Délégation de l'Union au Maroc* [2011] (not published in the ECR), para. 70.

¹⁹⁰⁰ Case T-89/06, *Lebard v Commission* [2009] (not published in the ECR).

¹⁹⁰¹ OJEU 1997 L 103/6.

¹⁹⁰² Case F-129/06, *Salvador Roldán v Commission* [2007] ECR p. II-0000, para. 15.

¹⁹⁰³ Case C-437/98 P, *Infrisa v Commission* [1999] ECR p. I-7145.

V. Other categories?

- 18 On the face of it, extending Art. 111 RP GC to those cases in which the facts are clear and do not provide any particular difficulties of a factual or legal nature would be in line with the underlying concept of rationalization. Such provision exists e.g. in the context of referrals for preliminary rulings (Art. 99 RP ECJ) and also in certain national laws¹⁹⁰⁴. But on the other hand, such “clear cut” cases are the exception and, more importantly, there is no analogy between these cases and the manifest “defects” Art. 111 is supposed to cover. Thus, it would seem unfair to deprive the applicant of the adversarial procedure which Art. 6 ECHR requires.

VI. Reasoned order

1. Advocate General

- 19 The obligation to hear the Advocate-General must be understood in the light of Articles 2(2), 18 and 19 of the RP GC. Thus, the obligation to hear the Advocate General is not applicable where no Judge was asked to perform the function of Advocate General¹⁹⁰⁵, which has been the rule for the past 20 years.

2. Reasoning

- 20 In practice, the reasoning contained in the orders tends to be rather short, as the manifestly inadmissible nature of these cases does not by definition require lengthy justifications. Also, the expression “without taking further steps in the proceedings” in Art. 111 allows the GC, where the conditions of that provision are fulfilled, to give a decision on an action without previously publishing a notice in the OJ EU¹⁹⁰⁶.

3. Appeal

- 21 Such orders may be **appealed** to the ECJ.

Article 112 [Referring an action to the Court of Justice]

The decision to refer an action to the Court of Justice, pursuant to the second paragraph of Article 54 of the Statute, shall, in the case of manifest lack of competence, be made by reasoned order and without taking any further steps in the proceedings.

¹⁹⁰⁴ Such as para. 84 (1) of the German rules of procedure governing applications to administrative Courts (VwGO).

¹⁹⁰⁵ Case C-266/10 P, *Seacid v Parliament and Council* [2010] ECR p. I-133, paras. 11–14.

¹⁹⁰⁶ Case C-266/10 P, *Seacid v Parliament and Council* [2010] ECR p. I-133, para. 17 and the case-law cited.

This provision implements the circumstances found in Art. 54 (2) of the Statute, which nowadays is of little relevance, i.e. whenever an application turns out to be a matter for the Court, not the GC. “Without taking any further steps in the proceedings” means in practice that the GC renders its order without even notifying the application to the defendant¹⁹⁰⁷. Apart from the cases of manifest lack of jurisdiction, the GC may also refer cases to the Court based on Art. 114 (4) RP GC.

Article 113 [Absolute bar to proceedings, devoid of purpose]

The General Court may at any time, on its own motion, after hearing the parties, decide whether there exists any absolute bar to proceeding with an action or declare that the action has become devoid of purpose and that there is no need to adjudicate on it; it shall give its decision in accordance with Article 114(3) and (4).

Outline:

I. General	1
1. Similar provisions	1
2. Art. 111 RP GC.....	2
II. Absolute bar to proceedings.....	3
1. General.....	3
2. Examples.....	4
3. Ex officio assessment	5
III. Action devoid of purpose	6
1. General.....	6
2. Examples.....	7
3. Procedure.....	8
IV. Decision	9

I. General

1. Similar provisions

Art. 111, 113, and 114 RP GC all relate to inadmissibility of cases. The major difference among them is that the defendant may decide whether he ought to make use of the various procedures laid down in Art. 114, while the GC decides on its own motion whether a given situation is covered by Art. 111 or 113 RP GC.

2. Art. 111 RP GC

There is a certain overlap between the recently-broadened Art. 113 RP GC and Art. 111 RP GC, in so far as both concern essential requirements of admissibility¹⁹⁰⁸. Thus the difference between both articles mainly arises from the fact that the “manifest inadmissibility” within the meaning of Art. 111 does not permit the

¹⁹⁰⁷ Case T-78/91, *Moat v Commission* [1991] ECR p. II-1387, para. 8.
¹⁹⁰⁸ OJEU 2005 L 298/4.

parties to be **heard**, while Art. 113 expressly provides for this. In some cases, both provisions will apply¹⁹⁰⁹.

II. Absolute bar to proceedings

1. General

- 3 A bar to proceedings is “absolute” if it relates to an **essential requirement of admissibility** of the application¹⁹¹⁰ which the GC must thus assess *ex officio*. Consequently, “may” means in fact “must” in this context. As a result, only the timing of the decision is truly left to the GC’s discretion.

2. Examples

- 4 The “essential requirements of admissibility” include e.g. whether the GC has **jurisdiction** over the case at issue¹⁹¹¹; whether the action for annulment is directed against a **challengeable act**¹⁹¹²; whether the applicant is represented by a **lawyer**¹⁹¹³ or, in case of a withdrawal of the mandate, a new lawyer¹⁹¹⁴; whether the applicant is **individually and directly** concerned¹⁹¹⁵ and has an **interest to act**¹⁹¹⁶; when the application is lodged and during the proceedings¹⁹¹⁷; whether the applicant complied with a **time-limit** regarding the application¹⁹¹⁸ or, in proceedings at the CST, the pre-contentious proceedings¹⁹¹⁹, i.e. Art. 90 and 91 Staff Regulations¹⁹²⁰, or with Art. 44 (1), lit. c) RP GC¹⁹²¹; etc.

3. Ex officio assessment

- 5 The mere fact that the defendant¹⁹²² or both parties¹⁹²³, did not raise any absolute bar to proceedings in their written submission or at the oral hearing or that the

¹⁹⁰⁹ Case T-209/04, *Spain v Commission* [2005] ECR p. II-47, paras. 33 et seq.

¹⁹¹⁰ Case T-234/94, *British Steel v Commission* [1997] ECR p. II-1887, para. 27.

¹⁹¹¹ Case T-29/02, *GEF v Commission* [2005] ECR p. II-835, para. 72 et seq.

¹⁹¹² Case T-265/03, *Helm Düngemittel v Commission* [2005] ECR p. II-2009, para. 27.

¹⁹¹³ Case T-175/10, *Milux Holding v OHIM* [2011] (not published in the ECR).

¹⁹¹⁴ Case T-299/06, *Leclercq v Commission* [2008] (not published in the ECR).

¹⁹¹⁵ Case T- 350/03, *Wirtschaftskammer Kärnten A. O. v Commission* [2006] ECR p. II-68, para. 10 et seq.

¹⁹¹⁶ Joined Cases T-228/00, T-229/00, T-242/00, T-243/00, T-245/00 to T-248/00, T-250/00, T-252/00, T-256/00 to T-259/00, T-265/00, T-267/00, T-268/00, T-271/00; T-274/00 to T-276/00, T-281/00, T-287/00 and T-296/00, *Gruppo ormeggiatori del porto di Venezia A. O. v Commission* [2005] ECR p. II-787 para. 22 et seq.

¹⁹¹⁷ Case T-19/06, *Mindo v Commission* [2011] (not yet published in the ECR), paras. 59–60.

¹⁹¹⁸ Case T-19/90, *von Hoessle v Court of Auditors* [1991] ECR p. II-615, 624, para. 24.

¹⁹¹⁹ Case T-15/91, *Bollendorf v Parliament* [1992] ECR p. II-1679, 1687, para. 22.

¹⁹²⁰ Case T-80/09 P, *Commission v Q* [2011] (not yet published in the ECR), paras. 129–130.

¹⁹²¹ Case T-64/89, *Automec v Commission* [1990] ECR p. II-367, para. 74; Case T-387/94, *Asia Motor France A. O. v Commission* [1996] ECR p. II-961, para. 108; Case T-157/96, *Affatato v Commission* [1998] ECR SC p. I-A-41, 47.

¹⁹²² Case T-15/91, *Bollendorf v Parliament* [1992] ECR p. II-1679, para. 28.

¹⁹²³ Case T-119/95, *Hauer v Council and Commission* [1998] ECR p. II-2713, para. 22.

defendant did not raise a question of admissibility within the meaning of Art. 114 RP GC¹⁹²⁴ does not relieve the GC from its duty to assess the case on its own motion. Conversely, in the case of an action under Art. 114 RP GC, the GC is not bound by the arguments put forward by the defendant¹⁹²⁵.

III. Action devoid of purpose

1. General

The second alternative covered by Art. 113 RP GC, which concerns an action 6 which loses its purpose, has little to do with the first alternative, except that both alternatives impede the GC from handing down a judgment on the substance. The word “action” is a generic term and thus covers all types of legal remedies, including e.g. an application for interim measures.

2. Examples

Actions may become devoid of purpose for a variety of reasons, e.g. because the 7 challenged **decision**¹⁹²⁶ or **provision**¹⁹²⁷ has been **withdrawn**; because the institution has adopted the action whose absence has led to an **action for failure**¹⁹²⁸; or because in the meantime the applicant has withdrawn the application for the registering of a **trademark**¹⁹²⁹ since the applicant is in possession of the **document** to which he requests access¹⁹³⁰, including cases in which the parties do not react to the letter of the Registrar informing them that the GC considers declaring the action devoid of purpose¹⁹³¹; etc.

3. Procedure

Often an action becomes devoid of purpose due to circumstances outside the 8 sphere of the GC, i.e. within the sphere of one or the other party. Thus, the GC will rarely declare an action devoid of purpose on its own motion¹⁹³². Most of the time, the defendant informs the GC of the facts either resulting in or likely to result in a loss of purpose of the action, whether in the statement of defence or through an application within the meaning of Art. 114 RP GC. Of course, nothing prevents the applicant from so notifying¹⁹³³ rather than waiting until the other party finds out.

¹⁹²⁴ Case C-417/04, *Regione Siciliana v Commission* [2006] ECR p. II-3881, para. 36.

¹⁹²⁵ Case T-354/00, *Métropole Télévision – M 6 v Commission* [2001] ECR p. II-3143, para. 27.

¹⁹²⁶ Case T-145/95, *Proderec v Commission* [1997] ECR p. II-823, para. 831.

¹⁹²⁷ Case T-28/02, *First Data A. O. v Commission* [2005] ECR p. II-4119, para. 53.

¹⁹²⁸ Case T-105/96, *Pharos v Commission* [1998] ECR p. II-285, 300.

¹⁹²⁹ Case T-292/03, *Messe Berlin v OHIM* [2004] ECR p. II-1143, para. 1 et seq., T-317/03, *Volkswagen v* [2006] ECR p. II-12, para. 3.

¹⁹³⁰ Case T-151/03, *Nuova Agricast v Commission* [2005] ECR p. II-1967, para. 23 et seq.

¹⁹³¹ For the surrounding circumstances see Case T-210/99, *Gankema v Commission* [2004] ECR p. II-781, para. 15 to 17.

¹⁹³² Nevertheless see for example Case T-39/97, *Port v Commission* [1997] ECR p. II-2125, 2135.

¹⁹³³ Case T-306/03, *Volkswagen v OHIM* [2006] ECR p. II-12, para. 1.

IV. Decision

- 9 The GC adopts decision pursuant to Art. 114 (3) and (4) RP GC, but usually does so without a hearing and thus by way of an order. On rare occasions, however, the GC will do so through a judgment¹⁹³⁴. The GC issues its decision on costs pursuant to Art. 87 (6) RP GC, i.e. at the GC's own judicial discretion.

Article 114 [Preliminary pleas not going to the substance]

1. A party applying to the General Court for a decision on admissibility, on lack of competence or other preliminary plea not going to the substance of the case shall make the application by a separate document.

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

2. As soon as the application has been lodged, the President shall prescribe a period within which the opposite party may lodge a document containing the form of order sought and the arguments of fact and law relied on.

3. Unless the General Court otherwise decides, the remainder of the proceedings shall be oral.

4. The General Court shall, after hearing the Advocate General, decide on the application or reserve its decision for the final judgment. It shall refer the case to the Court of Justice if the case falls within the jurisdiction of that Court.

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

Outline:

I. Interlocutory procedure (paragraph 1)	1
1. Preliminary decision on admissibility and lack of competence	1
a) Options of the defendant.....	1
aa) Statement of defence	2
bb) Formal plea of inadmissibility	3
b) When is a request for a decision on admissibility appropriate?.....	4
aa) Objective reasons	4
(1) More than doubts.....	4
(2) Clear cut reasons.....	5
(3) Structural obstacles.....	6
bb) No misuse.....	7
2. Request for a decision on other preliminary plea	8
3. Application by separate document	9
a) Contents	9
b) Stage of proceedings	10
c) Withdrawing an application for decision on admissibility.....	11
d) Multiple pleas	12
4. Contents of the application for a decision.....	13
a) General.....	13

¹⁹³⁴ Case T-141/03, *Sniace v Commission* [2005] ECR p. II-1197.

aa) The GC may not act on its own motion.....	13
bb) Contents.....	14
b) Application for a decision on admissibility.....	15
aa) Inadmissibility of the application	15
bb) Inadmissibility limited to a legal ground or plea sought	16
c) Application for a decision on the competence of the GC.....	17
d) Application for a decision on another preliminary plea.....	18
aa) Ancillary aspects	18
bb) Examples.....	19
5. Time-limits	20
a) Application for a decision on admissibility.....	20
b) No time-limit regarding lack of competence or other preliminary plea	21
c) Special rule for CST.....	22
aa) One month	22
bb) No possibility of extension	23
cc) Is the shortening of this time-limit justified?.....	24
dd) Applying the time-limit to all proceedings under Art. 78 RP GC?	25
II. Written observations by the other party (paragraph 2)	26
1. General.....	26
2. Contents	27
a) General.....	27
b) Inadmissible contents.....	28
III. Oral hearing (paragraph 3)	29
1. Discretionary power	29
2. Exception	30
IV. Decision by the GC (paragraph 4).....	31
1. Alternatives.....	31
2. Referring the case	32
V. Further procedure	33

I. Interlocutory procedure (paragraph 1)

1. Preliminary decision on admissibility and lack of competence. a) **Options of 1 the defendant.** Whenever the question arises concerning whether the GC is competent for the case or whether the particular legal remedy meets other conditions of admissibility, the defendant has two options¹⁹³⁵:

aa) Statement of defence

He may raise these issues in the statement of defence, through a **preliminary 2 remark** or a **specific chapter** on inadmissibility¹⁹³⁶ followed by his defence regarding the substance of the case.

¹⁹³⁵ Case T-141/03, *Sniace v Commission* [2005] ECR p. II-1197, paras. 20 to 22.

¹⁹³⁶ Which may also be raised at the stage of the rejoinder, in so far as it concerns conditions of admissibility which the GC needs to assess of its own motion.

bb) Formal plea of inadmissibility

- 3 Alternatively, the defendant may raise a formal¹⁹³⁷ plea of inadmissibility within the meaning of Article 114 RP GC¹⁹³⁸, **without** addressing the substance of the case. In other words, he is not obligated whatsoever to opt for such interlocutory procedure, even in cases where it would seem very appropriate.
- 4 **b) When is a request for a decision on admissibility appropriate? aa) Objective reasons. (1) More than doubts.** A formal plea of inadmissibility promotes the **economy of proceedings**, since such a plea implies that the defendant (and the GC, if the plea of inadmissibility turns out to be successful) need not address the substance of the case. Thus, there is no reason to request a decision on admissibility based on mere **doubts** concerning the admissibility of an application. Such doubts do not justify a formal plea of inadmissibility, as said plea would likely achieve the very opposite of an economy of proceedings, i.e. would delay proceedings.
- 5 **(2) Clear cut reasons.** “Clear cut” reasons for raising a formal plea of admissibility include e.g. cases of manifest failure to comply with time-limits, either because the application was lodged too late¹⁹³⁹ or too early; absence of a challengeable act¹⁹⁴⁰; absence of an interest to act¹⁹⁴¹; or an action of annulment against a decision rejecting a complaint against a Member State¹⁹⁴². In practice, however, a number of these cases do not reach the stage of an application based on Art. 114, since the GC normally excludes the manifest cases beforehand by way of Arts. 111 and 113 RP GC.
- 6 **(3) Structural obstacles.** A more structural obstacle to a formal plea of inadmissibility arises whenever the question of inadmissibility is **closely linked** to the substance of the case. This leaves the GC little choice but to assess the admissibility together with the substance of the case.

bb) No misuse

- 7 As with any right, though, one may make a lighthearted use of, let alone **misuse** this right, since these particular proceedings have not been designed to “gain time” or for any other frivolous use, as such use would in fact impede the economy of proceedings and may thus affect the decision regarding the costs of the proceedings. On the other hand, every plea of inadmissibility is clearly not to be considered a misuse merely because such plea turns out to be unfounded. Any defendant thus retains a reasonable discretionary power concerning whether to raise such plea of inadmissibility.

¹⁹³⁷ The GC calls it “formal objection of inadmissibility under Article 114 (1) of the Rules of Procedure”, whilst the plea of inadmissibility in a statement of defence or a rejoinder is just called “objection of inadmissibility”.

¹⁹³⁸ Which is limited to 20 pages (para. 15 of the “Practice Directions to parties”).

¹⁹³⁹ Case T-190/08 *Kuzneckie ferrosplavy OAO v Council and Commission* [2009] (not published in the ECR).

¹⁹⁴⁰ Case T-502/10, *Gers v Commission* [2011] (not published in the ECR).

¹⁹⁴¹ Case T-344/10, *UPS v Commission* [2012] (not published in the ECR).

¹⁹⁴² Case T-341/10 *Bonnetaud A.O v Commission* [2012] (not published in the ECR).

2. Request for a decision on other preliminary plea

A preliminary decision on admissibility and lack of competence concerns by 8 definition the **defendant** solely. By contrast, **any party** may request decisions on other preliminary pleas at **any stage** of the proceedings, i.e. not necessarily at a preliminary stage.

3. Application by separate document. a) Contents. Article 114 RP GC in no way 9 requires that the party submit every plea of inadmissibility by separate document. The submission of such a plea by separate document is necessary **only** if the party submitting it intends to ask the GC for a decision on the admissibility of the action **without** considering or addressing the substance of the case¹⁹⁴³.

b) Stage of proceedings

In the case of a formal plea of inadmissibility, the separate document must be 10 lodged **preliminarily**, i.e. in place of a statement of defence and thus not prior to or following such statement¹⁹⁴⁴.

c) Withdrawing an application for decision on admissibility

A party which lodged such an application remains free to withdraw it¹⁹⁴⁵ even 11 after the other party has made its written observations. After withdrawing this application, said party shall still have the possibility to lodge a statement of defence.

d) Multiple pleas

The fact that one party applies for a decision on admissibility within the meaning 12 of Article 114 RP GC does not prevent the other party to the same proceedings from applying for a decision on another preliminary plea, such as assessing the legality of a measure of inquiry under Article 65 lit. b) RP GC¹⁹⁴⁶.

4. Contents of the application for a decision. a) General. aa) The GC may not act 13 on its own motion. Under Art. 114 the respective party must apply for a decision on admissibility, on the GC's competence, or on any another preliminary plea. This is in contrast to the procedure in Arts. 111 and 113, which also concern inadmissibility but which enable the GC to act on its own motion. This also means that a party's application for a decision on admissibility within the meaning of Art. 114 RP GC does not prevent the GC from applying Art. 111 or 113 RP GC, if need be¹⁹⁴⁷.

bb) Contents

The decision for which a party applies may only pertain to the admissibility of 14 the application; to the competence of the GC; or to another preliminary plea. This

¹⁹⁴³ Case C-401/09 P, *Evropaiki Dynamiki v ECB* [2011] ECR p. I-0000, paras. 43–45.

¹⁹⁴⁴ Case T-11/90, *H.S. v Council* [1992] ECR p. II-1869, para. 10.

¹⁹⁴⁵ Case T-527/93, *O v Commission* [1995] ECR p. II-29, para. 17.

¹⁹⁴⁶ Case T-182/98, *UPS Europe v Commission* [1999] ECR p. II-2857, para. 20.

¹⁹⁴⁷ Case T-19/92, *Leclerc v Commission* [1996] ECR p. II-1851, para. 51.

means that any comments regarding the substance of the application are outside the scope of such application, even if they are only submitted in a subsidiary way.

- 15 **b) Application for a decision on admissibility. aa) Inadmissibility of the application.** This category includes all reasons likely to result in the inadmissibility of the application as a **whole** or at least in part, in which case the remainder of the proceedings follows the normal written procedure¹⁹⁴⁸.

bb) Inadmissibility limited to a legal ground or plea sought

- 16 If the application does not appear to be inadmissible as a whole or in part, but if a given legal ground is inadmissible and/or one out of several pleas sought is found to be inadmissible, one ought to raise this concern in a **statement of defence**.

c) Application for a decision on the competence of the GC

- 17 Such applications have become very rare, since the exact jurisdictional scope of each of the three EU courts leaves little room for doubt or confusion. The mere fact that the GC does not have jurisdiction for the pending case does not necessarily render actions inadmissible, but rather produces a referral to the ECJ, provided the latter has jurisdiction (see Article 114, (4), sub-paragraph 1 RP GC).

- 18 **d) Application for a decision on another preliminary plea. aa) Ancillary aspects.** At any time during the proceedings a party may request a decision on “another preliminary plea”, i.e. on aspects of the proceedings which are of a more **ancillary nature**.

bb) Examples

- 19 A party may request a decision on whether a given Judge is **biased**¹⁹⁴⁹; on the removal of **confidential** indications or data from a written submission or annex¹⁹⁵⁰; on whether a given case has **lost its object**¹⁹⁵¹; etc. through an application within the meaning of Art. 114.

- 20 **5. Time-limits. a) Application for a decision on admissibility.** In proceedings before the GC, the time-limit for an application for a decision on admissibility is the same as for a statement of defence, i.e. **two months** (plus 10 calendar days on account of distance). An application for **expedited procedure** within the meaning of Art. 76 a RP GC does not rule out such application as long as the time-limit of two months is respected.

¹⁹⁴⁸ Case T-70/94, *Comafrika and Dole Fresh Fruit Europe v Commission* [1996] ECR p. II-1741, para. 23.

¹⁹⁴⁹ Case T-47/92, *Lenz v Commission* [1992] ECR p. II-2523 et seq.

¹⁹⁵⁰ Case T-280/94, *Lopes v Court of Justice* [1996] ECR SC p. II-239, para. 37.

¹⁹⁵¹ Case T-256/97, *BEUC v Commission* [2000] ECR p. II-101, para. 17.

b) No time-limit regarding lack of competence or other preliminary plea

Such applications may be lodged at any stage of the proceedings¹⁹⁵². A time-limit 21 in such cases would indeed be absurd, e.g. in the – admittedly rare – case that a party has reasons to believe that a Judge is biased.

c) Special rule for CST. aa) One month. Pursuant to Art. 78 (1), 1st sub-paragraph 22 RP CST, the time-limit for applying to the Tribunal for a decision on admissibility, on lack of competence, or on another preliminary plea not pertinent to the substance of the case is “**within a month of service of the application**” plus ten calendar days on account of distance¹⁹⁵³. If the defendant fails to meet this time-limit of one month it may still lodge a statement of defence, which implies analyzing the substance of the case, as long as the defendant does so within the time-limit of two months¹⁹⁵⁴ (plus ten calendar days on account of distance).

bb) No possibility of extension

While the defendant may apply for an extension of the time-limit of two months 23 applying to statements of defence¹⁹⁵⁵, no such possibility exists concerning the one-month time-limit in Art. 78 (1) RP CST. While this absence of any possibility of extension is coherent with substantially reducing said time-limit, a reduction which would otherwise be circumvented, such distinction between extension of the two-month time-limit and of the one-month time-limit seems to create a double standard¹⁹⁵⁶.

cc) Is the shortening of this time-limit justified?

It seems that this substantial shortening of the time-limit – from two months to 24 one month – is the result of a compromise between either removing this specific procedure entirely or keeping this procedure and applying the same time-limit as for a statement of defence, i.e. two months, as is the case in proceedings at the ECJ and the GC. It does normally take less time to draft an application for a decision on admissibility than to draft a full statement of defence. However, one must ask if this reason is sufficient enough to justify a specific time-limit of one month in proceedings at the CST, especially since there is no equivalent rule in GC and ECJ proceedings, which need as much if not more (in the case of the GC) economy of proceedings? In other words, shouldn't the defendant's **autonomy** entitle him to the **same time-limit** for deciding on the most appropriate method of defence, i.e. application for a decision on admissibility or a statement of defence? Besides, it would seem from the CST orders published on the ECJ's website that in practice, applications for decisions on admissibility are hardly ever successful, meaning that in the vast majority of cases the Judges reserve their decision for the final judgment.

¹⁹⁵² Case T-47/92, *Lenz v Commission* [1992] ECR p. II-2523 et seq.

¹⁹⁵³ Art. 100 (3) RP CST.

¹⁹⁵⁴ Art. 39 (1) RP CST.

¹⁹⁵⁵ Art. 39 (2) RP GC.

¹⁹⁵⁶ In Case F-121/07, *Strack v Commission*, [2009] (not yet published in the ECR), para. 20, the CST held that by granting an extension of the time-limit of two months, which had been requested within one month of the notification of the application, it had implicitly granted an extension for the lodging of an application for a decision on admissibility. This case is currently under appeal.

dd) Applying the time-limit to all proceedings under Art. 78 RP CST?

- 25 The current wording of Art. 78 (1), 1st sub-paragraph, RP CST raises a question concerning the **third alternative** in this provision, i.e. an application for “(an)other preliminary plea not going into the substance of the case”: For example, should a Judge found to be biased during the proceedings, e.g. three months after the application has been served, the party concerned cannot be prevented from applying for a decision on the matter through an application based on Art. 78 RP CST.

II. Written observations by the other party (paragraph 2)

1. General

- 26 The other party may lodge a document¹⁹⁵⁷ containing the form of order sought and the arguments of fact and law upon which it relies¹⁹⁵⁸. Said party must do so within the time-limit set by the GC, which may be extended upon request.
- 27 **2. Contents. a) General.** The content of the written submission is determined by the nature of the decision the defendant applies for. The **defendant may not reply** to these observations. If the applicant waives his right to such written submission¹⁹⁵⁹, the GC is not obliged to schedule an oral hearing within the meaning of paragraph 3.

b) Inadmissible contents

- 28 If the written submission concerns an application for a decision on admissibility, the applicant may not in any way address the **merits** of the application. Any “additional” written submission handed in after the end of the written proceedings is inadmissible, since there is no such rule in the RP GC¹⁹⁶⁰. Nothing prevents the applicant from handing in a further written observation, as long as this takes place within the time-limit set¹⁹⁶¹.

III. Oral hearing (paragraph 3)

1. Discretionary power

- 29 An oral hearing is the rule in a “normal” procedure and is excluded in the case of Art. 111 RP GC. By contrast, in proceedings within the meaning of Art. 114 or 113 RP GC¹⁹⁶², the GC may use its discretion to decide whether it considers – on the

¹⁹⁵⁷ Which is limited to 20 pages (para. 15 of the “Practice Directions to parties”).

¹⁹⁵⁸ OJEU 2005 L 298/4.

¹⁹⁵⁹ Case T-210/99, *Gankema v Commission* [2004] ECR p. II-781, para. 4.

¹⁹⁶⁰ Case T-186/98, *Inpesca v Commission* [2001] ECR p. II-557, para. 33; Case T-387/00, *Comitato Organizzatore del Convegno Internazionale v Commission* [2002] ECR p. II-3031, para. 16.

¹⁹⁶¹ Case F-6/07, *Suvikas v Commission* [2007] (not published in the ECR), para. 3.

¹⁹⁶² Art. 113 RP GC.

basis of the files or in light of the answers to its written questions¹⁹⁶³ – that an oral hearing is necessary¹⁹⁶⁴.

2. Exception

In practice, an oral hearing which specifically concerns an application for a 30 decision is far from being the rule; it is, in fact, an absolute exception¹⁹⁶⁵, as the wording of paragraph 3 suggests. Such a hearing is most likely to take place if fundamental issues are at stake¹⁹⁶⁶. An application for a decision on another plea never results in a separate oral hearing.

IV. Decision by the GC (paragraph 4)

1. Alternatives

The GC either declares the application well founded, or rejects it, or assesses the 31 application for a decision on admissibility¹⁹⁶⁷ or another preliminary plea¹⁹⁶⁸ while also assessing the application's substance. The latter occurs if the question of e.g. admissibility is closely linked to the substance of the case.

2. Referring the case

The GC shall refer the case to the ECJ or, in accordance with Art. 8(2) of Annex I 32 to the Statute of ECJ, to the CST¹⁹⁶⁹ if the case falls within the jurisdiction of that Court or Tribunal.

V. Further procedure

If the GC rejects the application or requires that it be enlarged to include 33 arguments pertaining to substance, the defendant may hand in a full statement of defence, which is limited to the substance.

¹⁹⁶³ Joined Cases T-492/93 and T-492/93 R, *Nutril v Commission* [1993] ECR p. II-1024, para. 16; Case T-247/97, *Lonuzzo-Murgante v Parliament* [1998] ECR SC p. II-317, para. 13.

¹⁹⁶⁴ Case C-360/02 P, *Ripa de Meana v Parliament* [2004] ECR p. I-10339, para. 35.

¹⁹⁶⁵ Case T-12/90, *Bayer v Commission* [1991] ECR p. II-219, para. 11; Case T-60/92, *Noonan v Commission* [1993] ECR p. II-911, para. 5; Case T-288/97, *Regione Autonoma Friuli-Venezia Giulia v Commission* [2001] ECR p. II-1169, para. 26.

¹⁹⁶⁶ Case T-177/01, *Jégó Quéré v Commission* [2002] ECR p. II-2365, 2372.

¹⁹⁶⁷ Case T-11/90, *H.S. v Council* [1992] ECR p. II-1869, para. 12.

¹⁹⁶⁸ Case F-6/07, *Suvikas v Council* [2008] (not published in the ECR).

¹⁹⁶⁹ Case T-136/10, *M. v EMA* [2011] (not published in the ECR), para.

CHAPTER 3 INTERVENTION

Preliminary

I. Purpose

- 1 Art. 115 and 116 RP GC implement Art. 40 Statute ECJ. These Articles are mandatory and thus not within the discretion of either the parties or the GC¹⁹⁷⁰. These articles provide third parties with the opportunity to intervene in proceedings pending at the GC in order to support one of the main parties and thus enable interveners to achieve the status of a party to the proceedings.

II. Procedure

- 2 The process of intervention is in **two stages**:

1. First step

The GC must first admit the third party as an intervener¹⁹⁷¹, upon said third party's application. This first stage is a mere **formality** in the case of all EU institutions and Member States, since they are all “born” interveners. Such interveners must therefore simply hand in an application signalling that they intervene, with no further requirements as regards e.g. an interest in the proceedings. In contrast, natural or legal persons need to prove an “**interest**” in the “**outcome**”¹⁹⁷².

2. Second step

- 3 Once a party is formally admitted to intervene, it may exercise its rights within the limits of Article 116 (2) to (5) RP GC.

III. Delimitation

1. Change of party

- 4 An intervention is clearly distinct from a **change of party**, i.e. whenever one party which was not yet involved in the proceedings **replaces** a party due to, e.g. transfer

¹⁹⁷⁰ See e.g. Case T-201/04, *Microsoft v Commission* [2005] (not published in the ECR), para. 42 and the case-law cited.

¹⁹⁷¹ Art. 115 RP GC.

¹⁹⁷² An overview is given in *Dauses/Henkel* [2000] EuZW 581 et seq.

of rights of the applicant¹⁹⁷³. The GC provides no rules for this situation, and thus in such cases Articles 115 and 116 RP GC need to be applied by **analogy**. The legal successor of the party must accept the proceedings as they stand at the time of the substitution¹⁹⁷⁴.

2. Request for becoming a party

There are no procedural rules which allow the GC to require a third party to join 5 the proceedings as an intervener or in any other capacity¹⁹⁷⁵.

3. Third-party proceedings

If a third party was not able to become an intervener, he may apply for third- 6 party proceedings within the very restrictive conditions of Article 123 RP GC.

Article 115 [Admission as intervener]

1. An application to intervene must be made either within six weeks of the publication of the notice referred to in Article 24(6) or, subject to Article 116(6), before the decision to open the oral procedure as provided for in Article 53.

2. The application shall contain:

- (a) the description of the case;
- (b) the description of the parties;
- (c) the name and address of the intervener;
- (d) the intervener’s address for service at the place where the General Court has its seat;
- (e) the form of order sought, by one or more of the parties, in support of which the intervener 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.

Articles 43 and 44 shall apply.

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

Outline:

I. General	1
1. Application is a general requirement.....	1
2. Interest in the result of a case	2
a) Privileged applicants	2
b) Non-privileged applicants	4

¹⁹⁷³ Case T-230/08, *Asenbaum Fine Arts v OHIM* [2010] (not published in the ECR); T-139/08, *Loufrani v OHIM* [2009] (not published in the ECR); Case T-63/07, *Müllhens v OHIM* [2009] (not published in the ECR).

¹⁹⁷⁴ Case T-131/03, *Gerolsteiner Brunnen v OHIM (Kerry Springs)* [2004] ECR p. II-3019, para. 9.

¹⁹⁷⁵ Case T-1/90, *Pérez-Minguev Casariego v Commission* [1991] ECR p. II-143, para. 43.

3. CST.....	5
II. Time-limit (paragraph 1).....	6
1. GC.....	6
a) Six weeks.....	6
b) No extension	7
c) No circumvention	8
2. CST.....	9
3. Beginning of the time-limit.....	10
a) Publication in the OJ	10
b) Proceedings concerned	11
4. Non-compliance with time-limit.....	12
a) Oral hearing.....	12
b) Point in time of the application.....	13
III. Contents of the application (paragraph 2).....	14
1. General.....	14
2. Interest in the result of the case.....	15
3. Analogous application of Art. 43 and 44 RP GC.....	16
a) Art. 43.....	16
b) Art. 44.....	17
IV. Mandatory representation by a lawyer (paragraph 3).....	18
1. General.....	18
2. Choice of lawyer.....	19

I. General

1. Application is a general requirement

- 1 Any **third person** or body, whether a natural or legal person; an EU institution; or a Member State, which seeks to intervene in a given procedure pending at the GC must lodge an **application** that meets the requirements of Art. 115 RP GC.
- 2 **Interest in the result of a case.** a) **Privileged applicants.** EU institutions and Member States are privileged, since they do **not** have to prove that they have an interest in the result of the case. The **European Data Protection Supervisor** is **not** a privileged applicant, but has a right to intervene in actions pending before the EU Courts provided that the intervention falls within the scope of the tasks conferred upon it¹⁹⁷⁶.
- 3 Other parties cannot prevent such entities from intervening in a case¹⁹⁷⁷.

b) Non-privileged applicants

- 4 Unlike EU institutions and Member States, any natural or legal person, i.e. the so called “non-privileged” applicants, must prove that it has an **interest in the result of a case**¹⁹⁷⁸. This is quite often the most difficult part of the application process.

¹⁹⁷⁶ Case T-82/09, *Geert-Jan Eannekamp v Parliament* [2009] (not published in the ECR).

¹⁹⁷⁷ Case T-541/10, *Adedy and Others v Council* [2011] (not published in the ECR), para. 4.

¹⁹⁷⁸ Art. 115 (2) lit. f) RP GC, Art. 40 (2) Statute ECJ.

3. CST

Unlike in proceedings before the GC and the ECJ, the President of the CST may 5 invite natural persons, institutions, or Member States to intervene in a given case¹⁹⁷⁹.

II. Time-limit (paragraph 1)

1. GC. a) **Six weeks**. The time-limit, which used to be three months, is now six 6 weeks (plus **ten calendar days** on account of distance)¹⁹⁸⁰. A shorter time-limit not only accelerates the proceedings, but also takes the interest of each intervener into consideration, since said intervener must accept the proceedings as they stand at the time of his admission as an intervener¹⁹⁸¹.

b) No extension

This period is **mandatory** (“ordre public”). Thus, it cannot be extended either by 7 application or by the GC’s own motion. The GC must assess the compliance with this time-limit *ex officio*¹⁹⁸². The time-limit applies to **all applicants**, whether “privileged” (EU institutions/Member States)¹⁹⁸³ or “non-privileged” (natural/legal persons)¹⁹⁸⁴.

c) No circumvention

Allowing an entity applying for intervener status to cite facts which were not put 8 forward in his original, timely application after the expiry of the six-week period laid down in Article 115(1) of the RP and in support of an application which it has submitted within that six-week period would be tantamount to a circumvention of that time-limit. That applies *a fortiori* to facts which have arisen after the application to intervene was submitted¹⁹⁸⁵.

2. CST

In contrast to proceedings before the GC, the time-limit in proceedings before 9 the CST¹⁹⁸⁶ is only **four weeks**¹⁹⁸⁷, plus **ten calendar days** on account of distance¹⁹⁸⁸ dating from the publication of the notice in the Official Journal of the EU.

¹⁹⁷⁹ Art. 111 RP CST.

¹⁹⁸⁰ Art. 102 (2) RP GC.

¹⁹⁸¹ Art. 116 (3) RP GC.

¹⁹⁸² Case T-194/95, *INTV II, Area Cova A. O. v Council* [1996] ECR p. II-343, para. 2.

¹⁹⁸³ Case T-45/01, *Sanders and Others v Commission* [2007] (not published in the ECR).

¹⁹⁸⁴ Art. 40 (1) and (2) Statute GC.

¹⁹⁸⁵ Case T-237/10, *Vuitton Malletier v OHIM* [2011] (not published in the ECR), para. 37.

¹⁹⁸⁶ Case T-213/11 P (I), *Collège des représentants du personnel de la BEI and Others v Bömcke* [2011] (not published in the ECR), para. 9 and the case-law cited.

¹⁹⁸⁷ Art. 109 (1) RP CST.

¹⁹⁸⁸ Art. 100 (3) RP CST.

- 10 **3. Beginning of the time-limit. a) Publication in the OJ.** According to Art. 116(6) of the RP GC, an intervener who applies **after** the expiry of the six-week period laid down in Art. 115(1) RP GC which begins **from the date of publication in the Official Journal** of the notice of initiation of proceedings may participate in the **oral procedure only**, may receive a copy of the Report for the Hearing, and may submit its observations on the basis of that report at the hearing¹⁹⁸⁹.

b) Proceedings concerned

- 11 A notice is published concerning all **legal remedies** mentioned in Art. 24 (6) RP GC as well as certain **ancillary proceedings**, such as requests for interim proceedings, but not others, e.g. taxation proceedings.
- 12 **4. Non-compliance with time-limit. a) Oral hearing.** A potential intervener who missed the time-limit for admission and who cannot prove unforeseeable circumstances, *force majeure*,¹⁹⁹⁰ or an excusable error is not totally excluded from any intervention¹⁹⁹¹, since he may plead his views at the **oral hearing**¹⁹⁹².

b) Point in time of the application

- 13 That said, the applicant is only admitted to the oral hearing if he lodges his application **before** the decision regarding the opening of the oral procedure (Art. 53 RP GC) is taken¹⁹⁹³. The GC adopts this order after the Rapporteur submits the preliminary report in accordance with Art. 52 RP GC. A potential intervener must understand that the decision ordering the opening of the oral procedure is not published, unlike the publication of the notice in the OJEU which triggers the six-week time-limit. This potential problem can, however, be remedied by requesting the information from the main party concerned.

III. Contents of the application (paragraph 2)

1. General

- 14 The application to become an intervener must be drafted in the **language of the main proceedings**¹⁹⁹⁴. The requirements set out in lit. a) to e) amount to mere formalities when compared to the “**interest in the result of the case**” natural and legal persons need to prove pursuant to Art. 115 (2) lit. f) RP GC, which refers to Art. 40 (2) and (3) Statute ECJ.

¹⁹⁸⁹ Case T-314/06, *Whirlpool Europe v Council* [2010] ECR p. II-0000, para. 59 and the case-law cited.

¹⁹⁹⁰ Art. 45 (2) Statute ECJ.

¹⁹⁹¹ Case T-201/04, *Microsoft v Commission* [2005] ECR p. II-1491, para. 49.

¹⁹⁹² Art. 116 (6) RP GC.

¹⁹⁹³ Case T-52/00, *COE Clerici Logistics v Commission* [2002] ECR p. II-2555, para. 25 to 27.

¹⁹⁹⁴ Art. 7 (5) sub-para. 3 of the “Instructions to the Registrar”.

2. Interest in the result of the case

According to the settled case-law, in this context the idea of an interest in the result of the case must be understood as a **direct, existing interest** in the grant of the order sought¹⁹⁹⁵ (see commentary re. Art. 40 (2) and (3) Statute ECJ).

3. Analogous application of Art. 43 and 44 RP GC. a) Art. 43. The second subparagraph's reference to Art. 43's analogous application is merely confirmatory, as Art. 43 RP GC applies to **all written pleadings**.

b) Art. 44

The reference to the analogous application of Article 44 RP GC should not be understood to mean that each and every paragraph of that provision applies. Art. 44 (1) (c) RP GC does not apply since the **application** for admission as an intervener should not, e.g., contain any legal arguments¹⁹⁹⁶, which are instead part of the written submission once the intervention has been formally granted¹⁹⁹⁷. Thus, the analogous application of Art. 44 refers to all other procedural requirements in Art. 44, such as paragraph 5 (b), which provides that where the applicant for leave to intervene is a legal person governed by private law, said applicant must attach proof that the authority granted to its lawyer has been properly conferred on him by someone authorized for this purpose to its application¹⁹⁹⁸.

IV. Mandatory representation by a lawyer (paragraph 3)

1. General

The explicit reference in paragraph 3 to Article 19 Statute ECJ is also more of a reminder than anything else, since the obligation to be represented by an agent or lawyer applies to all proceedings before the three EU jurisdictions unless a specific derogation is provided in the RP¹⁹⁹⁹.

2. Choice of lawyer

The intervener may use the same lawyer as the main party whom he supports. This appears to be efficient in terms of time and costs, but the intervener should bear in mind that an "independent" lawyer might have a better *effet utile*, as he might be less tempted to merely repeat arguments already put forward by the party supported.

¹⁹⁹⁵ Case T-52/00, *COE Clerici Logistics v Commission* [2002] ECR p. II-2555, para. 33.

¹⁹⁹⁶ Case T-195/95 *INTV I, Area Cova A. O. v Council* [1996] ECR p. II-591, para. 7.

¹⁹⁹⁷ Art. 116 (4) RP GC.

¹⁹⁹⁸ See e.g. Case T-201/04, *Microsoft v Commission* [2005] (not published in the ECR), paras. 15 et seq.

¹⁹⁹⁹ Art. 95 (1) RP GC, which provides that applications for legal aid may be lodged by the party, i.e. without a lawyer.

Article 116 [Subsequent procedure]

1. The application shall be served on the parties.

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

The President shall decide on the application by order or shall refer the decision to the General Court. The order must be reasoned if the application is dismissed.

2. If an intervention for which application has been made within the period of six weeks prescribed in Article 115(1) is allowed, the intervener shall receive a copy of every document served on the parties. The President may, however, on application by one of the parties, omit secret or confidential documents.

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

4. In the cases referred to in paragraph 2 above, the President shall prescribe a period within which the intervener may submit a statement in intervention.

The statement in intervention shall contain:

- (a) a statement of the form of order sought by the intervener in support of or opposing, in whole or in part, the form of order sought by one of the parties;
- (b) the pleas in law and arguments relied on by the intervener;
- (c) where appropriate, the nature of any evidence offered.

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

6. Where the application to intervene is made after the expiry of the period of six weeks prescribed in Article 115(1), the intervener may, on the basis of the Report for the Hearing communicated to him, submit his observations during the oral procedure.

Outline:

I. Right to be heard (paragraph 1)	1
1. Notification of the application	1
2. Written comments	2
a) Member States and EU institutions.....	2
b) Natural and legal persons	3
3. Assessment by the GC.....	4
4. Order.....	5
II. Transmission of documents served and protection of confidentiality (paragraph 2)	6
1. Rule.....	6
2. Exceptions	7
a) Secret and confidential documents	7
b) Application	8
aa) General.....	8
(1) Main proceedings.	8
(2) Interim proceedings.	9
bb) Contents of the application	10
cc) Inadmissible order sought.....	11
c) Assessment of the request.....	12
aa) General.....	12

bb) Assessment	13
cc) Well founded applications.....	14
dd) Unfounded applications	15
(1) Information not new.	15
(2) Information already in the public domain or otherwise known.	16
(3) Other.....	17
dd) Balancing of interests	18
(1) Main proceedings.	18
(2) Interim proceedings.	19
ee) Decision	20
III. Accepting the case as it stands (paragraph 3)	21
IV. Contents and limits of the intervenor's written submission (paragraph 4).....	22
1. General.....	22
2. Content of the intervenor's submission.....	23
a) General.....	23
b) Requests.....	24
c) Pleas in law and arguments.....	25
aa) Formal aspects	25
bb) Substantive aspects	26
(1) No new pleas in law.	26
(2) Admissibility of new arguments.	27
V. Statement on the intervention (paragraph 5).....	28
VI. Intervenors only admitted to the oral hearing (paragraph 6).....	29
1. Admissible.....	29
2. Inadmissible.....	30

I. Right to be heard (paragraph 1)

1. Notification of the application

Any application for leave to intervene is notified to **all** parties for comments, i.e. **1** also that party or those parties whom the applicant intends to support.

2. Written comments. a) Member States and EU institutions. If an institution or a **2** Member State submits an application for admission as an intervenor, the other parties' observations are a **mere formality** due to the privileged status of the applicants as "born intervenors" which do not need to prove any particular interest in the intervention.

b) Natural and legal persons

Should the applicant be a natural or legal person, the parties may and ought to **3** examine the fundamental question of his application: has he demonstrated the necessary legitimate interest²⁰⁰⁰? In most cases, the parties provide comments in **writing**. If an application to intervene is lodged concerning interim proceedings, the other parties may only provide their observations at the oral hearing²⁰⁰¹.

²⁰⁰⁰ Art. 40 (2) and (3) Statute ECJ.

²⁰⁰¹ Case T-184/01 R, *IMS Health v Commission* [2001] ECR p. II-3198, para. 36.

3. Assessment by the GC

- 4 At this stage, the GC assesses whether the formal and/or substantive requirements laid down in Article 115 (2) which govern admission as interveners are met. The GC does not yet assess the application in the main proceedings, e.g. its admissibility²⁰⁰² or merits. If a party is admitted to intervene, the costs remain reserved²⁰⁰³. The GC may review the admissibility of an intervention at any stage²⁰⁰⁴, even during its final judgment²⁰⁰⁵.

4. Order

- 5 Normally, the GC adopts an order, unless the application has been rejected as inadmissible even before the application for intervention was lodged²⁰⁰⁶. In practice, the President shall refer difficult cases to the formation of judges which has been assigned to the application in the main proceedings²⁰⁰⁷. The President will adopt a reasoned order not only in cases where a party is refused to intervene²⁰⁰⁸, but also in those where the party is admitted as an intervener²⁰⁰⁹. If a party is admitted to intervene in the main proceedings it may also intervene in the interim proceedings, if any²⁰¹⁰.

II. Transmission of documents served and protection of confidentiality (paragraph 2)

1. Rule.

- 6 Since the third party admitted as an intervener has the status of a party to the proceedings as of the date he has been admitted as intervener, he is entitled to be heard during oral and written proceedings. Thus, as a rule, the GC serves on him all the documents already served on the parties²⁰¹¹, provided that the application for admission as an intervener has been lodged within²⁰¹² the time-limit of six weeks²⁰¹³.

²⁰⁰² Case T-191/96, *Cas Succhi Di Frutta v Commission* [1998] ECR p. II-573, para. 28.

²⁰⁰³ Case T-87/93, *Kruidvat v Commission* [1993] ECR p. II-1363, para. 1363, 1367.

²⁰⁰⁴ Case T-158/96, *Acciaierie di Bolzano v Commission* [1999] ECR p. II-3927, para. 33.

²⁰⁰⁵ Joined Cases T-32/98 and T-41/98, *Nederlandse Antillen v Commission* [2000] ECR p. II-201, para. 215.

²⁰⁰⁶ Case C-341/00 P, *CNPA A. O. v Commission* [2001] ECR p. II-5263, paras. 33–37.

²⁰⁰⁷ Case T-74/92, *Ladbroke v Commission* [1993] ECR p. II-535, 538.

²⁰⁰⁸ Art. 116 (1) sub-para. 3 RP GC.

²⁰⁰⁹ Case T-87/93, *Kruidvat v Commission* [1993] ECR p. II-1363, 1366 et seq.

²⁰¹⁰ Case T-5/00 R, *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied v Commission* [2000] ECR II-4121, para. 25.

²⁰¹¹ Case T-384/09, *SKW Stahl-Metallurgie Holding and Others v Commission* [2011] (not yet published in the ECR), para. 21.

²⁰¹² If the applicant fails to meet this time-limit, he will only be given the report for the hearing, Art. 116 (6) RP GC.

²⁰¹³ Art. 115 (1) RP GC.

2. Exceptions. a) Secret and confidential documents. Every party to the proceedings may request²⁰¹⁴ to exclude **secret** or **confidential** documents from those transmitted to the intervener²⁰¹⁵. Every party may, in any event, require other parties not to use its written submissions for purposes other than pursuing their own goals and thus not to **misuse** said documents²⁰¹⁶. Clear misuse occurs if a party publishes a written submission on the internet in order to generate public criticism regarding the arguments of the other parties to the proceedings²⁰¹⁷.

b) Application. aa) General. (1) Main proceedings. The parties to the proceedings – i.e. not the intervener in question – may lodge an application aiming at excluding **factual elements**²⁰¹⁸ which are either secret or otherwise confidential. Purely legal elements can never be treated as confidential unless they are based on secret and/or confidential factual elements²⁰¹⁹.

(2) Interim proceedings. If the parties and interveners in interim proceedings have not applied for a formal order regarding their application for confidential treatment, then the Judge of the interim proceedings may assess this on his own motion and create a non-confidential version of the written submissions to be notified²⁰²⁰.

bb) Contents of the application

The applicant must – with due regard to rules laid down in the Instructions to the Registrar²⁰²¹ as well as the “Practice Directions to Parties”²⁰²² – **precisely identify**²⁰²³ the documents considered secret or confidential and provide adequate **reasoning**²⁰²⁴ for them remaining confidential. This is particularly true if the application concerns a significant number of indications²⁰²⁵. It is appropriate to forward the application together with a non-confidential version of the documents²⁰²⁶. Such application may be withdrawn at any time²⁰²⁷.

²⁰¹⁴ Art. 116 (2), 2nd sentence, RP GC.

²⁰¹⁵ Consistent case law, see e.g. Case T-388/02, *Kronoply A. O. v Commission* [2008] ECR p. II-305, para. 24.

²⁰¹⁶ Case T-11/99 R, *Van Parys A. O. v Commission* [1999] ECR p. II-1355, para. 22.

²⁰¹⁷ Case T-174/95, *Svenska Journalistverbundet v Council* [1998] ECR p. II-2289, para. 135 to 137.

²⁰¹⁸ Case T-384/09, *SKW Stahl-Metallurgie Holding and Others v Commission* [2011] (not yet published in the ECR), para. 26.

²⁰¹⁹ Case T-384/09, *SKW Stahl-Metallurgie Holding and Others v Commission* [2011] (not yet published in the ECR), para. 26.

²⁰²⁰ Case T-184/01 R, *IMS Health v Commission* [2001] ECR p. II-3198, paras. 39 and 42.

²⁰²¹ Art. 6 (2) Instructions to the Registrar.

²⁰²² Paras. 85 to 92 of the “Practice Directions to Parties”.

²⁰²³ Case T-279/04, *Editions Jacob v Commission* [2007] (not published in the ECR), para. 17.

²⁰²⁴ Consistent case law, Case T-388/02, *Kronoply A. O. v Commission* [2007] (not published in the ECR), para. 25.

²⁰²⁵ Case T-266/02, *Deutsche Post v Commission* [2007] (not published in the ECR), para. 22.

²⁰²⁶ Case T-24/06, *MABB v Commission* [2007] (not published in the ECR), paras. 15 and 16.

²⁰²⁷ Case T-12/05, *TV Denmark and Kanal 5 Denmark v Commission* [2007] (not published in the ECR).

cc) Inadmissible order sought

- 11 The rules governing the procedure for an applicant to request that the Court do not explicitly provide for the ability to clearly communicate to the interveners that the documents in the case are made available to said interveners purely for the purpose of the proceedings in this case²⁰²⁸. Furthermore, it is settled case-law that when the same information is reproduced a number of times in the pleadings and a party neglects to request that each of the passages in which said information appears be treated confidentially, one may conclude that the information in question will in any event be disclosed to the interveners and thus the request concerning it will be refused, as it is ultimately pointless²⁰²⁹.
- 12 c) **Assessment of the request.** aa) **General.** The GC shall examine only those documents whose confidential or secret nature is denied²⁰³⁰. Only then it makes a balance of interests²⁰³¹, i.e. between the applicant's legitimate concern to prevent substantial damage to its business interests and the interveners' equally legitimate concern to have the necessary information in order to fully be able to assert their rights and state their case before the Community judicature²⁰³². Documents which are either not contested or which are not explicitly or precisely contested are not examined²⁰³³.

bb) Assessment

- 13 The requirement of an applicant's reasoned request for confidentiality will be assessed according to the secret or confidential nature of each of the documents and items of information. One must draw a distinction between information which is **by nature secret**, such as business secrets of a commercial, competition-related, financial, or accounting nature or **confidential**, such as purely internal information, and documents or information which may be secret or confidential, for a **reason which it is for the applicant to furnish**²⁰³⁴. Thus, the GC will only accept the secret or confidential nature of documents or information for which no reasoning other than a description of their content is given in so far as such information can be regarded as secret or confidential by its very nature²⁰³⁵.

cc) Well founded applications

- 14 The GC found that the following documents are either secret or confidential by their very nature: **correspondence between lawyers and clients and business secrets,**

²⁰²⁸ Case T-30/89, *Hilti v Commission* [1990] ECR p. II-163, para. 23.

²⁰²⁹ Case T-383/03, *Hynix v Council* [2005] ECR p. II-621, paras. 49 to 53.

²⁰³⁰ Case T-279/04, *Editions Jacob v Commission* [2007] (not published in the ECR), para. 17.

²⁰³¹ Case T-279/04, *Editions Jacob v Commission* [2007] (not published in the ECR), para. 21.

²⁰³² Case T-441/08, *ICO Services v Parliament and Council* [2009] (not published in the ECR), para. 22 and the case-law cited.

²⁰³³ Case T-384/09, *SKW Stahl-Metallurgie Holding and Others v Commission* [2011] (not yet published in the ECR), para. 18.

²⁰³⁴ Case T-421/08, *Performing Right Society v Commission* [2010] (not published in the ECR), para. 14 and the case-law cited.

²⁰³⁵ Case T-274/07, *ZhejiangHarmonic Hardware Products v Council*, not published in the ECR, para. 25.

such as the **market share**²⁰³⁶, **sales figures** and **pricing policy** in so far as it is expressed in precise figures which are normally not made public²⁰³⁷, detailed indication as to the **commercial policy** or the **competitive situation** of the applicant²⁰³⁸, **production figures** and **purchase figures/prices**, etc.²⁰³⁹

dd) Unfounded applications

The GC has rejected applications in the following cases:

15

(1) **Information not new.** An application is likely to be rejected if the applicant cannot demonstrate conclusively that data illustrated by charts which are **not new**, still allow a third party to draw conclusions about the turnover²⁰⁴⁰. The same applies to information pertaining to situations that took place **five or more years** ago²⁰⁴¹ or even older information which is thus deemed “historic”²⁰⁴². The GC only exceptionally classifies such indications as confidential if the party shows that despite their historical character these indications provide essential information about the business situation of the company concerned²⁰⁴³.

(2) **Information already in the public domain or otherwise known.** The same 16 applies where the application relates to information **already published** in the media²⁰⁴⁴. Information is neither secret nor confidential if the intervener **already knows** it because said information concerns the intervener; because that information is available to the general public or to the industry concerned; or because said information can be clearly derived from information that the intervener already legitimately knows²⁰⁴⁵.

(3) **Other.** An application also has no chance of success if it intends to circumvent 17 the President’s decision on a request for confidential treatment²⁰⁴⁶. Moreover, due to the fact that proceedings before the GC (and the CST) are adversarial and public, the applicant must expect that some of the secret or confidential documents or information he places in case files must be revealed in view of the rights of the interveners²⁰⁴⁷.

dd) Balancing of interests. (1) **Main proceedings.** In order to determine the condi- 18 tions under which one may claim confidentiality, it is necessary to determine the extent to which one may reconcile the applicant’s legitimate concern to prevent

²⁰³⁶ Joined Cases T-24/92 R and T-28/92 R, *Langnese-Schöller und Schöller Lebensmittel v Commission* [1992] ECR p. II-1713, para. 7, 17.

²⁰³⁷ Case T-89/96, *British Steel v Commission* [1997] ECR p. II-835, para. 26.

²⁰³⁸ Case T-383/03, *Hynix Semiconductor v Commission* [2005] ECR p. II-621, paras. 62 to 67.

²⁰³⁹ Case T-388/02, *Kronoply v Commission* [2007] (not published in the ECR), para. 34.

²⁰⁴⁰ Case T-289/03, *BUPA A. O. v Commission* [2005] ECR p. II-741, para. 38.

²⁰⁴¹ Case T-289/03, *BUPA A. O. v Commission* [2005] ECR p. II-741, paras. 34 and 35.

²⁰⁴² Case T-304/08, *Smurfit Kappa Group v Commission* [2010] (not published in the ECR), para. 24.

²⁰⁴³ Case T-271/03, *Deutsche Telekom v Commission* [2006] ECR p. II-1747, para. 45.

²⁰⁴⁴ Case T-289/03, *BUPA A. O. v Commission* [2005] ECR p. II-741, paras. 34, 35.

²⁰⁴⁵ Case T-383/03, *Hynix Semiconductor v Council* [2005] ECR p. II-621, paras. 54 to 60, 75, 88, 90.

²⁰⁴⁶ Case T-271/03, *Deutsche Telekom v Commission* [2006] ECR p. II-1747, para. 13.

²⁰⁴⁷ Case T-388/02, *Kronoply and Kronotex v Commission* [2007] ECR p. II-305, para. 31.

substantial damage to its business interests with the interveners' equally legitimate concern to have the proper information in order to assert their rights and state their case in Court²⁰⁴⁸. One ought to evaluate the proper balance between these two interests for each document in question. Natural or legal persons who are not parties to the dispute are also entitled to the protection of their confidential information²⁰⁴⁹.

- 19 (2) **Interim proceedings.** If the application is lodged in the context of **interim proceedings**, the GC will assess whether the information is *prima facie* secret or confidential²⁰⁵⁰. In the main proceedings the test for confidentiality is stricter.

ee) Decision

- 20 The GC may grant a request for confidentiality in whole or in part²⁰⁵¹; this decision is entirely independent of any agreement between the parties relating to the safeguarding of confidentiality²⁰⁵². Moreover, the judges may only allow parties to access the non-confidential version of a document while they assess a party's request for confidentiality, possibly in light of the arguments and objections which that party put forward²⁰⁵³. In any event, given the adversarial and public nature of the judicial proceedings, an applicant for confidential treatment must envisage the possibility that the disclosure of some of the secret or confidential documents or information which it has decided to place in the file may appear necessary for the exercise of the interveners' procedural rights²⁰⁵⁴.

III. Accepting the case as it stands (paragraph 3)

- 21 Intervenors are admitted *ex nunc*, because an intervener may not be treated as if he had been a party to the proceedings from the very beginning of the case. Thus, an intervener may not act with retroactive effect, but must instead accept the case as it stands at the moment he is admitted.

IV. Contents and limits of the intervener's written submission (paragraph 4)

1. General

- 22 Once admitted, the intervener "may", i.e. he is not obliged to²⁰⁵⁵, submit his written submission within the time-limit set²⁰⁵⁶. Should several intervenors be

²⁰⁴⁸ Case T-30/89, *Hilti v Commission* [1990] ECR p. II-163, para. 11.

²⁰⁴⁹ Case T-102/96, *Gencor v Commission* [1997] ECR p. II-879, para. 17.

²⁰⁵⁰ Case T-53/01, *Poste Italiane v Commission* [2001] ECR p. II-1479, para. 66.

²⁰⁵¹ Case T-89/96, *British Steel v Commission* (not published in the ECR) para. 20.

²⁰⁵² Case T-89/96, *Gencor v Commission* [1997] ECR p. II-879, para. 893.

²⁰⁵³ Case T-24/06, *MABB v Commission* [2007] ECR p. II-198, para. 16.

²⁰⁵⁴ Case T-421/08, *Performing Right Society v Commission* [2010] (not published in the ECR), para. 19.

²⁰⁵⁵ Joined Cases T-33/98 and T-34/98, *Petrotub and Republica v Council* [1999] ECR p. II-3837, para. 27.

²⁰⁵⁶ Which is limited to 20 pages (para. 15 of the "Practice Directions to parties").

admitted in support of a main party, they may submit a joint intervention²⁰⁵⁷. This provision, which implements Art. 40 (4) Statute ECJ, illustrates that while an intervener becomes a party to the proceedings as of his admission, he does not enjoy the same autonomy in his arguments as the supported main party does.

2. Content of the intervener's submission. a) General. The requirements in paragraph 4 a) to c) are similar to those laid down in Art. 44 (1) and 46 (1) RP GC and reflect the ancillary nature of the intervention:

b) Requests

A formal application meets the requirements of clarity, but a less formal application may suffice should the intervention be readily supported²⁰⁵⁸. The intervener can only support the requests of the respective main party, which inevitably means that he can make no other or additional material requests. For example, the intervener is not entitled to demand a fine increase if the main party has not supported this request²⁰⁵⁹.

c) Pleas in law and arguments. aa) Formal aspects. One cannot articulate a plea of illegality²⁰⁶⁰ by way of an abstract request, but must instead articulate it in a sufficiently clear and precise manner in order to allow the parties to respond and the Court to exercise its powers²⁰⁶¹. However, an intervener remains at liberty to avoid repetition by referring to another intervener's submissions which he has helped to prepare, if this submission meets the requirements of Article 116 (4), subparagraph 2 RP GC²⁰⁶². However, the intervener may not refer to future documents or those whose content he does not know²⁰⁶³.

bb) Substantive aspects. (1) No new pleas in law. The limited autonomy of each intervener is particularly apparent in the fact that he cannot put forward pleas of law which are different of those put forward by the party supported²⁰⁶⁴. Thus, the intervener may not raise a formal plea of inadmissibility if the party supported either raises no plea of inadmissibility whatsoever²⁰⁶⁵; only raises one in respect of

²⁰⁵⁷ Case T-10/93, *A v Commission* [1994] ECR p. II-179 para. 11.

²⁰⁵⁸ Joined Cases T-133/95 and T-204/95, *IECC v Commission* [1998], ECR p. II-3645, para. 51.

²⁰⁵⁹ Case T-139/98, *AAMS v Commission* [2001] ECR p. II-3413, para. 106; Joined Cases T-5/00 and T-6/00, *Nederlandse Federatieve Vereniging voor de Groothandel op Elektronisch Gebied and Technische Unie v Commission* [2003] ECR p. II-5761, para. 418.

²⁰⁶⁰ Art. 277 TFEU.

²⁰⁶¹ Case T-171/02, *Regione autonoma della Sardegna v Commission* [2005] ECR p. II-2123, para. 186.

²⁰⁶² Case T-374/00, *Verband der freien Rohrwerke A. O. v Commission* [2003] ECR p. II-2275, para. 89.

²⁰⁶³ Case T-374/00, *Verband der freien Rohrwerke A. O. v Commission* [2003] ECR p. II-2275, para. 89.

²⁰⁶⁴ Joined Cases T-371/94 and T-394/94, *British Airways A. O. and British Midlands v Commission* [1998] ECR p. II-2405, para. 72; Case T-114/02, *Babyliiss v Commission* [2003] ECR p. II-1279, para. 417.

²⁰⁶⁵ Case T-19/92, *Leclerc v Commission* [1996] ECR p. II-1851, para. 50; Case T-290/94, *Kaysersberg SA v Commission* [1997] ECR p. II-2137, para. 76.

another part of the application²⁰⁶⁶, or if the plea would be inadmissible if it were raised by the main party²⁰⁶⁷. The same applies if the supported party has withdrawn its objection of inadmissibility either before²⁰⁶⁸ or after²⁰⁶⁹ the intervener has been admitted to the proceedings. The GC may, however, assess on its own motion²⁰⁷⁰ whether the interveners meet the essentials of the proceeding, such as the *locus standi*²⁰⁷¹ or the compliance with the time-limit²⁰⁷².

- 27 (2) **Admissibility of new arguments.** On the other hand, interveners may support any plea in law of the main party by any argument of their choice, including new ones²⁰⁷³, as long as the pleas in law are not modified²⁰⁷⁴. Should this not be the case, the intervener's arguments would be limited to a mere repetition of the supported party's arguments and would thereby lack *effet utile*.

V. Statement on the intervention (paragraph 5)

- 28 Usually, the parties comment on the interveners' submission in writing²⁰⁷⁵, but depending on the stage of the procedure the GC may instead ask the parties to submit their comments at the oral hearing. De jure this provision applies to all parties, but in practice it is essentially the opposing parties which make use of this possibility.

VI. Intervenors only admitted to the oral hearing (paragraph 6)

1. Admissible

- 29 This mandatory²⁰⁷⁶ provision allows parties who failed to apply for admission as an intervener **within** the time-limit of six weeks²⁰⁷⁷ to intervene at the **oral hearing** on the basis of the non-confidential version²⁰⁷⁸ of the **Report for the Hearing**²⁰⁷⁹, if these parties' application to intervene is lodged prior²⁰⁸⁰ to the opening of the oral

²⁰⁶⁶ Case T-184/97, *BP Chemicals v Commission* [2000] ECR p. II-3145, para. 39.

²⁰⁶⁷ See, with respect to proceedings at the CST, Case F-7/07, *Angioi v Commission* [2011] (not yet published in the ECR), para. 112.

²⁰⁶⁸ Case T-140/95, *Ryanair v Commission* [1998] ECR p. II-3327, para. 22.

²⁰⁶⁹ Case T-146/01, *DLD Trading v Council* [2003] ECR p. II-6005, para. 49.

²⁰⁷⁰ Art. 113 RP GC.

²⁰⁷¹ Case T-239/94, *EISA v Commission* [1997] ECR p. II-1839, para. 26.

²⁰⁷² Case T-140/95, *Ryanair v Commission* [1998] ECR p. II-3327, para. 23.

²⁰⁷³ Joined Cases T-125/96 and T-152/96, *Boehringer v Council and Commission* [1999] ECR p. II-3427, para. 183.

²⁰⁷⁴ Case T-459/93, *Siemens v Commission* [1995] ECR p. II-1675, para. 21; T-154/96, *Chvatal A. O. v Court of Justice* [1998] ECR SC p. II-1579, para. 77.

²⁰⁷⁵ It's limited to 15 pages (para. 15 of the "Practice Directions to parties").

²⁰⁷⁶ Case T-52/00, *COE Clerici Logistics v Commission* [2002] ECR p. II-2555, para. 31.

²⁰⁷⁷ Art. 115 (1) RP GC.

²⁰⁷⁸ Case T-444/04, *France Télécom v Commission* [2008] (not published in the ECR).

²⁰⁷⁹ And therefore not on the basis of all the documents, like in the proceedings of the ECJ (Art. 129 (4) RP ECJ).

²⁰⁸⁰ As was the case in Case T-54/07, *Vtesse Networks v Commission* [2010] (not published in the ECR), para. 27.

procedure²⁰⁸¹ within the meaning of Art. 53 RP GC²⁰⁸². Art. 116 (6) does not confer any further rights²⁰⁸³ to such parties. Moreover, the applicant shall also prove a legitimate interest in the outcome of the dispute within the meaning of Article 40 (2) Statute ECJ²⁰⁸⁴.

2. Inadmissible

Thus any request lodged **after** the oral hearing is manifestly inadmissible²⁰⁸⁵. 30

CHAPTER 4

JUDGMENTS OF THE GENERAL COURT DELIVERED AFTER ITS DECISION HAS BEEN SET ASIDE AND THE CASE REFERRED BACK TO IT

Preliminary

Articles 117 to 121 do not relate to a particular legal remedy, but instead govern the GC procedure in cases in which the ECJ annuls a GC judgment, and then refers the case back to the GC.

Article 117 [Referral back to GC]

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 seized of the case by the judgment so referring it.

The ECJ may give final judgment in a case should the state of the proceedings so permit, or it may refer the case back to the GC for judgment (see Art. 61 Statute ECJ). Since an ECJ referral back to the GC automatically informs the GC concerning the case, there is no need for a new application or other measures initiating proceedings. The GC and thus the parties shall be bound by the decision of the Court of Justice on points of law (see Art. 61 (2) Statute ECJ)²⁰⁸⁶.

Article 118 [Formation of Judges]

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 composed of the same number of Judges.

²⁰⁸¹ Case T-201/04, *Microsoft v Commission* [2005] ECR p. II-1491, para. 41.

²⁰⁸² Case T-52/00, *Coe Clerici v Commission* [2002] ECR p. II-2553, para. 24 et seq.

²⁰⁸³ Case T-314/06, *Whirlpool Europe v Council* [2010] (not yet published in the ECR), para. 59.

²⁰⁸⁴ Case T-139/01, *Comafra and Dole Fresh Fruits Europe v Commission* [2002] ECR p. II-799, para. 22.

²⁰⁸⁵ Case T-45/01, *Sanders A. O. v Commission* [2007] ECR p. II-2665.

²⁰⁸⁶ Case T-236/02, *Marcuccio v Commission* [2011] (not yet published in the ECR), paras. 83 and 86.

2. Where the Court of Justice sets aside a judgment delivered or an order made by the General Court sitting in plenary session or by the Grand Chamber, the case shall be assigned to that Court or that Chamber as the case may be.

2a. 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 composed of three Judges of which that Judge is not a member.

3. In the cases provided for in paragraphs 1, 2 and 2a of this Article, Articles 13(2), 14(1) and 51 shall apply.

I. General

- 1 The parties are not entitled to a prior assignment to a particular Chamber or formation within the GC. This is exclusively determined by the GC within the limits of Art. 118 RP GC, which in general terms states that a case may never be assigned to a Chamber which is comprised of less judges than the formation of judges which adopted the initial judgment.

II. Chamber (paragraph 1)

- 2 If the ECJ sets aside and then refers a GC chamber's judgment, the case is not automatically re-assigned to the same chamber, as the principle of economy of proceedings would seem to suggest. By virtue of the discretionary power conferred by paragraph 1 of Art. 118, the President of the GC may assign the case to a different chamber.

III. Grand Chamber, Plenum (paragraph 2)

- 3 An automatic referral to the same formation occurs only in relatively rare cases in which the plenary session or the Grand Chamber has made a decision which was annulled by the appeal.

IV. Single Judge (paragraph 2a)

- 4 A mandatory assignment to a larger formation only occurs should the ECJ set aside a judgment adopted by a single judge, with the understanding that the case may be assigned to a larger formation if this is justified by the legal difficulty or the importance of the case or special circumstances.

Article 119 [Procedure after referral to the GC]

1. Where the written procedure before the General Court has been completed when the judgment referring the case back to it is delivered, the course of the procedure shall be as follows:

- (a) Within two months from the service upon him of the judgment of the Court of Justice the applicant may lodge a statement of written observations;
- (b) In the month following the communication to him of that statement, the defendant may lodge a statement of written observations. The time allowed to the defendant for lodging it may in no case be less than two months from the service upon him of the judgment of the Court of Justice;
- (c) In the month following the simultaneous communication to the intervener of the observations of the applicant and the defendant, the intervener may lodge a statement of written observations. The time allowed to the intervener for lodging it may in no case be less than two months from the service upon him of the judgment of the Court of Justice.

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

3. The General Court may, if the circumstances so justify, allow supplementary statements of written observations to be lodged.

The course of the proceedings before the GC depends on whether the written procedure prior to the referral back had already been closed, which is the rule, or if it remained open. Instead of a new simple²⁰⁸⁷ or double²⁰⁸⁸ exchange of written submissions²⁰⁸⁹, the parties may wish to refer to their written submissions made before the GC. This does not exclude their participation in the oral hearing²⁰⁹⁰.

Article 120 [Applicable provisions]

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

I. Applicable regulations

Since the proceedings before the GC are either continued²⁰⁹¹ or resumed²⁰⁹² in 1 such a situation, it is consistent to apply Art. 43 to 103, i.e. the second title of the RP

²⁰⁸⁷ Art. 119 (1) RP GC.

²⁰⁸⁸ Art. 119 (3) RP GC.

²⁰⁸⁹ Case T-331/94, *IPK München v Commission* [2001] ECR p. II-779, 790.

²⁰⁹⁰ Case T-40/94, *V v Commission* [1998] ECR p. II-1753, 1763.

²⁰⁹¹ Art. 119 (1) RP GC.

²⁰⁹² Art. 119 (2) RP GC.

GC, by analogy rather than creating a set of separate rules. Thus, after the referral back to the GC the parties may not put forward new legal pleas unless said pleas are founded upon circumstances which came to light in the course of the proceedings²⁰⁹³. Additionally, since such referral is the third step in the proceedings, an applicant might well a fact hitherto unknown to him prior to lodging the application²⁰⁹⁴.

II. Not applicable rules

- 2 In contrast to the second title, the third title, comprised of Art. 104–129 RP GC (“Special forms of procedure”) is not applicable during an ECJ referral. Thus, an application for admission as an intervener lodged for the first time after the ECJ referral to the GC is inadmissible, in contrast to those interveners who were admitted in the initial proceedings and then remained interveners in the appeals proceedings²⁰⁹⁵.

Article 121 [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.

If the ECJ sets aside the decision of the GC and gives a final ruling it will also decide on the costs. By contrast, if the case is referred back to the GC, the GC will rule on all costs relating to the proceedings²⁰⁹⁶.

CHAPTER 4A

DECISIONS OF THE GENERAL COURT GIVEN AFTER ITS DECISION HAS BEEN REVIEWED AND THE CASE REFERRED BACK TO IT

Preliminary

Art. 121 a – 121 d govern the – very rare – cases of the ECJ reviewing a judgment delivered by the GC in appeals proceedings (Art. 62–62 b Statute ECJ and Art. 191–195 RP ECJ) and then referring the matter back to the GC. There is a clear analogy between Art. 121 a – 121 d RP GC and Art. 117 to 121 RP GC governing the judgments of the GC delivered after its decision has been set aside as a result of a successful appeal and the case referred back to it.

²⁰⁹³ Art. 48 (2) RP GC.

²⁰⁹⁴ Case T-43/89 RV, *Gill v Commission* [1993] ECR p. II-303, para. 48.

²⁰⁹⁵ Art. 119 (1) c) RP GC.

²⁰⁹⁶ Case T-43/89 RV, *Gill v Commission* [1993] ECR p. II-303, 324.

Article 121a

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 seized of the case by the judgment so referring it.

This provision is analogous to Art. 117 RP GC. To date, there is only one case which was sent back to the GC²⁰⁹⁷. Such referral was necessary in order to enable the parties to be heard²⁰⁹⁸.

Article 121b

1. Where the Court of Justice refers back to the General Court a case which was originally heard by a Chamber, the President of the General Court may assign the case to another Chamber composed of the same number of Judges.

2. Where the Court of Justice refers back to the General Court a case which was originally heard by the General Court sitting in plenary session or by the Grand Chamber, the case shall be assigned to that Court or that Chamber as the case may be.

3. In the cases provided for in paragraphs 1 and 2 of this Article, Articles 13(2), 14(1) and 51(1) shall apply.

This provision is analogous to Art. 118 RP GC.

Article 121c

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 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 in an oral procedure.

A possible conclusion to be drawn from the judgment of the ECJ is that the state of the proceedings does not permit the GC to give final judgment in the matter and that it can therefore only refer the case back to the CST²⁰⁹⁹.

²⁰⁹⁷ Case C-197/09 RX, *M v EMEA* [2009] ECR p. I-12033; Case C-197/09 RX-II, *M v EMEA* [2009] ECR I-12033.

²⁰⁹⁸ Case C-197/09 RX-II, *M v EMEA* [2009] ECR p. I-12033, para. 70.

²⁰⁹⁹ Case T-12/08 P-RENV-RX, *M v EMEA* [2010] ECR p. II-3735, para. 38.

Article 121d

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 provision is equivalent to Art. 121.

CHAPTER 5

JUDGMENTS BY DEFAULT AND APPLICATIONS TO SET THEM ASIDE

Article 122 [Conditions]

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

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

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

3. A judgment by default shall be enforceable. The General Court may, however, grant a stay of execution until it has given its decision on any application under paragraph 4 of this Article 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.

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

The application to set aside the judgment must be made within one month from the date of service of the judgment and must be lodged in the form prescribed by Articles 43 and 44.

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

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

6. The General Court shall decide by way of a judgment which may not be set aside. The original of this judgment shall be annexed to the original of the judgment by default. A note of the judgment on the application to set aside shall be made in the margin of the original of the judgment by default.

Outline:

I. Introduction	1
II. Requirements (paragraph 1)	2
1. Default	2
a) Definition	2

b) Choice of submission	3
2. Application	4
a) No time-limit	4
b) Autonomous decision of the applicant	5
c) Oral hearing	6
III. Assessment by the GC (paragraph 2)	7
1. General	7
2. Appropriate formalities	8
3. Admissibility	9
4. Substance	10
a) Legal standard	10
b) Measures of inquiry	11
c) Oral hearing	12
5. Adopting a default judgment	13
IV. Enforcing a default judgment (paragraph 3)	14
V. Application to set aside a default judgment (paragraph 4)	15
1. General	15
2. Default does not rule out right to be heard	16
3. Time-limit	17
4. Contents of application	18
VI. Opinion by the other party (paragraph 5)	19
VII. Judgment (paragraph 6)	20

I. Introduction

Court decisions are generally the result of an **adversarial process**. Art. 41 Statute 1
ECJ makes an **exception**²¹⁰⁰ to this rule which is detailed in Art. 122 RP GC. This
exception, however, does not exclude an adversarial procedure, since the defendant
may apply to set aside a judgment of default and may thus be heard. In practice,
default judgments are rare, as the defendants, i.e. usually institutions and other
bodies of the EU, keep an exact calendar and thus almost always provide a defence.
In disputes concerning intellectual property rights, the provisions on the default
judgment do not apply if the conditions in Art. 134 (4) RP GC are met.

II. Requirements (paragraph 1)

1. Default. a) Definition. Any defendant who omits to hand in a “defence”, or does 2
so but fails to meet the time-limit²¹⁰¹ (which results in the submission being sent
back to him²¹⁰²) risks the applicant seeking the adoption of a default judgment²¹⁰³.

b) Choice of submission

Despite what the wording suggests, the defendant must decide whether to hand 3
in a statement of defence within the meaning of Art. 46 RP GC, which is the normal

²¹⁰⁰ See also Art. 111 RP GC.

²¹⁰¹ Case T-39/97, *T. Port v Commission* [1997] ECR p. II-2125, para. 14.

²¹⁰² Thus, the written submission is sent back to the defendant.

²¹⁰³ Case T-85/94, *Branco v Commission* [1995] ECR p. II-17, para. 19.

form of reply, or whether the application provides sufficient reasons to react by way of a plea of inadmissibility within the meaning of Art. 114 RP GC²¹⁰⁴.

- 4 **2. Application. a) No time-limit.** There is no time-limit for lodging an application for the adoption of a default judgment. If the applicant does not lodge such request on his own motion²¹⁰⁵, then the Registrar of the GC will enquire about his intentions²¹⁰⁶.

b) Autonomous decision of the applicant

- 5 In the end, the applicant alone must decide whether to apply for a default judgment; seeking such a judgment is thus not mandatory and, besides, is not always opportune. The applicant may also withdraw such an application, in which case the GC will set a new time-limit for handing in a statement of defence²¹⁰⁷. But an application for a default judgment does not prevent the GC from finding that the application has lost its object, which it may do at any time, as provided in Art. 113 and 114 (3) and (4) RP GC²¹⁰⁸.

c) Oral hearing

- 6 An oral hearing²¹⁰⁹ in such cases remains an exception.

III. Assessment by the GC (paragraph 2)

1. General

- 7 The GC does not adopt a judgment by default automatically; it is not a mechanical consequence of the defence's default followed by an application by the applicant. The GC must assess whether the application complies with the appropriate formalities and rules of admissibility and whether the application seems well founded:

2. Appropriate formalities

- 8 The GC assesses whether the application complies with the requirements laid down in Art. 43 and 44 RP GC, which may raise questions of admissibility.

²¹⁰⁴ Case T-489/04, *US Steel Kočice v Commission* [2007] (not published in the ECR), paras. 39 et seq.

²¹⁰⁵ Case T-20/00, *Camacho-Fernandez v Commission* [2000] ECR SC p. II-1149, para. 3.

²¹⁰⁶ Case T-16/89, *Herkenrath A. O. v Commission* [1992] ECR p. II-275, para. 11.

²¹⁰⁷ Case T-55/92, *Kniff v Court of Auditors* [1993] ECR p. II-823, 829.

²¹⁰⁸ Case T-39/97, *T. Port v Commission* [1997] ECR p. II-2125, para. 25.

²¹⁰⁹ Art. 122 (1), sub-para. 2, RP GC.

3. Admissibility

Next, the GC will examine the admissibility of the application on the basis of the 9 usual criteria²¹¹⁰, i.e. including those which the GC needs to assess on its own motion, as no default results in the criteria of admissibility becoming inapplicable. Sanctioning a defendant by way of a default judgment despite the fact that the application is inadmissible would unduly privilege the applicant and would thus be inequitable.

4. Substance. a) Legal standard. The wording of paragraph 2 (“whether the 10 application appears well founded”) seems to suggest that the GC applies the same legal standard to these cases as to interim proceedings, i.e. that it verifies whether the applicant has a *prima facie* case (*fumus boni juris*). This is not the case, however. The wording merely expresses that the GC has no choice but to assess the substance of the case based on a single written submission: the application. For this reason alone the GC assesses the application in greater detail than in interim proceedings²¹¹¹, with the understanding that the GC may abstain from assessing all other legal grounds if it finds that one ground is well founded²¹¹².

b) Measures of inquiry

A default procedure does not rule out measures of inquiry²¹¹³, which nevertheless 11 remain rather rare, let alone measures of organization²¹¹⁴.

c) Oral hearing

At this stage, an oral hearing is the exception²¹¹⁵, but normally the GC will hear 12 an application to set aside a default judgment²¹¹⁶.

5. Adopting a default judgment

Although a default judgment is adopted on the basis of a single written statement 13 and without an oral hearing, such a procedure does not necessarily take less time than a “normal” procedure.

²¹¹⁰ Case T-42/89, *Yorck von Wartenburg v Parliament* [1990] ECR p. II-31, 35.

²¹¹¹ Case T-56/02, *Bayrische Hypo- und Vereinsbank v Commission* [2004] ECR p. II-3495, 3538.

²¹¹² Case T-44/02, *Dresdner Bank v Commission* [2004] (not published in the ECR).

²¹¹³ Case T-20/00, *Camacho-Fernandez v Commission* [2000] ECR SC p. II-1149, para. 5.

²¹¹⁴ Case T-85/94, *Branco v Commission* [1995] ECR p. II-45, 54.

²¹¹⁵ No hearing took place in Case T-20/00, *Camacho-Fernandez v Commission* [2000] ECR SC p. II-1149, para. 6.

²¹¹⁶ In Case T-44/02, *Dresdner Bank v Commission* [2004] (not published in the ECR) the default judgment was handed down 2 years and three months after the application.

IV. Enforcing a default judgment (paragraph 3)

- 14 A default judgment may be enforced in the same way and to the same extent as an “ordinary” judgment, although the GC may suspend enforcement in the event of an application to set aside the default judgment.

V. Application to set aside a default judgment (paragraph 4)

1. General

- 15 The application to set aside a default judgment provided in Article 122 paragraph 4 is the only legal remedy which is **neither a classical legal remedy** nor an **appeal**, but rather a sort of complaint, a legal remedy²¹¹⁷ which is quite uncommon in the European judicial system.

2. Default does not rule out right to be heard

- 16 A party which is in a situation of “default” is not considered to have waived its right to defend itself and to be heard. Thus, the defendant is granted a “**second chance**”, since it may lodge an application to set aside the default judgment. This at least partially paves the way towards the contradictory procedure which did not take place due to the defence’s default. The purpose of the procedure to set aside provided for in Art. 122(4) RP GC is to allow the GC to re-examine the case on an *inter partes* basis without being bound by the outcome of the judgment by default²¹¹⁸.

3. Time-limit

- 17 The time-limit is **one month**²¹¹⁹, which represents half of the current time-limit for a statement of defence. This period may seem short at first glance, but does not affect the right of the defendant to a fair hearing as he previously had two months to comment on the action setting, even if he did make use of said right.

4. Contents of application

- 18 The content of the application is at the discretion of the defendant. As the RP GC provide no provision to the contrary, the defendant is in principle free concerning the arguments it chooses to raise, without being limited to refuting the grounds of the judgment by default. Thus, the application becomes a **de facto statement of**

²¹¹⁷ Art. 146 et seq. RP GC.

²¹¹⁸ Joined Cases T-44/02 OP, T-54/02 OP, T-56/02 OP, T-60/92 OP and T-61/02 OP, *Dresdner Bank A. O. v Commission* [2004] ECR p. II-3567, para. 43.

²¹¹⁹ Plus ten calendar days on account of distance, Art. 102 (2) RP GC.

defence. Under these specific circumstances the provision ruling out new legal pleas in the course of the proceedings (Art. 48 (2) RP GC) does not apply²¹²⁰.

VI. Opinion by the other party (paragraph 5)

The “other party”, i.e. the applicant, may subsequently submit his written 19 observations, which de facto constitutes a reply, except that the written procedure ends at that stage, i.e. without a rejoinder from the other party. This shortened written procedure is normally followed by an oral hearing²¹²¹.

VII. Judgment (paragraph 6)

The defendant may appeal against the judgment of the GC.

20

CHAPTER 6 EXCEPTIONAL REVIEW PROCEDURES

SECTION 1 – THIRD-PARTY PROCEEDINGS

Article 123 [Third-party proceedings]

1. Articles 43 and 44 shall apply to an application initiating third-party proceedings. In addition such an application shall:

- (a) specify the judgment contested;
- (b) state how that judgment is prejudicial to the rights of the third party;
- (c) indicate the reasons for which the third party was unable to take part in the original case before the General Court.

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

Where the judgment has been published in the Official Journal of the European Union, the application must be lodged within two months of the publication.

2. The General Court may, on application by the third party, order a stay of execution of the judgment. The provisions of Title III, Chapter 1, shall apply.

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

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

²¹²⁰ Joined Cases T-44/02 OP, T-54/02 OP, T-56/02 OP, T-60/92 OP and T-61/02 OP, *Dresdner Bank A. O. v Commission* [2004] ECR p. II-3567, para. 43 et seq.

²¹²¹ Case T-20/00 OP, *Commission v Camacho-Fernandez* [2003] ECR SC p. II-405, para. 24.

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

Outline:

I. Introduction	1
II. Contents of the written submission (paragraph 1)	2
1. General.....	2
2. Time-limit of two months	3
3. Procedural requirements	4
4. Requirements regarding the substance.....	5
a) Parts of the judgment contested	6
b) Reasons for non-participation.....	7
III. Stay of the execution (paragraph 2).....	8
IV. Upholding the submission (paragraph 3)	9
V. Appeal and third-party proceedings (paragraph 4).....	10

I. Introduction

1 In principle, the proper administration of justice in general and legal certainty in particular require that persons interested in the outcome of a given case, i.e. third parties, be able to articulate their interest in said case before the GC has handed down its judgment and thus decided the matter. This cannot be applied in an absolute way, however, as such absolute application would be detrimental to those persons who for **valid reasons** were prevented from intervening in the proceedings. Therefore, the legislature has created an exceptional legal remedy, the so-called **third-party proceedings**²¹²², which is subject to strict conditions²¹²³. It is only used rarely in practice.

II. Contents of the written submission (paragraph 1)

1. General

2 Unlike the two-step procedure which applies to the intervention²¹²⁴, third-party proceedings do not require any application in order for the third party in question to be admitted. Admission would be followed by the third party's written submission.

²¹²² Art. 42 Statute ECJ.
²¹²³ Case T-35/99 TO, *Ascasibar Zubizarreta A. O. v Albani and Commission* [1992] ECR p. II-1599, para. 31.
²¹²⁴ Which implies that the third party must first apply for admission as an intervener. Once admitted it may submit a written submission, Art. 115 and 116 RP GC.

2. Time-limit of two months

Within a time-limit of **two months** after the publication of the notice on the 3 judgment of the GC in the **Official Journal of the EU** (an ordre public time-limit which cannot be extended), the interested third party must lodge an application to the GC²¹²⁵.

3. Procedural requirements

As is the case with any other written submission, the application for third-party 4 proceedings must meet the general requirements laid down in Art. 43 and 44 RP GC as well as the specific requirements laid down in lit. a) to c).

4. Requirements regarding the substance

The applicant must prove that the submission's substance meets the require- 5 ments laid down in Art. 42 Statute ECJ. In particular, he needs to specify the following:

a) Parts of the judgment contested

First, the applicant needs to indicate which parts of the contested judgment affect 6 his legal interest²¹²⁶.

b) Reasons for non-participation

Next, the applicant needs to indicate the objective reasons which prevented him 7 from intervening in the main proceedings. The application must include the term "third-party proceedings".

III. Stay of the execution (paragraph 2)

No legal remedy provided by EU law has an automatic suspensive effect²¹²⁷; 8 exceptional review procedures are no exception to this rule. As in the case of an appeal against a judgment by default²¹²⁸, however, the enforcement of the contested judgment may be suspended upon application²¹²⁹.

²¹²⁵ Art. 123 (1), 2nd and 4th sub-paragraph, and Art. 124 RP GC.

²¹²⁶ Case T-284/08 TO, *Avaessian Avaki and Others v People's Mojahedin* [2009] (not published in the ECR), paras. 19 et seq.

²¹²⁷ See the exception in Art. 57 (1) Council Regulation 40/94 of 20.12.1993 on the Community trade mark and in Art. 55 (1) of Council Regulation 6/2002 on the Community design.

²¹²⁸ Art. 122 (3) RP GC.

²¹²⁹ Such application was rejected as inadmissible in Case T-3855/05 TO-R, *Portugal v Transnautica and Commission* [2010] (not published in the ECR).

IV. Upholding the submission (paragraph 3)

- 9 A successful third-party proceeding does not repeal or otherwise overturn the judgment, but amends it with respect to the contested aspect(s).

V. Appeal and third-party proceedings (paragraph 4)

- 10 In the rather rare event of third-party proceedings brought before the GC coinciding with an appeal to the ECJ regarding the very same judgment, the GC shall **suspend** the third-party application after hearing the parties, since a successful appeal before the ECJ would remove any basis for such application, should the entire judgment at first instance should be overturned. That said, the third-party applicant may request to be admitted as intervener in the appeals proceedings.

Article 124 [Chamber hearing third-party proceedings]

The application initiating third-party proceedings shall be assigned to the Chamber which delivered the judgment which is the subject of the application; if the General Court sitting in plenary session or the Grand Chamber of the General Court delivered the judgment, the application shall be assigned to it. If the judgment has been delivered by a single Judge, the application initiating third-party proceedings shall be assigned to that Judge.

If the ECJ annuls and refers a judgment back to the GC, the President of the GC may assign that case to a different Chamber of the GC²¹³⁰. However, the logic of third-party proceedings states that the matter ought to be assigned to the same judges as those who adopted the contested decision, regardless of the formation.

SECTION 2 – REVISION

Article 125 [Time-limits]

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

²¹³⁰ Art. 118 (2) RP GC.

I. Overview

1. Implementing Art. 44 Statute ECJ

Art. 125 to 128 RP GC implement the “revision” of judgments provided by 1 Art. 44 Statute ECJ.

2. Purpose of the legal remedy

It is apparent from that Art. 44 Statute ECJ that revision is not an appeal 2 procedure but an **exceptional review procedure** (such as e.g. the third-party proceedings²¹³¹) that allows an applicant to question the authority of *res judicata* attached to a final judgment and based on the GC’s findings of fact²¹³². Revision presupposes the discovery of elements of a factual nature which existed prior to the judgment but which at the time of judgment were unknown to the Court which delivered said judgment as well as to the party applying for revision and which, had the Court been able to take said facts into consideration, could have led to a different outcome in the proceedings²¹³³.

3. Conditions

Given the importance of the authority of *res judicata*, the substantive require- 3 ments laid down in Art. 44 Statute ECJ are more stringent than, for example, in the case of an application for interim relief. The latter proceedings are provisional. As a result, the authority of *res judicata* of the orders of interim relief is less absolute, as illustrated by Art. 108 RP GC.

II. Cut-off period

The authority of *res judicata* may be challenged within a cut-off period of 10 4 years from the date of the handing down of the judgment (Art. 44 (3) Statute ECJ), provided that within this time-limit the applicant proves that the conditions for a revision are fulfilled.

III. Time-limit

Within the general time period of 10 years, the applicant must apply for revision 5 within a period of **three months** from the date upon which he became aware of the

²¹³¹ Art. 123 and 124 RP GC.

²¹³² Case T-14/89 REV, *Montecatini v Commission* [1992] ECR p. II-2409, para. 10; Case T-26/89, *de Compte v Parliament* [1997] ECR SC p. I-A-305, 307.

²¹³³ Case T-367/03 REV, *Yedaş Tarım ve Otomotiv Sanayi ve Ticaret AS v Council and Commission* [2009] (not published in the ECR), para. 15 and the case-law cited.

new, pertinent fact(s) on which he bases his application. Compliance with this time-limit may prove to be difficult if the applicant bases his application on several facts, as he may not have learned of their existence at exactly the same time²¹³⁴. An application filed outside this time-limit is manifestly inadmissible²¹³⁵.

Article 126 [Contents of the application]

1. Articles 43 and 44 shall apply to an application for revision. In addition such an application shall:

- (a) specify the judgment contested;
- (b) indicate the points on which the application is based;
- (c) set out the facts on which the application is based;
- (d) indicate the nature of the evidence to show that there are facts justifying revision of the judgment, and that the time-limits laid down in Article 125 have been observed.

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

I. General

1. Procedural requirements

- 1 This provision outlines the **procedural** requirements for an application for revision, which are a blend of general rules (Art. 43 and 44 RP GC) and additional requirements found in paragraph 1 lit. a) to d).

2. Substance

- 2 The conditions relating to the substance of such application, i.e. in particular those which outline how to provide evidence for a hitherto-unknown “fact which is of such a nature as to be a decisive factor”, are laid down in Art. 44 Statute ECJ.

II. Contents of the application (paragraph 1)

- 3 The application not only needs to comply with the procedural requirements in Art. 43 and 44 RP GC²¹³⁶, but also with the more substantive requirements laid down in lit. a) to d) of Art. 126 RP GC. These elements need to be indicated in a self-explanatory way, since the GC ought not be forced to distil the hitherto-unknown facts out of the applicant’s written submissions²¹³⁷.

²¹³⁴ Case T-26/89 (125), *de Compte v Parliament* [1997] ECR SC p. I-A-305, 310.

²¹³⁵ Case T-4/89 REV, *BASF v Commission* [1992] ECR p. II-1591, 1598.

²¹³⁶ See a case of non compliance in Joined Cases T-40/07 P-REV and T-62/07 P-REV, *Carvalho v Commission* [2012] (not published in the ECR), paras. 11 et seq.

²¹³⁷ Case T-26/89 (125), *de Compte v Parliament* [1997] ECR SC p. I-A-305, 308.

III. Addressees of the application (paragraph 2)

The application needs to be made against all parties concerned in the case who 4 will thus be heard (see Art. 127 (2) RP GC), with the understanding that the applicant notifies the GC, which will then address this application to those parties.

Article 127 [Competent formation]

1. The application for revision shall be assigned to the Chamber which delivered the judgment which is the subject of the application; if the General Court sitting in plenary session or the Grand Chamber of the General Court delivered the judgment, the application shall be assigned to it. If the judgment has been delivered by a single Judge, the application for revision shall be assigned to that Judge.

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

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

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

I. Assigning the application to a formation (paragraph 1)

The application is assigned to a formation of judges according to the same logic 1 used in third-party proceedings²¹³⁸.

II. Admissibility (paragraph 2)

1. Requirements

The GC shall first assess the admissibility of the application for review²¹³⁹. The 2 applicant must not only lodge his application within the relevant time-limit²¹⁴⁰ in compliance with the relevant rules governing its form²¹⁴¹, but must also prove²¹⁴² his discovery of pre-existing elements of a factual nature which were unknown to

²¹³⁸ Art. 124 RP GC.

²¹³⁹ Case T-26/89 (125), *de Comptex v Parliament* [1997] ECR SC p. I-A-305, 307.

²¹⁴⁰ Art. 125 RP GC.

²¹⁴¹ Art. 126 RP GC.

²¹⁴² Art. 44 (1) and (2) RP GC.

the Court and to the party applying for revision at the time of judgment and which, had the Court been able to consider said facts, could have induced the Court to adopt a different determination of the proceedings²¹⁴³. It is not sufficient to request measures of inquiry in order to discover new facts²¹⁴⁴. The GC must not prejudge the merits of such a case.

2. Discovery of new facts

- 3 These include only **objective** facts, which do not include **personal opinions** or **assessments**, as these do not originate from an administration and relate to facts which could be considered as new facts within the meaning of Art. 44 Statute ECJ²¹⁴⁵. The existence, scope, or withdrawal of a lawyer's mandate in a given case is not likely to be revised by the GC, except if it is contested²¹⁴⁶.

3. Inadmissible applications

- 4 An application for revision is inadmissible if the applicant states that it has been found only after the action was brought, that a decision is inexistent if the relevant judgment of the GC is later overturned on appeal²¹⁴⁷. Similarly, such a request is inadmissible if it is based on a document which the defendant presented to GC during the oral hearing and which was subsequently distributed to all members of the Chamber as well as to opposing counsel, who commented on this document without contesting its contents during the main proceedings²¹⁴⁸.

III. Substance of the application (paragraph 3)

- 5 If the GC finds the application for revision to be admissible, it will re-examine the main proceedings and assess whether the new facts which the applicant believes justify his application would have in fact lead to a different outcome.

²¹⁴³ Case C-185/90 P-REV, *Gill v Commission* [1992] ECR p. I-993, para. 12; Case C-130/91 REV II, *ISAE/VP and Interdata v Commission* [1996] ECR p. I-65, para. 6; Case C-2/98 P, *de Compte v Parliament* [1999] ECR p. I-1787, para. 24; Case C-5/93 P, *DSM v Commission* [1999] ECR p. I-4695; Case T-8/89 REV, *DSM v Commission* [1992] ECR p. II-2399, para. 14; Case T-26/89 REV, *De Compte v Parliament* [1997] ECR SC I-A-305 and II-8476, para. 15; Case T-91/96 REV, *Council v Hankart* [1998] ECR SC p. I-A-597 and p. II-1809, para. 13.

²¹⁴⁴ Case C-5/93 P, *DSM v Commission* [1999] ECR p. I-4695.

²¹⁴⁵ Case C-2/98 P, *De Compte v Parliament* [1999] ECR p. I-1778, para. 32.

²¹⁴⁶ Case F-8/05 REV, *Fouwels A. O. v Commission* (not yet published in the ECR), paras. 45–46; Case F-45/06 REV, *De Buggenoms A. O. v Commission* [2011] (not yet published in the ECR), paras. 45–46; Case F-103/06 REV, *Saintraint v Commission* [2011] (not yet published in the ECR), paras. 45–46.

²¹⁴⁷ Case T-106/89 REC, *Norsk Hydro v Commission* [1994] ECR p. II-419, 428 et seq.

²¹⁴⁸ Case T-8/89 REV, *DSM v Commission* [1992] ECR p. II-2399, para. 14.

IV. Modifying judgment (paragraph 4)

The revised judgment is annexed to the original judgment. A revised judgment 6 may be appealed²¹⁴⁹.

Article 128 [Appeal and application for revision]

Where an appeal before the Court of Justice and an application for revision before the General Court concern the same judgment of the General Court, the General Court may, after hearing the parties, stay the proceedings until the Court of Justice has delivered its judgment.

This provision concerning revision procedures is equivalent Article 123 (4) RP GC, which applies to third-party proceedings.

SECTION 3 – INTERPRETATION OF JUDGMENTS

Article 129 [Contents of the application]

1. An application for interpretation of a judgment shall be made in accordance with Articles 43 and 44. In addition it shall specify:

- (a) the judgment in question;
- (b) the passages of which interpretation is sought.

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

2. The application for interpretation shall be assigned to the Chamber which delivered the judgment which is the subject of the application; if the General Court sitting in plenary session or the Grand Chamber of the General Court delivered the judgment, the application shall be assigned to it. If the judgment has been delivered by a single Judge, the application for interpretation shall be assigned to that Judge.

3. The General Court shall give its decision in the form of a judgment after having given the parties an opportunity to submit their observations and after hearing the Advocate General.

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

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

²¹⁴⁹ Case C-5/93, *DSM v Commission* [1999] ECR p. I-4695.

Outline:

I. Introduction	1
1. Purpose	1
2. Art. 129 RP GC complements Art. 43 Statute ECJ	2
II. Application (paragraph 1)	3
1. Persons entitled to apply	3
2. Contents of application	4
a) Requirements	4
b) Inadmissibility	5
c) Legitimate interest	6
III. Jurisdiction (paragraph 2)	7
IV. Hearing the parties (paragraph 3)	8
V. Staying the proceedings if an appeal and application for interpretation coincide (paragraph 4)	9

I. Introduction

1. Purpose

- 1 An application for interpretation of **judgments**²¹⁵⁰, which is also admissible concerning final **orders**²¹⁵¹, does not aim to quash a decision of an administration or a Court at first instance (which is a matter for an appeal), but to **clarify the meaning** of a decision of the GC²¹⁵².

2. Art. 129 RP GC complements Art. 43 Statute ECJ

- 2 Art. 129 RP GC merely defines the procedural requirements of such an application; Art. 43 Statute ECJ outlines the substantial criteria for such an application. The party applying for clarification of a judgment needs to establish both his doubts concerning the meaning or scope of a judgment as well as his “interest” in a clarification of the relevant parts of the GC’s decision.

II. Application (paragraph 1)

1. Persons entitled to apply

- 3 Everyone may not apply for an interpretation of the judgments; only those who were a **party** to the proceedings are eligible for such an application²¹⁵³. Eligible

²¹⁵⁰ Art. 43 Statute ECJ.

²¹⁵¹ Case F-1/05 INT, *Landgren v ETF* [2007] (not published in the ECR).

²¹⁵² Case C-412/92 P, *Parliament v Meskens* [1994] ECR p. II-3735, para. 35.

²¹⁵³ Case 5/55, *Assider v High Authority* [1955] ECR 263, 277; Case 24/77, *Getreidehandel v Commission* [1973] ECR p. 1599, 1602 et seq.

interveners include the **applicant**, the **defendant**, and the **interveners**²¹⁵⁴, if any, who may lodge such an application even if the main parties do not do so²¹⁵⁵.

2. Contents of application. a) Requirements. The application needs to be addressed to **all the parties** to the proceedings²¹⁵⁶. It must designate a specific element of the operative part of the judgment in conjunction with the main reasons in the judgment and must request the elimination of an **uncertainty or ambiguity**²¹⁵⁷ that may affect the meaning or the scope of that judgment, in so far as the Court was required to decide the particular case before it²¹⁵⁸.

b) Inadmissibility

An application for interpretation is thus inadmissible if it evokes issues which were **not decided** in the case concerned²¹⁵⁹; if the applicant fails to indicate which parts of the decision concerned he considers to be uncertain or ambiguous²¹⁶⁰; or if the application directly or indirectly aims at obtaining indications from the GC concerning the practical application or implementation²¹⁶¹ of the judgment or order²¹⁶² or concerning the consequences of the judgment²¹⁶³. An application which proves to be inadmissible is rejected by way of an order²¹⁶⁴.

c) Legitimate interest

The applicant must prove that he has a **direct interest** in the interpretation of the judgment and must demonstrate that he possesses no other legal remedies to gain clarity²¹⁶⁵.

III. Jurisdiction (paragraph 2)

As in the case of third-party proceedings²¹⁶⁶ or an application for review²¹⁶⁷, the formation of judges which handed down the judgment or order concerned hears the

²¹⁵⁴ Case C-245/95 P-INT, *NSK A. O. v Commission* [1999] ECR p. II-1, para. 5.

²¹⁵⁵ Joined Cases 146/85 INT and 431/85 INT, *Maindiaux A. O. v ECOSOC* [1988] ECR p. 2003, 2005.

²¹⁵⁶ Art. 129 (1) 2nd sub-para. RP GC.

²¹⁵⁷ Case C-245/95 P-INT, *NSK A. O. v Commission* [1999] ECR p.I-1, para. 15.

²¹⁵⁸ Case T-284/08 INTP, *People's Mojahedin Organization of Iran v Council* [2008] (not published in the ECR), para. 8.

²¹⁵⁹ Case T-284/08 INTP, *People's Mojahedin Organization of Iran v Council* [2008] (not published in the ECR), para. 11.

²¹⁶⁰ Case T-284/08 INTP, *People's Mojahedin Organization of Iran v Council* [2008] (not published in the ECR), para. 10.

²¹⁶¹ Art. 266 TFEU.

²¹⁶² Case T-284/08 INTP, *People's Mojahedin Organization of Iran v Council* [2008] (not published in the ECR), para. 12.

²¹⁶³ Case T-573/93, *Montoya v Commission* [1997] ECR SC p. I-A-271, 274; Case F-1/05 INT, *Landgren v ETF* [2007] (not published in the ECR), para. 8.

²¹⁶⁴ Case T-22/91 INT, *Raiola-Denti A. O. v Council* [1993] ECR p. II-817, para. 11.

²¹⁶⁵ Case 5/55, *Assider v High Authority* [1955] ECR p. 263, 275.

²¹⁶⁶ Art. 124 RP GC.

²¹⁶⁷ Art. 127 (1) RP GC.

application. The judge hearing interim proceedings must not therefore determine how the operative part of a ruling of the GC is to be interpreted²¹⁶⁸.

IV. Hearing the parties (paragraph 3)

- 8 Since an interpretation of a judgment is a definitive decision, it must be the subject of an adversarial process.

V. Staying the proceedings if an appeal and application for interpretation coincide (paragraph 4)

- 9 According to this principle, which also applies to third-party proceedings²¹⁶⁹ and requests for review²¹⁷⁰, the GC may stay an application for interpretation if the judgment concerned is subject to an appeal before the ECJ.

TITLE IV PROCEEDINGS RELATING TO INTELLECTUAL PROPERTY RIGHTS

Preliminary

1. Jurisdiction

- 1 The GC's jurisdiction extends to proceedings in the field of **Community trademarks**²¹⁷¹, to the field of **Community design**²¹⁷², as well as to **Community plant variety protection**²¹⁷³. "Proceedings" means direct applications within the meaning of Art. 263 TFEU and do not include any referrals for preliminary rulings in the area of intellectual property rights.

2. Procedural rules

- 2 The relevant regulations do not lay down the procedural rules²¹⁷⁴; rather, the RP GC centralizes these rules, in particular in Articles 130 to 136 thereof²¹⁷⁵. This is the first and so far only time that one has formed a **separate title** in the RP GC to take

²¹⁶⁸ Case T-11/00 R, *Hautem v EIB* [2001] ECR SC p. II-301, para. 11.

²¹⁶⁹ Art. 123 (4) RP GC.

²¹⁷⁰ Art. 128 RP GC.

²¹⁷¹ Art. 63 of Council Regulation 40/94 of 20.12.1993 on the Community trade mark, OJEU L 11 of 14.1.1994, p. 1.

²¹⁷² Council Regulation 6/2002 of 12.12.2001 on Community designs, OJEU L 3 of 5.1.2003, p. 1.

²¹⁷³ Art. 73 of Council Regulation 2100/94 of 27.7.1994 on Community plant variety rights, OJEU L 227 of 1.9.1994, p. 1.

²¹⁷⁴ Case C-24/05 P, *Storck v OHIM* [2006] ECR II-5677, para. 48.

²¹⁷⁵ See also para. 15 and paras. 34 to 41 of the "Practice Directions to Parties".

account of the specificities of a legal area. These rules reflect the fact that intellectual property rights proceedings are **disputes between private parties**, rather than contentious matters of an administrative nature, since in intellectual property cases the defendant, i.e. the relevant office, has no personal interest in the outcome of the case.

3. Statistics

The number of applications in this area has dramatically risen from **34 in 2000** to **219 in 2011**. The **average duration** of the proceedings was **20.3 months** in 2011.

4. Specialized Tribunal?

Both this exponential increase in case load and the specificity of this legal area **4** have triggered a debate on whether one ought to create a **specialized Tribunal** like the CST for personnel matters.

5. No specific ECR

Although they concern a specific legal area, intellectual property rulings are not **5** published in a separate ECR, unlike e.g. judgments in staff matters during the time of the GC's jurisdiction.

Article 130 [Procedural rules]

1. Subject to the special provisions of this Title, the provisions of these Rules of Procedure shall apply to proceedings brought against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) and against the Community Plant Variety Office (both hereinafter referred to as 'the Office'), and concerning the application of the rules relating to an intellectual property regime.

2. The provisions of this Title shall not apply to actions brought directly against the Office without prior proceedings before a Board of Appeal.

I. Applicable provisions (paragraph 1)

Paragraph 1 provides that all²¹⁷⁶ RP GC provisions also apply to intellectual **1** property rights proceedings, unless Art. 130 to 136 RP GC provide a specific exception to this rule. The most relevant of these general rules are the provisions governing the contents of applications (Art. 44)²¹⁷⁷; those governing the joining of cases (Art. 50)²¹⁷⁸; and those pertaining to the adoption of measures of organization (Art. 64)²¹⁷⁹.

²¹⁷⁶ Thus not just some of its titles, such as provided e.g. by Art. 120 RP GC.

²¹⁷⁷ Case T-24/00, *Sunrider v OHIM* [2001] ECR p. II-449, 456.

²¹⁷⁸ Joined Cases T-357/99 and T-358/99, *Telefon & Buch Verlag v OHIM* [2001] ECR p. II-1705.

²¹⁷⁹ Case T-19/99, *DKV v OHIM* [2001] ECR p. II-1, 7.

II. Exception (paragraph 2)

- 2 The provisions of Title 4 shall only apply if the application was preceded by proceedings before the Board of Appeal²¹⁸⁰. In contrast to most if not all other administrative complaint proceedings, an application directed against the examiners' decisions have a **suspensive effect**²¹⁸¹, which continues to apply during subsequent contentious proceedings at the GC until the judgment in question has become definitive²¹⁸². Thus, there is no room for interim proceedings in intellectual property law.

Article 131 [Language of the proceedings]

1. The application shall be drafted in one of the languages described in Article 35(1), according to the applicant's choice.

2. The language in which the application is drafted shall become the language of the case if the applicant was the only party to the proceedings before the Board of Appeal or if another party to those proceedings does not object to this within a period laid down for that purpose by the Registrar after the application has been lodged.

If, within that period, the parties to the proceedings before the Board of Appeal inform the Registrar of their agreement on the choice, as the language of the case, of one of the languages referred to in Article 35(1), that language shall become the language of the case before the General Court.

In the event of an objection to the choice of the language of the case made by the applicant within the period referred to above and in the absence of an agreement on the matter between the parties to the proceedings before the Board of Appeal, the language in which the application for registration in question was filed at the Office shall become the language of the case. If, however, on a reasoned request by any party and after hearing the other parties, the President finds that the use of that language would not enable all parties to the proceedings before the Board of Appeal to follow the proceedings and defend their interests and that only the use of another language from among those mentioned in Article 35(1) makes it possible to remedy that situation, he may designate that other language as the language of the case; the President may refer the matter to the General Court.

3. In the pleadings and other documents addressed to the General Court and during the oral procedure, the applicant may use the language chosen by him in accordance with paragraph 1 and each of the other parties may use a language chosen by that party from those mentioned in Article 35(1).

²¹⁸⁰ Art. 63 of Council Regulation 40/94 of 20.12.1993 on the Community trade mark.

²¹⁸¹ Art. 57 (1) of Council Regulation 40/94 of 20.12.1993 on the Community trade mark; Art. 55 (1) of Council Regulation 6/2002 of 12.12.2001 on Community designs.

²¹⁸² Art. 62 (3) of Council Regulation 40/94 of 20.12.1993 on the Community trade mark; Art. 60 (3) of Council Regulation 6/2002 of 12.12.2001 on Community designs.

4. If, by virtue of paragraph 2, a language other than that in which the application is drafted becomes the language of the case, the Registrar shall cause the application to be translated into the language of the case.

Each party shall be required, within a reasonable period to be prescribed for that purpose by the Registrar, to produce a translation into the language of the case of the pleadings or documents other than the application that are lodged by that party in a language other than the language of the case pursuant to paragraph 3. The party producing the translation, which shall be authentic within the meaning of Article 37, shall certify its accuracy. If the translation is not produced within the period prescribed, the pleading or the procedural document in question shall be removed from the file.

The Registrar shall cause everything said during the oral procedure to be translated into the language of the case and, at the request of any party, into the language used by that party in accordance with paragraph 3.

Outline:

I. Overview.....	1
II. Language of application (paragraph 1)	2
III. Language of the case (paragraph 2)	3
1. Not automatically determined by the language of the application.....	3
2. Objection to the choice of the language of the case.....	4
IV. Other steps of the proceedings (paragraph 3)	5
V. Translation preserving the language of the proceedings (paragraph 4) .	6

I. Overview

The special rules in Art. 131 RP GC regarding the language of the proceedings 1 supplement the general rules in Art. 35 RP GC and reflect the linguistic specificities of procedures in the field of intellectual property rights, especially concerning the principle of equality of arms. The GC has declared this – complex – provision as proportionate²¹⁸³.

II. Language of application (paragraph 1)

The applicant may draft his application in one of the official EU languages and is 2 thus not obliged to opt for one of the five working languages of the OHIM. Nevertheless, his choice does not automatically determine the language of the case, unlike what is provided in Art. 35 (2) RP GC.

²¹⁸³ Case T-120/99, *Kik v OHIM* [2001] ECR p. II-2235, 2261.

III. Language of the case (paragraph 2)

1. Not automatically determined by the language of the application

- 3 The language in which the application is drafted does not automatically become the language of the case, in order to reflect the **interests** of any **other parties** to the proceedings before the Board of Appeal. Thus, the applicant **freely** chooses the language of the case only if no other party's linguistic interests need to be protected; if no one else was involved in the proceedings before the Board of Appeal²¹⁸⁴; or if all parties have agreed on a common procedural language²¹⁸⁵.

2. Objection to the choice of the language of the case

- 4 Other parties' and interveners²¹⁸⁶ right to **object** to the applicant's choice of language within certain limits²¹⁸⁷ does not provide them with a right to choose the language of the case. In such cases, as a **rule**, the language in which the application for registration was filed to the Office becomes the language of the case. **Exceptionally**, the President may deviate from this rule at the reasoned request of a party in order to prevent interference with the rights of defence.

IV. Other steps of the proceedings (paragraph 3)

- 5 Like other written and oral proceedings, this provision is a rather flexible solution, as each party may use the official language of its choice, which may subsequently be translated into the language of the proceedings as regulated in paragraph 4.

V. Translation preserving the language of the proceedings (paragraph 4)

- 6 This rule is based on the idea that the **applicant** should not be penalized if, according to paragraph 2, a different official language than the one in which he drafts his application becomes the language of the proceedings. In such a case, the GC's language service will translate the application. On the other hand, **any other party** must fund translation of its pleadings into the official language of the case itself if it makes use of the protection granted by paragraph 3.

²¹⁸⁴ Art. 131 (2) sub-para. 1, 1st alternative, RP GC.

²¹⁸⁵ Art. 131 (2), sub-para. 2, RP GC.

²¹⁸⁶ Case T-356/02, *Vitakraft-Werke Wührmann v OHIM* [2004] ECR p. II-3445, para. 13.

²¹⁸⁷ Art. 131 (2) sub-para. 1, RP GC.

Article 132 [Additional indications in the application]

1. Without prejudice to Article 44, the application shall contain the names of all the parties to the proceedings before the Board of Appeal and the addresses which they had given for the purposes of the notifications to be effected in the course of those proceedings.

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.

2. If the application does not comply with paragraph 1, Article 44(6) shall apply.

I. Application (paragraph 1)**1. Art. 44 RP GC**

By virtue of Art. 130 (1) and Art. 132(1) RP GC, the central provision determining the contents of an application, i.e. Art. 44 RP GC, also applies to intellectual property rights proceedings. Thus, the parties need to pay attention to the following aspects, as with any other application:

a) Annexes

As in any other area of law, the text of the application may refer to **annexes**.² Unlike the number of pages in an application, the number of annexes is not limited. Nevertheless, the applicant may not make general references to other documents in order to compensate for an absence of essential arguments in law which must be included in the application itself²¹⁸⁸. The GC is not to substitute itself for the parties by searching for relevant pleas and arguments in the annexes and determining which ones are possibly relevant²¹⁸⁹. Nor shall the annexes to an application include documents which have not been presented during the **administrative procedure**²¹⁹⁰, unless those documents are not strictly evidence but relate to OHIM's usual practice in reaching decisions or which detail national case law to which, even after the procedure before OHIM is complete, a party has the right to refer²¹⁹¹.

b) Form of order sought

General principles apply to the content of the form of order sought; i.e. the GC³ may not address injunctions to institutions, and thus may also not address such injunctions to the OHIM. Pursuant to Art. 63 (6) of Regulation No 40/94, the OHIM needs to draw its own conclusions from the operative part and the reasoning of the judgments²¹⁹².

²¹⁸⁸ Case T-270/02, *MLP Finanzdienstleistungen v OHIM* [2004] ECR p. II-2837, para. 16.

²¹⁸⁹ Case T-169/03, *Sergio Rossi v OHIM* [2005] ECR p. II-685, paras.30. 31.

²¹⁹⁰ Case T-396/04, *Soffass v OHIM*, [2005] ECR p. II-4789, para. 41.

²¹⁹¹ Case T-346/04, *Sadas v OHIM* [2005] ECR p. II-4891, paras. 19–20.

²¹⁹² Case T-322/03, *Telefon & Buch Verlagsgesellschaft mbH v OHIM* [2006] ECR p. II-835, paras. 22 and 23.

2. Specific requirements

- 4 The plaintiff shall not only, as provided in Art. 44 (1) lit. b), designate the party against whom the application is made, but shall also indicate the names and addresses of service of all the parties to the proceedings before the Board of Appeal²¹⁹³. The obligation in paragraph 2, which requires that the applicant annex the contested decision of the Board of Appeal to the application, merely echoes Art. 44 (4) RP GC.

II. Rectification (paragraph 2)

- 5 If an application fails to meet the requirements laid down in paragraph 1, the Registrar will request the applicant to comply with these requirements as provided in Art. 44 (6) RP GC²¹⁹⁴.

Article 133 [Service of the application]

1. The Registrar shall inform the Office and all the parties to the proceedings before the Board of Appeal of the lodging of the application. He shall arrange for service of the application after determining the language of the case in accordance with Article 131(2).

2. The application shall be served on the Office, as defendant, and on the parties to the proceedings before the Board of Appeal other than the applicant. Service shall be effected in the language of the case.

Service of the application on a party to the proceedings before the Board of Appeal shall be effected by registered post with a form of acknowledgment 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.

3. Once the application has been served, the Office shall forward to the General Court the file relating to the proceedings before the Board of Appeal.

I. General

- 1 The modalities of notification of the application in this provision go beyond the general provisions found in Art. 45 RP GC.

II. Information of the lodging of the application (paragraph 1)

- 2 This provision, like Art. 131 RP GC, reflects the fact that proceedings concerning intellectual property rights may concern more persons than just the applicant and

²¹⁹³ Paras. 34 to 41 of the “Practice Directions to Parties”.

²¹⁹⁴ Para. 62 of the “Practice Directions to Parties”.

the defendant. Accordingly, not only the OHIM or Plant Variety Office shall be informed of the filing of the application, but also those parties which were involved in the proceedings before the Board of Appeal.

III. Notification of the application (paragraph 2)

1. Defendant

The respective office, i.e. the OHIM or Plant Variety Office, is always the 3 defendant in such cases regardless of whether the proceedings which took place before the Board of Appeal involved other parties than the applicant (procedure “inter partes”) or whether they remained between the applicant and the respective office (procedure “ex parte”).

2. Other parties

Furthermore, the application is served on the other parties to the proceedings 4 before the Board of Appeal. These parties normally do not, however, obtain the status of another defendant, but may possibly be considered **interveners**, while enjoying farther-reaching procedural rights than “classical” interveners.

IV. Forwarding the files (paragraph 3)

It is within the logic of the procedure that the defendant will forward the entire 5 files of the proceedings before the Board of Appeal to the GC, as this enables the Judge to verify whether the subject matter is being modified before the GC²¹⁹⁵.

Article 134 [Intervention]

1. The parties to the proceedings before the Board of Appeal other than the applicant may participate, as interveners, in the proceedings before the General Court by responding to the application in the manner and within the period prescribed.

2. The interveners referred to in paragraph 1 shall have the same procedural rights as the main parties.

They may support the form of order sought by a main party and they 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.

3. An intervener, as referred to in paragraph 1, may, in his response lodged in accordance with Article 135(1), seek an order annulling or altering the decision of the Board of Appeal on a point not raised in the application and put forward pleas in law not raised in the application.

²¹⁹⁵ Art. 135 (4) RP GC.

Such submissions seeking orders or putting forward pleas in law in the intervenor's response shall cease to have effect should the applicant discontinue the proceedings.

4. In derogation from Article 122, the default procedure shall not apply where an intervenor, as referred to in paragraph 1 of this Article, has responded to the application in the manner and within the period prescribed.

Outline:

I. "Born" interveners (paragraph 1)	1
1. Parties to the proceedings before the Board of Appeal.....	1
2. Substitution of interveners	2
3. Third parties	3
II. Autonomy of the interveners (paragraph 2)	4
III. Contents of the statement of defence (paragraph 3)	5
IV. Restriction of default procedure (paragraph 4)	6

I. "Born" interveners (paragraph 1)

1. Parties to the proceedings before the Board of Appeal

- 1 In contrast to the classic rules governing an intervention²¹⁹⁶, a party to the proceedings before the Board of Appeal²¹⁹⁷ who wishes to intervene in a given Court case does not need to apply for admission as an intervenor, nor does it need to demonstrate a legitimate interest²¹⁹⁸. This is why the GC notifies application to such parties on its own motion²¹⁹⁹. However, if such a party does not submit written pleadings and subsequently informs the GC that it will not appear at the oral hearing, such party is not an intervenor in the proceedings before the GC²²⁰⁰.

2. Substitution of interveners

- 2 Where an intellectual property right at issue in a dispute is transferred to a new owner, the new owner of that right may be authorized by order to substitute itself for the original right holder in the proceedings before the GC, should the former right holder have no objection and the Court, having heard the other parties to the action, consider it appropriate²²⁰¹. In the absence of any provisions in the Statute and the RP expressly governing the substitution of one party for another, the

²¹⁹⁶ Art. 115 et seq. RP GC.

²¹⁹⁷ Except for the applicant who cannot cumulate the status of applicant and intervenor, see Art. 134 (1) RP GC.

²¹⁹⁸ Case T-10/03, *Koubi v OHIM* [2004] ECR p. II-719, para. 33.

²¹⁹⁹ Art. 133 (2) RP GC.

²²⁰⁰ Joined Cases T-160/02 and T-162/02, *Naipes Heraclio Fournier v OHIM* [2005] ECR p. II-1643, para. 11.

²²⁰¹ Case T-361/08 *Peek & Cloppenburg and van Graaf v OHIM*, (not published in the ECR), para. 8 and the case-law cited.

procedural provisions laid down in Articles 115 and 116 of the RP GC apply by analogy²²⁰².

3. Third parties

Moreover, Art. 40 Statute ECJ and Art. 115, 116 RP GC may authorize all 3 previously uninvolved persons claiming a legitimate interest in the outcome of the case²²⁰³. The application of the new right-holder seeking to replace the former owner him must be lodged within the time-limit laid down in Art. 115(1) RP GC and, *mutatis mutandis*, meet the formal requirements arising under Art. 115 (2)²²⁰⁴.

II. Autonomy of the interveners (paragraph 2)

A further fundamental difference to the classical rules of intervention²²⁰⁵ arises 4 from the fact that those parties intervening in the proceedings before the Board of Appeal act independently of the supported parties²²⁰⁶. Consequently, they may choose whether to support the claims of the main party or to make motions and put forward legal pleas independently of the parties²²⁰⁷. That said, there may of course be no contradiction between these parties' pleas in law (Art. 134 (2) RP GC) and the claims they seek (Article 134 (3) RP GC)²²⁰⁸.

III. Contents of the statement of defence (paragraph 3)

This rule is a further illustration of interveners' high degree of autonomy in these 5 cases, as the interveners may make use of the opportunity Article 134 (3) RP GC affords them in order to use their responses to seek a form of order altering the decision of the Board of Appeal on a point not raised in the main party's application²²⁰⁹. Since this is to be regarded as an exception, this rule cannot be extended to the Office or Plant Variety Office, which has the status of the defendant²²¹⁰.

IV. Restriction of default procedure (paragraph 4)

This rule is the logical consequence of the fact that the interveners are, in this 6 case, essentially equal to the main parties, so that an intervener's statement of

²²⁰² Case T-527/10, *Google v OHIM* [not yet published in the ECR], para. 12.

²²⁰³ Case T-94/02, *Hugo Boss v OHIM* [2004] ECR p. II-813, para. 14.

²²⁰⁴ Case T-94/02, *Hugo Boss v OHIM* [2004] ECR p. II-813, para. 28.

²²⁰⁵ Art. 115 and Art. 116 RP GC.

²²⁰⁶ Case T-57/03, *SPAG v OHIM* [2005] ECR p. II-287, para. 23.

²²⁰⁷ Case T-373/03, *Solo Italia v OHIM* [2005] ECR p. II-1881, para. 17.

²²⁰⁸ Joined Cases T-53/04 to T-56/04, T-56/04 and T-59/04, *Budějovický Budvar, národní podnik v OHIM* [2007] ECR p. II-57, para. 206.

²²⁰⁹ Case T-214/04, *The Royal County of Berkshire Polo Club v OHIM* [2006] ECR p. II-239, para. 50.

²²¹⁰ Case T-110/01, *Vedial v OHIM* [2002] ECR p. II-5275, para. 22.

defence which has been submitted in the appropriate form and within the relevant time-limit excludes a default procedure even if the defendant did not submit a form-fitting and timely statement of defence.

Article 135 [Statement of defence, reply and rejoinder]

1. The Office and the parties to the proceedings before the Board of Appeal other than the applicant shall lodge their responses to the application within a period of two months from the service of the application.

Article 46 shall apply to the responses.

2. The application and the responses may be supplemented by replies and rejoinders by the parties, including the interveners referred to in Article 134(1), where the President, on a reasoned application made within two weeks of service of the responses or replies, considers such further pleading necessary and allows it in order to enable the party concerned to put forward its point of view.

The President shall prescribe the period within which such pleadings are to be submitted.

3. Without prejudice to the foregoing, in the cases referred to in Article 134(3), the other parties may, within a period of two months of service upon them of the response, submit a pleading confined to responding to the form of order sought and the pleas in law submitted for the first time in the response of an intervener. That period may be extended by the President on a reasoned application from the party concerned.

4. The parties' pleadings may not change the subject-matter of the proceedings before the Board of Appeal.

Outline:

I. Statement of defence (paragraph 1)	1
1. Time-limit	1
2. Contents	2
a) Normal requirements	2
b) References to annexes	3
c) The defendant	4
II. Reply and rejoinder (paragraph 2)	5
III. Limited reply (paragraph 3)	6
IV No change of the subject-matter (paragraph 4)	7
1. General	7
2. New documents	8
3. New pleas sought	9
4. Exception	10

I. Statement of defence (paragraph 1)

1. Time-limit

- 1 From the very beginning, when this chapter on intellectual property rights was added to the RP GC, defendants and intervening parties in intellectual property

litigation were given a time-limit of **two months** in order to hand in written submissions²²¹¹, while the “normal” rule in Art. 46 (2) RP GC provided for a period of **one month**. This rule was not extended to **two months** until 2005. Art. 101 and 102 RP GC apply to this time-limit²²¹².

2. Contents. a) Normal requirements. A statement of defence needs to be in accordance²²¹³ with the requirements laid down in Art. 44 and Art. 46 RP GC²²¹⁴, which means that said statement must contain factual and legal reasoning²²¹⁵.

b) References to annexes

Although one can support and complete specific points in the text of the statement of defence (the same is true for an application) by referring to specific passages in the annexes, a general reference to other documents cannot compensate for a lack of essential elements of legal arguments which, under the provisions mentioned above, must be included in the defence itself²²¹⁶.

c) The defendant

While OHIM does not have the requisite capacity to bring an action against a decision of a Board of Appeal, it cannot be required to systematically defend every contested Board of Appeal decision or to automatically claim that every action challenging such a decision should be dismissed. Nothing prevents OHIM from endorsing an applicant’s claim or from simply leaving its decision to the Court’s while putting forward all the arguments that OHIM considers appropriate for giving guidance to the Court. On the other hand, it may not seek an order annulling or altering the decision of the Board of Appeal on a point not raised in the application, nor may it put forward pleas in law not raised in the application²²¹⁷.

II. Reply and rejoinder (paragraph 2)

This provision²²¹⁸ is less strict than the general rule in Art. 47 (1) RP GC, but such applications nevertheless remain quite often²²¹⁹ unsuccessful²²²⁰. The GC tends to justify the decision to end a case before reply and rejoinder by noting that one needs not undertake a further exchange of pleadings since the applicant would be able to

²²¹¹ See a case of missed time-limit in T-158/05, *Trek Bicycle v OHIM* [2007] ECR p. II-49, para. 15.

²²¹² Case T-143/11, *Consorzio vino Chianti Classico v OHIM* [2011] paras. 8 et seq.

²²¹³ Paras. 38–41 of the “Practice Directions to the Parties”.

²²¹⁴ Joined Cases T-350/04 and T-352/04, *Bitburger Brauerei v OHIM* [2006] ECR p. II-4255, paras. 34 et seq.

²²¹⁵ Case T-242/02, *The Sunrider Corp. v OHIM* [2005] ECR p. II-2793, para. 12.

²²¹⁶ Case T-115/02, *AVEX v OHIM* [2004] ECR p. II-2907, para. 11.

²²¹⁷ Case T-191/04, *MIP v OHIM* [2006] ECR p. II-2855, para. 14 and the case-law cited.

²²¹⁸ See also paras. 95 and 96 of the “Practice Directions to Parties”.

²²¹⁹ Case T-164/03, *Ampafrance v OHIM* [2005] ECR p. II-1404, para. 15; Case T-344/03, *Saiwa v OHIM* [2006] ECR p. II-1097, para. 11; Case T-172/05, *Armaceil v OHIM* [2006] ECR p. II-4061, para. 13.

²²²⁰ Case T-158/05, *Trek Bicycle v OHIM* [2007] ECR p. II-49, para. 16.

develop its pleas and arguments and reply to OHIM's response during the oral procedure. An application for reply and rejoinder has the best chance of success if the GC has a need for clarification. A reply submitted without a prior application for such reply is normally not added to the file, i.e. sent back to the party.

III. Limited reply (paragraph 3)

- 6 This provision reflects the rights which Art. 134 (3) grants to interveners.

IV No change of the subject-matter (paragraph 4)

1. General

- 7 The purpose of lodging an application at the GC is to verify the legality of a decision of the Board of Appeal within the meaning of Art. 63 of Regulation No 40/94. Thus, under Art. 135(4) RP GC, the parties' pleadings may not change the subject-matter of the proceedings before the Board of Appeal²²²¹.

2. New documents

- 8 Documents which are annexed to e.g. the applicant's application and reply and the intervener's statement in intervention (such as elements of evidence) which were not submitted to the Board of Appeal cannot be considered, because the purpose of actions before the GC is to review the legality of decisions of the Boards of Appeal of OHIM according to Article 63 of Regulation No 40/94.

3. New pleas sought

- 9 Pleas before the GC which were not assessed before the Board of Appeal are equally inadmissible. However, an only partial annulment of the contested decision is not in breach of Art. 135 (4) RP GC.

4. Exception

- 10 Facts pleaded before the Court without previously being brought before the departments of OHIM can affect the legality of such a decision only if OHIM took said facts into account on its own motion. The concluding words of Article 74(1) states that in proceedings relating to relative grounds for refusal of registration, OHIM must restrict its examination to the facts, evidence, and arguments which the parties provide as well as to the relief sought. Furthermore, OHIM is not required to

²²²¹ Case T-173/00 *KWS Saat v OHIM* [2002] ECR II-3843, para. 13.

consider on its own motion facts which the parties have not put forward. Therefore, such facts cannot affect the legality of a decision of the Board of Appeal²²²².

Article 135a [Ruling without oral procedure]

After the submission of pleadings as provided for in Article 135(1) and, if applicable, Article 135(2) and (3), the General Court, acting upon a report of the Judge-Rapporteur and after hearing the Advocate General and the parties, may decide to rule on the action without an oral procedure unless one of the parties submits an application setting out the reasons for which he wishes to be heard. The application shall be submitted within a period of one month from notification to the party of closure of the written procedure. That period may be extended by the President.

In a number of special circumstances (see e.g. Art. 113 RP GC), the GC may decide a case without an oral procedure and with no possibility for the parties to request such an oral procedure. By contrast, the newly inserted Art. 135 a forms part of those provisions (see also the analogous provision of Art. 146 RP GC regarding oral procedures in appeals) in which the parties may submit an application for an oral hearing²²²³.

Article 136 [Costs]

1. Where an action against a decision of a Board of Appeal is successful, the General Court may order the Office to bear only its own costs.

2. Costs necessarily incurred by the parties for the purposes of the proceedings before the Board of Appeal and costs incurred for the purposes of the production, prescribed by the second subparagraph of Article 131(4), of translations of pleadings or other documents into the language of the case shall be regarded as recoverable costs.

In the event of inaccurate translations being produced, the second subparagraph of Article 87(3) shall apply.

I. Costs of the Office (paragraph 1)

The defendant is privileged since it does not automatically bear all costs of the 1 proceedings in the event the applicant wins the case, but only bears its own costs. The fact that intellectual property rights proceedings are normally disputes between private parties justifies this derogation from the normal rules on costs. Apart from this exception, the classic cost provisions apply²²²⁴.

²²²² Case T-269/02, *PepsiCO v OHIM* [2005] ECR II-1341, para. 35.

²²²³ See paras. 99 to 100 of the “Practice Directions to Parties”.

²²²⁴ Art. 87 RP GC.

II. Recoverable costs (paragraph 2)

1. Translations

- 2 This rule provides that despite the normal rules, the costs for **translations** within the meaning of Art. 131 (4) sub-paragraph 2 RP GC are always recoverable expenses.

2. Appeal

The same applies to the costs of the appeal, as opposed to the costs of opposition proceedings²²²⁵ or of an action for annulment²²²⁶.

TITLE V
APPEALS AGAINST DECISIONS OF THE EUROPEAN UNION CIVIL
SERVICE TRIBUNAL

Preliminary

Outline:

1. Introduction	1
a) Relevance	1
b) Legal framework.....	2
c) Costs.....	3
2. Admissibility.....	4
a) General rules	4
b) Specific rules	5
3. The substance	7
4. Number of appeals	8

- 1 **1. Introduction. a) Relevance.** While appeals to the GC play a relatively minor role on the whole since they are limited to CST decisions²²²⁷, there were, on average, 32 appeals annually between 2007 and 2011, with a peak of **44 new appeals** in 2011²²²⁸. Out of the 30 appeals heard in 2011, 23 were dismissed. The average duration (in months) of appeals proceedings at the GC was **18.3** in 2011, up from 16.6 in 2010 and 16.1 in both 2009 and 2008.

b) Legal framework

- 2 Primary law which outlines this appeals procedure includes **Arts. 9 to 13** of Annex I of the Statute ECJ, which are essentially identical to the rules governing

²²²⁵ Case T-22/04, *Reemark v OHIM* [2005] ECR p. II-1559.
²²²⁶ Case T-373/03, *Solo Italia v OHIM* [2005] ECR p. II-1881, para. 24.
²²²⁷ Which to date is the only specialized Court.
²²²⁸ In 2011, there were 159 new cases at the CST, up from 139 in 2010 and 113 in 2009.

appeals before the ECJ, i.e. Art. 55 to 61 Statute ECJ. At the secondary level Art. 136 a to 149 RP GC²²²⁹ govern appeals to the GC. These articles reproduce, in essence, but not with the same degree of detail, in particular as regards the counter-appeal the wording of Art. 167 to 190 RP ECJ. Thus, since these rules are identical and bearing in mind the possibility of a revision in case a decision of the GC on appeal bears a “*serious risk of the unity or consistency of Union law being affected*”, the GC’s case law regarding the procedural requirements of appeals against decisions of the CST is, to date, in line with the case-law of the ECJ. Consequently, the parties should take account of this book’s comments regarding Art. 55 to 61 Statute ECJ, Art. 9 to 13 of Annex I of the Statute ECJ and Art. 167 to 190 RP ECJ, which are complemented below.

c) Costs

The one major difference between appeals before the ECJ and appeals before the GC relates to the rule on costs in Article 148 RP GC, which differs from Article 184 RP ECJ in order to reflect the fact that institutions or Member States may not appeal in staff cases if they have not been a party to the proceedings at first instance²²³⁰.

2. Admissibility. a) General rules. The admissibility of the appeal is not only subject to those conditions which apply to all legal remedies, such as the existence of a party’s **legal interest** in bringing the proceedings, which the GC verifies on its own motion²²³¹ and which presupposes that the appeal must, if successful, procure an advantage to the party bringing it²²³².

b) Specific rules

The appellant furthermore needs to comply with a set of specific rules: more specifically, the appeal must be limited to questions of law²²³³; the party must precisely indicate which legal pleas challenge which parts of the CST’s judgment²²³⁴; one must not change the subject-matter of the proceedings from that which was brought before the first instance²²³⁵; etc. All these requirements also apply to appeals to the ECJ.

In staff cases, the GC held the following to be questions of law: the proportionality of a disciplinary measure²²³⁶; an error regarding the interpretation of a provision regarding the annual assessments of officials²²³⁷ or of one of the condi-

²²²⁹ B. Wägenbaur, EuZW 1995, 199 et seq. and EuZW 2003, 517 et seq.

²²³⁰ Art. 56 (3) Statute ECJ.

²²³¹ Case T-526/08 P, *Commission v Strack* [2010] (not yet published in the ECR), para. 44.

²²³² Case T-560/08 P, *Commission v Meierhofer* [2010] ECR p. p.II-1739, para. 41 and the case-law cited.

²²³³ Case T-46/08 P, *Marcuccio v Commission* [2009] (not yet published in the ECR), paras. 44–45.

²²³⁴ Case T-239/09 P, *Marcuccio v Commission* [2011] (not yet published in the ECR), para. 62.

²²³⁵ Case T-454/09 P, *van Arum v Parliament* [2011] (not yet published in the ECR), para. 79.

²²³⁶ Case T-17/08 P, *Andreasen v Commission* [2010] (not yet published in the ECR), paras. 93–94.

²²³⁷ Case T-498/09 P, *Kerstens v Commission* [2010] (not yet published in the ECR), paras. 25–26.

tions governing the extra-contractual liability of the Union²²³⁸; the question of whether the reasoning of a judgment of the CST is contradictory or insufficient²²³⁹,

3. The substance

- 7 The appellant faces the same challenges as in an appeal to the ECJ, i.e. the appellant needs (1) to understand the challenged decision, (2) prove at least one legal error, which (3) has a bearing on the operative part of the judgment. Thus, proving a legal error, which is difficult enough, does not suffice if the reasoning in question has no bearing on the operative part of the challenged decision²²⁴⁰, e.g. because the challenged reason is merely an additional reasoning and thus has no effect on the main reasoning and outcome of the case²²⁴¹.

4. Number of appeals

- 8 The number of appeals to the GC has risen sharply, from 10 in 2006 to 31 in 2009; likewise, number of decisions of the CST totally or partially set aside rose from 1 in 2007 to 9 in 2009²²⁴². There has been no major deviation from the recent ECJ case law on procedural matters relating to the appeal. The following comments are accordingly scarce, as most pertinent commentary is already outlined in the rest of the commentary of Article 167 to 190 RP ECJ.

Article 136a [Language of the proceedings]

Without prejudice to the arrangements laid down in Article 35 (2) (b) and the fourth subparagraph of Article 35(3) of these Rules, in appeals against decisions of the Civil Service Tribunal as referred to in article 9 and 10 of the Annex 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.

This recently adopted provision confirms a rule which remained up until that date unwritten, i.e. that the language of the case at first instance determines the language of the appeal unless one of the exceptions provided in Articles 35 (2) (b) and 35 (3), 4th sub-paragraph applies. Thus the appellant and the defendant are, in principle, bound by the applicant's initial choice of language.

²²³⁸ Case T-80/09 P, *Commission v O* [2011] (not yet published in the ECR), paras. 24–25, 27–28.

²²³⁹ Case T-256/10 P, *Marcuccio v Commission* [2011] (not yet published in the ECR), paras. 23–25–26.

²²⁴⁰ Case T-50/08 P, *Michail v Commission* [2009] (not yet published in the ECR), para. 65.

²²⁴¹ Case T-491/08 P, *Bui Van v Commission* [2010] (not yet published in the ECR), para. 52.

²²⁴² See annual report of CST.

Article 137 [Notice of appeal]

1. An appeal shall be brought by lodging a notice of appeal at the Registry of the General Court or of the Civil Service Tribunal.

2. The Registry of the Civil Service Tribunal shall immediately transmit to the Registry of the General Court the papers in the case at first instance and, where necessary, the appeal.

The party may choose whether it lodges its appeal at the CST, even though it is not the instance of appeal, but the one which adopted the challenged judgment, or the GC.

Article 138 a [Notice of appeal]

1. The notice of appeal shall contain:
 - (a) the name and address of the appellant;
 - (b) the names of the other parties to the proceedings before the Civil Service Tribunal;
 - (c) the pleas in law and legal arguments relied on;
 - (d) the form of order sought by the appellant.

Article 43 and Article 44(2) and (3) shall apply to appeals.

2. The decision of the Civil Service Tribunal appealed against shall be attached to the notice. The notice shall state the date on which the decision appealed against was notified to the appellant.

3. If a notice of appeal does not comply with Article 44(3) or with paragraph (2) of this Article, Article 44(6) shall apply.

I. General

The contents and structure of a “notice of appeal” are different from those found 1 in an application at first instance (see Art. 44 RP GC), but not fundamentally so. Paragraphs 42 to 49 of the “**Practice Directions to Parties**” outline this provision in more detail. The number of pages of a “notice of appeal” is limited to **fifteen pages**²²⁴³ and the appellant is well advised to strictly comply with this limit. Otherwise, the Registrar of the GC will send the notice of appeal back with a request for adaptation.

II. Contents of a notice of appeal (paragraph 1)

1. Introduction

This provision corresponds to Art. 168 (1) RP ECJ and thus the GC’s case law is 2 in this matter a continuation of the ECJ’s case law. Thus, the comments made

²²⁴³ See para. 15 of the “Practice Directions to Parties”.

earlier in this volume concerning Art. 168 RP ECJ should be taken into account when applying Art. 138 RP GC.

- 3 **2. Pleas in law and legal arguments (c). a) Indicating the challenged parts of the CST's decision.** The appeal needs to specify exactly which parts of the challenged decision it contests and which legal pleas it employs in order to contest said aspects of said decision. A mere repetition, whether verbatim or otherwise²²⁴⁴, of arguments already brought forward at first instance does not suffice²²⁴⁵, since such repetition amounts to a mere re-examination of the application at first instance, which is outside the jurisdiction of the GC²²⁴⁶.

b) Indicating the legal arguments

- 4 An appeal which contains no specific legal argument is manifestly inadmissible²²⁴⁷. The same is true for an appeal which merely refers to other written submissions or annexes²²⁴⁸; one which contains new pleas in law which are outside the object of proceedings at first instance²²⁴⁹; or should the appeal contain legal views which are too general and imprecise²²⁵⁰.

Article 139 [Petita]

1. An appeal may seek:

- (a) to set aside, in whole or in part, the decision of the Civil Service Tribunal;
- (b) 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.

2. The subject matter of the proceedings before the Civil Service Tribunal may not be changed in the appeal.

I. Admissible

- 1 The mere fact that appeal does not contain pleas seeking the same forms of order sought at first instance in whole or in part as outlined in Art. 139(1) (b) RP GC does not justify rejecting the appeals as inadmissible if they contain appellants' pleas

²²⁴⁴ Case T-107/07 P, *Rossi Ferreras v Commission* [2008] (not yet published in the ECR), paras. 26–31, 36–39.

²²⁴⁵ Case T-92/07, *Franklin A. O. v Commission* [2008] (not yet published in the ECR), paras. 21–22.

²²⁴⁶ Case T-253/06 P, *Chassagne v Commission* [2008] (not yet published in the ECR), paras. 54–55.

²²⁴⁷ Case T-340/08 P, *Timmer v Court of Auditors* [2009] (not yet published in the ECR), paras. 24–25.

²²⁴⁸ Case T-376/08 P, *Nijs v Court of Auditors* [2009] (not yet published in the ECR), para. 24.

²²⁴⁹ Case T-164/07 P, *Sundholm v Commission* [2008] (not yet published in the ECR), paras. 41–42.

²²⁵⁰ Case T-100/08 P, *Kerelov v Commission* [2010] (not yet published in the ECR), paras. 38–39.

seeking that the CST's judgment of the Civil Service Tribunal with Article 139(1) (a)²²⁵¹.

II. Inadmissible

The appellant may not seek a referral to a different formation of Judges of the 2 GC²²⁵².

Article 140 [Serving the notice of appeal]

The notice of appeal shall be served on all the parties to the proceedings before the Civil Service Tribunal. Article 45 shall apply.

It is the Registry of the GC, i.e. not the appellant, which service the notice of appeal to the other parties.

Article 141 [Response]

1. Any party to the proceedings before the Civil Service Tribunal may lodge a response within two months after service on him of the notice of appeal. The time-limit for lodging a response shall not be extended.

2. A response shall contain:

- (a) the name and address of the respondent;
- (b) the date on which notice of the appeal was served on the respondent;
- (c) the pleas in law and legal arguments relied on;
- (d) the form of order sought by the respondent.

Article 43 and Article 44(2) and (3) shall apply.

I. General

The response is similar to a statement of defence; its details are outlined in 1 paragraphs 50 to 56 of the "Practice Directions to Parties".

II. Time-limit (paragraph 1)

The time-limit of **two months** (plus ten days on account of distance) cannot be 2 extended, unlike the time-limit of two months applying to the statement of defence

²²⁵¹ Joined Casess T-90/07 P and T-99/07 P, *Belgium v Ginette* [2008] (not yet published in the ECR), paras. 40–41.

²²⁵² Case T-222/07 P, *Kerstens v Commission* [2008] (not yet published in the ECR), para. 24.

in cases at first instance²²⁵³. This rule seems rigid but is appropriate since the defendant is already familiar with the case and since the appeal is limited to questions of law. This time-limit applies also to a **cross-appeal**²²⁵⁴, the admissibility of which the GC verifies on its own motion²²⁵⁵.

III. Contents of the response (paragraph 2)

- 3 The contents of a response is detailed in paragraphs 43 to 49 of the “Practice Directions to Parties” and is limited to **fifteen pages**²²⁵⁶ just like the number of pages allotted to a notice of appeal.

Article 142 [Petita]

1. A response may seek:

- (a) to dismiss, in whole or in part, the appeal or to set aside, in whole or in part, the decision of the Civil Service Tribunal;
- (b) 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.

2. The subject-matter of the proceedings before the Civil Service Tribunal may not be changed in the response.

A cross-appeal is not admissible if it does not either seek to dismiss, in whole or in part, the original appeal or to set aside, in whole or in part, the CST’s decision but to substitute new reasoning upon which it finds that the operative part ought to be based²²⁵⁷.

Article 143 [Reply and rejoinder]

1. The notice of appeal and the response may be supplemented by a reply and a rejoinder where the President, on application made by the appellant within seven days of service of the response, considers such further pleading necessary and expressly allows the submission of a reply in order to enable the appellant to put forward his point of view or in order to provide a basis for the decision on the appeal. The President shall prescribe the date by which the reply is to be submitted and, upon service of that pleading, the date by which the rejoinder is to be submitted.

2. Where the response seeks to set aside, in whole or in part, the decision of the Civil Service Tribunal on a plea in law which was not raised in the appeal, the appellant or any other party may submit a reply on that plea alone within two

²²⁵³ See Art. 46 (3) RP GC.

²²⁵⁴ Case T-49/08 P, *Michail v Commission* [2009] (not yet published in the ECR), paras. 38.

²²⁵⁵ Case T-563/10 P, *De Luca v Commission* [2011] (not yet published in the ECR), para. 29.

²²⁵⁶ See para. 15 of the “Practice Directions to Parties”.

²²⁵⁷ Case T-563/10 P, *De Luca v Commission* [2011] (not yet published in the ECR), paras. 30–31, 34–35.

months of the service of the response in question. Paragraph 1 shall apply to any further pleading following such a reply.

I. General

A second round of written submission, i.e. a reply and, as the case may be, a 1 rejoinder, is far from automatic in appeals cases before the GC. It requires an application by the **appellant**, who must remember that requirements in terms of time-limit (seven days, plus ten days on account of distance) and contents are rather demanding for a reply and rejoinder. The President determines the merits of an application for reply and rejoinder; the **defendant** is not heard in this matter.

II. Application and merits

The application should generally not exceed two to three pages and should 2 indicate in short form the reasons which led the appellant to consider lodging a reply necessary²²⁵⁸. The case law to date indicates that the GC is rather restrictive in accepting such applications. By allowing a reply, the other party automatically has the right to lodge a rejoinder without any further formalities.

Article 144 [Applicable provisions]

Subject to the provisions of Articles 144 to 149 inclusive, Articles 48(2) and Articles 49, 50, 51(1), 52, 55 to 64, 76 a to 110, 115(2) and (3), 116, 123 to 127 and 129 shall apply to the procedure before the General Court on appeal from a decision of the Civil Service Tribunal.

Pursuant to Art. 48 (2) and 144, a legal plea which was not mentioned in an appeal but was instead first mentioned in a letter to the Registry and then argued at the oral hearing is clearly inadmissible²²⁵⁹.

Article 145 [Appeal manifestly inadmissible or unfounded]

Where the appeal is, in whole or in part, clearly inadmissible or clearly unfounded, the General Court may at any time, acting on a report from the Judge Rapporteur and after hearing the Advocate General, by reasoned order dismiss the appeal in whole or in part.

²²⁵⁸ See paras. 97 to 98 of the “Practice Directions to Parties”.

²²⁵⁹ Case T-355/08 P, *De Fays v Commission* [2010] (not yet published in the ECR), paras. 34, 40.

I. Manifestly inadmissible

1. Introduction

- 1 A number of appeals before the GC are found to be partly or wholly manifestly inadmissible. The reasons for this relatively large amount of inadmissible appeal cases range from lawyers' lack of familiarity with the specificities of this legal remedy to lawyers' conscious decision to more or less deliberately disregarding said specificities. It is of course ironic that full and rigorous compliance with procedural rules and a self-critical assessment of the decision in question will in a number of cases likely remove the elements which the lawyer perceives as grounds for appeal²²⁶⁰.
- 2 **2. Examples. a) Non-compliance with time-limit.** An appeal is inadmissible if the original is sent by telefax within the relevant time-limit, while the certified copies are notified to the Registry more than ten days afterwards (see Art. 43 (4) RP GC after the time-limit elapsed²²⁶¹.

b) Not challengeable

- 3 It is manifestly inadmissible to challenge e.g. a CST order suppressing certain parts of a written submission²²⁶²; a CST order referring the matter to the ECJ, as provided by Art. 8 (2) of Annex 1 Statute ECJ²²⁶³; or a CST decision to reject an application as unfounded without adjudicating on a plea of inadmissibility²²⁶⁴.

c) No legal arguments

- 4 A party who omits to indicate legal arguments in the appeal²²⁶⁵ clearly risks an order of inadmissibility.

Article 146 [Oral procedure]

After the submission of pleadings as provided for in Article 141(1) and, if applicable, Article 143(1) and (2), the General Court, acting on a report from the Judge Rapporteur and after hearing the Advocate General and the parties, may decide to rule on the appeal without an oral procedure unless one of the parties submits an application setting out the reasons for which he wishes to be heard.

²²⁶⁰ As was the case in e.g. T-454/09 P, *van Arum v Parliament* [2011] (not yet published in the ECR).

²²⁶¹ Case T-283/09 P, *Laleh Aayhan v Parliament* [2009] (not published in the ECR), paras. 15 and 16.

²²⁶² Case T-311/07 P, *Nijs v Court of Auditors* [2007] (not yet published in the ECR), paras. 6–10.

²²⁶³ Case T-413/06, *Gualtieri v Commission* [2008] (not yet published in the ECR), paras. 22–25, 27.

²²⁶⁴ Case T-250/06 P, *Ott A. O. v Commission* [2009] (not yet published in the ECR), paras. 75–76.

²²⁶⁵ See Case T-12/10 P, *Marcuccio v Commission* [2011] (not yet published in the ECR), para. 30.

The application shall be submitted within a period of one month from notification to the party of the closure of the written procedure. That period may be extended by the President.

I. General

Unlike in proceedings at first instance, in appeals against CST decisions an oral procedure²²⁶⁶ is the exception rather than the rule. In many instances, the GC will decide the case without a hearing.

II. Date of the application

Since an application for a hearing be submitted after the time-limits outlined in Article 141 (1) and Article 143 (1) and (2), as pleadings are in a preliminary stage, e.g. as part of the response, shall be found both inadmissible and premature, especially if the party concerned shall, within one month of completion of the written procedure, a new application.

III. Contents of the application

The request must be justified in detail, i.e. must clearly outline the concrete and particular reasons which the applicant believes justify an oral hearing. The GC may also convene a hearing even if no party has requested one. In practice, however, the GC has not made use of this possibility.

Article 147 [Preliminary report]

The preliminary report referred to in Article 52 shall be presented to the General Court after the pleadings provided for in Article 141(1) and where appropriate Article 143(1) and (2) have been lodged. Where no such pleadings are lodged, the same procedure shall apply after the expiry of the period prescribed for lodging them.

Article 148 [Costs]

Where the appeal is unfounded or where the appeal is well founded and the General Court itself gives judgment in the case, the General Court shall make a decision as to costs.

Article 88 shall apply only to appeals brought by institutions.

²²⁶⁶ See paras. 101 to 102 of the “Practice Directions to Parties”.

By way of derogation from Article 87(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.

If the appeal is withdrawn Article 87(5) shall apply.

Article 149 [Intervention]

An application to intervene made to the Court in appeal proceedings shall be lodged before the expiry of a period of one month running from the date of the publication of the notice referred to in Article 24(6).

FINAL PROVISIONS

Article 150 [Practice directions to parties]

The General Court may issue practice directions relating, in particular, to the preparations for and conduct of hearings before it and to the lodging of written pleadings or observations.

I. General

- 1 The purpose of the “**Practice Directions to Parties**”, which are published in a consolidated version on the ECJ’s website and also in the Official Journal of the EU, is to render the written and oral procedure, if any, of any legal remedy as efficient as possible. These practice directions outline many **practical aspects** of proceedings before the EU courts and thus complement a number of central provisions found in primary and secondary law, in particular concerning the written proceedings.

II. Overview on the contents

- 2 **1. Written proceedings. a) General rules.** The vast majority of the rules which the Practice Directions outline concern the written proceedings. The general part of these Directions pertains to the use of technical means of communication, the lodging of pleadings, the **length of pleadings**, the form and content of the application and of the defence/response, the annexes to pleadings, and the regularization of pleadings.

b) Specific rules

- 3 The “**Practice Directions**” also provide a number of rules relating to specific procedural aspects such as applications for **expedited procedure**, applications for **interim measures**, applications for **confidential treatment**, specific aspects of the **appeals proceedings**, and procedural aspects of intellectual property cases.

2. Oral proceedings

The provisions relating to the oral hearings mainly concern the purpose of the 4 hearing, the length of the pleadings, and practical tips regarding oral submissions.

III. Compliance with the Practice Directions

Anyone who disregards these rules and thus potentially by implication the 5 relevant provision of the RP GC risks a reprimand or re-direction by the President and ultimately risks a finding of inadmissibility. Moreover, such disregard for procedural rules could possibly have prejudicial consequences²²⁶⁷ with respect to costs²²⁶⁸.

Article 151 [Coming into force]

These Rules, which are authentic in the languages mentioned in Article 35(1), shall be published in the *Official Journal of the European Union*. They shall enter into force on the first day of the second month from the date of their publication.

Amendments to these Rules of Procedure are directly applicable once they come into force²²⁶⁹.

²²⁶⁷ U. Hirsbrunner, EWS 2003, 308 et seq.

²²⁶⁸ Case T-464/04, *Impala v Commission* [2006] ECR p. II-2289, para. 547; see also Joined Cases T-191/98, T-212/98 to T-214/98, *Atlantic Container A. O. v Commission* [2003] ECR p. II-3275, para. 1646.

²²⁶⁹ Case T-52/00, *Coe Clerici Logistics v Commission* [2002] ECR p. II-2555, para. 23 and the case law cited.

Index

A

Abbreviated appeal

- General Court decision Stat 57 1 et seq.
- Procedural rules Stat 57 6
- Time-limit Stat 57 4 et seq.

Accelerated procedure *see Expedited procedure*

Access to documents and information

- General Court RP GC 43 4 et seq.
- IDOC RP GC 43 10
- OLAF RP GC 43 10

Action devoid of purpose RP GC 113

Adviser

- Definition RP GC 38 5 et seq. *see Representation of parties*

Advocate General *see also Judges*

- Delivery of opinion RP ECJ 82 2
- Designation RP ECJ 16
- First Advocate General RP ECJ 14 *see First Advocate General*
- General Court Stat 49 1 et seq., RP GC 2 1 et seq., 17 et seq.
- Involvement Stat 20 24 et seq.
- Opinions RP ECJ 197
- Review of decisions of GC RP ECJ 195 3

Agents *see Representation of parties*

- Definition RP GC 38 3 et seq.
- Exclusion RP GC 41

Allocation of cases

- Assignment procedure RP GC 13 2
- Cases not proceeding RP GC 87 42 et seq.
- Criteria RP GC 12 1 et seq.
- Discontinuation and withdrawal RP GC 87 832 et seq.
- Exceptions RP GC 87 8 et seq.
- Final judgment or order RP GC 87 3
- General Court RP GC 12 1 et seq.

Allocation of costs

- Interveners RP GC 87 28 et seq.
- Principle RP GC 87 4 et seq.
- Publication RP GC 12 3

Amicable settlement RP ECJ 147

- Court settlement RP ECJ 147 2 et seq.

Appeal

- Abbreviated appeal Stat 57 1 et seq.
- Appellants Stat 56 15 et seq.
- Categories of legal pleas Stat 58 29 et seq.
- Civil Service Tribunal Stat Annex I 9 RP GC 136 a et seq. *see Appeal CST*
- Costs Stat 56 26 et seq.
- Effect of decision Stat 61 1 et seq.
- Filter mechanism Stat 56 25 et seq.
- General Court decision Stat 56 1 et seq.
- Interim proceedings Stat 60 2
- Intervention Stat 40 31
- Limit to pleas Stat 58 34 et seq.
- Object of appeal Stat 56 4 et seq.
- Points of law Stat 58 6 et seq.
- Prerogatives Stat 56 20 et seq.
- Procedure Stat 59 1 et seq.
- Review by ECJ Stat 62 1 et seq. *see Review by the ECJ*
- Scope Stat 58 1 et seq.
- Suspensory effect Stat 60 1

Appeal Civil Service Tribunal

- Admissibility RP GC 136 a 4 et seq.
- Applicable provisions RP GC 144
- Costs RP GC 136 a 3 148
- Intervention RP GC 149
- Language RP GC 136a
- Manifestly inadmissible or unfounded RP GC 145
- Notice RP GC 137 138
- Oral procedure RP GC 146

Index Appeal Civil Service Tribunal

- Petita RP GC 139 142
 - Preliminary report RP GC 147
 - Reply and Rejoinder RP GC 143
 - Response RP GC 141
 - Serving of notice RP GC 140
 - Appeals against decisions of GC
 - Authority to respond RP ECJ 172
 - Content of appeal RP ECJ 168 *see* *Content of appeal*
 - Content of response RP ECJ 173 *et seq.*
 - Costs RP ECJ 184
 - Cross-appeal RP ECJ 176 *et seq. see* *Cross-appeal*
 - Form and Content RP ECJ 167 *et seq.*
 - Inadmissible or unfounded RP ECJ 181 *et seq.*
 - Legal aid RP ECJ 185 *et seq.*
 - Lodging of appeal RP ECJ 167
 - Responses, replies and rejoinders RP ECJ 171 *et seq.* 175
 - Service of the appeal RP ECJ 171
 - Applicable law Stat Intro 1 *et seq.*
 - Application
 - Admissibility RP ECJ 115 2 *et seq.*
 - Burden of proof RP ECJ 115 5
 - Contents RP GC 44 13 *et seq.*
 - General Court RP GC 44
 - Legal aid at national level RP ECJ 115 8
 - Minimum requirements RP GC 44 1 *et seq.*
 - Reply and rejoinder RP GC 47 10 *et seq. see* *Reply and rejoinder*
 - Serving application RP GC 45
 - Supporting documents RP ECJ 115 5 *et seq.*
 - Application for suspension or interim measures
 - Applications pursuant Art. 81 TEAEC RP ECJ 166
 - Applications pursuant Arts. 280, 299 TFEU, 164 TEAEC RP ECJ 165
 - Change in circumstances RP ECJ 163
 - Content of application RP ECJ 160 10 *et seq.*
 - Decision on the application RP ECJ 161
 - Nature of application RP ECJ 160 6 *et seq.*
 - New application RP ECJ 164
 - Notification and observations RP ECJ 160 29 *et seq.*
 - Order for suspension or interim measures RP ECJ 162
 - Preparatory inquiry RP ECJ 160 36
 - Purpose RP ECJ 160 2
 - Application to intervene
 - Contents RP ECJ 130 2 *et seq.*
 - Decision on application RP ECJ 131
 - Representation RP ECJ 130 8
 - Time-limit RP ECJ 130 1
 - Arbitration Committee
 - Appeals against decisions of RP ECJ 201
 - Assignment of case
 - Court of Justice RP ECJ 60
 - Assistant Rapporteur Stat 13 RP ECJ 17
 - Authentic text
 - Language RP ECJ 41
- B
- Bar to proceedings RP GC 113
 - Absolute bar RP GC 113 3 *et seq.*
- C
- Calendar of the Court
 - Judicial year RP ECJ 24 1
 - Judicial vacations RP ECJ 24 2 *et seq.*
 - Official holidays RP ECJ 24 5
 - Case list Stat 34
 - Chambers Stat 16
 - Allocation of cases RP GC 12 1 *et seq.*
 - Civil Service Tribunal Stat Annex I 4
 - Competence RP GC 11 1 *et seq.*
 - Constitution RP ECJ 11
 - Formation Stat 16 1 *et seq.*
 - Full Court Stat 16 13 *et seq.*
 - General Court Stat 50 1 *et seq.*, RP GC 10 1 *et seq.*

- Grand Chamber **Stat 16 8 et seq.**
- Honorary judge **Stat 16 3**
- Pending amendments **Stat 16 10**
- Specialised Chambers **RP ECJ 11 2**
- Change in circumstances
 - Definition **RP GC 108 5 et seq.**
 - Suspension of operation **RP GC 108**
- Civil Service Tribunal (CST) **Stat Intro 9, RP GC Intro 22 et seq.**
 - Amicable settlement **Stat Annex I 7 9 et seq.**
 - Appeal **Stat Annex I 9 RP GC 136 a et seq. see Appeal CST**
 - Chambers **Stat Annex I 4**
 - Costs **Stat Annex I 7 14**
 - Expedited procedure **Stat Annex I 10**
 - Judges **Stat Annex I 2**
 - Language **Stat Annex I 7 4**
 - Oath **Stat Annex I 5 2**
 - President **Stat Annex I 4**
 - Procedure **Stat Annex I 7 1 et seq. 5 et seq.**
 - Scope of Jurisdiction **Stat Annex I 1**
 - Staff **Stat Annex I 6**
 - Suspension **Stat Annex I 8**
 - Transmitting cases **Stat Annex I 8**
- Code of conduct **RP ECJ 5 2**
- Conduct of oral proceedings
 - Duration **RP ECJ 78 12**
 - Language **RP ECJ 78 11**
 - Opening **RP ECJ 78 5**
 - Pleadings **RP ECJ 78 6 et seq.**
 - Preliminary meeting **RP ECJ 78 2 et seq.**
- Content of application for appeal **RP ECJ 168**
 - Applicable procedural rules **RP ECJ 168 18**
 - Contents **RP ECJ 168 2 et seq.**
 - Curing defects **RP ECJ 168 20 et seq.**
 - Form of order sought, pleas in law and arguments **RP ECJ 169 et seq.**
 - Indication date of notification **RP ECJ 168 19**
- Costs **RP ECJ 137 et seq.**
 - Adjudication **Stat 38 1 et seq.**
 - Allocation of costs **RP GC 87 see Allocation of costs**
 - Allocation of costs **RP ECJ 138**
 - Appeal **Stat 56 26 et seq.**
 - Appeal CST **RP GC 136 a 3 148**
 - Appeals against decisions of GC **RP ECJ 184**
 - Application for taxation **RP ECJ 145 2 et seq.**
 - Assessment by ECJ **RP ECJ 145 7 et seq.**
 - Authentic copy **RP ECJ 145 18**
 - CST Civil Service Tribunal **Stat Annex I 7 14**
 - Costs necessarily incurred **RP ECJ 144 5 et seq.**
 - Costs of proceedings **RP ECJ 143**
 - Currency **RP GC 93**
 - Decision on costs **RP ECJ 137**
 - Discontinuance or withdrawal **RP ECJ 141**
 - Disputes concerning costs **RP ECJ 145**
 - Enforcement of judgment **RP GC 89**
 - Formation **RP ECJ 145 17**
 - General Court **RP GC 87 et seq.**
 - If case not proceeds to judgment **RP ECJ 142**
 - Intervention **RP ECJ 140**
 - IP cases **RP GC 136**
 - Judicial costs **RP GC 90 see Judicial costs**
 - Legal aid **RP GC 94 et seq. see Legal aid**
 - Omission to decide **RP GC 85**
 - Preliminary ruling **RP ECJ 102**
 - Procedure for payment **RP ECJ 146**
 - Recoverable costs **RP ECJ 144 RP GC 91 see Recoverable costs**
 - Referral of case **RP GC 121d**
 - Review of decisions of GC **RP ECJ 195 5**
 - Securities **RP ECJ 73 1**
 - Setting aside of decision **RP GC 121**
 - Staff cases **RP GC 88**
 - Taxation of costs **RP GC 92 see Taxation of costs**

Index Costs

- Taxation order RP ECJ 145 15 et seq.
 - Unreasonable or vexatious costs RP ECJ 139
 - Witnesses and experts RP ECJ 144 4
 - Witnesses and experts RP ECJ 73
 - Court of Justice (ECJ) Stat Intro 7
 - Advocate General RP ECJ 2 et seq.
 - Assignment of case RP ECJ 60
 - Calendar RP ECJ 24
 - Chambers RP ECJ 11
 - Composition of the formation RP ECJ 27 et seq.
 - Costs RP ECJ 137 et seq. *see also Costs*
 - Derived laws RP ECJ Intro 14 et seq.
 - General meeting RP ECJ 25
 - Grand Chamber RP ECJ 27 et seq.
 - Interim measures RP ECJ 160 et seq.
 - Interpretation RP ECJ Intro 17 et seq. *see interpretation of judgment*
 - Intervention RP ECJ 129 et seq. *see Intervention*
 - Judge RP ECJ 2 et seq.
 - Judgments and orders RP ECJ 86 et seq.
 - Judgments by default RP ECJ 152
 - Jurisdiction RP ECJ Intro 2
 - Language RP ECJ 36 et seq. *see Languages*
 - Legal aid RP ECJ 115 et seq.
 - Location RP ECJ 23
 - Measures of inquiry RP ECJ 63 et seq.
 - Measures of organisation RP ECJ 61 et seq.
 - Minutes RP ECJ 26
 - Opinions RP ECJ 196 et seq. *see Opinions*
 - Preliminary report RP ECJ 59
 - Preliminary ruling RP ECJ 93 et seq.
 - Procedure RP ECJ 53 et seq.
 - Rules of Procedure RP ECJ Intro 5 et seq.
 - Service RP ECJ 48
 - Statistics RP ECJ Intro 3 et seq.
 - Terminology RP ECJ Intro 1
 - Time-limits RP ECJ 49 et seq. *see also Time-limits*
 - Urgent preliminary ruling procedure RP ECJ 107 et seq. *see Urgent preliminary ruling procedure*
 - Website RP ECJ 20 7
 - Working of the Court RP ECJ 23 et seq.
 - Cross-appeal RP ECJ 176
 - Content RP ECJ 177
 - Effect RP ECJ 183
 - Form of orders sought, pleas in law and arguments RP ECJ 178
 - Inadmissible or unfounded RP ECJ 181 et seq.
 - Reply and rejoinder RP ECJ 180
 - Response to cross-appeal RP ECJ 179
- ## D
- Declining jurisdiction *see Staying proceedings*
 - Decision RP GC 80
 - General Court RP GC 77
 - Default *see Judgment by default*
 - IP cases RP GC 134 6
 - Default
 - Judgment Stat 41 1 et seq.
 - Judgments by default RP ECJ 152
 - Defence
 - Content RP ECJ 124 3 et seq. 10
 - Information relating service RP ECJ 124 9
 - Time-limit RP ECJ 124 2 et seq.
 - Deliberations of the Court
 - Court of Justice RP ECJ 32 et seq.
 - General Court RP GC 32 et seq.
 - Majority vote RP ECJ 32 5
 - Modalities RP GC 33 1 et seq.
 - Participants RP ECJ 32 3 et seq., 33
 - Quorum RP ECJ 34 et seq.
 - Secrecy Stat 35 1 et seq.
 - Statement of reasons Stat 36 1 et seq.
 - Deprivation
 - Judge and AG Stat 6 1 et seq., RP ECJ 6

Digest of Community Courts RP ECJ 20 8

Discontinuing of proceedings RP ECJ 148 RP GC 98 et seq.

- Amicable settlement RP GC 98 et seq.

- Application RP GC 99

- Costs RP GC 98 2

- Definition RP GC 98 1

Disjoining cases

- General Court RP GC 50 16

E

EAEC-Treaty Stat 22

e-Curia RP GC 43 12 et seq.

Enforcement

- Costs RP GC 89

- Suspension RP GC 110

European Court Reporter (ECR) RP ECJ 20 5 et seq.

Exclusion of representatives

- Adviser RP GC 41

- Costs RP GC 41 28, RP ECJ 46 14

- Exclusion order RP ECJ 46 15

- Incompatible conduct RP GC 41 1 et seq.

- Lawyers RP GC 41

- Measures by ECJ RP ECJ 46 10 et seq.

- New appointment RP GC 41 28

- Reprehensible conduct RP ECJ 46 3 et seq.

- Withdrawal of measures RP ECJ 46 16

Expedited procedure Stat 23 a 1 et seq. RP GC Intro 15 et seq.

- Application RP ECJ 105 6 et seq., RP GC 76 a 11 et seq.

- Civil Service Tribunal Stat Annex I 10

- Conditions RP GC 76 a 37

- Court of Justice RP ECJ 132 et seq. *see Expedited procedure*

- Decision of GC RP GC 76 a 27 et seq.

- Decision on expedited procedure RP ECJ 133

- General Court RP GC Intro 15 et seq.

- Initiator RP ECJ 105 3 et seq.

- Oral hearing RP GC 76 a 36

- Oral part RP ECJ 135

- Pending amendments Stat 23 a 7 et seq.

- Preliminary ruling Stat 23 a 3 9 13, RP ECJ 105

- Procedural rules RP ECJ 105 15

- Purpose RP GC 76 a 1 8 et seq.

- Requirements Stat 23 a 8

- Scope RP GC 76 a 2

- Time-limits RP GC 76 a 34 et seq.

- Transmission of documents RP ECJ 106

- Urgency Stat 23 a 11 et seq.

- Written and oral procedure Stat 20 11

- Written part RP ECJ 134

Experts *see witnesses*

- Duties RP GC 70 8 et seq.

- Expert's report RP ECJ 70 RP GC 70 2

- Oath RP ECJ 71

- Rights of parties RP GC 70 8 et seq.

F

Failure to adjudicate

- Application RP ECJ 155 2 et seq.

- Decision RP ECJ 155 5

- Right to be heard RP ECJ 155 4

First Advocate General

- Designation RP ECJ 14

Force majeure Stat 45 9 et seq.

General Court (GC) Stat Intro 8, RP GC 150

- Advisers RP GC 38 11 et seq.

- Advocate General Stat 49 1 et seq., RP GC 17 18 19

- Agents RP GC 38 1 et seq.

- Appeal Stat 56 1 et seq.

- Applicable rules Stat 47 1 et seq.

- Assignment to single Judge RP GC 51 8 et seq.

- Chambers RP GC 10 1 et seq.

- Costs RP GC 87 et seq. *see Costs*

Index General Court (GC)

- Grand chamber RP GC 14 2
- Interlocutory procedure RP GC 114 1 et seq.
- Joining Cases RP GC 50 2 et seq.
- Judges Stat 48 1 et seq.
- Judgments RP GC 81 et seq. *see Judgments*
- Jurisdiction Stat 51 1 et seq., RP GC Intro 1 et seq.
- Languages RP GC 35 et seq.
- Lawyers RP GC 38 11 et seq.
- Notification of decision Stat 55
- Opinions of AG Stat 53 5
- Oral procedure RP GC 53 RPe 55 55 et seq. *see Oral procedure*
- Period of limitation Stat 47 et seq.
- Plenary Session RP GC 14 1 et seq.
- Practice Directions RP GC Intro 16
- Preliminary report RP GC 52
- Preliminary rulings Stat 51 8
- Procedure Stat 53 1 et seq., RP GC 31 et seq. 43 et seq.
- Public databases RP GC Intro 19
- Referral of action Stat 54 3 et seq.
- Referral of case RP GC 51 2 et seq., 112
- Register RP GC 24
- Registrar RP GC 20 et seq.
- Rules of procedure RP GC Intro 4 et seq.
- Single judge RP GC 14 68 et seq.
- Specialized courts Stat 51 9
- Staff Stat 52 RP GC 28 et seq.
- Staying of proceedings Stat 54 7 et seq.
- Wrong instance Stat 53 2

G

- Grand Chamber Stat 16 8 et seq.
- Composition RP ECJ 27 et seq.
 - General Court Stat 50 1 et seq., RP GC 14 2
 - Members RP ECJ 27 1
 - Prevention from acting RP ECJ 29 et seq.
 - Quorum RP ECJ 34 et seq.

H

- Hearing
- In camera RP ECJ 79
 - Joint hearing RP ECJ 77
 - Oral part of procedure RP ECJ 76
 - Request RP ECJ 76 2
- Honorary judge Stat 16 3

I

Immunities

- Agents RP GC 38 10 et seq.
- Judge and AG Stat 3 1 et seq.
- Representatives of the parties RP ECJ 43 2 et seq., RP GC 38 10 et seq.
- Waiver RP ECJ 45 RP GC 40 *see Exclusion of representatives*

Impartiality

- Conflicts of interest Stat 18 1 et seq.
- Judge and AG Stat 2 4 et seq.

Inadmissibility

- CST RP GC 111 2
- General Court RP GC 111 1
- Lack of jurisdiction RP GC 111 9 et seq.
- Lacking foundation in law RP GC 111 17
- Manifestly inadmissible RP GC 111 13 et seq.
- Reasoned order RP GC 111 19 et seq.

Incompatible conduct

- Misuse of rights RP GC 41 12 et seq.
- Representatives of the parties RP GC 41 1 et seq.

Interim measures

- Application for suspension or interim measures RP ECJ 160 *see Application for suspension or interim measures*

Interim proceedings Stat 39 1 et seq.

- Appeal Stat 60 2
- Intervention Stat 40 30

Interim relief RP GC 104 22 et seq.

- Application RP GC 104 50 et seq.
- Balance of interests RP GC 104 56 et seq.
- Urgency RP GC 104 24 et seq.

Interlocutory procedure

- Application by separate document RP GC 114 9 et seq.
- Decision RP GC 114 31 et seq.
- General Court RP GC 114 1 et seq.
- Oral hearing RP GC 114 29 et seq.
- Preliminary decision RP GC 114 1 et seq.
- Request for a decision RP GC 114 8
- Time-Limits RP GC 114 20 et seq.
- Written observations by other party RP GC 114 26 et seq.

Interpretation of judgment RP GC 129

- Application RP ECJ 158 3 et seq., RP GC 129 3 et seq.
- Effect RP ECJ 158 11
- Hearing of parties RP GC 129 8
- Jurisdiction RP GC 129 7
- Purpose RP ECJ 158 1, RP GC 129 1
- Staying of proceedings RP GC 129 9
- Time-limit RP ECJ 158 2

Intervention Stat 40 1 et seq.

- Admission RP GC 115 1 et seq.
- Altering subject-matter Stat 40 36 et seq.
- Appeal Stat 40 31
- Appeal Civil Service Tribunal RP GC 149
- Application RP ECJ 130 RP GC 115 1 14 et seq. *see Application to intervene*
- Bodies, office etc. Stat 40 8 et seq.
- „Born“ interveners RP GC 134 1 et seq.
- Contents and limits RP GC 116 22 et seq.
- Costs RP ECJ 140
- Delimitation RP GC 115 4 et seq.
- Entitlement to intervene Stat 40 3 et seq.
- EU institutions Stat 40 3 et seq.
- Exclusion Stat 40 32 et seq.
- Interim proceedings Stat 40 30
- IP cases RP GC 134
- Legal remedies Stat 40 6
- Mandatory representation RP GC 115 18 et seq.
- Member States Stat 40 3 et seq.

- Objects and effects RP ECJ 129
 - Other requirements Stat 40 14 et seq.
 - Procedure RP GC 115 2 et seq.
 - Purpose RP GC 115 1
 - Right to be heard RP GC 116 1 et seq.
 - Service of application RP GC 116 6 et seq.
 - Specific time-limits in appeal RP ECJ 190 5 et seq.
 - Submission of statements RP ECJ 132 *see Submission of statements*
 - Time limit RP GC 115 6 et seq.
- IP cases
- Application RP GC 132 1 et seq.
 - Autonomy of interveners RP GC 134 4
 - Costs RP GC 136
 - Default procedure RP GC 134 6
 - Intervention by third parties RP GC 134
 - Jurisdiction RP GC 130 1
 - Language RP GC 131
 - Limited reply RP GC 135 6
 - Oral hearing RP GC 135a
 - Procedural rules RP GC 130 2, 130 131 5
 - Proceedings RP GC 131 et seq.
 - Rectification RP GC 132 5
 - Reply and rejoinder RP GC 135 5
 - Service of application RP GC 133
 - Statement of defence RP GC 134 5, 135 1 et seq.
 - Translations RP GC 131 6

J

Joinder RP ECJ 54

- Conditions RP ECJ 54 2 et seq.
- Disjoining cases RP ECJ 54 8
- Language RP ECJ 54 5
- Procedure RP ECJ 54 7

Joining cases

- Access to documents and confidentiality RP GC 50 18 et seq.
- Disjoining cases RP GC 50 16
- Procedure RP GC 50 2 et seq.

Index Joint hearing

Joint hearing RP ECJ 77

Judge

- Absence Stat Annex I 2 3
- Appointment Stat Annex I 3
- Civil Service Tribunal Stat Annex I 2
- Conflicts of interest Stat 18 1 et seq.
- Court of Justice RP ECJ 2 et seq.
- Deprivation Stat 6 1 et seq.
- General Court Stat 48 1 et seq., RP GC 2 1 et seq.
- Honorary judge Stat 16 3
- Immunity Stat 3 1 et seq.
- Impartiality Stat 2 4 et seq.
- Oath Stat 2 2 et seq., RP GC 4 *see Oath*
- Other occupation Stat 4 1 et seq.
- Ranking RP GC 6
- Replacement Stat 9 1 et seq.
- Residence Stat 14
- Resignation Stat 5 3 et seq.
- Revocation RP GC 5 1 et seq.
- Temporary Judge Stat 62 c 7 Stat Annex I 2
- Term in office Stat 5 1 et seq., RP GC 3

Judgements and orders

- Preliminary ruling RP ECJ 103

Judge-Rapporteur

- Prevention from action RP ECJ 15 3
- Designation RP GC 13 4, RP ECJ 15
- Opinions RP ECJ 197

Judgment

- Contents RP GC 81 2 et seq.
- Delivery RP GC 82
- Duration RP GC 83
- General Court RP GC 81 et seq.
- Handing down Stat 37 1 et seq.
- Interpretation of judgment Stat 43 1 et seq.
- Judgment by default Stat 41 1 et seq. *see Judgment by default*
- Rectification RP GC 84 *see Rectification*
- Revision RP ECJ 159 16
- Scope Stat 43 3 et seq.

Judgment by default Stat 41 1 et seq., RP GC 122 et seq.

- Application RP GC 122 4 et seq.

- Application to set aside RP GC 122 15 et seq.
- Assessment RP ECJ 151 6 et seq., RP GC 122 7 et seq.
- Enforcing a default judgment RP GC 122 14
- Failure to respond RP ECJ 151 2 et seq.
- Objections Stat 41 5 et seq.
- Oral hearing RP GC 122 6
- Requirements RP GC 122 2 et seq.
- Serving the application RP ECJ 151 5

Judgments and orders

- Binding nature of judgment and order RP ECJ 91
- Content of judgment RP ECJ 87
- Content of order RP ECJ 89
- Court of Justice RP ECJ 86 et seq.
- Date of delivery RP ECJ 86
- Delivery and service RP ECJ 88
- Publication RP ECJ 92
- Requests and applications after case has been closed RP ECJ 153 et seq. *see Requests and applications after case has been closed*
- Signature and service of order RP ECJ 90

Judicial costs RP GC 90

- CST RP GC 90 8 et seq.
- Exceptions RP GC 90 2 et seq.
- Rule RP GC 90 1

Judicial year RP ECJ 24 1

Jurisdiction

- Court of Justice RP ECJ Intro 2
- General Court Stat 51 1 et seq.

L

Languages

- Appeal Civil Service Tribunal RP GC 136a
- Authentic text RP ECJ 41
- Authentic version RP GC 37
- Choice RP ECJ 37 1 et seq., RP GC 35 4 et seq.
- Civil Service Tribunal Stat Annex I 74

- Court of Justice RP ECJ 36 et seq.
- Determination RP ECJ 37
- General Court RP GC 35 et seq.
- IP cases RP GC 131
- Language services RP ECJ 42
- Language of the case RP ECJ 36
- Legal remedies RP ECJ 37 7 et seq.
- List of languages RP GC 35 2 et seq.
- Preliminary ruling Proceedings RP ECJ 37 11 et seq.
- Prerogative of Judges RP GC 35 34 et seq.
- Procedure Stat 64
- Publications of the Court RP ECJ 40 RP GC 36 6 et seq.
- Responsibility of Registrar RP ECJ 39
- Special cases RP ECJ 36 7 et seq.
- Translations RP GC 36 1 et seq.
- Use RP ECJ 38 RP GC 35 27 et seq.
- Witnesses and experts RP GC 35 33
- Working language RP ECJ 36 4 et seq.

Lawyers *see also Re Representatives of the parties*

- Authorisation Stat 19 24 et seq.
- Exclusion RP GC 41
- Immunities Stat 19 31, RP GC 38 10 et seq.
- Powers of Court Stat 19 32 et seq.
- Recoverable remuneration RP GC 91 20 et seq.
- Re Representing the party Stat 19 7 et seq.
- Role Stat 19 22
- Self-Representation Stat 19 15 et seq.

Legal aid

- Appeal RP GC 96 9
- Appeals against decisions of GC RP ECJ 185 et seq.
- Application RP ECJ 115 RP GC 95 1 et seq. *see also Application for legal aid*
- Application admissible and founded RP GC 94 10 et seq.
- Application form RP GC 95 10
- Court of Justice RP ECJ 115 et seq.

- Decision on the application RP ECJ 116 187
- Designating a lawyer RP GC 96 4
- Economic situation RP GC 94 3 et seq.
- Effect RP GC RP 94 4
- Evidence RP GC 95 5 et seq.
- Hearing RP GC 96 1
- Modality of payment RP GC 97
- Prior application RP ECJ 186
- Procedure RP GC 96
- Purpose RP GC 94 1
- Reasoning RP GC 96 3
- Relevant documents RP GC 95
- Scope RP GC RP 94 3
- Sums advanced RP ECJ 117 188
- Suspending effect RP GC 96 5 et seq.
- Withdrawal RP ECJ 118 RP GC 96 8
- Letter rogatory Stat 29 RP GC 75
- List of languages
- General Court RP GC 35 2 et seq.

M

Measures of inquiry

- Court of Justice RP ECJ 63 et seq.
- Oral testimony RP ECJ 66
- Participants RP ECJ 65
- Procedure RP ECJ 64 3
- Serving the order RP ECJ 64 4

Measures of organisation

- Amicable settlement of disputes RP GC 64 8 et seq.
- Catalogue RP GC 64 14 et seq., 65
- Court of Justice RP ECJ 61 et seq.
- Discretion RP GC 64 3 et seq.
- Evidence RP GC 66 4
- General Court RP GC RPe 64 64 et seq.
- Letter of registrar RP GC 64 2
- Measures of inquiry RP GC 65 4 et seq., 67
- Oath RP GC 71 *see also Oath*
- Order RP GC 64 50, 66 1 et seq.
- Ordering an expert's report RP GC 70 3 et seq.

Index Measures of organisation

- Prescription by Judge- Rapporteur or Advocate General RP ECJ 62
- Prescription by the Court RP ECJ 61
- Proposal by party RP GC 64 41 et seq.
- Purpose RP GC 64 7 et seq., 65 1
- Summoning and examination of witnesses and experts RP GC 68 et seq. 68 1 et seq. 9

Minutes

- Access to minutes RP ECJ 84 2
- Correcting RP GC 63 6
- Oral hearings RP ECJ 84 1
- Purpose RP GC 63 1 et seq.

N

Notification of decision

- General Court Stat 55

O

Oath RP GC 71

- Civil Service Tribunal Stat Annex I 5 2
- Expert RP ECJ 71
- Judge RP GC 4
- Judge and AG Stat 2 2 et seq., RP ECJ 4
- Registrar Stat 10 1 et seq., RP ECJ 18 5, RP GC 20 1
- Staff Stat 12 2
- Violation Stat 30
- Witness and expert Stat 28 RP ECJ 68

Objection to witness or expert

- Grounds to object RP ECJ 72 1 et seq.
- Oral testimony RP ECJ 72
- Time-limit RP ECJ 72 5 et seq.

Official holidays RP ECJ 24 5

Official journal RP GC 24 5

Opinions

- Delivery RP ECJ 200
- Designation of Judge-Rapporteur and Advocate General RP ECJ 197
- Hearing in camera RP ECJ 198
- Object RP ECJ 196 2
- Procedure RP ECJ 196 3

- Time-limit RP ECJ 199

- Written part RP ECJ 196

Oral hearing

- Attending RP GC RP 55 11 et seq.
 - Closure RP GC 58 42 et seq., 60 61 3
 - Course RP GC 58 2 et seq.
 - Directions RP GC 56
 - Expedited Procedures RP GC 76 a 36
 - General Court RP GC 55 et seq.
 - Giving Priority or deferring RP GC 55 4 et seq.
 - In camera RP GC 57
 - Minutes RP GC 63 76
 - Opinion of AG RP GC 61
 - Oral pleadings RP GC 58 11 et seq.
 - Preliminary meeting RP GC 58 3 et seq.
 - Purpose RP GC RP 55 1 et seq.
 - Question time RP GC 58 27 et seq.
 - Questions RP GC 58
 - Recording RP GC 63 7
 - Reopening RP GC 62 1 et seq.
 - Reply and rejoinder RP GC 58 40 et seq.
 - Representatives of the parties RP GC 59
 - Rules RP GC RP 55 5 et seq.
 - Sequence of cases RP GC 55 1 et seq.
 - Urgent Preliminary ruling Procedure RP ECJ 108 *see also Legal aid*
- ### Oral part of Procedure
- Close of hearings RP ECJ 81
 - Conduct of oral Proceedings RP ECJ 78 *see also Conduct of oral Proceedings*
 - Guidance RP ECJ 76 et seq. 3
 - Hearing RP ECJ 76 *see also Hearing*
 - Hearing in camera RP ECJ 79
 - Joint hearing RP ECJ 77
 - Minutes RP ECJ 84 *see also Minutes*
 - Opening or reopening RP ECJ 83
 - Opinion of the Advocate General RP ECJ 82
 - Purpose RP ECJ 76 et seq. 2
 - Questions RP ECJ 80 *see Questions in oral hearing*

- Recording RP ECJ 85
- Oral pleadings
 - sequence of pleadings RP GC 58 11 et seq. *see also Oral hearing*
- Oral Procedure Stat 20 1 et seq. *see Oral hearing*
- Date RP GC 53 1 et seq. 6 et seq.
- General Court RP GC 53 54
- Oral testimony
 - Costs RP ECJ 73
 - Court of Justice RP ECJ 66
 - Examination RP ECJ 67
 - Expert RP ECJ 70 71
 - Minutes RP ECJ 74
 - Oath RP ECJ 68
 - Objection to witness or expert RP ECJ 72
 - Opening RP ECJ 75
 - Order RP ECJ 66 4
 - Pecuniary penalties RP ECJ 69
 - Securities RP ECJ 66 5
 - Witnesses RP ECJ 66 2
- Order
 - Effect RP GC 107 7
 - Enforcement RP GC 107 6
 - Suspension on operation RP GC 107
- Order of seniority RP ECJ 7
- Other occupation
 - Judge and AG Stat 4 1 et seq.

P

- Period of limitation
 - Beginning Stat 46 4 et seq.
 - Interruption Stat 46 9 et seq.
 - Proceedings against ECB Stat 46 1 et seq.
 - Proceedings against EU Stat 46 1 et seq.
- Periods of grace Stat 45 1 et seq.
 - Excusable error Stat 45 28 et seq.
 - Pending amendments Stat 45 2 et seq.
 - Procedure Stat 45 39
 - Unforeseeable circumstances Stat 45 9 et seq.
- Pleadings
 - „e-Curia“ RP GC 43 12 et seq.

- Dates RP GC 43 20 et seq.
- Electronic mail RP GC 43 27 et seq.
- Facsimile RP GC 43 27 et seq.
- General Court RP GC 43 et seq.
- General Rules RP GC 43
- Lacunae RP GC 43 23
- Language RP ECJ 38 1 et seq., RP GC 43 18 *see languages*
- Lodging documents RP GC 43 25 et seq.
- Original and copies RP GC 43 3 et seq.
- Translations RP GC 43 16 et seq.
- Pleas in law and evidence
 - Evidence produced or offered RP ECJ 128
 - New pleas in law RP ECJ 127 3 et seq.
 - Rights of defence RP ECJ 127 9
- Powers of Court
 - Expert opinion Stat 25 1 et seq.
 - Hearing of Witnesses Stat 26
 - Request for documents Stat 24 2 et seq.
 - Request for information Stat 24 12 et seq.
- Preliminary meeting RP GC 58 3 et seq.
- Preliminary objections and issues RP ECJ 151
 - Application RP ECJ 151 3 et seq.
 - Content of application RP ECJ 151 9
 - Decision of Court RP ECJ 151 12
 - Hearing RP ECJ 151 11
- Preliminary report
 - Appeal Civil Service Tribunal RP GC 147
 - Contents RP ECJ 59 3, RP GC 52 3 et seq.
 - Court of Justice RP ECJ 59
 - Date RP GC 52 1 et seq.
 - General Court RP GC 52
 - Purpose RP ECJ 59 1 et seq.
- Preliminary rulings
 - Anonymity RP ECJ 95
 - Average duration RP ECJ 93 et seq. 17 et seq.
 - Content of request RP ECJ 94

Index Preliminary rulings

- Costs RP ECJ 102
 - Court of Justice RP ECJ 93 et seq.
 - Entitled to refer Stat 23 16 et seq.
 - Expedited Procedure RP ECJ 105 et seq.
 - Filter mechanism Stat 23 66 et seq.
 - General Court Stat 51 8
 - Language RP ECJ 37 11 et seq.
 - Nature RP ECJ pre 93 et seq. 1 et seq.
 - Nature of referral Stat 23 4 et seq.
 - Notification Stat 23 51 et seq.
 - Oral hearing Stat 23 62
 - Participants RP ECJ 96
 - Parties' role RP ECJ 97
 - Pending amendments Stat 23 3
 - Rectification of judgments and orders RP ECJ 103
 - Referral Stat 23 1 et seq.
 - Relevant Provisions RP ECJ 93 et seq. 15 et seq.
 - Remaining seizure of the Court RP ECJ 100
 - Reply by reasoned order RP ECJ 99
 - Request for clarification RP ECJ 101
 - Review of decisions of GC RP ECJ 194
 - Scope RP ECJ 93
 - Suspension of national Proceedings Stat 23 46 et seq.
 - Translation and services RP ECJ 98
 - Urgent preliminary ruling procedure RP ECJ 107 et seq. *see Urgent preliminary ruling procedure*
 - Written observations Stat 23 53 et seq.
- President
- Chamber RP GC 15
 - Election RP GC 7 RP ECJ 8 1
 - Oral hearing RP GC 56
 - Powers RP GC 8 16 RP ECJ 9
 - Prevention from action RP ECJ 13
 - Substitute RP GC 9
- President of Chambers
- Election RP ECJ 12
 - Powers RP ECJ 11 5
- Privileges, Immunities and facilities
- Representatives of the parties RP ECJ 43 11, RP GC 38 15 et seq.
 - Waving RP GC 40
- Procedure
- Access to documents and information RP GC 43 4 et seq. *see also Proceedings*
 - Appeal Stat 59 1 et seq.
 - Assignment of case RP GC 13 2
 - Case list Stat 34
 - Civil Service Tribunal Stat Annex I 7 1 et seq. 5 et seq.
 - Costs Stat 38 1 et seq., RP ECJ 137 et seq.
 - Court of Justice RP ECJ 53 et seq.
 - Deliberations Stat 35 1 et seq., RP GC 32 et seq.
 - Expedited and urgent procedures RP ECJ 53 19 et seq., 133 et seq. RP GC 76 a et seq. *see Expedited procedure*
 - General Court RP GC 31 et seq. 43 et seq.
 - Inadmissibility RP ECJ 53 3 et seq.
 - Interim proceedings Stat 39 1 et seq.
 - Intervention RP ECJ 129 et seq. *see Intervention*
 - Joined cases RP ECJ 54
 - Joining cases RP GC 50 2 et seq.
 - Judgments and orders Stat 37 1 et seq., RP ECJ 86 et seq.
 - Judgments by default RP ECJ 152
 - Lack of jurisdiction RP ECJ 53 3 et seq.
 - Language Stat 64
 - Measures of organization RP GC 64 64 et seq. *see Measures of organisation*
 - Oral part RP ECJ 76 et seq. *see Oral part of procedure*
 - Pleadings RP GC 43 et seq. *see Pleadings*
 - Priority of case RP ECJ 53 17 et seq.
 - Public hearing Stat 31 1 et seq. *see Public hearing*
 - Quorum RP GC 31 5 et seq.
 - Reply and rejoinder RP GC 48 30 et seq.
 - Sittings RP GC 31

- Staying proceedings RP ECJ 55 *see Staying proceedings*
 - Summary procedure Stat 39 1 et seq.
 - Suspending enforcement Stat 39 1 et seq.
 - Written or oral Stat 20 1 et seq.
 - Written part RP ECJ 57 120 et seq. *see also Written part of the procedure*
 - Written procedure RP GC 43 et seq.
- Proceedings
- Discontinuance RP GC 98 et seq. *see also Procedure see Discontinuing of proceedings*
 - Staying RP GC 77
- Proceedings Against ECB
- Period of limitation Stat 46 1 et seq.
- Proceedings against EU
- Period of limitation Stat 46 1 et seq.
- Public databases RP GC Intro 19
- Public hearing Stat 31 1 et seq.
- Experts, witnesses, parties Stat 32 1 et seq.
 - Minutes Stat 33
- Publication RP GC 86
- Website RP GC 86 2
- Publications of the Court
- Language RP ECJ 40

Q

- Question time RP GC 58 27 et seq.
- Questions in oral hearing
- Addressee RP ECJ 80 8
 - Contents RP ECJ 80 4
 - Oral rejoinder RP ECJ 80 9 et seq.
 - Technique RP ECJ 80 5 et seq.
- Quorum Stat 17 3
- Grand Chamber RP ECJ 34 et seq.

R

- Ranking
- General Court RP GC 6
- Recording
- Oral hearing RP GC 63 7
- Recoverable costs
- Costs for witnesses and experts RP GC 91 3 et seq.
 - CST RP GC 91 2

- General Court RP GC 91 1
- Necessary incurred RP GC 91 5 et seq.
- Other expenses RP GC 91 66 et seq.
- Party expenses RP GC 91 6 et seq.
- Purpose of costs RP GC 91 8 et seq.
- Remuneration of representatives of the parties RP GC 91 8 et seq.
- Travel and subsistence expenses RP GC 91 61 et seq.

Rectification

- Application RP GC 84 3 et seq.
- Judgment and orders RP GC 84 1 et seq.
- Right to be heard RP GC 84 10 et seq.

Referral for preliminary rulings *see preliminary rulings*

Referral of case

- Assignment of chamber RP GC 121b
- Back to General Court RP GC 117
- Costs RP GC 121d
- General Court RP GC 51 2 et seq., 112
- Seizure of General Court RP GC 121a

Register

- Form RP GC 24 2 et seq.
- General Court RP GC 24
- Right to consult RP ECJ 22

Registrar *see also Registry*

- Appointment RP GC 20 1, RP ECJ 18 1 et seq.
- Assistant RP GC 21
- Duties Stat 10 2
- General Court RP GC 20 et seq.
- Instruction to the Registrar RP ECJ 20 1
- Instructions RP GC 23
- Language RP ECJ 39
- Oath Stat 10 1, RP GC 20 1, RP ECJ 18 5
- Practice Directions RP GC 23 4
- Presence RP GC 33 8
- Publication of cases RP GC 86 RP ECJ 21 2
- Replacement Stat 11 RP ECJ 18 6

Index Registrar

- Residence Stat 14
- Responsibilities RP ECJ 20
- Substitute RP GC 22
- Tasks RP GC 26 27
- Registry
 - Court of Justice RP ECJ 18 et seq.
 - Purpose RP GC 23 5 et seq., 25
- Reopening RP GC 62 1 et seq.
- Reply and rejoinder
 - Appeal RP ECJ 175
 - Appeal CST RP GC 143
 - Application RP GC 47 10 et seq.
 - Contents RP GC 48 1
 - Court of Justice RP ECJ 126
 - Cross-appeal RP ECJ 180
 - Further evidence RP GC 48 3 et seq.
 - IP cases RP GC 135 5
 - New pleas RP GC 48 10 et seq.
 - Procedure RP GC 48 30 et seq.
 - Statement of Defence RP GC 47 10 et seq.
 - Supplementing documents RP GC 47 10 et seq.
 - Time-limits RP GC 47 25 et seq.
 - Time-limits and injunction RP ECJ 126 5 et seq.
- Representation of parties Stat 19 1 et seq., RP ECJ 119
 - Adviser Stat 19 3 10 et seq. *see Adviser*
 - Agent Stat 19 3 et seq. *see Agent*
 - Agent or lawyer RP ECJ 119 2 et seq.
 - Authority to act RP ECJ 119 6 et seq.
 - Exclusion from proceedings RP ECJ 46 *see Exclusion of representatives*
 - Lawyer Stat 19 7 et seq. *see Lawyer*
 - Privileges, Immunities and facilities RP ECJ 43 RP GC 38 10 et seq.
 - Proof of status RP GC 39
 - Recoverable remunerations RP GC 91 20 et seq.
 - Rights and obligations RP ECJ 43 et seq.
 - Status RP ECJ 44
 - University teachers Stat 19 38

Requests and applications after case has been closed

- Advocate General RP ECJ 154 9
- Application to set aside RP ECJ 156
- Competent formation of the Court RP ECJ 153
- Failure to adjudicate RP ECJ 155 *see Failure to adjudicate*
- Interpretation RP ECJ 158 *see Interpretation*
- Operative part and grounds RP ECJ 154 7
- Order RP ECJ 154 10
- Rectification RP ECJ 154
- Request RP ECJ 154 2 et seq.
- Revision RP ECJ 159
- Third party proceedings RP ECJ 157 *see Third party proceedings*

Resignation of Judge and AG Stat 5 3 et seq.

Review by ECJ

- Appeal Stat 62 1 et seq.
- Proposal by AG Stat 62 3 et seq.
- Suspensory effect Stat 62 b 1 et seq.
- Time-limit Stat 62 6
- Urgency procedure Stat 62 a 1 et seq.

Review of decisions of GC RP ECJ 191 et seq.

- Advocate-General RP ECJ 195 3
- Costs RP ECJ 195 5
- Decisions given on appeal RP ECJ 193
- Information and Communication of decisions RP ECJ 192
- Judgment on the substance of the case RP ECJ 195
- Preliminary rulings RP ECJ 194
- Reviewing Chamber RP ECJ 191
- Time-limit RP ECJ 195 2

Revision RP ECJ 159

- Addressees of the application RP GC 125 4
- Admissibility RP ECJ 159 13 et seq.
- Application Stat 44 1 et seq., RP ECJ 159 8 et seq. 15
- Assessing substance RP ECJ 159 15
- Competent chamber RP GC 126

- Contents of application RP GC 125 3, 126 5
- Cut-off period RP GC 125 2
- Judgment RP ECJ 159 16
- Procedure Stat 44 2 et seq.
- Purpose RP ECJ 159 2 et seq.
- Time-limit Stat 44 11, RP ECJ 159 6 et seq., RP GC 125 3
- Revocation
 - Procedure RP GC 5 2 et seq.
- Rules of procedure
 - Contents RP GC Intro 8 et seq.
 - Court of Justice RP ECJ Intro 5 et seq.
 - Expedited procedure RP GC Intro 15 et seq.
 - General Court RP GC Intro 4 et seq.
 - Pending amendments RP GC Intro 11 et seq.
 - Purpose RP ECJ 2

S

- Scope of urgent preliminary ruling procedure
 - Establishing urgency RP ECJ 107 8 et seq.
 - Request or ex officio RP ECJ 107 4 et seq.
 - Rights of initiative of President RP ECJ 107 19
 - setting out the reasons for urgency RP ECJ 107 8 et seq.
- Securities
 - Oral testimony RP ECJ 66 5
- Service RP GC 100 et seq.
 - At the address of service RP GC 100 2
 - Court of Justice RP ECJ 48
 - Modes of delivery RP ECJ 48 2 et seq.
 - To the address of service RP GC 100 3 et seq.
- Service of application in IP cases RP GC 133
- Setting aside of decision RP GC 117 et seq.
 - Costs RP GC 121

- Formation of Judges RP GC 118
- Procedure after referral RP GC 119 120
- Referral of case RP GC 117
- Single Judge
 - Assignment of case RP GC 51 8 et seq.
 - Civil Service Tribunal RP GC 14 17
 - General Court RP GC 14 8 et seq.
- Sources of law Stat Intro 13 et seq., 1
- Specialised courts Stat 62 c 1 et seq.
 - Pending amendments Stat 62 c 7
- Staff
 - Definition Stat 12 1
 - General Court RP GC 28 et seq.
 - Oath Stat 12 2, RP GC 29
 - Regulations RP GC 28 2
- Staff cases
 - Costs RP GC 88
 - Statement of Defence RP GC 46 24 et seq.
- Statement of Defence
 - Contents RP GC 46 5 et seq.
 - Reply and rejoinder RP GC 47 10 et seq. *see Reply and rejoinder*
 - Staff cases RP GC 46 24 et seq.
 - Time-limit RP GC 46 28 et seq.
- Staying proceedings
 - Conditions RP ECJ 55 1 et seq.
 - Duration RP GC 79
 - Effect RP ECJ 55 8
 - General Court RP GC 77
 - Hearing parties RP GC 78 2
 - Interim proceedings RP GC 77 7
 - Joint request RP GC 77 9 et seq.
 - Legal effect RP GC 79 2
 - Order RP GC 78 1
 - Procedure RP ECJ 55 5 et seq.
 - Purpose RP GC 77 1
 - Resuming proceedings RP ECJ 55 7
- Submission of statements
 - Contents RP ECJ 132 3 et seq.
 - Reply to statement RP ECJ 132 6
- Summary procedure Stat 39 1 et seq.
- Suspended enforcement Stat 39 1 et seq. *see Interim proceedings*
- Suspension of operation
 - Admissibility RP GC 104 3 et seq.

Index Suspension of operation

- Application RP GC 104 1 et seq.
- Change in circumstances RP GC 108
- Competent judge RP GC 106
- Decision RP GC 107 *see Order*
- Inaudit altera parte-order RP GC 105 15 et seq.

Suspension of operation

- New facts RP GC 109
- Observations by other party RP GC 105 1 et seq.
- Oral hearing RP GC 105 9 et seq.
- Requirements RP GC 104 64 et seq.
- Suspension of enforcement RP GC 110
- Appeal Stat 60 1
- Review by ECJ Stat 62 b 1 et seq.

T

Taxation of costs

- Application RP GC 92 14 et seq.
- Costs of taxation proceedings RP GC 92 30
- Enforcement RP GC 92 32
- Hearing RP GC 92 29 et seq.
- Precondition RP GC 92 8 et seq.

Temporary Judge Stat 62 c 7 Stat Annex I 2

Term in office

- Judge and AG Stat 5 1 et seq.

Third party proceedings RP GC 123

- Addressee RP ECJ 157 5
- Appeal RP GC 123 10
- Application RP ECJ 157 2 et seq.
- Assignment of Judge RP GC 124
- Stay of execution RP GC 123 8
- Submission RP GC 123 2 et seq.
- Suspension of operation RP ECJ 157 7
- Time-limit RP ECJ 157 6
- Upholding submission RP GC 123 9

Time-limits

- Abbreviated appeal Stat 57 4 et seq.
- Beginning RP ECJ 49 4, RP GC 101 2, 102 1 et seq.
- Calculation RP ECJ 49 RP GC 101 2 et seq.
- coherence RP GC 101 3

- Court of Justice RP ECJ 49 et seq.
- Date in other publications RP GC 102 7 et seq.
- Date in the OJ RP GC 102 1 et seq.
- End RP ECJ 49 5 et seq., RP GC 101 3
- Expedited procedures RP GC 76 a 34 et seq. *see Expedited procedures*
- Extension RP ECJ 51 et seq. RP GC 101 6 et seq., 106
- General Court RP GC 101 et seq.
- Interlocutory procedure RP GC 114 20 et seq.
- Interpretation RP ECJ 158 2
- Intervention by third parties RP GC 115 6 et seq.
- Intervention in appeals RP ECJ 190 5 et seq.
- Measures of an institution RP ECJ 50
- Obligation to advise RP GC 101 7 et seq.
- Opinions RP ECJ 199
- Periods on account of distance RP GC 102 19 et seq.
- Reply and rejoinder RP GC 47 25 et seq.
- Review by ECJ Stat 62 6
- Review of decisions of GC RP ECJ 195 2
- Revision Stat 44 11, RP ECJ 159 6 et seq., RP GC 125 3
- Statement of defence RP GC 46 5 et seq.
- Third party proceedings RP ECJ 157 6

Translations

- General Court RP GC 36 1 et seq.
- Publications of the Court RP GC 36 6 et seq.
- Preliminary ruling RP ECJ 98

U

Unfoundedness *see Inadmissibility*

University teachers Stat 19 38

- Court of Justice RP ECJ 47
- General Court RP GC 42

Urgency procedure

- Court of Justice RP ECJ 107 et seq.
- Decision as of urgency RP ECJ 108
- Decision on substance RP ECJ 112
- Formation of Court RP ECJ 113
- Notifications RP ECJ 109 1 et seq.
- Omission of written part RP ECJ 111
- Oral hearing RP ECJ 109 5
- Review by ECJ Stat 62 a 1 et seq.
- Scope RP ECJ 107
- Service and information after written part RP ECJ 110
- Transmission of documents RP ECJ 114
- Written part RP ECJ 109

V

Vacation Stat 15

- Judges RP GC 34 1 et seq.
- Public holidays RP GC 34 7

Vice- President Stat 9a 16 10

- Election RP ECJ 8 2
- Interim proceedings Stat 39 3
- Prevention from action RP ECJ 13
- Responsibilities RP ECJ 10

W

Witnesses

- Examination RP ECJ 67
- Letter rogatory RP GC 75
- Oath RP ECJ 68 RP GC 71
- Objections RP GC 73
- Obligation to attend RP GC 69
- Oral testimony RP ECJ 66 2
- Summoning and examination RP GC 68 et seq. 68 1 et seq. 9
- Suspended enforcement Stat 39 3
- Travel and subsistence expenses RP GC 74

Witnesses and experts

- Costs RP ECJ 144 4
- Defaulting witnesses Stat 27
- Expert opinion Stat 25 1 et seq.

- Hearing Stat 20 22 et seq., 26
- Letter rogatory Stat 29
- Loss of earnings and fees RP ECJ 73 3
- Oath Stat 28
- Travel and subsistence expenses RP ECJ 73 2

Written application

- Content requirements Stat 21 1 et seq.
- Documents Stat 21 6

Written part of the procedure Stat 20 1 et seq., RP GC 43 2

- Additional obligations of institutions RP ECJ 57 8
- Annexed documents RP ECJ 57 10 et seq.
- Annexes to application RP ECJ 122
- Certified copy RP ECJ 57 6 et seq.
- Content of application RP ECJ 120
- Defence RP ECJ 124 *see also Defence*
- Designation of defendant RP ECJ 120 5
- Form of order sought RP ECJ 120 23 et seq.
- Indication concerning applicant RP ECJ 120 4
- Indication of evidence RP ECJ 120 28
- Information relating service RP ECJ 121
- Lodging documents RP ECJ 57 15 et seq.
- Pleas in law and evidence RP ECJ 127 et seq. *see Pleas in law and evidence*
- Procedural documents RP ECJ 57 2 et seq., 58
- Reply and rejoinder RP ECJ 126
- Service of application RP ECJ 123
- Subject-matter RP ECJ 120 7 et seq.
- Time-limits RP ECJ 57 16 et seq.
- Transmission of documents RP ECJ 125

