

## COURT OF JUSTICE

### AMENDMENTS TO THE RULES OF PROCEDURE OF THE COURT OF JUSTICE FOLLOWING THE ENTRY INTO FORCE OF THE TREATY OF NICE

THE COURT OF JUSTICE,

Having regard to the Treaty establishing the European Community, in particular the sixth paragraph of Article 223 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, in particular the sixth paragraph of Article 139 thereof,

Whereas:

- (1) The Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts has made amendments to the provisions of the EC and EAEC Treaties concerning the Court of Justice and has replaced the Protocols on the Statute of the Court of Justice annexed to the Treaty establishing the European Community and to the Treaty establishing the European Atomic Energy Community by a new Protocol on the Statute of the Court of Justice annexed to the Treaty on European Union, to the Treaty establishing the European Community and to the Treaty establishing the European Atomic Energy Community.
- (2) Articles 221 of the EC Treaty and 137 of the EAEC Treaty, as amended, provide that the Court is to sit in chambers, in a Grand Chamber or, where appropriate, as a full Court, and Article 16 of the new Protocol on the Statute of the Court of Justice lays down the composition of the chambers and of the Grand Chamber; account must be taken of those new formations in the Rules of Procedure and certain detailed rules must be laid down for the assignment of cases to the formations and for their composition for each case.
- (3) Articles 222 of the EC Treaty and 138 of the EAEC Treaty, as amended, and Article 20 of the new Protocol on the Statute of the Court of Justice provide that the Court may, in certain circumstances, decide that a case is to be determined without an opinion from the Advocate General; provision must be made in the Rules of Procedure for the manner in which that decision is to be taken.
- (4) Article 300(6) of the EC Treaty, as amended, gives the European Parliament the right to obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of that Treaty;

provision must be made in the Rules of Procedure for the procedure to be followed where a request for an opinion is made by the Parliament.

- (5) Article 16 of the new Protocol on the Statute of the Court of Justice provides that the Judges are to elect the Presidents of the chambers from among their number and that the Presidents of the chambers of five Judges are to be elected for three years; consequential amendments must be made to the Rules of Procedure.
- (6) The expiry of the Treaty establishing the European Coal and Steel Community and the entry into force of the new Protocol on the Statute of the Court of Justice make it necessary to make a number of drafting amendments to the provisions of the Rules of Procedure,

With the approval of the Council given on 8 April 2003,

HAS ADOPTED THE FOLLOWING AMENDMENTS TO ITS RULES OF PROCEDURE:

#### *Article 1*

The Rules of Procedure of the Court of Justice of the European Communities of 19 June 1991 (OJ L 176, 4.7.1991, p. 7; Corrigendum in OJ L 383, 29.12.1992, p. 117), as amended on 21 February 1995 (OJ L 44, 28.2.1995, p. 61), 11 March 1997 (OJ L 103, 19.4.1997, p. 1; Corrigendum in OJ L 351, 23.12.1997, p. 72), 16 May 2000 (OJ L 122, 24.5.2000, p. 43), 28 November 2000 (OJ L 322, 19.12.2000, p. 1), 3 April 2001 (OJ L 119, 27.4.2001, p. 1) and 17 September 2002 (OJ L 272, 10.10.2002, p. 24; Corrigendum in OJ L 281, 19.10.2002), shall be amended as follows:

1. Article 1 is replaced by the following:

'In these Rules:

- "Union Treaty" means the Treaty on European Union,
- "EC Treaty" means the Treaty establishing the European Community,
- "EAEC Treaty" means the Treaty establishing the European Atomic Energy Community,
- "Statute" means the Protocol on the Statute of the Court of Justice,
- "EEA Agreement" means the Agreement on the European Economic Area.

For the purposes of these Rules:

- “institutions” means the institutions of the Community and bodies which are established by the Treaties, or by an act adopted in implementation thereof, and which may be parties before the Court,
  - “EFTA Surveillance Authority” means the surveillance authority referred to in the EEA Agreement.’
2. In Article 7(1) the words ‘Article 32(b) of the ECSC Treaty’ shall be deleted.
  3. In Article 9(1):
    - (a) in the first paragraph, the words ‘of five and three Judges’ shall be added after the word ‘Chambers’, and the words ‘the provisions of the second paragraph of Article 221 of the EC Treaty, the second paragraph of Article 32 of the ECSC Treaty and the second paragraph of Article 137 of the EAEC Treaty’ shall be replaced by the words ‘Article 16 of the Statute’;
    - (b) in the second paragraph, the words ‘The composition of the Chambers’ shall be replaced by the words ‘The assignment of Judges to Chambers’ and the words ‘of the European Communities’ shall be replaced by the words ‘of the European Union’.
  4. In Article 9(2) the words ‘of three Judges’ shall be added after the word ‘Chambers’.
  5. Article 9(3) shall be replaced by the following:
 

‘3. For cases assigned to a formation of the Court in accordance with Article 44(3), the word “Court” in these Rules shall mean that formation.’
  6. In Article 9(4):
    - (a) The first subparagraph shall be deleted;
    - (b) in the second subparagraph (now the sole paragraph), the words ‘assigned to a Chamber’ shall be replaced by the words ‘assigned to a Chamber of five or three Judges’.
  7. Article 10(1) shall be replaced by the following:
 

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

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

The Court shall appoint for a period of one year the First Advocate General.

The provisions of Article 7(2) and (3) shall apply.

The elections and appointment made in pursuance of this paragraph shall be published in the *Official Journal of the European Union*.’
  8. In Article 11:
    - (a) in the first paragraph, the words ‘of five Judges’ shall be added after the words ‘a President of a Chamber’;
    - (b) the following new second subparagraph shall be added: ‘When the President of the Court and the Presidents of the Chambers of five Judges are all 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 Presidents of the Chambers of three Judges according to the order of precedence laid down in Article 6 of these Rules’;

- (c) the present second subparagraph shall become the third and in that subparagraph the words ‘the Presidents of the Chambers’ shall be replaced by ‘all the Presidents of Chambers’.

9. The following shall be inserted after Article 11:

‘CHAPTER 2(a)

#### FORMATIONS OF THE COURT

*Article 11(a)*

The Court shall sit in the following formations:

- the full Court, composed of all the Judges,
- the Grand Chamber, composed of eleven Judges in accordance with Article 11(b),
- Chambers composed of five or three Judges in accordance with Article 11(c).

*Article 11(b)*

1. For each case the Grand Chamber shall be composed of the President of the Court, the Presidents of the Chambers of five Judges, the Judge-Rapporteur and the number of Judges necessary to reach eleven. The last-mentioned Judges shall be designated from the list referred to in paragraph (2), following the order laid down therein, the starting-point moving on by one name at each general meeting of the Court.

2. After the election of the President of the Court and of the Presidents of the Chambers of five Judges, a list of the other Judges shall be drawn up for the purposes of determining the composition of the Grand Chamber. That list shall follow the order laid down in Article 6 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.

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

*Article 11(c)*

1. The Chambers of five Judges and 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 paragraph (2) and following the order laid down in them, the starting-point being moved on by one name at each general meeting of the Court.

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 11(b)(2).

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 6 of these Rules.

The lists referred to in this paragraph shall be published in the *Official Journal of the European Union*.

#### Article 11(d)

Where the Court considers that several 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 first examined.

#### Article 11(e)

When a member of the formation determining a case is prevented from attending, he shall be replaced by a Judge according to the order of the lists referred to in Article 11(b)(2) or 11(c)(2).

When the President of the Court is prevented from attending, the functions of the President of the Grand Chamber shall be exercised in accordance with the provisions of Article 11.

When the President of a Chamber of five Judges is prevented from attending, 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 6 of these Rules or, if that Chamber 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 6.

When the President of a Chamber of three Judges is prevented from attending, the functions of President of the Chamber shall be exercised by a Judge of that Chamber according to the order laid down in Article 6 of these Rules.'

10. In Article 16(6) the words 'of the European Communities' shall be replaced by the words 'of the European Union'.
11. The words 'the third paragraph of Article 36 of the ECSC Treaty' shall be deleted from Article 16(7).
12. In Article 17 paragraph (2) shall be replaced by the following:
 

'2. The Registrar shall assist the Court, the President and the Presidents of Chambers and the Judges in all their official functions.'

13. In Article 24(1) the words 'Article 12 of the EC Statute, Article 16 of the ECSC Statute and Article 12 of the EAEC Statute' shall be replaced by the words 'Article 13 of the Statute'.

14. In Article 25(1) the word 'Court' shall be replaced by the words 'Grand Chamber and of the full Court'.

15. In Article 25(2) the words 'of five and three Judges' shall be added after the word 'Chambers'.

16. In Article 25(3) the words 'and the Chambers may' shall be replaced by the word 'may'.

17. In Article 26(2):

- (a) the word 'Court' shall be replaced by the words 'Grand Chamber or full Court';
- (b) the words 'Articles 15 of the EC Statute, 18 of the ECSC Statute and 15 of the EAEC Statute' shall be replaced by the words 'the third or fourth paragraph of Article 17 of the Statute'.

18. In Article 26(3):

- (a) the words 'any Chamber' shall be replaced by the words 'any Chamber of five or three Judges';
- (b) the words 'Articles 15 of the EC Statute, 18 of the ECSC Statute and 15 of the EAEC Statute' shall be replaced by the words 'the second paragraph of Article 17 of the Statute';
- (c) after the word 'attained' there shall be added the words 'and if it is not possible to replace the Judges prevented from attending in accordance with Article 11(e)'.

19. In Article 27(1) the words 'and Chambers shall deliberate' shall be replaced by the words 'shall deliberate'.

20. The words 'or Chamber' shall be deleted from Article 27(4).

21. The words 'or Chamber' shall be deleted from Article 27(6).

22. Article 29(3) shall be amended as follows:

- (a) in the third subparagraph the words 'or Chamber' shall be deleted;
- (b) in the fifth subparagraph the words 'Article 20 of the EC Statute' shall be replaced by the words 'Article 23 of the Statute';
- (c) in the sixth subparagraph the words 'the final paragraph of Article 20 of the EC Statute' shall be replaced by the words 'the fourth paragraph of Article 23 of the Statute'.

23. In Article 29(4) the words 'or Chamber' shall be deleted.

24. In Article 30(1) the words 'or a Chamber' shall be deleted.

25. Article 35(1) shall be amended as follows:

- (a) after the words 'towards the Court', the words 'a Chamber' shall be deleted;

- (b) after the words 'of the Court', the words 'or Chamber' shall be deleted.
26. In Article 36 the words 'Article 17 of the EC Statute, Article 20 of the ECSC Statute and Article 17 of the EAEC Statute' shall be replaced by the words 'Article 19 of the Statute'.
27. In Article 38(1) the words 'Article 19 of the EC Statute, Article 22 of the ECSC Statute and Article 19 of the EAEC Statute' shall be replaced by the words 'Article 21 of the Statute'.
28. In Article 38(4) the words 'the second paragraph of Article 19 of the EC Statute, the second paragraph of Article 22 of the ECSC Statute and the second paragraph of Article 19 of the EAEC Statute' shall be replaced by the words 'the second paragraph of Article 21 of the Statute'.
29. In Article 38(6) the words 'Articles 42 and 89 of the ECSC Treaty' shall be deleted.
30. Article 44 shall be replaced by the following:

'CHAPTER 1(a)

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

*Article 44*

1. The President shall fix a date on which the Judge-Rapporteur is to present his preliminary report to the general meeting of the Court, either:

- (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 41(2); or
- (c) where the party concerned has waived his right to lodge a reply or rejoinder; or
- (d) where the expedited procedure referred to in Article 62(a) is to be applied, when the President fixes a date for the hearing.

2. The preliminary report shall contain recommendations as to whether a preparatory inquiry or any other preparatory step should be undertaken and as to the formation to which the case should be assigned. It shall also contain the Judge-Rapporteur's recommendation, if any, as to whether to dispense with a hearing as provided for in Article 44(a) and as to whether to dispense with an opinion of the Advocate General pursuant to the fifth subparagraph of Article 20 of the Statute.

The Court shall decide, after hearing the Advocate General, what action to take upon the recommendations of the Judge-Rapporteur.

3. The Court shall assign to the Chambers of five and 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.

However, a case may not be assigned to a Chamber of five or three Judges if a Member State or an institution of the Communities, being a party to the proceedings, has

requested that the case be decided by the Grand Chamber. For the purposes of this provision, "party to the proceedings" means any Member State or any institution which is a party to or an intervener in the proceedings or which has submitted written observations in any reference of a kind mentioned in Article 103. A request such as that referred to in this subparagraph may not be made in proceedings between the Communities and their servants.

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.

4. The formation to which a case has been assigned may, at any stage of the proceedings, refer the case back to the Court in order that it may be reassigned to a formation composed of a greater number of Judges.

5. Where a preparatory inquiry has been opened, the formation determining the case may, if it does not undertake it itself, assign the inquiry to the Chamber referred to in Article 9(2) of these Rules.

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

31. In Article 45(2) the words '21 and 22 of the EC Statute, Articles 24 and 25 of the ECSC Statute and 22 and 23 of the EAEC Statute' shall be replaced by the words '24 and 25 of the Statute'.
32. In Article 48(4) the words 'Articles 44 and 92 of the ECSC Treaty' shall be deleted.
33. In Article 74(1) there shall be added, after the words 'the Chamber', the words 'referred to in Article 9(2) of these Rules'.
34. In Article 76(3), after the words 'the Chamber', there shall be added the words 'of three Judges'.
35. In the second paragraph of Article 77, the words 'Articles 33 and 35 of the ECSC Treaty' shall be deleted.
36. In Article 80(1), the words 'the EC, ECSC and EAEC Treaties, the Statutes of the Court' shall be replaced by the words 'the Union Treaty, the EC Treaty and the EAEC Treaty, the Statute of the Court'.
37. In the second paragraph of Article 80(2), the words 'of the European Communities' shall be replaced by the words 'of the European Union'.
38. In Article 81(1) the words 'of the European Communities' shall be replaced by the words 'of the European Union'.
39. In Article 82(a)(1) the words 'the third paragraph of Article 47 of the EC Statute, the third paragraph of Article 47 of the ECSC Statute and the third paragraph of Article 48 of the EAEC Statute' shall be replaced by the words 'the third paragraph of Article 54 of the Statute' and the words 'or of the Chamber to which the case has been assigned' shall be deleted.



40. Article 83(1) shall be amended as follows:
- (a) in the first paragraph the words 'the second paragraph of Article 39 of the ECSC Treaty' shall be deleted;
  - (b) in the second paragraph the words 'the third paragraph of Article 39 of the ECSC Treaty' shall be deleted.
41. In the first paragraph of Article 89 the words 'Articles 44 and 92 of the ECSC Treaty' shall be deleted.
42. Article 93(1) shall be amended as follows:
- (a) in point (f) of the second subparagraph, the words 'the second or third paragraph of Article 37 of the EC Statute, Article 34 of the ECSC Statute or the second paragraph of Article 38 of the EAEC Statute' shall be replaced by the words 'the second or third paragraph of Article 40 of the Statute';
  - (b) in the third subparagraph, the words 'Article 17 of the EC Statute, Article 20 of the ECSC Statute and Article 17 of the EAEC Statute' shall be replaced by the words 'Article 19 of the Statute'.
43. After Article 94, the fifth chapter containing Article 95 shall be repealed.
44. In Article 97(1) the words 'of the European Communities' shall be replaced by the words 'of the European Union'.
45. Article 103 shall be amended as follows:
- (a) in paragraph (1), the words 'Article 20 of the EC Statute and Article 21 of the EAEC Statute' shall be replaced by the words 'Article 23 of the Statute';
  - (b) paragraph (3) shall be repealed.
46. Article 104 shall be amended as follows:
- (a) in the second subparagraph of paragraph (1), the words 'Article 20 of the EC Statute' shall be replaced by the words 'the third paragraph of Article 23 of the Statute';
  - (b) in the third subparagraph of paragraph (1), the words 'Article 20 of the EC Statute' shall be replaced by the words 'the fourth paragraph of Article 23 of the Statute';
  - (c) in paragraphs (3) and (4), the words 'Article 20 of the EC Statute, Article 21 of the Euratom Statute and Article 103(3) of these Rules' shall be replaced by the words 'Article 23 of the Statute'.
47. In the second paragraph of Article 104(a), the words 'Article 20 of the EC Statute, Article 21 of the Euratom Statute and Article 103(3) of these Rules' shall be replaced by the words 'Article 23 of the Statute'.
48. In Article 107(1) the first subparagraph shall be replaced by the following:
- 'A request by the European Parliament for an opinion pursuant to Article 300 of the EC Treaty shall be served on the Council, on the Commission and on the Member States. Such a request by the Council shall be served on the Commission and on the European Parliament. Such a request by the Commission shall be served on the Council, on the European Parliament and on the Member States. Such a request by a Member State shall be served on the Council, on the Commission, on the European Parliament and on the other Member States.'
49. Article 109 shall be repealed.
50. In Article 110, the words 'Articles 49 and 50 of the EC Statute, Articles 49 and 50 of the ECSC Statute and Articles 50 and 51 of the EAEC Statute' shall be replaced by the words 'in Articles 56 and 57 of the Statute'.
51. In Article 125 the words 'Article 245 of the EC Treaty and Article 160 of the EAEC Treaty' shall be replaced by the words 'Article 223 of the EC Treaty and Article 139 of the EAEC Treaty' and in point (c) the words 'Article 27 of the EC Statute and Article 28 of the ECSC and EAEC Statutes' shall be replaced by the words 'Article 30 of the Statute'.
52. In Article 127 the words 'of the European Communities' shall be replaced by the words 'of the European Union'.

#### Article 2

These amendments to the Rules of Procedure, which are authentic in the languages mentioned in Article 29(1) 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 second month following their publication.