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(Acts whose publication is obligatory)

## COURT OF JUSTICE

### AMENDMENTS TO THE RULES OF PROCEDURE OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

of 15 May 1991

THE COURT OF JUSTICE,

Having regard to Article 55 of the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community,

Having regard to the third paragraph of Article 188 of the Treaty establishing the European Economic Community,

Having regard to the third paragraph of Article 160 of the Treaty establishing the European Atomic Energy Community (Euratom),

Whereas, in order to maintain the effectiveness of judicial review in the legal order of the Community, it is necessary to amend the Rules of Procedure;

With the unanimous approval of the Council, given on 21 December 1990,

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, adopted on 4 December 1974 (*Official Journal of the European Communities* No L 350 of 28 December 1974, p. 1), as amended on 12 September 1979 (*Official Journal of the European Communities* No L 238 of 21 September 1979, p. 1), 27 May 1981 (*Official Journal of the European Communities* No L 199 of 20 July 1981, p. 1), 8 May 1987 (*Official Journal of the European Communities* No L 165 of 24 June 1987, p. 1) and 7 June 1989 (*Official Journal of the European Communities* No L 241 of 17 August 1989, p. 1), shall be amended as follows:

1. In the second subparagraph of Article 9 (4) the words 'or devolving upon' shall be deleted.

2. The following shall be substituted for Article 14:

#### 'Article 14

Where the Registrar and the Assistant Registrars are absent or prevented from attending or their posts are vacant, the President shall designate an official to carry out temporarily the duties of Registrar.'

3. The following shall be substituted for Article 26 (1)

'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 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.'

4. (a) At the end of Article 38 (2) there shall be inserted, as the second subparagraph, the following:

'If the application does not comply with these requirements, 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 79,

service shall then be deemed to be duly effected by the lodging of the registered letter at the post office of the place where the Court has its seat.'

- (b) The following shall be substituted for Article 38 (5) (a):

'(a) the instrument or instruments constituting or 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;'

- (c) In Article 38 (7) for the words 'paragraphs 2 to 6' there shall be substituted the words 'paragraphs (3) to (6)'.

5. In the first and second subparagraphs of Article 42 (2) there shall be substituted for the words 'written procedure' the word 'procedure'.

6. The following shall be substituted for Article 43:

*'Article 43*

The Court may, at any time, after hearing the parties and the Advocate-General, if the assignment referred to in Article 10 (2) has taken place, 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.'

7. After Article 44 there shall be inserted, as Article 44 (a), the following:

*'Article 44 (a)*

Without prejudice to any special provisions laid down in these Rules, and except in the specific cases in which, after the pleadings referred to in Article 40 (1) and, as the case may be, in Article 41 (1) have been lodged, the Court, acting on a report from the Judge-Rapporteur, after hearing the Advocate-General and with the express consent of the parties, decides otherwise, the procedure before the Court shall also include an oral part.'

8. The following shall be substituted for Article 45 (1):

'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. Before the Court decides on the measures of inquiry referred to in paragraph (2) (c), (d) and (e) the parties shall be heard.'

9. The following shall be substituted for Article 47 (6):

'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.'

10. (a) In the first subparagraph of Article 48 (2) there shall be substituted for the words '250 EMA units' the words 'ECU 5 000'.

- (b) The following shall be substituted for Article 48 (3):

'3. If the witness proffers a valid excuse to the 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.'

11. At the end of Article 49 (2) there shall be inserted, as the second subparagraph, the following:

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

12. In Article 52 there shall be substituted for the words 'Article 111' the words 'Article 125'.

13. (a) The second subparagraph of Article 55 (1) shall be deleted.

- (b) The following shall be substituted for Article 55 (2):

'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.'

14. The following shall be substituted for Article 60.

*'Article 60*

The Court may at any time, in accordance with Article 45 (1), after hearing the Advocate-General, order any measure of inquiry to be taken or that a previous inquiry be repeated or expanded. The Court may direct the Chamber or the Judge-Rapporteur to carry out the measures so ordered.'

15. The following shall be substituted for Article 66 (1):

'1. Without prejudice to the provisions relating to the interpretation of judgments the Court may, of 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.'

16. (a) The following shall be substituted for Article 69 (1):

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

- (b) The following shall be substituted for the first subparagraph of Article 69 (3):

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

- (c) The following shall be substituted for Article 69 (4):

'4. The Member States and institutions which intervene in the proceedings shall bear their own costs.'

The Court may order an intervener other than those mentioned in the preceding subparagraph to bear his own costs.'

- (d) At the end of Article 69 (4) there shall be inserted, as paragraph (5), the following:

'5. 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 pleadings. 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 claimed, the parties shall bear their own costs.'

- (e) The former Article 69 (5) shall become Article 69 (6).

17. In Article 70 there shall be substituted for the words 'under Article 95 (3) of these rules' the words 'between the Communities and their servants.'

18. The following shall be substituted for the first paragraph of Article 77:

'If, before the Court has given its decision, the parties reach a settlement of their dispute and intimate to the 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 69 (5), having regard to any proposal made by the parties on the matter.'

19. The following shall be substituted for Article 78:

*'Article 78*

If the applicant informs the 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 69 (5).'

20. Article 79 (2) is repealed.

21. The following shall be substituted for Article 80:

*'Article 80*

1. Any period of time prescribed by the ECSC, EEC or Euratom Treaties, the Statutes of the Court 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 an official holiday, it shall be extended until the end of the first following working day.

A list of official holidays drawn up by the Court shall be published in the *Official Journal of the European Communities*.

22. At the end of Article 82 there shall be inserted, as the second subparagraph, the following:

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

23. At the end of Article 82 there shall be inserted a Chapter 10 containing a new Article 82 (a) and worded as follows:

*'Chapter 10*

*STAY OF PROCEEDINGS*

*Article 82 (a)*

1. The proceedings may be stayed:
- (a) in the circumstances specified in the third paragraph of Article 47 of the ECSC Statute, the

third paragraph of Article 47 of the EEC Statute and the third paragraph of Article 48 of the Euratom Statute, by order of the Court or of the Chamber to which the case has been assigned, made after hearing the Advocate-General;

- (b) in all other cases, by decision of the President adopted after hearing the Advocate-General and, save in the case of references for a preliminary ruling as referred to in Article 103, the parties.

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

The orders or decisions referred to in this paragraph shall be served on the parties.

2. 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.

While proceedings are stayed time shall cease to run for the purposes of prescribed time-limits for all parties.

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.

From the date of resumption time shall begin to run afresh for the purposes of the time-limits.'

24. [This amendment does not concern the English text].

25. The following shall be substituted for the second paragraph of Article 89:

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

26. The following shall be substituted for Article 92 (1):

'1. Where it is clear that the Court has no jurisdiction to take cognizance of an action or where the action is manifestly inadmissible, the Court may, by reasoned order, after hearing the Advocate-General and without taking further steps in the proceedings, give a decision on the action.'

27. The following shall be substituted for Article 93:

*'Article 93*

1. An application to intervene must be made within three months of the publication of the notice referred to in Article 16 (6) of these Rules.

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 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) except in the case of applications to intervene made by Member States or institutions, a statement of the reasons establishing the intervener's interest in the result of the case.

The intervener shall be represented in accordance with the first and second paragraphs of Article 20 of the ECSC Statute and with Article 17 of the EEC and Euratom Statutes.

Article 37 and 38 of these Rules shall apply.

2. 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 application to the Court.

3. If the President allows the intervention, 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.

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

5. 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.

6. 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.'

28. (a) The following shall be substituted for Article 95 (1):
- '1. The Court may assign to a Chamber any appeal brought against a decision of the Court of First Instance pursuant to Article 49 of the ECSC Statute, Article 49 of the EEC Statute and Article 50 of the Euratom Statute, any reference for a preliminary ruling of a kind mentioned in Article 103 of these Rules and any other case, with the exception of those brought by a Member State or an institution, in so far as the difficulty or the importance of the case or particular circumstances are not such as to require that the Court decide it in plenary session.'
- (b) In the second subparagraph of Article 95 (2) the words 'of the Communities' shall be deleted.
- (c) At the end of Article 95 (2) there shall be inserted, as the third subparagraph, the following:
- 'The request referred to in the preceding subparagraph may not be made in proceedings between the Communities and their servants.'
- (d) The following shall be substituted for Article 95 (3):
- '3. A Chamber may at any stage refer a case back to the Court.'
- (e) Article 95 (4) is repealed.
29. Article 96 is repealed.
30. [This amendment does not concern the English text].
31. (a) The following shall be substituted for Article 103 (1):
- '1. In cases governed by Article 20 of the EEC Statute and Article 21 of the Euratom Statute, 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.'
- (b) [This amendment does not concern the English text]
- (c) In the second subparagraph of Article 103 (2) there shall be substituted for the words 'preliminary rulings' the word 'interpretation'.
- (d) In the first subparagraph of Article 103 (3) there shall be substituted for the words 'the High Authority and the Special Council of Ministers' the words 'the Commission and the Council'.
- (e) The following shall be substituted for the third subparagraph of Article 103 (3):
- 'The provisions of paragraph (1) shall apply.'
32. (a) At the end of Article 104 (2) there shall be inserted, as paragraphs (3) and (4), the following:
- '3. Where a question referred to the Court for a preliminary ruling is manifestly identical to a question on which the Court has already ruled, the Court may, after informing the court or tribunal which referred to the question to it, hearing any observations submitted by the persons referred to in Article 20 of the EEC Statute, Article 21 of the Euratom Statute and Article 103 (3) of these Rules and hearing the Advocate-General, give its decision by reasoned order in which reference is made to its previous judgment.
4. Without prejudice to paragraph (3) of this Article, the procedure before the Court in the case of a reference for a preliminary ruling shall also include an oral part. However, after the statements of case or written observations referred to in Article 20 of the EEC Statute, Article 21 of the Euratom Statute and Article 103 (3) of these Rules have been submitted, the Court, acting on a report from the Judge-Rapporteur, after informing the persons who under the aforementioned provisions are entitled to submit such statements or observations, may, after hearing the Advocate-General, decide otherwise, provided that none of those persons has asked to present oral argument.'
- (b) The former Article 104 (3) shall become Article 104 (5).
33. (a) In the first and second paragraphs of Article 109 there shall be substituted for the words 'High Authority' the word 'Commission' and for the words 'Special Council of Ministers' the word 'Council'.
- (b) [This amendment does not concern the English text]
34. In Article 112 (3) there shall be substituted for the words 'Article 38 (2) and (3)' the words 'Article 38 (3)'.
35. (a) In Article 120 (1) there shall be substituted for the words 'oral procedure' the words 'oral part of the procedure'.
- (b) Article 120 (2) is repealed.
36. In Article 122 the following shall be substituted for the second, third and fourth subparagraphs:
- 'In proceedings between the Communities and their servants:
- Article 70 of these Rules shall apply only to appeals brought by institutions;
- by way of derogation from Article 69 (2) of these Rules, the Court may, in appeals brought by officials or other servants of an institution, order the parties to share the costs where equity so requires.

If the appeal is withdrawn Article 69 (5) shall apply.

When an appeal brought by a Member State or an institution which did not intervene in the proceedings

before the Court of First Instance 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.'

*Article 2*

These amendments to the Rules of Procedure, which are authentic in the languages mentioned in Article 29 (1) of the Rules of Procedure, shall be published in the *Official Journal of the European Communities* and shall enter into force on the first day of the second month after their publication.

Done at Luxembourg, 15 May 1991.

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