

## II

*(Acts whose publication is not obligatory)*

## COUNCIL

## COUNCIL DECISION

of 24 October 1988

establishing a Court of First Instance of the European Communities

(88/591/ECSC, EEC, Euratom)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 32d thereof,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 168a thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 140a thereof,

Having regard to the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community, signed in Paris on 18 April 1951,

Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, signed in Brussels on 17 April 1957,

Having regard to the Protocol on the Statute of the Court of Justice of the European Atomic Energy Community, signed in Brussels on 17 April 1957,

Having regard to the Protocol on Privileges and Immunities of the European Communities, signed in Brussels on 8 April 1965,

Having regard to the request of the Court of Justice,

Having regard to the opinion of the Commission,

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

Whereas Article 32d of the ECSC Treaty, Article 168a of the EEC Treaty and Article 140a of the EAEC Treaty empower

the Council to attach to the Court of Justice a Court of First Instance called upon to exercise important judicial functions and whose members are independent beyond doubt and possess the ability required for performing such functions;

Whereas the aforesaid provisions empower the Council to give the Court of First Instance jurisdiction to hear and determine at first instance, in accordance with the conditions laid down by the Statutes, certain classes of action or proceeding brought by natural or legal persons, subject to the right of appeal to the Court of Justice on questions of law alone;

Whereas the Council is to determine, pursuant to the aforesaid provisions, the composition of that court and adopt the necessary adjustments and additional provisions to the Statutes of the Court of Justice;

Whereas, in respect of actions requiring close examination of complex facts, the establishment of a second court will improve the judicial protection of individual interests;

Whereas it is necessary, in order to maintain the quality and effectiveness of judicial review in the Community legal order, to enable the Court to concentrate its activities on its fundamental task of ensuring uniform interpretation of Community law;

Whereas it is therefore necessary to make use of the powers granted by Article 32d of the ECSC Treaty, Article 168a of the EEC Treaty and Article 140a of the EAEC Treaty and to transfer to the Court of First Instance jurisdiction to hear and determine at first instance certain classes of action or proceeding which frequently require an examination of complex facts, that is to say actions or proceedings brought by servants of the Communities and also, in so far as the ECSC Treaty is concerned, by undertakings and associations in matters concerning levies, production, prices, restrictive agreements, decisions or practices and concentrations, and so far as the EEC Treaty is concerned, by natural or legal persons in competition matters,

<sup>(1)</sup> OJ No C 187, 18. 7. 1988, p. 227.

HAS DECIDED AS FOLLOWS:

*Article 1*

A Court, to be called the Court of First Instance of the European Communities, shall be attached to the Court of Justice of the European Communities. Its seat shall be at the Court of Justice.

*Article 2*

1. The Court of First Instance shall consist of 12 members.
2. The members shall elect the President of the Court of First Instance from among their number for a term of three years. He may be re-elected.
3. The members of the Court of First Instance may be called upon to perform the task of an Advocate-General.

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 Court of First Instance in order to assist the Court of First Instance in the performance of its task.

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 Court of First Instance.

A member called upon to perform the task of Advocate-General in a case may not take part in the judgment of the case.

4. The Court of First Instance shall sit in chambers of three or five judges. 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 Court of First Instance may sit in plenary session.

5. Article 21 of the Protocol on Privileges and Immunities of the European Communities and Article 6 of the Treaty establishing a Single Council and a Single Commission of the European Communities shall apply to the members of the Court of First Instance and to its Registrar.

*Article 3*

1. The Court of First Instance shall exercise at first instance the jurisdiction conferred on the Court of Justice by the Treaties establishing the Communities and by the acts adopted in implementation thereof:

- (a) in disputes between the Communities and their servants referred to in Article 179 of the EEC Treaty and in Article 152 of the EAEC Treaty;
- (b) in actions brought against the Commission pursuant to the second paragraph of Article 33 and Article 35 of the ECSC Treaty by undertakings or by associations of

undertakings referred to in Article 48 of that Treaty, and which concern individual acts relating to the application of Article 50 and Articles 57 to 66 of the said Treaty;

- (c) in actions brought against an institution of the Communities by natural or legal persons pursuant to the second paragraph of Article 173 and the third paragraph of Article 175 of the EEC Treaty relating to the implementation of the competition rules applicable to undertakings.

2. Where the same natural or legal person brings an action which the Court of First Instance has jurisdiction to hear by virtue of paragraph 1 of this Article and an action referred to in the first and second paragraphs of Article 40 of the ECSC Treaty, Article 178 of the EEC Treaty, or Article 151 of the EAEC Treaty, for compensation for damage caused by a Community institution through the act or failure to act which is the subject of the first action, the Court of First Instance shall also have jurisdiction to hear and determine the action for compensation for that damage.

3. The Council will, in the light of experience, including the development of jurisprudence, and after two years of operation of the Court of First Instance, re-examine the proposal by the Court of Justice to give the Court of First Instance competence to exercise jurisdiction in actions brought against the Commission pursuant to the second paragraph of Article 33 and Article 35 of the ECSC Treaty by undertakings or by associations of undertakings referred to in Article 48 of that Treaty, and which concern acts relating to the application of Article 74 of the said Treaty as well as in actions brought against an institution of the Communities by natural or legal persons pursuant to the second paragraph of Article 173 and the third paragraph of Article 175 of the EEC Treaty and relating to measures to protect trade within the meaning of Article 113 of that Treaty in the case of dumping and subsidies.

*Article 4*

Save as hereinafter provided, Articles 34, 36, 39, 44 and 92 of the ECSC Treaty, Articles 172, 174, 176, 184 to 187 and 192 of the EEC Treaty, and Articles 147, 149, 156 to 159 and 164 of the EAEC Treaty shall apply to the Court of First Instance.

*Article 5*

The following provisions shall be inserted after Article 43 of the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community:

**TITLE IV:**

**THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES**

**Rules concerning the members of the Court of First Instance and its organization**

*Article 44*

Articles 2, 3, 4, 6 to 9, 13 (1), 17, 18 (2) and 19 of this Statute shall apply to the Court of First Instance and its

members. The oath referred to in Article 2 shall be taken before the Court of Justice and the decisions referred to in Articles 3, 4 and 7 shall be adopted by that Court after hearing the Court of First Instance.

#### Registrar and staff

##### Article 45

The Court of First Instance shall appoint its Registrar and lay down the rules governing his service. Articles 9 and 14 of this Statute shall apply to the Registrar of the Court of First Instance *mutatis mutandis*.

The President of the Court of Justice and the President of the Court of First Instance 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 Court of First Instance to enable it to function. Certain officials or other servants shall be responsible to the Registrar of the Court of First Instance under the authority of the President of the Court of First Instance.

#### Procedure before the Court of First Instance

##### Article 46

The procedure before the Court of First Instance shall be governed by Title III of this Statute, with the exception of Articles 41 and 42.

Such further and more detailed provisions as may be necessary shall be laid down in the Rules of Procedure established in accordance with Article 32d (4) of the Treaty.

Notwithstanding the fourth paragraph of Article 21, the Advocate-General may make his reasoned submissions in writing.

##### Article 47

Where an application or other procedural document addressed to the Court of First Instance 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 Court of First Instance; likewise, where an application or other procedural document addressed to the Court of Justice is lodged by mistake with the Registrar of the Court of First Instance, it shall be transmitted immediately by that Registrar to the Registrar of the Court of Justice.

Where the Court of First Instance 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 Court of First Instance, it shall refer that action to the Court of First Instance, whereupon that Court may not decline jurisdiction.

Where the Court of Justice and the Court of First Instance 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 Court of First Instance may, after hearing the parties, stay the proceedings before it until such time as the Court of Justice shall have delivered judgment. Where applications are made for the

same act to be declared void, the Court of First Instance may also decline jurisdiction in order that the Court of Justice may rule on such applications. In the cases referred to in this subparagraph, the Court of Justice may also decide to stay the proceedings before it; in that event, the proceedings before the Court of First Instance shall continue.

##### Article 48

Final decisions of the Court of First Instance, 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 Court of First Instance to all parties as well as all Member States and the Community institutions even if they have not intervened in the case before the Court of First Instance.

#### Appeals to the Court of Justice

##### Article 49

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 Court of First Instance 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.

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 Community institutions may bring such an appeal only where the decision of the Court of First Instance directly affects them.

With the exception of cases relating to disputes between the Communities and their servants, an appeal may also be brought by Member States and Community institutions which did not intervene in the proceedings before the Court of First Instance. Such Member States and institutions shall be in the same position as Member States or institutions which intervened at first instance.

##### Article 50

Any person whose application to intervene has been dismissed by the Court of First Instance may appeal to the Court of Justice within two weeks of the notification of the decision dismissing the application.

The parties to the proceedings may appeal to the Court of Justice against any decision of the Court of First Instance made pursuant to the second or third paragraphs of Article 39 or the third paragraph of Article 92 of the Treaty within two months from their notification.

The appeal referred to in the first two paragraphs of this Article shall be heard and determined under the procedure referred to in Article 33 of this Statute.

*Article 51*

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 Court of First Instance, a breach of procedure before it which adversely affects the interests of the appellant as well as the infringement of Community law by the Court of First Instance.

No appeal shall lie regarding only the amount of the costs or the party ordered to pay them.

**Procedure before the Court***Article 52*

Where an appeal is brought against a decision of the Court of First Instance, 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.

**Suspensory effect***Article 53*

Without prejudice to the second and third paragraphs of Article 39 of the Treaty, an appeal shall not have suspensory effect.

By way of derogation from Article 44 of the Treaty, decisions of the Court of First Instance declaring a general decision to be void shall take effect only as from the date of expiry of the period referred to in the first paragraph of Article 49 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 the second and third paragraphs of Article 39 of the Treaty, for the suspension of the effects of the decision which has been declared void or for the prescription of any other interim measure.

**The decision of the Court of Justice on the appeal***Article 54*

If the appeal is well founded, the Court of Justice shall quash the decision of the Court of First Instance. It may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the Court of First Instance for judgment.

Where a case is referred back to the Court of First Instance, that Court shall be bound by the decision of the Court of Justice on points of law.

When an appeal brought by a Member State or a Community institution, which has not intervened in the proceedings before the Court of First Instance, is well founded the Court of Justice may, if it considers this necessary, state which of the effects of the decision of the Court of First Instance which has been quashed shall be considered as definitive in respect of the parties to the litigation.'

*Article 6*

The former Articles 44 and 45 of the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community shall become Articles 55 and 56 respectively.

*Article 7*

The following provisions shall be inserted after Article 43 of the Protocol on the Statute of the Court of Justice of the European Economic Community:

## TITLE IV:

## THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES

*Article 44*

Articles 2 to 8, and 13 to 16 of this Statute shall apply to the Court of First Instance and its members. The oath referred to in Article 2 shall be taken before the Court of Justice and the decisions referred to in Articles 3, 4 and 6 shall be adopted by that Court after hearing the Court of First Instance.

*Article 45*

The Court of First Instance shall appoint its Registrar and lay down the rules governing his service. Articles 9, 10 and 13 of this Statute shall apply to the Registrar of the Court of First Instance *mutatis mutandis*.

The President of the Court of Justice and the President of the Court of First Instance 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 Court of First Instance to enable it to function. Certain officials or other servants shall be responsible to the Registrar of the Court of First Instance under the authority of the President of the Court of First Instance.

*Article 46*

The procedure before the Court of First Instance shall be governed by Title III of this Statute, with the exception of Article 20.

Such further and more detailed provisions as may be necessary shall be laid down in the Rules of Procedure established in accordance with Article 168a (4) of the Treaty.

Notwithstanding the fourth paragraph of Article 18 of this Statute, the Advocate-General may make his reasoned submissions in writing.

*Article 47*

Where an application or other procedural document addressed to the Court of First Instance 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 Court of First Instance; likewise, where

an application or other procedural document addressed to the Court of Justice is lodged by mistake with the Registrar of the Court of First Instance, it shall be transmitted immediately by that Registrar to the Registrar of the Court of Justice.

Where the Court of First Instance 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 Court of First Instance, it shall refer that action to the Court of First Instance, whereupon that Court may not decline jurisdiction.

Where the Court of Justice and the Court of First Instance 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 Court of First Instance may, after hearing the parties, stay the proceedings before it until such time as the Court of Justice shall have delivered judgment. Where applications are made for the same act to be declared void, the Court of First Instance may also decline jurisdiction in order that the Court of Justice may rule on such applications. In the cases referred to in this subparagraph, the Court of Justice may also decide to stay the proceedings before it; in that event, the proceedings before the Court of First Instance shall continue.

#### *Article 48*

Final decisions of the Court of First Instance, 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 Court of First Instance to all parties as well as all Member States and the Community institutions even if they have not intervened in the case before the Court of First Instance.

#### *Article 49*

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 Court of First Instance 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.

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 Community institutions may bring such an appeal only where the decision of the Court of First Instance directly affects them.

With the exception of cases relating to disputes between the Communities and their servants, an appeal may also be brought by Member States and Community institutions which did not intervene in the proceedings before the Court of First Instance. Such Member States and institutions shall be in the same position as Member States or institutions which intervened at first instance.

#### *Articles 50*

Any person whose application to intervene has been dismissed by the Court of First Instance may appeal to the Court of Justice within two weeks of the notification of the decision dismissing the application.

The parties to the proceedings may appeal to the Court of Justice against any decision of the Court of First Instance made pursuant to Article 185 or 186 or the fourth paragraph of Article 192 of the Treaty within two months from their notification.

The appeal referred to in the first two paragraphs of this Article shall be heard and determined under the procedure referred to in Article 36 of this Statute.

#### *Article 51*

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 Court of First Instance, a breach of procedure before it which adversely affects the interests of the appellant as well as the infringement of Community law by the Court of First Instance.

No appeal shall lie regarding only the amount of the costs or the party ordered to pay them.

#### *Article 52*

Where an appeal is brought against a decision of the Court of First Instance, 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 of the Court of Justice, having heard the Advocate-General and the parties, may dispense with the oral procedure.

#### *Article 53*

Without prejudice to Articles 185 and 186 of the Treaty, an appeal shall not have suspensory effect.

By way of derogation from Article 187 of the Treaty, decisions of the Court of First Instance 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 Article 49 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 185 and 186 of this Treaty, for the suspension of the effects of the regulation which has been declared void or for the prescription of any other interim measure.

#### *Article 54*

If the appeal is well founded, the Court of Justice shall quash the decision of the Court of First Instance. It may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the Court of First Instance for judgment.

Where a case is referred back to the Court of First Instance, that Court shall be bound by the decision of the Court of Justice on points of law.

When an appeal brought by a Member State or a Community institution, which has not intervened in the proceedings before the Court of First Instance, is well founded the Court of Justice may, if it considers this necessary, state which of the effects of the decision of the Court of First Instance which has been quashed shall be considered as definitive in respect of the parties to the litigation.'

#### Article 8

The former Articles 44, 45 and 46 of the Protocol on the Statute of the Court of Justice of the European Economic Community shall become Articles 55, 56 and 57 respectively.

#### Article 9

The following provisions shall be inserted after Article 44 of the Protocol on the Statute of the Court of the Justice of the European Atomic Energy Community:

#### TITLE IV:

#### THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES

##### Article 45

Articles 2 to 8, and 13 to 16 of this Statute shall apply to the Court of First Instance and its members. The oath referred to in Article 2 shall be taken before the Court of Justice and the decisions referred to in Articles 3, 4 and 6 shall be adopted by that Court after hearing the Court of First Instance.

##### Article 46

The Court of First Instance shall appoint its Registrar and lay down the rules governing his service. Articles 9, 10 and 13 of this Statute shall apply to the Registrar of the Court of First Instance *mutatis mutandis*.

The President of the Court of Justice and the President of the Court of First Instance 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 Court of First Instance to enable it to function. Certain officials or other servants shall be responsible to the Registrar of the Court of First Instance under the authority of the President of the Court of First Instance.

##### Article 47

The procedure before the Court of First Instance shall be governed by Title III of this Statute, with the exception of Articles 20 and 21.

Such further and more detailed provisions as may be necessary shall be laid down in the Rules of Procedure

established in accordance with Article 140a (4) of the Treaty.

Notwithstanding the fourth paragraph of Article 18, the Advocate-General may make his reasoned submissions in writing.

#### Article 48

Where an application or other procedural document addressed to the Court of First Instance 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 Court of First Instance; likewise, where an application or other procedural document addressed to the Court of Justice is lodged by mistake with the Registrar of the Court of First Instance, it shall be transmitted immediately by that Registrar to the Registrar of the Court of Justice.

Where the Court of First Instance 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 Court of First Instance, it shall refer that action to the Court of First Instance, whereupon that Court may not decline jurisdiction.

Where the Court of Justice and the Court of First Instance 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 Court of First Instance may, after hearing the parties, stay the proceedings before it until such time as the Court of Justice shall have delivered judgment. Where applications are made for the same act to be declared void, the Court of First Instance may also decline jurisdiction in order that the Court of Justice may rule on such applications. In the cases referred to in this subparagraph, the Court of Justice may also decide to stay the proceedings before it; in that event, the proceedings before the Court of First Instance shall continue.

#### Article 49

Final decisions of the Court of First Instance, 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 Court of First Instance to all parties as well as all Member States and the Community institutions even if they have not intervened in the case before the Court of First Instance.

#### Article 50

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 Court of First Instance 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.

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 Community institutions may bring such an appeal only where the decision of the Court of First Instance directly affects them.

With the exception of cases relating to disputes between the Communities and their servants, an appeal may also be brought by Member States and Community institutions which did not intervene in the proceedings before the Court of First Instance. Such Member States and institutions shall be in the same position as Member States or institutions which intervened at first instance.

#### Article 51

Any person whose application to intervene has been dismissed by the Court of First Instance may appeal to the Court of Justice within two weeks of the notification of the decision dismissing the application.

The parties to the proceedings may appeal to the Court of Justice against any decision of the Court of First Instance made pursuant to Article 157 or 158 or the third paragraph of Article 164 of the Treaty within two months from their notification.

The appeal referred to in the first two paragraphs of this Article shall be heard and determined under the procedure referred to in Article 37 of this Statute.

#### Article 52

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 Court of First Instance, a breach of procedure before it which adversely affects the interests of the appellant as well as the infringement of Community law by the Court of First Instance.

No appeal shall lie regarding only the amount of the costs or the party ordered to pay them.

#### Article 53

Where an appeal is brought against a decision of the Court of First Instance, 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.

#### Article 54

Without prejudice to Articles 157 and 158 of the Treaty, an appeal shall not have suspensory effect.

By way of derogation from Article 159 of the Treaty, decisions of the Court of First Instance 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 Article 50 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 157 and 158 of this Treaty, for the suspension of the effects of the regulation which has been declared void or for the prescription of any other interim measure.

#### Article 55

If the appeal is well founded, the Court of Justice shall quash the decision of the Court of First Instance. It may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the Court of First Instance for judgment.

Where a case is referred back to the Court of First Instance, that Court shall be bound by the decision of the Court of Justice on points of law.

When an appeal brought by a Member State or a Community institution, which has not intervened in the proceedings before the Court of First Instance is well founded the Court of Justice may, if it considers this necessary, state which of the effects of the decision of the Court of First Instance which has been quashed shall be considered as definitive in respect of the parties to the litigation.'

#### Article 10

The former Articles 45, 46 and 47 of the Protocol on the Statute of the Court of Justice of the European Atomic Energy Community shall become Articles 56, 57 and 58 respectively.

#### Article 11

The first President of the Court of First Instance shall be appointed for three years in the same manner as its members. However, the Governments of the Member States may, by common accord, decide that the procedure laid down in Article 2 (2) shall be applied.

The Court of First Instance shall adopt its Rules of Procedure immediately upon its constitution.

Until the entry into force of the Rules of Procedure of the Court of First Instance, the Rules of Procedure of the Court of Justice shall apply *mutatis mutandis*.

#### Article 12

Immediately after all members of the Court of First Instance have taken oath, the President of the Council shall proceed to choose by lot the members of the Court of First Instance whose terms of office are to expire at the end of the first three years in accordance with Article 32d (3) of the ECSC Treaty, Article 168a (3) of the EEC Treaty, and Article 140a (3) of the EAEC Treaty.

#### Article 13

This Decision shall enter into force on the day following its publication in the *Official Journal of the European*

*Communities*, with the exception of Article 3, which shall enter into force on the date of the publication in the *Official Journal of the European Communities* of the ruling by the President of the Court of Justice that the Court of First Instance has been constituted in accordance with law.

*Article 14*

Cases referred to in Article 3 of which the Court of Justice is seised on the date on which that Article enters into force but in which the preliminary report provided for in Article 44 (1)

of the Rules of Procedure of the Court of Justice has not yet been presented shall be referred back to the Court of First Instance.

Done at Luxembourg, 24 October 1988.

*For the Council*  
*The President*  
Th. PANGALOS