

**For discussion  
on 17 March 2015**

**Subcommittee to Study the Proposed Subsidiary Legislation on the  
Procedures to be Adopted by the Competition Tribunal**

**Rules and Procedures Applicable to the Competition-related Courts  
in Selected Common Law Jurisdictions**

**PURPOSE**

This paper sets out a brief overview on the rules and procedures of competition-related courts in a few other common law jurisdictions.

**BACKGROUND**

2. At the meeting of the Panel on Administration of Justice and Legal Services on 16 February 2015 when discussing the draft procedural rules for the Competition Tribunal in Hong Kong, Members requested that the Judiciary Administration provide, among others, more information on the rules and procedures of competition-related courts in other common law jurisdictions.

**OVERVIEW**

3. The regulatory mechanisms for enforcing competition laws vary from place to place. In many jurisdictions, the authority responsible for enforcement has wide-ranging powers including investigating potential cases of anti-competitive conduct and sanctioning offenders (“inquisitorial approach”). The courts only handle appeals against such decisions. Other places rely heavily on the courts to decide on the extent to which a company has sought to hinder competition unfairly and to hand down appropriate sanctions (“prosecutorial approach”). The regime in Hong Kong belongs to the second category.

4. In preparing the draft Competition Tribunal Rules (“CTR”), the Judiciary has made reference to, among others, the rules and practice applicable to competition-related court proceedings as appropriate in a few other relevant common law jurisdictions, such as the United Kingdom (“UK”), Australia and the European Union (“EU”). However, as the Judiciary cannot interpret the laws on behalf of these jurisdictions, the Judiciary can only provide below some brief information on the

relevant rules and procedures for these jurisdictions according to their publicly available information and on the basis of the Judiciary's limited understanding.

5. Besides, when considering the rules for these other jurisdictions, the Judiciary is mindful that the competition control regimes of these places, including the exact roles of the court, are not entirely the same as that in Hong Kong. Moreover, since two of the three jurisdictions below do not have dedicated rules for handling competition cases, the Judiciary has only made limited reference to these jurisdictions when preparing the draft rules for the Competition Tribunal in Hong Kong.

## **OVERSEAS JURISDICTIONS**

### **UK**

6. The UK adopts an inquisitorial approach. The Competition and Markets Authority ("the CMA") is a primary regulatory body which enjoys the combined roles of policeman, prosecutor, judge and jury. It investigates and decides if there is any anti-competitive conduct.

7. The UK Competition Appeal Tribunal ("the CAT") is an independent judicial body established to hear appeals against certain decisions of the UK competition and sectoral regulatory authorities made under the Competition Act 1998, the Enterprise Act 2002 and the Communications Act 2003. The rules and procedures in CAT proceedings are set out in the Competition Appeal Tribunal Rules 2003 ("the CATR 2003") at **Annex A**.

### **Australia**

8. Australia mainly adopts a prosecutorial approach. The regulatory body, i.e. the Australian Competition and Consumer Commission ("the ACCC") carries out investigations and brings cases to the court. It enforces the Competition and Consumer Act 2010 ("the CCA") and a range of additional legislation.

9. Enforcement actions are brought in the Federal Court of Australia. The procedures are governed by the Federal Court Rules<sup>1</sup> which apply to court proceedings generally. The Australian Federal Court has the jurisdiction to determine private and public complaints made in regard to contraventions of the CCA.

10. There is also the Australian Competition Tribunal (“ACT”) which reviews determinations of the ACCC granting or revoking authorizations/granting or refusing clearances for company mergers and acquisitions. The ACT may perform all the functions and exercise all the powers of the original decision-maker for the purposes of review. It can affirm, set aside or vary the original decision. But there are no dedicated rules for this Tribunal. It only has Practice Directions.

## EU

11. The EU adopts an inquisitorial approach. The European Commission (“the EC”), together with the national competition authorities, directly enforces EU competition rules. Within the EC, the Directorate-General for Competition is primarily responsible for these direct enforcement powers.

12. The key relevant provisions are Articles 101-109 of the Treaty on the Functioning of the EU. Appeals against the decisions of the EC can be made to the EU’s General Court and further (on points of law) to the Court of Justice.

13. Applications to annul the decision of the EC on the competition front are heard by the EU’s General Court. The procedures are governed by the general procedural rules of that court, called “Rules of Procedure of the General Court” (**Annex B**). In general, the procedure includes a written phase and an oral phase.

## **Judiciary Administration** **March 2015**

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<sup>1</sup> As the Federal Court Rules have over 400 pages, they are not annexed to this paper. Members may wish to examine the Federal Court Rules using the link : <http://www.comlaw.gov.au/Details/F2011L01551>.

# Statutory Instrument 2003 No. 1372

## **The Competition Appeal Tribunal Rules 2003**

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STATUTORY INSTRUMENTS

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**2003 No. 1372**

**COMPETITION**

**The Competition Appeal Tribunal Rules 2003**

<i>Made</i>	<i>23rd May 2003</i>
<i>Laid before Parliament</i>	<i>27th May 2003</i>
<i>Coming into force</i>	<i>20th June 2003</i>

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The Secretary of State, after consultation with the President of the Competition Appeal Tribunal and such other persons as she considers appropriate in accordance with section 15(1) of the Enterprise Act 2002[1], and after consultation with the Council on Tribunals in accordance with section 8(1) of the Tribunals and Inquiries Act 1992[2], in exercise of the powers conferred by section 15 of and Part 2 of Schedule 4 to the Enterprise Act 2002, hereby makes the following rules:

# PART I

## INTRODUCTION

### **Citation and commencement**

1. These rules may be cited as the Competition Appeal Tribunal Rules 2003 and shall come into force on 20th June 2003.

### **Interpretation**

2. In these rules -

"a chairman" means any member of the panel of chairmen;

"the chairman" means the chairman of the Tribunal as constituted for particular proceedings;

"the Competition Service" means the body corporate established by section 13 of the Enterprise Act 2002;

"damages" means any sum which may be claimed under section 47A of the 1998 Act[3];

"the Registrar" means the person appointed to be Registrar of the Tribunal;

"the 1998 Act" means the Competition Act 1998[4];

"the 2002 Act" means the Enterprise Act 2002.

### **Application of rules**

3. Unless the context otherwise requires -

(a) Parts I and V of these rules apply to all proceedings before the Tribunal;

(b) Part II of these rules applies to all proceedings before the Tribunal save as otherwise provided in Part III (proceedings under the 2002 Act) or Part IV (claims for damages);

(c) Part III of these rules applies to proceedings for a review or an appeal against penalties under the 2002 Act;

(d) Part IV of these rules applies to claims for damages.

### **The Registrar**

4. - (1) Any person appointed to be the Registrar under section 12(3) of the 2002 Act must -

(a) have a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990[5], or

(b) be an advocate or solicitor in Scotland of at least seven years' standing, or



(c) be -

(i) a member of the Bar of Northern Ireland of at least seven years' standing, or

(ii) a solicitor of the Supreme Court of Northern Ireland of at least seven years' standing.

(2) The Registrar shall act in accordance with the instructions of the President and shall, in particular, be responsible for -

(a) the establishment and maintenance of a register in which all pleadings and supporting documents and all orders and decisions of the Tribunal shall be registered;

(b) the acceptance, transmission, service and custody of documents in accordance with these rules;

(c) the enforcement of decisions of the Tribunal pursuant to paragraphs 4 and 5 of Schedule 4 to the 2002 Act;

(d) certifying that any order, direction or decision is an order, direction or decision of the Tribunal, the President or a chairman, as the case may be.

(3) With the authorisation of the President, the Registrar may consider and dispose of interlocutory matters in accordance with rule 62(3).

(4) A party may within 5 days of any exercise by the Registrar of his functions pursuant to paragraph (3) of this rule request in writing that the exercise of such functions be reviewed by the President. The President may determine the matter acting alone or refer the matter to a chairman or to the Tribunal.

(5) Any administrative function of the Registrar may be performed on his behalf by any member of staff of the Competition Service whom the President may authorise for the purpose.

#### **Tribunal address for service**

5. The address for service of documents on the Tribunal (referred to in these rules as "the Tribunal address for service") is: The Registrar of the Competition Appeal Tribunal, New Court, 48 Carey Street, London WC2A 3BZ or such other address as may be notified in the London, Edinburgh and Belfast Gazettes and on the Tribunal Website.

#### **Tribunal Website**

6. The location of the Tribunal Website is: [www.catribunal.org.uk](http://www.catribunal.org.uk) or such other location as may be notified from time to time in such manner as the President may direct.

## **Representation**

7. In proceedings before the Tribunal, a party may be represented by -

- (a) a qualified lawyer having a right of audience before a court in the United Kingdom; or
- (b) by any other person allowed by the Tribunal to appear on his behalf.

## **PART II**

### **APPEALS**

#### **COMMENCING APPEAL PROCEEDINGS**

##### **Time and manner of commencing appeals**

8. - (1) An appeal to the Tribunal must be made by sending a notice of appeal to the Registrar so that it is received within two months of the date upon which the appellant was notified of the disputed decision or the date of publication of the decision, whichever is the earlier.

(2) The Tribunal may not extend the time limit provided under paragraph (1) unless it is satisfied that the circumstances are exceptional.

(3) The notice of appeal shall state -

- (a) the name and address of the appellant;
- (b) the name and address of the appellant's legal representative, if appropriate;
- (c) an address for service in the United Kingdom; and
- (d) the name and address of the respondent to the proceedings,

and shall be signed and dated by the appellant, or on his behalf by his duly authorised officer or his legal representative.

(4) The notice of appeal shall contain -

- (a) a concise statement of the facts;
- (b) a summary of the grounds for contesting the decision, identifying in particular:
  - (i) under which statutory provision the appeal is brought;
  - (ii) to what extent (if any) the appellant contends that the disputed decision was based on an error of fact or was wrong in law;

(iii) to what extent (if any) the appellant is appealing against the respondent's exercise of his discretion in making the disputed decision;

(c) a succinct presentation of the arguments supporting each of the grounds of appeal;

(d) the relief sought by the appellant, and any directions sought pursuant to rule 19; and

(e) a schedule listing all the documents annexed to the notice of appeal.

(5) The notice of appeal may contain observations on the question in which part of the United Kingdom the proceedings of the Tribunal are to be treated as taking place for all or for any purposes of those proceedings.

(6) There shall be annexed to the notice of appeal -

(a) a copy of the disputed decision; and

(b) as far as practicable a copy of every document on which the appellant relies including the written statements of all witnesses of fact, or expert witnesses, if any.

(7) Unless the Tribunal otherwise directs the signed original of the notice of appeal (and its annexes) must be accompanied by ten copies certified by the appellant or his legal representative as conforming to the original.

### **Defective notices of appeal**

**9.** - (1) If the Tribunal considers that a notice of appeal does not comply with rule 8, or is materially incomplete, or is unduly prolix or lacking in clarity, the Tribunal may give such directions as may be necessary to ensure that those defects are remedied.

(2) The Tribunal may, if satisfied that the efficient conduct of the proceedings so requires, instruct the Registrar to defer service of the notice of appeal on the respondent until after the directions referred to in paragraph (1) have been complied with.

### **Power to reject**

**10.** - (1) The Tribunal may, after giving the parties an opportunity to be heard, reject an appeal in whole or in part at any stage in the proceedings if -

(a) it considers that the notice of appeal discloses no valid ground of appeal;

(b) it considers that the appellant does not have (or represent those who have) a sufficient interest in the decision in respect of which the appeal is made;

(c) it is satisfied that the appellant has habitually and persistently and without any reasonable ground -

(i) instituted vexatious proceedings, whether against the same person or different persons; or

(ii) made vexatious applications in any proceedings; or

(d) the appellant fails to comply with any rule, direction, practice direction or order of the Tribunal.

(2) When the Tribunal rejects an appeal it may make any consequential order it considers appropriate.

### **Amendment**

**11.** - (1) The appellant may amend the notice of appeal only with the permission of the Tribunal.

(2) Where the Tribunal grants permission under paragraph (1) it may do so on such terms as it thinks fit, and shall give such further or consequential directions as may be necessary.

(3) The Tribunal shall not grant permission to amend in order to add a new ground for contesting the decision unless -

(a) such ground is based on matters of law or fact which have come to light since the appeal was made; or

(b) it was not practicable to include such ground in the notice of appeal; or

(c) the circumstances are exceptional.

### **Withdrawal of the appeal**

**12.** - (1) The appellant may withdraw his appeal only with the permission of the Tribunal, or if the case has not yet proceeded to a hearing, the President.

(2) Where the Tribunal gives permission under paragraph (1) it may -

(a) do so on such terms as it thinks fit; and

(b) instruct the Registrar to publish notice of the withdrawal on the Tribunal website or in such other manner as the Tribunal may direct.

(3) Where an appeal is withdrawn -

(a) any interim order of the Tribunal, other than an order made in respect of costs, shall immediately cease to have effect; and

(b) no fresh appeal may be brought by the appellant in relation to the decision which was the subject of the appeal withdrawn.

## **RESPONSE TO APPEAL PROCEEDINGS**

### **Acknowledgement and notification**

**13.** On receiving a notice of appeal the Registrar shall -

- (a) send an acknowledgement of its receipt to the appellant; and
- (b) subject to rules 9(2) and 10 send a copy of the notice of appeal to the respondent who made the disputed decision.

### **Defence**

**14.** - (1) The respondent shall send to the Registrar a defence in the form required by this rule so that the defence is received within six weeks (or such further time as the Tribunal may allow) of the date on which the respondent received a copy of the notice of appeal in accordance with rule 13(b).

(2) The defence shall state -

- (a) the name and address of the respondent;
- (b) the name and address of the respondent's legal representative, if appropriate;
- (c) an address for service in the United Kingdom,

and shall be signed and dated by the respondent, or on his behalf by his duly authorised officer or his legal representative.

(3) The defence shall contain -

- (a) a succinct presentation of the arguments of fact and law upon which the respondent will rely;
- (b) the relief sought by the respondent and any directions sought pursuant to rule 19; and
- (c) a schedule listing all the documents annexed to the defence.

(4) The defence may contain observations on the question in which part of the United Kingdom the proceedings of the Tribunal are to be treated as taking place for all or for any purposes of those proceedings.

(5) There shall be annexed to the defence a copy of every document upon which the respondent relies including the written statements of all witnesses of fact, and where practicable expert witnesses, if any.

(6) The signed original of the defence (and its annexes) must be accompanied by ten copies certified by the respondent or his duly authorised officer or legal representative as conforming to the original.

(7) Rules 9, 10 (except rule 10(1)(b) and (c)) and 11 shall apply to the defence.

(8) On receiving the defence, the Registrar shall send a copy to the appellant.

## **INTERVENTION, CONSOLIDATION AND FORUM**

### **Publication of summary of appeal**

**15.** - (1) Subject to rules 9 and 10 of these rules the Registrar shall as soon as practicable upon receipt of an appeal publish a notice on the Tribunal website and in any other manner the President may direct.

(2) The notice referred to in paragraph (1) above shall state -

(a) that an appeal has been received;

(b) the name of the appellant;

(c) the disputed decision to which the appeal relates and the person by whom it was made;

(d) the particulars of the relief sought by the appellant;

(e) a summary of the principal grounds relied on; and

(f) a statement indicating that any person who considers that he has sufficient interest may apply to intervene in the proceedings, in accordance with rule 16, within three weeks of publication of the notice or such other period as the President may direct.

### **Intervention**

**16.** - (1) Any person who considers he has sufficient interest in the outcome may make a request to the Tribunal for permission to intervene in the proceedings.

(2) The request must be sent to the Registrar within the period referred to in rule 15(2)(f).

(3) The Registrar shall give notice of the request for permission to intervene to all the other parties to the proceedings and invite their observations on that request within a specified period.

(4) A request for permission to intervene must state -

(a) the title of the proceedings to which that request relates;

(b) the name and address of the person wishing to intervene;

(c) the name and address of his legal representative, if appropriate;

(d) an address for service in the United Kingdom.

(5) The request must contain -

(a) a concise statement of the matters in issue in the proceedings which affect the person making the request;

(b) the name of any party whose position the person making the request intends to support; and

(c) a succinct presentation of the reasons for making the request.

(6) If the Tribunal is satisfied, having taken into account the observations of the parties, that the intervening party has a sufficient interest, it may permit the intervention on such terms and conditions as it thinks fit.

(7) On granting permission in accordance with paragraph (6), the Tribunal shall give all such consequential directions as it considers necessary with regard, in particular, to the service on the intervener of the documents lodged with the Registrar, the submission by the intervener of a statement of intervention and, if appropriate, the submission by the principal parties of a response to the statement of intervention.

(8) In making any decision or direction under this rule the Tribunal shall have regard to the matters referred to in paragraph 1(2) of Schedule 4 to the 2002 Act.

(9) The statement of intervention and any response thereto shall contain:

(a) a succinct presentation of the facts and arguments supporting the intervention;

(b) the relief sought by the intervener;

(c) a schedule listing all the documents annexed to the intervention and, as far as possible, a copy of every document on which the intervener relies including the written statements of witnesses of fact or expert witnesses, if any.

(10) Rules 9, 10 (except 10(1)(b)) and 11 shall apply to the statement of intervention.

### **Consolidation**

**17.** - (1) Where two or more proceedings are pending in respect of the same decision, or which involve the same or similar issues, the Tribunal may, on the request of a party or of its own initiative, order that the proceedings or any particular issue or matter raised in the proceedings be consolidated or heard together.

(2) Before making an order under this rule, the Tribunal shall invite the parties to the relevant proceedings to submit their observations.

### **Forum**

**18.** - (1) The Tribunal, after taking into account the observations of the parties, may at any time determine whether its proceedings are to be treated, for purposes connected with-

- (a) any appeal from a decision of the Tribunal made in those proceedings; or
- (b) any other matter connected with those proceedings,

as proceedings in England and Wales, in Scotland or in Northern Ireland and shall instruct the Registrar to notify the parties of its determination.

(2) Notwithstanding any determination under paragraph (1), the Tribunal may hold any meeting, case management conference, pre-hearing review or hearing, or give any directions, in such place and in such manner as it thinks fit having regard to the just, expeditious and economical conduct of the proceedings.

(3) In making a determination under paragraph (1), the Tribunal may have regard to all matters which appear to it to be relevant and in particular the part of the United Kingdom where -

- (a) any individual party to the proceedings is habitually resident or has his head office or principal place of business;
- (b) the majority of the parties are habitually resident or have their head offices or principal places of business;
- (c) any agreement, decision or concerted practice to which the proceedings relate was made or implemented or intended to be implemented;
- (d) any conduct to which the proceedings relate took place.

(4) Without prejudice to paragraph (3), in making a determination under paragraph (1) for the purposes of a claim for damages under section 47A of the 1998 Act, the Tribunal -

- (a) may have regard to the law which is applicable to the claim; and
- (b) in the case of claims included in proceedings under section 47B of the 1998 Act, may decide that one or more of the claims is to be treated as included in separate proceedings.

## **CASE MANAGEMENT**

### **Directions**

**19.** - (1) The Tribunal may at any time, on the request of a party or of its own initiative, at a case management conference, pre-hearing review or otherwise, give such directions as are provided for in paragraph (2) below or such other directions as it thinks fit to secure the just, expeditious and economical conduct of the proceedings.

(2) The Tribunal may give directions -

- (a) as to the manner in which the proceedings are to be conducted, including any time limits to be observed in the conduct of the oral hearing;



- (b) that the parties file a reply, rejoinder or other additional pleadings or particulars;
- (c) for the preparation and exchange of skeleton arguments;
- (d) requiring persons to attend and give evidence or to produce documents;
- (e) as to the evidence which may be required or admitted in proceedings before the Tribunal and the extent to which it shall be oral or written;
- (f) as to the submission in advance of a hearing of any witness statements or expert reports;
- (g) as to the examination or cross-examination of witnesses;
- (h) as to the fixing of time limits with respect to any aspect of the proceedings;
- (i) as to the abridgement or extension of any time limits, whether or not expired;
- (j) to enable a disputed decision to be referred back in whole or in part to the person by whom it was taken;
- (k) for the disclosure between, or the production by, the parties of documents or classes of documents;
- (l) for the appointment and instruction of experts, whether by the Tribunal or by the parties and the manner in which expert evidence is to be given;
- (m) for the award of costs or expenses, including any allowances payable to persons in connection with their attendance before the Tribunal; and
- (n) for hearing a person who is not a party where, in any proceedings, it is proposed to make an order or give a direction in relation to that person.

(3) The Tribunal may, in particular, of its own initiative -

- (a) put questions to the parties;
- (b) invite the parties to make written or oral submissions on certain aspects of the proceedings;
- (c) ask the parties or third parties for information or particulars;
- (d) ask for documents or any papers relating to the case to be produced;
- (e) summon the parties' representatives or the parties in person to meetings.

(4) A request by a party for directions shall be made in writing as soon as practicable and shall be served by the Registrar on any other party who might be

affected by such directions and determined by the Tribunal taking into account the observations of the parties.

**Case management conference etc.**

**20.** - (1) Where it appears to the Tribunal that any proceedings would be facilitated by holding a case management conference or pre-hearing review the Tribunal may, on the request of a party or of its own initiative, give directions for such a conference or review to be held.

(2) Unless the Tribunal otherwise directs, a case management conference shall be held as soon as practicable after the filing of an appeal, whether or not the time for service of the defence has expired.

(3) A case management conference or pre-hearing review shall be held in private unless the Tribunal otherwise directs.

(4) The purpose of a case management conference or pre-hearing review shall be -

(a) to ensure the efficient conduct of the proceedings;

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

(c) to clarify the forms of order sought by the parties, their arguments of fact and law and the points at issue between them;

(d) to ensure that all agreements that can be reached between the parties about the matters in issue and the conduct of the proceedings are made and recorded;

(e) to facilitate the settlement of the proceedings.

(5) The Tribunal may authorise a person qualified for appointment to the panel of chairmen to carry out on its behalf a case management conference, pre-hearing review or any other preparatory measure relating to the organisation or disposal of the proceedings.

**Timetable for the oral hearing**

**21.** As soon as practicable, the Tribunal shall -

(a) set a timetable outlining the steps to be taken by the parties pursuant to the directions of the Tribunal in preparation for the oral hearing of the proceedings;

(b) fix the date for the oral hearing;

(c) notify the parties in writing of the date and place for the oral hearing and of any timetable for that hearing; and

(d) if it considers it necessary for the expeditious disposal of the proceedings,

send the parties a report for the hearing summarising the factual context of the case and the parties' principal submissions.

### **Evidence**

**22.** - (1) The Tribunal may control the evidence by giving directions as to -

- (a) the issues on which it requires evidence;
- (b) the nature of the evidence which it requires to decide those issues; and
- (c) the way in which the evidence is to be placed before the Tribunal.

(2) The Tribunal may admit or exclude evidence, whether or not the evidence was available to the respondent when the disputed decision was taken.

(3) The Tribunal may require any witness to give evidence on oath or affirmation or if in writing by way of affidavit.

(4) The Tribunal may allow a witness to give evidence through a video link or by other means.

(5) The Tribunal may dispense with the need to call a witness to give oral evidence if a witness statement has been submitted in respect of that witness.

### **Summoning or citing of witnesses**

**23.** - (1) Subject to paragraphs (2) and (3) below, the Tribunal may, at any time, either of its own initiative or at the request of any party, issue a summons, (or in relation to proceedings taking place in Scotland, a citation), requiring any person wherever he may be in the United Kingdom to do one or both of the following -

- (a) to attend as a witness before the Tribunal, at the time and place set out in the summons or citation; and
- (b) to answer any questions or produce any documents or other material in his possession or under his control which relate to any matter in question in the proceedings.

(2) A request by a party for the issue of a summons or citation under this rule shall state with reasons -

- (a) upon which facts the witness is to be questioned and the reasons for the examination;
- (b) the documents required to be produced.

(3) No person may be required to attend in compliance with a summons or citation under this rule unless -

- (a) he has been given at least seven days' notice of the hearing; and
- (b) he is paid such sum as would be recoverable by that witness in respect of

his attendance in proceedings before the Supreme Court of England and Wales, the Court of Session or the Supreme Court of Northern Ireland.

(4) The Tribunal may make the summoning or citation of a witness in accordance with paragraph (1) conditional upon the deposit with the Registrar of a sum determined by the Tribunal as sufficient to cover -

- (a) the costs of the summons or citation;
- (b) the sum referred to in paragraph (3)(b).

(5) The Registrar shall advance the funds necessary in connection with the examination of any witness summoned by the Tribunal of its own initiative.

#### **Failure to comply with directions**

**24.** If any party fails to comply with any direction given in accordance with these rules, the Tribunal may if it considers that the justice of the case so requires, order that such party be debarred from taking any further part in the proceedings without the permission of the Tribunal.

### **PART III**

#### **PROCEEDINGS UNDER THE ENTERPRISE ACT 2002**

##### **Application of these rules**

**25.** Parts I, II and V of these rules apply to proceedings under sections 114 or 176(1)(f) (appeals against penalties in merger or market investigations), section 120 (review of merger decisions) and section 179 (review of market investigation decisions), save as otherwise provided in this Part.

##### **Time for commencing proceedings for a review under section 120 of the 2002 Act**

**26.** An application under section 120(1) of the 2002 Act for the review of a decision in connection with a reference or possible reference in relation to a relevant merger situation or a special merger situation, must be made within four weeks of the date on which the applicant was notified of the disputed decision, or the date of publication of the decision, whichever is the earlier.

##### **Time for commencing proceedings for a review under section 179 of the 2002 Act**

**27.** An application under section 179(1) of the 2002 Act for review of a decision in connection with a reference or possible reference under Part 4 of that Act (market investigations) must be made within two months of the date on which the applicant was notified of the disputed decision, or the date of publication of the decision, whichever is the earlier.

##### **Supplementary provisions concerning reviews**

**28.** - (1) In proceedings for a review under sections 120 or 179 of the 2002 Act, rules 8 to 16 shall be construed and applied as if references to "appeal" were references to "application", references to "the notice of appeal" were references to

"the notice of application", references to the "appellant" were references to the "applicant", and references to the "grounds of appeal" were references to the "grounds of review".

(2) Rule 8(2) shall apply to the time for commencing proceedings under rules 26 and 27 as it does to the time for commencing an appeal under rule 8(1).

(3) In proceedings for a review under section 120 of the 2002 Act, rule 14(1) shall apply with the substitution of "four weeks" for "six weeks".

(4) The Tribunal's power to reject an appeal under rule 10 includes a power to reject an application for review if it considers that the applicant is not a person aggrieved by the decision in respect of which the review is sought.

#### **Appeals in relation to penalties under sections 114 or 176(1)(f) of the 2002 Act**

**29.** - (1) An appeal against a penalty brought under section 114 or 176(1)(f) of the 2002 Act must be made by sending a notice of appeal to the Registrar so that it is received within the period of 28 days starting with-

(a) in the case of an appeal against a penalty imposed by a notice under section 112(1) of that Act, the day on which a copy of the notice was served on the person concerned;

(b) in the case of an appeal against a decision on an application under section 112(3), the day on which the person concerned was notified of the decision.

(2) In an appeal against a penalty brought under section 114 or 176(1)(f) of the 2002 Act, rule 14(1) shall apply with the substitution of "three weeks" for "six weeks".

(3) Rules 15 and 16 shall not apply to appeals against penalties under sections 114 or 176(1)(f) of the 2002 Act.

## **PART IV**

### **CLAIMS FOR DAMAGES**

#### **Application of rules to claims for damages**

**30.** The rules applicable to proceedings under sections 47A and 47B of the 1998 Act (claims for damages) are those set out in this Part, and in Part I, Part II (except for rules 8 to 16) and Part V of these rules. In respect of proceedings in Scotland, references in this Part to "claimant" and "defendant" shall be read respectively as "pursuer" and "defender".

### **COMMENCEMENT OF PROCEEDINGS**

#### **Time limit for making a claim for damages**

**31.** - (1) A claim for damages must be made within a period of two years

beginning with the relevant date.

(2) The relevant date for the purposes of paragraph (1) is the later of the following –

- (a) the end of the period specified in section 47A(7) or (8) of the 1998 Act in relation to the decision on the basis of which the claim is made;
- (b) the date on which the cause of action accrued.

(3) The Tribunal may give its permission for a claim to be made before the end of the period referred to in paragraph (2)(a) after taking into account any observations of a proposed defendant.

(4) No claim for damages may be made if, were the claim to be made in proceedings brought before a court, the claimant would be prevented from bringing the proceedings by reason of a limitation period having expired before the commencement of section 47A.

#### **Manner of commencing proceedings under section 47A of the 1998 Act**

**32.** - (1) A claim for damages under section 47A of the 1998 Act must be made by sending a claim form to the Registrar within the period specified in rule 31(1).

(2) The claim form referred to in paragraph (1) shall state -

- (a) the full name and address of the claimant;
- (b) the full name and address of the claimant's legal representative, if appropriate;
- (c) an address for service in the United Kingdom; and
- (d) the name and address of the defendant to the proceedings.

(3) The claim form shall contain -

- (a) a concise statement of the relevant facts, identifying any relevant findings in the decision on the basis of which the claim for damages is being made;
- (b) a concise statement of any contentions of law which are relied on;
- (c) a statement of the amount claimed in damages, supported with evidence of losses incurred and of any calculations which have been undertaken to arrive at the claimed amount;
- (d) such other matters as may be specified by practice direction,

and its contents shall be verified by a statement of truth signed and dated by the claimant or on his behalf by his duly authorised officer or his legal representative.

(4) There shall be annexed to the claim form -

(a) a copy of the decision on the basis of which the claim for damages is being made;

(b) as far as practicable a copy of all essential documents on which the claimant relies.

(5) Unless the Tribunal otherwise directs, the signed original of the claim form (and its annexes) must be accompanied by ten copies certified by the claimant or his legal representative as conforming to the original.

### **Manner of commencing proceedings under section 47B of the 1998 Act**

**33.** - (1) Where a claim for damages is made under section 47B of the 1998 Act by a specified body on behalf of consumers the claim form shall in addition to the information required by rule 32 -

(a) contain the name and address of the specified body and a concise statement of the object or activities of that body;

(b) contain the names and addresses of the persons it seeks to represent;

(c) be accompanied by a document or documents, giving consent to the specified body by each of the individuals listed in the claim form to act on his behalf;

(d) indicate whether each individual listed in connection with the claim is a "consumer" for the purposes of section 47B of the 1998 Act.

(2) A claim for damages commenced under section 47A of the 1998 Act may be continued by a specified body under section 47B of that Act subject to such directions as may be given by the Tribunal.

### **Amendment**

**34.** A claim form may only be amended -

(a) with the written consent of all the parties; or

(b) with the permission of the Tribunal.

### **Addition of parties**

**35.** The Tribunal may, after hearing the parties, grant permission for one or more parties to be joined in the proceedings in addition or in substitution to the existing parties.

## **RESPONSE TO A CLAIM FOR DAMAGES**

### **Acknowledgment and notification**

**36.** - (1) On receiving a claim the Registrar shall send an acknowledgment of receipt to the claimant and send a copy of the claim form to the defendant.

(2) Within 7 days of receipt of the copy of the claim form from the Registrar the defendant shall send to the Registrar an acknowledgment of service of the claim form in such form as the President may direct.

### **Defence to a claim for damages**

**37.** - (1) Within 28 days of receipt of the copy of the claim form from the Registrar the defendant shall send to the Registrar a defence setting out in sufficient detail which of the facts and contentions of law in the claim form it admits or denies, on what grounds and on what other facts or contentions of law it relies.

(2) The contents of the defence shall be verified by a statement of truth signed and dated by the defendant or on his behalf by his duly authorised officer or his legal representative.

(3) Unless the Tribunal otherwise directs, the signed original of the defence (and its annexes) must be accompanied by ten copies certified by the defendant or his legal representative as conforming to the original.

### **Additional claims**

**38.** - (1) A defendant may make a counterclaim against a claimant or a claim against any other person -

(a) without the Tribunal's permission if he includes it with his defence;

(b) at any other time with the Tribunal's permission.

(2) Rules 31, 32(2), (3), (4) and (5) shall apply to claims or counterclaims under this rule and rules 36 and 37 shall apply to the response to such claims, subject to any direction by the Tribunal to the contrary.

### **Further pleadings**

**39.** No further pleadings may be filed without the permission of the Tribunal.

## **SUMMARY DISPOSAL**

### **Power to reject**

**40.** - (1) The Tribunal may, of its own initiative or on the application of a party, after giving the parties an opportunity to be heard, reject in whole or in part a claim for damages at any stage of the proceedings if -

(a) it considers that there are no reasonable grounds for making the claim;

(b) in the case of proceedings under section 47B of the 1998 Act it considers that the body bringing the proceedings is not entitled to do so, or that an individual on whose behalf the proceedings are brought is not a consumer for the purposes of that section;

(c) it is satisfied that the claimant has habitually and persistently and without any reasonable ground -



(i) instituted vexatious proceedings, whether against the same person or different persons; or

(ii) made vexatious applications in any proceedings; or

(d) the claimant fails to comply with any rule, direction, practice direction or order of the Tribunal.

(2) When the Tribunal rejects a claim it may enter judgment on the claim in whole or in part or make any other consequential order it considers appropriate.

### **Summary judgment**

**41.** - (1) The Tribunal may of its own initiative or on the application of a party, after giving the parties an opportunity to be heard, give summary judgment in a claim for damages or reject in whole or in part a claim or defence in a claim for damages if -

(a) it considers that -

(i) the claimant has no real prospect of succeeding on the claim or issue; or

(ii) the defendant has no reasonable grounds for defending the claim or issue; and

(b) there is no other compelling reason why the case or issue should be disposed of at a substantive hearing.

(2) The Tribunal shall not exercise its power under this rule before the filing of the defence.

(3) The Tribunal shall give such directions as it considers appropriate for dealing with a request under this rule.

(4) Upon giving summary judgment the Tribunal may make any consequential order it considers appropriate.

### **Withdrawal**

**42.** - (1) The claimant may withdraw his claim only -

(a) with the consent of the defendant; or

(b) with the permission of the President or, if the case has proceeded to a hearing, the Tribunal.

(2) Where a claim is withdrawn -

(a) the Tribunal may make any consequential order it thinks fit;

(b) no further claim may be brought by the claimant in respect of the same subject matter.

## **OFFERS AND PAYMENTS TO SETTLE**

### **Offers and payments to settle**

**43.** - (1) A payment to settle is an offer made by way of payment into the Tribunal in such manner as may be prescribed by practice direction.

(2) A payment to settle the whole or part of a claim may be made by a defendant once a claim for damages has been commenced.

(3) Notification of a payment to settle into the Tribunal must be sent to the Registrar and to the party to whom the payment to settle is made. Such notification must state precisely the basis on which the payment has been calculated.

(4) A payment to settle may be withdrawn or reduced only with the permission of the Registrar.

(5) A payment to settle may be accepted any time up to 14 days before the substantive hearing of the claim.

(6) Where a claimant accepts a defendant's payment to settle the whole or part of the proceedings, he shall be entitled to his costs of the proceedings or such costs relating to the part of the proceedings to which the offer related, up to the date of serving notice of acceptance, unless the Tribunal otherwise directs.

(7) Notwithstanding rule 55(3), where following a substantive hearing a claimant fails to better a payment to settle, the Tribunal will order the claimant to pay any costs incurred by the defendant after the latest date on which the payment or offer could have been accepted unless it considers it unjust to do so. The Tribunal may order such costs to carry interest from that date and to be paid on an indemnity basis.

(8) The fact that a payment to settle has been made shall not be communicated to the members of the Tribunal deciding the case until all questions of liability and the amount of money to be awarded have been agreed between the parties or determined by the Tribunal.

(9) A payment to settle under this rule will be treated as "without prejudice " except as to costs.

(10) This rule does not preclude either party from making an offer to settle at any time or by any other means. In the event that, following a substantive hearing, a claimant recovers less than the amount offered by a defendant other than by way of a payment to settle, the Tribunal may take that fact into account on the issue of costs, notwithstanding the provisions of rule 55(3).

## **CASE MANAGEMENT**

### **Case management generally**

**44.** - (1) In determining claims for damages the Tribunal shall actively exercise the Tribunal's powers set out in rules 17 (Consolidation), 18 (Forum), 19 (Directions),

20 (Case management conference etc.), 21 (Timetable for the oral hearing), 22 (Evidence), 23 (Summoning or citing of witnesses) and 24 (Failure to comply with directions) with a view to ensuring that the case is dealt with justly.

(2) Dealing with a case justly includes, so far as is practicable -

(a) ensuring that the parties are on an equal footing;

(b) saving expense;

(c) dealing with the case in ways which are proportionate -

(i) to the amount of money involved;

(ii) to the importance of the case;

(iii) to the complexity of the issues; and

(iv) to the financial position of each party;

(d) ensuring that it is dealt with expeditiously and fairly; and

(e) allotting to it an appropriate share of the Tribunal's resources, while taking into account the need to allot resources to other cases.

(3) The Tribunal may in particular -

(a) encourage and facilitate the use of an alternative dispute resolution procedure if the Tribunal considers that appropriate;

(b) dispense with the need for the parties to attend any hearing;

(c) use technology actively to manage cases.

### **Security for costs**

**45.** - (1) A defendant to a claim for damages may by request under this rule seek security for his costs of the proceedings.

(2) A request for security for costs must be supported by written evidence.

(3) Where the Tribunal makes an order for security for costs, it shall -

(a) determine the amount of security; and

(b) direct -

(i) the manner in which, and

(ii) the time within which

the security must be given.

- (4) The Tribunal may make an order for security for costs under this rule if -
- (a) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and
  - (b) one or more of the conditions in paragraph 5 applies.
- (5) The conditions are -
- (a) the claimant is an individual -
    - (i) who is ordinarily resident out of the jurisdiction; and
    - (ii) is not a person against whom a claim can be enforced under the Brussels Conventions or the Lugano Convention or the Regulation, as defined by section 1(1) of the Civil Jurisdiction and Judgments Act 1982[6];
  - (b) the claimant is a company or other incorporated body -
    - (i) which is ordinarily resident out of the jurisdiction; and
    - (ii) is not a body against whom a claim can be enforced under the Brussels Conventions or the Lugano Convention or the Regulation;
  - (c) the claimant is an undertaking (whether or not it is an incorporated body, and whether or not it is incorporated inside or outside the United Kingdom) and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so;
  - (d) the claimant has changed his address since the claim was commenced with a view to evading the consequences of the litigation;
  - (e) the claimant failed to give his address in the claim form, or gave an incorrect address in that form;
  - (f) the claimant is acting as a nominal claimant, other than under section 47B of the 1998 Act, and there is reason to believe that he will be unable to pay the defendant's costs if ordered to do so;
  - (g) the claimant has taken steps in relation to his assets that would make it difficult to enforce an order for costs against him.

## **PAYMENTS OF DAMAGES**

### **Interim payments on claims for damages**

**46.** - (1) An interim payment is an order for payment by the defendant on account of any damages (except costs) which the Tribunal may hold the defendant liable to pay.

(2) The claimant may not request an order for an interim payment before the end of the period for filing a defence by the defendant against whom the claim is made.

(3) The claimant may make more than one request for an order for an interim payment.

(4) The Tribunal may make an interim payment order if -

(a) the defendant against whom the order is sought has admitted liability to pay damages to the claimant;

(b) it is satisfied that, if the claim were to be heard the claimant would obtain judgment for a substantial amount of money (other than costs) against the defendant from whom he is seeking damages.

(5) The Tribunal must not order an interim payment of more than a reasonable proportion of the likely amount of the final judgment.

(6) A request for an interim payment shall include -

(a) the grounds on which an interim payment is sought;

(b) any directions necessary in the opinion of the claimant for the determination of the request.

(7) On receiving a request for an interim payment the Registrar shall send a copy to all the other parties to the proceedings and shall inform them of the date by which they may submit written or oral observations to the Tribunal.

### **Order for payment of damages**

**47.** - (1) If satisfied that the claimant is entitled to an amount of damages, the Tribunal shall order that amount to be paid to the claimant by the defendant.

(2) Where an award is made in respect of a claim included in proceedings brought by a specified body under section 47B of the 1998 Act, the Tribunal may (with the consent of the individual concerned and the specified body) order that the amount awarded is to be paid to the specified body on behalf of the individual.

(3) The Tribunal shall make such consequential orders as may be necessary for the payment of damages awarded in proceedings under section 47B of the 1998 Act.

(4) In making any order for the payment of damages to a claimant the Tribunal may take into account any sums owing from the claimant to the defendant.

## **TRANSFERS**

### **Transfer of claims from the Tribunal**

**48.** The Tribunal may, at any stage of the proceedings on the request of a party or of its own initiative, and after considering any observations of the parties direct that a

claim for damages (other than a claim included in proceedings under section 47B of the 1998 Act) be transferred to -

(a) the High Court or a county court in England and Wales or Northern Ireland; or

(b) the Court of Session or a sheriff court in Scotland.

### **Transfer of claims to the Tribunal**

**49.** - (1) A claim which may be made under section 47A of the 1998 Act may be transferred to the Tribunal from any court in accordance with rules of court or any practice direction.

(2) The person bringing the claim shall within 7 days of the order of the court transferring the claim or such other period directed by that court, send to the Registrar -

(a) a certified copy of the order of the court transferring the claim to the Tribunal;

(b) any pleadings and documents in support of the claim filed with the court in which the claim was begun;

(c) any directions sought for the further progress of the claim.

(3) As soon as practicable after receipt of the documents referred to in paragraph (2) a case management conference shall be held in accordance with rule 20.

## **PART V**

### **GENERAL AND SUPPLEMENTARY**

#### **THE HEARING**

##### **Hearing to be in public**

**50.** The hearing of any appeal, review or claim for damages shall be in public except as to any part where the Tribunal is satisfied that it will be considering information which is, in its opinion, information of the kind referred to in paragraph 1(2) of Schedule 4 to the 2002 Act.

##### **Procedure at the hearing**

**51.** - (1) The proceedings shall be opened and directed by the President or the chairman who shall be responsible for the proper conduct of the hearing.

(2) The Tribunal shall, so far as it appears to it appropriate, seek to avoid formality in its proceedings and shall conduct the hearing in such manner as it considers most appropriate for the clarification of the issues before it and generally to the just, expeditious and economical handling of the proceedings.

(3) Unless the Tribunal otherwise directs, no witness of fact or expert shall be heard unless the relevant witness statement or expert report has been submitted in advance of the hearing and in accordance with any directions of the Tribunal.

(4) The Tribunal may limit cross-examination of witnesses to any extent or in any manner it deems appropriate.

### **Quorum**

**52.** - (1) If, after the commencement of any hearing, the chairman is unable to continue the President may appoint either of the remaining two members to chair the Tribunal; and in that case the Tribunal shall consist of the remaining two members for the rest of the proceedings.

(2) If the person appointed under paragraph (1) is not a member of the panel of chairmen, the President may appoint himself or some other suitably qualified person to attend the proceedings and advise the remaining members on any questions of law arising.

(3) For the purposes of paragraph (2), a person is "suitably qualified" if he is, or is qualified for appointment as, a member of the panel of chairmen.

(4) If, after the commencement of any hearing, a member of the Tribunal (other than its chairman) is unable to continue, the President may decide that the Tribunal shall consist of the remaining two members for the rest of the proceedings.

(5) Where in pursuance of this rule the Tribunal consists of two members, a decision of the Tribunal must be unanimous.

## **CONFIDENTIALITY**

### **Requests for confidential treatment**

**53.** - (1) A request for the confidential treatment of any document or part of a document filed in connection with proceedings before the Tribunal shall be made in writing by the person who submitted the document at the latest within 14 days after filing the document indicating the relevant words, figures or passages for which confidentiality is claimed and supported in each case by specific reasons and, if so directed by the Registrar, the person making the request must supply a non-confidential version of the relevant document.

(2) No request for confidential treatment made in disregard of this rule or outside the period provided under paragraph (1) shall be permitted unless the Tribunal considers that the circumstances are exceptional.

(3) In the event of a dispute as to whether confidential treatment should be accorded, the Tribunal shall decide the matter after hearing the parties, taking into account the matters referred to in paragraph 1(2) of Schedule 4 to the 2002 Act.

## **DECISION OF THE TRIBUNAL**

### **Delivery of the decision**

**54.** - (1) The decision of the Tribunal shall be delivered in public on the date fixed for that purpose.

(2) The Registrar shall send a copy of the document recording the decision to each party and shall enter it on the register.

(3) The decision of the Tribunal shall be treated as having been notified on the date on which a copy of the document recording it is sent to the parties under paragraph (2).

(4) The President shall arrange for the decision of the Tribunal to be published in such manner as he considers appropriate.

### **Costs**

**55.** - (1) For the purposes of these rules "costs" means costs and expenses recoverable before the Supreme Court of England and Wales, the Court of Session or the Supreme Court of Northern Ireland.

(2) The Tribunal may at its discretion, subject to paragraph (3), at any stage of the proceedings make any order it thinks fit in relation to the payment of costs by one party to another in respect of the whole or part of the proceedings and in determining how much the party is required to pay, the Tribunal may take account of the conduct of all parties in relation to the proceedings.

(3) Any party against whom an order for costs is made shall, if the Tribunal so directs, pay to any other party a lump sum by way of costs, or all or such proportion of the costs as may be just. The Tribunal may assess the sum to be paid pursuant to any order under paragraph (1), (2) or (3) or may direct that it be assessed by the President, a chairman or the Registrar, or dealt with by the detailed assessment of a costs officer of the Supreme Court or a taxing officer of the Supreme Court of Northern Ireland or by the Auditor of the Court of Session.

(4) Unless the Tribunal otherwise directs, an order made pursuant to paragraphs (1) and (2) may be made in the decision, if the parties so consent, or immediately following delivery of the decision.

(5) The power to award costs pursuant to paragraphs (1) to (3) includes the power to direct any party to pay to the Tribunal such sum as may be appropriate in reimbursement of any costs incurred by the Tribunal in connection with the summoning or citation of witnesses or the instruction of experts on the Tribunal's behalf. Any sum due as a result of such a direction may be recovered by the Tribunal as a civil debt due to the Tribunal.

### **Interest**

**56.** - (1) If it imposes, confirms or varies any penalty under Part 1 of the 1998 Act, the Tribunal may, in addition, order that interest is to be payable on the amount of any such penalty from such date, not being a date earlier than the date upon which the application was made in accordance with rule 8, and at such rate, as the Tribunal



considers appropriate. Unless the Tribunal otherwise directs, the rate of interest shall not exceed the rate specified in any Order made pursuant to section 44 of the Administration of Justice Act 1970[7]. Such interest is to form part of the penalty and be recoverable as a civil debt in addition to the amount recoverable under section 36 of the 1998 Act.

(2) If it makes an award of damages the Tribunal may include in any sum awarded interest on all or any part of the damages in respect of which the award is made, for all or any part of the period between the date when the cause of action arose and -

(a) in the case of any sum paid before the decision making the award, the date of the payment; and

(b) in the case of the sum awarded, the date of that decision.

Unless the Tribunal otherwise directs, the rate of interest shall not exceed the rate specified in any Order made pursuant to section 44 of the Administration of Justice Act 1970.

### **Consent orders**

**57.** - (1) If all the parties agree the terms on which to settle all or any part of the proceedings, they may request the Tribunal to make a consent order.

(2) A request for a consent order shall be made by sending to the Registrar -

(a) a draft consent order;

(b) a consent order impact statement; and

(c) a statement signed by all the parties to the proceedings or their legal representatives requesting that an order be made in the form of the draft.

(3) A consent order impact statement shall provide an explanation of the draft consent order, including an explanation of the circumstances giving rise to the draft order, the relief to be obtained if the order is made and the anticipated effects on competition of that relief.

(4) If the Tribunal considers that a proposed consent order may have a significant effect on competition, it shall direct the Registrar as soon as practicable following receipt of the application to publish a notice on the Tribunal website or in such other manner as the Tribunal may direct.

(5) The notice referred to in paragraph (4) shall state -

(a) that a request for a consent order has been received;

(b) the name of each of the parties to the proceedings;

(c) the particulars of the relief sought by those parties; and

(d) that the draft consent order and consent order impact statement may be inspected at the Tribunal address for service or such other place as may be mentioned in the notice and shall so far as practicable exclude any information of the kind referred to in paragraph 1(2) of Schedule 4 to the 2002 Act.

(6) Any person may send his comments upon a request for a consent order to the Registrar within one month of the date upon which the notice was published in accordance with paragraph (4).

(7) Comments supplied in accordance with paragraph (6) shall be in writing, signed by the commentator and shall state the title of the proceedings to which the comments relate and the name and address of the commentator.

(8) The Registrar shall send all comments received in accordance with paragraph (6) to all parties to the proceedings. Any party to the proceedings may within 14 days of receipt of the comments send a response to the comments to the Registrar.

(9) In respect of any request for a consent order the Tribunal may, as it thinks fit, after hearing the parties and considering the comments of third parties -

- (a) make the order in the terms requested; or
- (b) invite the parties to vary the terms; or
- (c) refuse to make any order.

(10) This rule does not apply to claims for damages.

## **APPEALS FROM THE TRIBUNAL**

### **Permission to appeal**

**58.** - (1) A request to the Tribunal for permission to appeal from a decision of the Tribunal may be made -

- (a) orally at any hearing at which the decision is delivered by the Tribunal; or
- (b) in writing to the Registrar within one month of the notification of that decision.

(2) Where a request for permission to appeal is made in writing, it shall be signed and dated by the party or his representative and shall -

- (a) state the name and address of the party and of any representative of the party;
- (b) identify the Tribunal decision to which the request relates;
- (c) state the grounds on which the party intends to rely in his appeal; and
- (d) state whether the party requests a hearing of his request and any special circumstances relied on.

### **Decision of the Tribunal on request for permission to appeal**

**59.** - (1) Where a request for permission to appeal is made orally the Tribunal shall give its decision either orally or in writing, stating its reasons.

(2) Where a request for permission to appeal is made in writing, the Tribunal shall decide whether to grant such permission on consideration of the party's request and, unless it considers that special circumstances render a hearing desirable, in the absence of the parties.

(3) The decision of the Tribunal on a written request for permission to appeal together with the reasons for that decision shall be recorded in writing and the Registrar shall notify the parties of such decision.

### **REFERENCES TO THE EUROPEAN COURT**

#### **References to the European Court**

**60.** - (1) An order may be made by the Tribunal of its own initiative at any stage in the proceedings or on application by a party before or at the oral hearing.

(2) An order shall set out in a schedule the request for the preliminary ruling of the European Court and the Tribunal may give directions as to the manner and form in which the schedule is to be prepared.

(3) The proceedings in which an order is made shall, unless the Tribunal otherwise directs, be stayed (or in Scotland, sisted) until the European Court has given a preliminary ruling on the question referred to it.

(4) When an order has been made, the Registrar shall send a copy of it to the Registrar of the European Court.

(5) In this rule -

"European Court" means the Court of Justice of the European Communities;  
"order" means an order referring a question to the European Court for a preliminary ruling under Article 234 of the Treaty establishing the European Community, Article 150 of the Treaty establishing the European Atomic Energy Community or Article 41 of the Treaty establishing the European Coal and Steel Community.

### **INTERIM ORDERS AND MEASURES**

#### **Power to make interim orders and to take interim measures**

**61.** - (1) The Tribunal may make an order on an interim basis -

(a) suspending in whole or part the effect of any decision which is the subject matter of proceedings before it;

(b) in the case of an appeal under section 46 or 47 of the 1998 Act, varying the conditions or obligations attached to an exemption;

(c) granting any remedy which the Tribunal would have the power to grant in its final decision.

(2) Without prejudice to the generality of the foregoing, if the Tribunal considers that it is necessary as a matter of urgency for the purpose of -

(a) preventing serious, irreparable damage to a particular person or category of person, or

(b) protecting the public interest,

the Tribunal may give such directions as it considers appropriate for that purpose.

(3) The Tribunal shall exercise its power under this rule taking into account all the relevant circumstances, including -

(a) the urgency of the matter;

(b) the effect on the party making the request if the relief sought is not granted; and

(c) the effect on competition if the relief is granted.

(4) Any order or direction under this rule is subject to the Tribunal's further order, direction or final decision.

(5) A party shall apply for an order or a direction under paragraphs (1) and (2) by sending a request for interim relief in the form required by paragraph (6) to the Registrar.

(6) The request for interim relief shall state -

(a) the subject matter of the proceedings;

(b) in the case of a request for a direction pursuant to paragraph (2), the circumstances giving rise to the urgency;

(c) the factual and legal grounds establishing a prima facie case for the granting of interim relief by the Tribunal;

(d) the relief sought;

(e) if no appeal or application has been made in accordance with rule 8, in respect of a decision which is the subject of the request for interim relief, an outline of the information required by rule 8(4).

(7) On receiving a request for interim relief the Registrar shall send a copy to all the other parties to the proceedings (and where no appeal or application has been made in accordance with rule 8, to the person who made the decision to which the request for interim relief relates) and shall inform them of the date by which they may submit written or oral observations to the Tribunal.

(8) The Tribunal shall fix a date for the hearing of the request for interim relief and

give the parties any directions as may be necessary for disposing of the request for interim relief.

(9) The Tribunal may, for the purposes of this rule, join any party to the proceedings.

(10) Subject to paragraph 11, an order or direction for interim relief may be made against a person who is not a party to the proceedings, provided that no such order may be made unless that person has been given an opportunity to be heard.

(11) If the urgency of the case so requires, the Tribunal may dispense with a written request for interim relief or grant the request for interim relief before the observations of the other parties have been submitted.

(12) Unless the context otherwise requires, these rules apply to requests for interim relief.

(13) This rule does not apply to claims for damages.

## **SUPPLEMENTARY**

### **Power of President, Chairman and Registrar to exercise powers of Tribunal**

**62.** - (1) Any procedural act required or authorised by these rules, not being one required or authorised by the following rules -

(a) rules 10 (Power to reject) and 28(2);

(b) rule 12 (Withdrawal of the appeal), in the case of a withdrawal during or after the hearing;

(c) rule 40 (Power to reject);

(d) rule 41 (Summary judgment);

(e) rule 42 (Withdrawal), in the case of a withdrawal during or after the hearing;

(f) rules 58 (Permission to appeal) and 59 (Decision of the Tribunal on request for permission to appeal);

(g) rule 60 (References to the European Court),

may be done by the President acting alone.

(2) The powers of the President may be exercised by a chairman provided that the powers conferred by rule 61 may only be exercised by a chairman if the urgency of an application made in accordance with rule 61(7) so requires.

(3) If so authorised by the President, the Registrar may, subject to rule 4(4) and without prejudice to rule 55(3) -

- (a) make any order by consent (except where rule 57(4) applies);
- (b) deal with extensions or abridgments of time limits under rule 19(2)(i), except a request for an extension of time for filing an appeal or application under Part II or Part III of these rules;
- (c) deal with requests for confidential treatment under rule 53;
- (d) exercise the Tribunal's powers in respect of the service of documents under rule 63.

**Documents etc.**

**63.** - (1) Any document required to be sent to or served on any person for the purposes of proceedings under these rules may be -

- (a) delivered personally at his appropriate address;
- (b) sent to him at his appropriate address by first class post;
- (c) served through a document exchange;
- (d) where authorised by the Tribunal, sent to him by facsimile or electronic mail or other similar means.

(2) Where -

- (a) a document is to be served by the Tribunal; and
- (b) the Tribunal is unable to serve it,

the Tribunal must send a notice of non-service, stating the method attempted, to the other parties to the proceedings.

(3) Where it appears to the Tribunal that there is a good reason to authorise service by a method not permitted by these rules, the Tribunal may of its own initiative or on the request of a party make an order permitting and specifying an alternative method of service, and specifying when the document will be deemed to be served.

(4) The Tribunal may dispense with service of a document if the interests of justice so require.

(5) A document which is sent or served in accordance with these rules shall be treated as if it had been received by or served on that person -

- (a) in the case of personal delivery, on the day of delivery;
- (b) when sent by first class post or through a document exchange, on the second day after it was posted or left at the document exchange;
- (c) in the case of a facsimile transmitted on a business day before 4pm on that

day or in any other case on the business day after the day on which it is transmitted;

(d) in the case of electronic mail or similar means, on the second day after the day on which it is transmitted.

(6) If a document (other than a facsimile) is served after 5pm on a business day, or at any time on a Saturday, Sunday or a Bank Holiday, the document shall be treated as having been served on the next business day.

(7) For the purposes of these rules "business day" means any day except Saturday, Sunday or a Bank Holiday and "Bank Holiday" includes Christmas Day and Good Friday.

(8) A person's appropriate address for the purposes of paragraph (1) is -

(a) in the case of a document directed to the Tribunal or to the Registrar, the Tribunal address for service;

(b) in the case of a document directed to the applicant or to his representative, the address stated in the application in accordance with rule 8(3)(c) or such other address as may be subsequently notified to the Tribunal;

(c) in the case of a document addressed to the respondent, the address stated in the defence in accordance with rule 14(2)(c) or such other address as may be subsequently notified to the Tribunal;

(d) in the case of an intervener, the address stated in the request to intervene in accordance with rule 16(4)(d) or such other address as may be subsequently notified to the Tribunal.

(9) Anything required to be sent to or served on a company is duly sent or served if it is sent to or served on the secretary of the company at its principal place of business or registered address for the time being.

(10) Anything required to be sent or delivered to or served on a partnership is duly sent or served if it is sent to or served on any one of the partners for the time being.

(11) The Registrar shall, at the request of the Tribunal, or any party, certify the steps taken to serve a document pursuant to this rule, including the date and manner of service.

## **Time**

**64.** - (1) Where a period expressed in days, weeks or months 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.

(2) A period expressed in weeks or months shall end with the expiry of whichever day in the last week or month is the same day of the week or falls on the same date in

the month, 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, 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.

(2) "Month" shall mean calendar month.

(3) Where the time prescribed by the Tribunal, the President, a chairman or the Registrar, or by these rules, for doing any act expires on a Saturday, Sunday or Bank Holiday, the act is in time if done on the next following day which is not a Saturday, Sunday or Bank Holiday.

### **Conditional Fee Arrangements**

**65.** The rules on funding arrangements made under the Civil Procedure Rules 1998[8] as amended apply to proceedings before the Tribunal.

### **Enforcement of orders**

**66.** Any order, direction or decision of the Tribunal is enforceable in accordance with Schedule 4 to the 2002 Act.

### **Irregularities**

**67.** - (1) Any irregularity resulting from failure to comply with any provision of these rules before the Tribunal has reached its decision shall not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the Tribunal, the Tribunal may, and must if it considers any person may have been prejudiced by the irregularity, give such directions as it thinks just, to cure or waive the irregularity before reaching its decision.

(3) Clerical mistakes in any document recording a direction, order or decision of the Tribunal, the President, a chairman or the Registrar, or errors arising in such a document from an accidental slip or omission, may be corrected by the President, that chairman or the Registrar, as the case may be, by certificate under his hand.

### **General power of the Tribunal**

**68.** - (1) Subject to the provisions of these rules, the Tribunal may regulate its own procedure.

(2) The President may issue practice directions in relation to the procedures provided for by these rules.

## **TRANSITIONAL AND REVOCATION**

### **Transitional**

**69.** Proceedings commenced before the Tribunal prior to the coming into force of these rules shall continue to be governed by The Competition Commission Appeal Tribunal Rules 2000[9] as if they had not been revoked.

### **Revocation**



**70.** Save as provided by rule 69, the Competition Commission Appeal Tribunal Rules 2000 are revoked.

*Brian Wilson*

Minister of State for Energy and Construction, Department of Trade and Industry

23rd May 2003

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### **EXPLANATORY NOTE**

*(This note is not part of the Rules)*

These rules prescribe the procedure to be followed before the Competition Appeal Tribunal established by section 12 of the Enterprise Act 2002 in relation to proceedings before the Tribunal including proceedings under the Enterprise Act 2002 and the Competition Act 1998 as amended by the Enterprise Act 2002.

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*Notes:*

[1] 2002 c.40.

[2] 1992 c.53; *see* Schedule 1 to the Act, which is amended by paragraph 27 of Schedule 25 to the Enterprise Act 2002.

[3] Section 47A is inserted by section 18 of the Enterprise Act 2002.

[4] 1998 c.41.

[5] 1990 c.41.

[6] 1982 c.27; section 1(1) is amended by paragraph 1 of Schedule 2 to the Civil Jurisdiction and Judgments Order 2001 (S.I. 2001/3929).

[7] 1970 c.31.

[8] S.I. 1998/3132.

[9] S.I. 2000/261 as amended by S.I. 2003/767 which will be treated as having been made under section 15 of the 2002 Act by virtue of paragraph 12(1) of Schedule 24 to that Act.

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ISBN 0 11 046315 3

# Statutory Instrument 2004 No. 2068

## **The Competition Appeal Tribunal (Amendment and Communications Act Appeals) Rules 2004**

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### STATUTORY INSTRUMENTS

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**2004 No. 2068**

**COMPETITION**

**ELECTRONIC COMMUNICATIONS**

The Competition Appeal Tribunal (Amendment and Communications Act Appeals)  
Rules 2004

*Made*

*2nd August 2004*

*Laid before Parliament*

*4th August 2004*

*Coming into force*

*25th August 2004*

The Secretary of State, after consultation with the President of the Competition Appeal Tribunal and such other persons as she considers appropriate in accordance with section 15(1) of the Enterprise Act 2002[1], and after consultation with the Council on Tribunals in accordance with section 8(1) of the Tribunals and Inquiries Act 1992[2], in exercise of the powers conferred by section 15 of and Part 2 of Schedule 4 to the Enterprise Act 2002 and by sections 192(3) and (4) and 193(1), (2)(b) and (3) of, and paragraph 23(5) of Schedule 18 to, the Communications Act 2003[3], hereby makes the following Rules:

### **Citation and commencement**

1. - (1) These Rules may be cited as the Competition Appeal Tribunal (Amendment and Communications Act Appeals) Rules 2004 and shall come into force on 25th August 2004.

(2) In these Rules-

"the Act" means the Communications Act 2003;

"the Commission" means the Competition Commission;

"principal rule" means a rule of the Competition Appeal Tribunal Rules 2003[4];

"specified price control matter" means a price control matter specified in rule 3(1).

### **Amendment of Principal Rules**

2. The Competition Appeal Tribunal Rules 2003 shall be amended as provided in the Schedule to these Rules.

### **Reference of price control matters to the Competition Commission**

3. - (1) For the purposes of subsection (1) of section 193 of the Act, there is specified every price control matter falling within subsection (10) of that section which is disputed between the parties and which relates to-

(a) the principles applied in setting the condition which imposes the price control in question,

(b) the methods applied or calculations used or data used in determining that price control, or

(c) what the provisions imposing the price control which are contained in that condition should be (including at what level the price control should be set).

(2) In a notice of appeal under principal rule 8, the appellant may include a statement indicating the extent to which-

(a) the appeal relates to price control, or

(b) a specified price control matter arises in the appeal.

(3) In a defence under principal rule 14, the respondent may include a statement indicating the extent to which the appeal relates to price control or a specified price control matter arises in the appeal, including a statement in rebuttal of a statement under paragraph (2).

(4) In a request to intervene under principal rule 16, the person making the request may include a statement indicating the extent to which the appeal relates to price control or a specified price control matter arises in the appeal, including a statement in rebuttal of any statement under paragraph (2) or (3).

(5) The Tribunal shall refer to the Commission for determination in accordance with section 193 of the Act and rule 5 every matter which, either upon consideration of any statement provided for in paragraphs (2) to (4) or in the subsequent course of the appeal, it decides is a specified price control matter.

(6) The Tribunal may make a reference to the Commission under paragraph (5) at any time before it delivers its decision.

(7) This rule applies in all cases in which the Tribunal has not delivered its decision before 25<sup>th</sup> August 2004.

#### **Appeals relating to price control: transitional provision**

4. Notwithstanding principal rule 8(1) (which provides a time limit of two months from notification or publication of a decision for making an appeal), an appeal to the Tribunal may be made at any time before 26<sup>th</sup> October 2004 if-

- (a) the appeal relates to price control, or
- (b) a specified price control matter arises in the appeal.

#### **Determination by Competition Commission of price control matters**

5. - (1) Subject to any directions given by the Tribunal (which may be given at any time before the Commission have made their determination), the Commission shall determine every price control matter within four months of receipt by them of the reference.

(2) The Tribunal may give directions as to the procedure in accordance with which the Commission are to make their determination.

(3) The Tribunal may give directions under this rule of its own motion or upon the application of the Commission or of any party.

#### **Appeals under repealed enactments**

6. If an appeal under section 1F of the Wireless Telegraphy Act 1949<sup>[5]</sup> or section 46B of the Telecommunications Act 1984<sup>[6]</sup> ("the old appeal") is stayed or sisted under subparagraph (3) of paragraph 23 of Schedule 18 to the Act and a new appeal is brought under subparagraph (4) of that paragraph-

- (a) all pleadings and (except in Scotland) written evidence in the old appeal shall be treated as pleadings and written evidence in the new appeal,
- (b) all other steps taken and things done in the old appeal shall be taken into account in the new appeal to the extent directed by the Tribunal, and
- (c) the Tribunal may give directions to OFCOM as to the carrying out of their functions

which are the same as or correspond to directions which could have been given by the court before 25<sup>th</sup> July 2003 under subsection (4) of the said section 1F or (as the case may be) 46B.

*Stephen Timms,*

Minister of State for Energy, E-Commerce and Postal Services, Department of Trade and Industry

2nd August 2004

## SCHEDULE

### Rule 2

#### Amendments to the Competition Appeal Tribunal Rules 2003

**1. In rule 12(2)-**

(a) at the end of paragraph (a) the word "and" is deleted;

(b) at the end of paragraph (b) there are added the words-

" and

(c) publish any decision which it would have made had the appeal not been withdrawn."

**2. In rule 16(9), the words "and any response thereto" are deleted.**

**3. In rule 43(7), the words "Notwithstanding rule 55(3)" are deleted.**

**4. In rule 55-**

(a) in paragraph (3), for the words "paragraph (1), (2) or (3)" there are substituted the words "paragraph (2)";

(b) in paragraph (4), for the words "paragraphs (1) and (2)" there are substituted the words "paragraph (2) or a direction made pursuant to paragraph (3)".

**5. In rule 62-**

(a) in paragraph (1)(a), for "28(2)" there is substituted "28(4)";

(b) in paragraph (1)(f), for the words "rules 58 (Permission to appeal) and 59" there are substituted the words "rule 59".

6. In rule 63(6), after the words "is served" there are inserted the words "or is treated by virtue of paragraph (5) as having been served".

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## EXPLANATORY NOTE

*(This note is not part of the Rules)*

Rule 2 introduces the Schedule. Paragraph 1 of the Schedule enables the Competition Appeal Tribunal to publish what would have been its decision in an appeal which is withdrawn. Paragraphs 2 to 6 make minor amendments correcting errors in the Competition Appeal Tribunal Rules 2003. A copy of the Schedule is available separately from Consumer and Competition Policy Directorate, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET or from [glenn.fisher&commat;dti.gsi.gov.uk](mailto:glenn.fisher&commat;dti.gsi.gov.uk).

Rule 3 provides for reference by the Tribunal to the Competition Commission of the price control matters arising in an appeal specified in the rule.

Rule 4 provides that price control appeals may be made to the Tribunal at any time before 26<sup>th</sup> October 2004 even though they may otherwise be out of time.

Rule 5 provides that, subject to directions from the Tribunal, the Commission must complete their determination of price control matters within four months and that the Tribunal may give other directions as to the Commission's procedure.

Rule 6 makes provision to facilitate the conversion of appeals under sections 1F of the Wireless Telegraphy Act 1949 and section 46B of the Telecommunications Act 1984 into appeals under section 192 of the Communications Act 2003.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the cost of business.

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### Notes:

[1] 2002 c. 40.

[2] 1992 c. 53; see Schedule 1 to the Act, which is amended by paragraph 27 of Schedule 25 to the Enterprise Act 2002.

[3] 2003 c. 21.

[4] S.I. 2003/1372.

[5] 1949 c. 54; section 1F is repealed by the Communications Act 2003(c. 21), section 406(7) and Schedule 19.

[6] Section 46B is repealed by the Communications Act 2003(c. 21), section 406(7) and Schedule 19.

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ISBN 0 11 049672 8



**RULES OF PROCEDURE  
OF THE GENERAL COURT**

This edition consolidates:

the Rules of Procedure of the Court of First Instance of the European Communities of 2 May 1991 (OJ L 136 of 30.5.1991, p. 1, and OJ L 317 of 19.11.1991, p. 34 (corrigenda)) and the amendments resulting from the following measures:

1. Amendments to the Rules of Procedure of the Court of First Instance of the European Communities of 15 September 1994 (OJ L 249 of 24.9.1994, p. 17),
2. Amendments to the Rules of Procedure of the Court of First Instance of the European Communities of 17 February 1995 (OJ L 44 of 28.2.1995, p. 64),
3. Amendments to the Rules of Procedure of the Court of First Instance of the European Communities of 6 July 1995 (OJ L 172 of 22.7.1995, p. 3),
4. Amendments to the Rules of Procedure of the Court of First Instance of the European Communities of 12 March 1997 (OJ L 103 of 19.4.1997, p. 6, and OJ L 351 of 23.12.1997, p. 72 (corrigenda)),
5. Amendments to the Rules of Procedure of the Court of First Instance of the European Communities of 17 May 1999 (OJ L 135 of 29.5.1999, p. 92),
6. Amendments to the Rules of Procedure of the Court of First Instance of the European Communities of 6 December 2000 (OJ L 322 of 19.12.2000, p. 4),
7. Amendments to the Rules of Procedure of the Court of First Instance of the European Communities of 21 May 2003 (OJ L 147 of 14.6.2003, p. 22),
8. Council Decision 2004/406/EC, Euratom of 19 April 2004 amending Article 35(1) and (2) of the Rules of Procedure of the Court of First Instance of the European Communities (OJ L 132 of 29.4.2004, p. 3),
9. Amendments to the Rules of Procedure of the Court of First Instance of the European Communities of 21 April 2004 (OJ L 127 of 29.4.2004, p. 108),
10. Amendments to the Rules of Procedure of the Court of First Instance of the European Communities of 12 October 2005 (OJ L 298 of 15.11.2005, p. 1),
11. Council Decision 2006/956/EC, Euratom of 18 December 2006 amending the Rules of Procedure of the Court of First Instance of the European Communities with regard to languages (OJ L 386 of 29.12.2006, p. 45),
12. Amendments to the Rules of Procedure of the Court of First Instance of the European Communities of 12 June 2008 (OJ L 179 of 8.7.2008, p. 12),

13. Amendments to the Rules of Procedure of the Court of First Instance of the European Communities of 14 January 2009 (OJ L 24 of 28.1.2009, p. 9),
14. Council Decision 2009/170/EC, Euratom of 16 February 2009 amending the Rules of Procedure of the Court of First Instance of the European Communities as regards the language arrangements applicable to appeals against decisions of the European Union Civil Service Tribunal (OJ L 60 of 4.3.2009, p. 3),
15. Amendments to the Rules of Procedure of the Court of First Instance of the European Communities of 7 July 2009 (OJ L 184 of 16.7.2009, p. 10),
16. Amendments to the Rules of Procedure of the General Court of 26 March 2010 (OJ L 92 of 13.4.2010, p. 14),
17. Amendments to the Rules of Procedure of the General Court of 24 May 2011 (OJ L 162 of 22.6.2011, p. 18),
18. Amendments to the Rules of Procedure of the General Court of 19 June 2013 (OJ L 173 of 26.6.2013, p. 66).

This edition has no legal force and the preambles have therefore been omitted.

**RULES OF PROCEDURE  
OF THE GENERAL COURT  
OF 2 MAY 1991 <sup>1</sup>**

**SUMMARY**

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- |           |   |
|-----------|---|
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*Title 2 – Procedure*

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<sup>1</sup> OJ L 136 of 30.5.1991 and OJ L 317 of 19.11.1991, p. 34 (corrigenda), with amendments dated 15 September 1994 (OJ L 249 of 24.9.1994, p. 17), 17 February 1995 (OJ L 44 of 28.2.1995, p. 64), 6 July 1995 (OJ L 172 of 22.7.1995, p. 3), 12 March 1997 (OJ L 103 of 19.4.1997, p. 6, and OJ L 351 of 23.12.1997, p. 72 (corrigenda), 17 May 1999 (OJ L 135 of 29.5.1999, p. 92), 6 December 2000 (OJ L 322 of 19.12.2000, p. 4), 21 May 2003 (OJ L 147 of 14.6.2003, p. 22), 19 April 2004 (OJ L 132 of 29.4.2004, p. 3), 21 April 2004 (OJ L 127 of 29.4.2004, p. 108), 12 October 2005 (OJ L 298 of 15.11.2005, p. 1), 18 December 2006 (OJ L 386 of 29.12.2006, p. 45), 12 June 2008 (OJ L 179 of 8.7.2008, p. 12), 14 January 2009 (OJ L 24 of 28.1.2009, p. 9), 16 February 2009 (OJ L 60 of 4.3.2009, p. 3), 7 July 2009 (OJ L 184 of 16.7.2009, p. 10), 26 March 2010 (OJ L 92 of 13.4.2010, p. 14), 24 May 2011 (OJ L 162 of 22.6.2011, p. 18) and 19 June 2013 (OJ L 173 of 26.6.2013, p. 66).

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*Title 5 – Appeals against decisions of the European Union Civil Service Tribunal (Articles 136a to 149)*

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## INTERPRETATION

### *Article 1*

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 the 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.

*TITLE 1*  
**ORGANISATION OF THE GENERAL COURT**

Chapter 1  
**PRESIDENT AND MEMBERS OF THE GENERAL COURT**

*Article 2*

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.

*Article 3*

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.

*Article 4*

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 with integrity and discretion as regards the acceptance, after he has ceased to hold office, of certain appointments and benefits.

#### *Article 5*

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.

The General Court shall state the reasons for its opinion.

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.

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

#### *Article 6*

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.

Where there is equal seniority in office, precedence shall be determined by age.

Retiring Judges who are reappointed shall retain their former precedence.

#### *Article 7*

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.



### *Article 8*

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.

The President of the General Court shall preside over the Grand Chamber.

If the President of the General Court is assigned to a Chamber of three or of five Judges, he shall preside over that Chamber.

### *Article 9*

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.

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.

## Chapter 2 CONSTITUTION OF THE CHAMBERS AND DESIGNATION OF JUDGE-RAPPORTEURS AND ADVOCATES GENERAL

### *Article 10*

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*.

### *Article 11*

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.

#### *Article 12*

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*.

#### *Article 13*

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.

#### *Article 14*

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.

#### *Article 15*

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.  
  
The election of the Presidents of Chambers of five Judges shall take place immediately after the election of the President of the General Court 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*.

*Article 16*

In cases coming before a Chamber the powers of the President shall be exercised by the President of the Chamber.

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.

*Article 17*

When the General Court sits in plenary session, it shall be assisted by an Advocate General designated by the President of the General Court.

*Article 18*

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.

*Article 19*

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.

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

Chapter 3  
REGISTRY

**Section 1 – The Registrar**

*Article 20*

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.

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.

*Article 21*

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.

## *Article 22*

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.

## *Article 23*

Instructions to the Registrar shall be adopted by the General Court acting on a proposal from the President of the General Court.

## *Article 24*

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.

*Article 25*

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.

*Article 26*

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.

*Article 27*

Subject to Articles 5 and 33, the Registrar shall attend the sittings of the General Court.

**Section 2 – Other Departments**

*Article 28*

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.

*Article 29*

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.

### *Article 30*

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.

## Chapter 4 THE WORKING OF THE GENERAL COURT

### *Article 31*

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.

### *Article 32*

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 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.

### *Article 33*

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.

#### *Article 34*

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.

### Chapter 5 LANGUAGES

#### *Article 35*

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

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 subparagraph (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.

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, of 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.

#### *Article 36*

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 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.

#### *Article 37*

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.

### Chapter 6 RIGHTS AND OBLIGATIONS OF AGENTS, ADVISERS AND LAWYERS

#### *Article 38*

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.
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.

*Article 39*

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.

*Article 40*

The privileges, immunities and facilities specified in Article 38 are granted exclusively in the interests of the proper conduct of proceedings.

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

*Article 41*

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.

*Article 42*

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.

*TITLE 2*  
**PROCEDURE**

Chapter 1  
WRITTEN PROCEDURE

*Article 43*

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 lodgment 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.

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 lodgment 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*.

#### *Article 44*

1. 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 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.

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.

#### *Article 45*

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.

#### *Article 46*

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;
- (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.

#### *Article 47*

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 authorise 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.

#### *Article 48*

1. In reply or rejoinder a party may offer further evidence. The party must, however, give reasons for the delay in offering it.

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.

#### *Article 49*

At any stage of the proceedings the General Court may, after hearing the Advocate General, prescribe any measure of organisation of procedure or any measure of inquiry referred to in Articles 64 and 65 or order that a previous inquiry be repeated or expanded.



### *Article 50*

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.

### *Article 51*

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 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.

### *Article 52*

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 76a(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 organisation 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.

#### *Article 53*

Where the General Court decides to open the oral procedure without undertaking measures of organisation of procedure or ordering a preparatory inquiry, the President of the General Court shall fix the opening date.

#### *Article 54*

Without prejudice to any measures of organisation of procedure or measures of inquiry which may be arranged at the stage of the oral procedure, where, during the written procedure, measures of organisation of procedure or measures of inquiry have been instituted and completed, the President shall fix the date for the opening of the oral procedure.

Chapter 2  
ORAL PROCEDURE

*Article 55*

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.

*Article 56*

The proceedings shall be opened and directed by the President, who shall be responsible for the proper conduct of the hearing.

*Article 57*

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

*Article 58*

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.

*Article 59*

A party may address the General Court only through his agent, adviser or lawyer.

*Article 60*

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.

*Article 61*

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.

*Article 62*

The General Court may, after hearing the Advocate General, order the reopening of the oral procedure.

*Article 63*

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.

Chapter 3  
MEASURES OF ORGANISATION OF PROCEDURE  
AND MEASURES OF INQUIRY

**Section 1 – Measures of organisation of procedure**

*Article 64*

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

possible conditions. They shall be prescribed by the General Court, after hearing the Advocate General.

2. Measures of organisation 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 organisation 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.
4. Each party may, at any stage of the procedure, propose the adoption or modification of measures of organisation 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 organisation 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 organisation 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 organisation of procedure.

## Section 2 – Measures of inquiry

### *Article 65*

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.

### *Article 66*

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.

### *Article 67*

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.

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.

### **Section 3 – The summoning and examination of witnesses and experts**

#### *Article 68*

1. The General Court may, either of 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 of 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 of 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.

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.

#### *Article 69*

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 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.

#### *Article 70*

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.

#### *Article 71*

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*

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.

#### *Article 73*

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.

#### *Article 74*

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.

#### *Article 75*

1. The General Court may, on application by a party or of its own motion, issue letters rogatory for the examination of witnesses or experts.

2. Letters rogatory shall be issued in the form of an order 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 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.

#### *Article 76*

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.

### Chapter 3a EXPEDITED PROCEDURES

#### *Article 76a*

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 organisation 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.

#### Chapter 4 STAY OF PROCEEDINGS AND DECLINING OF JURISDICTION BY THE GENERAL COURT

##### *Article 77*

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.

*Article 78*

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.

*Article 79*

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.

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

*Article 80*

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.

Chapter 5  
JUDGMENTS

*Article 81*

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,
- 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.

#### *Article 82*

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.

#### *Article 83*

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.

#### *Article 84*

1. Without prejudice to the provisions relating to the interpretation of judgments, the General 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.

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.

#### *Article 85*

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.

#### *Article 86*

The Registrar shall arrange for the publication of cases before the General Court.

### Chapter 6 COSTS

#### *Article 87*

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.

#### *Article 88*

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.

#### *Article 89*

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.

### *Article 90*

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).

### *Article 91*

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.

### *Article 92*

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.

### *Article 93*

1. Sums due from the cashier of the General Court 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.

Chapter 7  
LEGAL AID

*Article 94*

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.

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.

*Article 95*

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.

*Article 96*

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 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.

### *Article 97*

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.

## Chapter 8 DISCONTINUANCE

### *Article 98*

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.

*Article 99*

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).

Chapter 9  
SERVICE

*Article 100*

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

## Chapter 10 TIME-LIMITS

### *Article 101*

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.

### *Article 102*

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.

#### *Article 103*

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.

### **TITLE 3 SPECIAL FORMS OF PROCEDURE**

#### **Chapter 1 SUSPENSION OF OPERATION OR ENFORCEMENT AND OTHER INTERIM MEASURES**

#### *Article 104*

1. An application to suspend the operation of any measure adopted by an institution, made pursuant to Article 278 TFEU and Article 157 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.

*Article 105*

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.

*Article 106*

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.

*Article 107*

1. The decision on the application shall take the form of a reasoned order. The order shall be served on the parties forthwith.
2. The 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.

*Article 108*

On application by a party, the order may at any time be varied or cancelled on account of a change in circumstances.

*Article 109*

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.

*Article 110*

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 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.

Chapter 2  
PRELIMINARY ISSUES

*Article 111*

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.

*Article 112*

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.

*Article 113*

The General Court may at any time, of 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).

#### *Article 114*

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.

### Chapter 3 INTERVENTION

#### *Article 115*

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.

#### *Article 116*

- 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.

Chapter 4  
JUDGMENTS OF THE GENERAL COURT DELIVERED  
AFTER ITS DECISION HAS BEEN SET ASIDE AND THE CASE  
REFERRED BACK TO IT

*Article 117*

Where the Court of Justice sets aside a judgment or an order of the General Court and refers the case back to that Court, the latter shall be seised of the case by the judgment so referring it.

*Article 118*

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.

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.

*Article 119*

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.

*Article 120*

The procedure shall be conducted in accordance with the provisions of Title 2 of these Rules.

*Article 121*

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.

Chapter 4a  
DECISIONS OF THE GENERAL COURT GIVEN  
AFTER ITS DECISION HAS BEEN REVIEWED AND THE CASE  
REFERRED BACK TO IT

*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 seised of the case by the judgment so referring it.



*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.

*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.

*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.

Chapter 5

JUDGMENTS BY DEFAULT AND APPLICATIONS TO SET THEM ASIDE

*Article 122*

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 2 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.

Chapter 6  
EXCEPTIONAL REVIEW PROCEDURES

**Section 1 – Third-party proceedings**

*Article 123*

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 3, 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.

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.

*Article 124*

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.

**Section 2 – Revision**

*Article 125*

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.

*Article 126*

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.

*Article 127*

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.

#### *Article 128*

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.

### **Section 3 – Interpretation of judgments**

#### *Article 129*

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.

#### *TITLE 4*

### **PROCEEDINGS RELATING TO INTELLECTUAL PROPERTY RIGHTS**

#### *Article 130*

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.

#### *Article 131*

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).

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.

#### *Article 132*

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.

#### *Article 133*

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.

#### *Article 134*

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.

Such submissions seeking orders or putting forward pleas in law in the intervener'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 intervener, as referred to in paragraph 1 of this Article, has responded to the application in the manner and within the period prescribed.

#### *Article 135*

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.

#### *Article 135a*

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.

#### *Article 136*

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.

*TITLE 5*  
**APPEALS AGAINST DECISIONS**  
**OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL**

*Article 136a*

Without prejudice to the arrangements laid down in Article 35(2)(b) and (c) and the fourth subparagraph of Article 35(3) of these Rules, in appeals against decisions of the Civil Service Tribunal as referred to in Articles 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.

*Article 137*

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.

*Article 138*

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.

#### *Article 139*

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.

#### *Article 140*

The notice of appeal shall be served on all the parties to the proceedings before the Civil Service Tribunal. Article 45 shall apply.

#### *Article 141*

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.

*Article 142*

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.

*Article 143*

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 months of the service of the response in question. Paragraph 1 shall apply to any further pleading following such a reply.

*Article 144*

Subject to the provisions of Articles 144 to 149 inclusive, Articles 48(2) and Articles 49, 50, 51(1), 52, 55 to 64, 76a 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.

*Article 145*

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.

*Article 146*

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. 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.

*Article 147*

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*

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;

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*

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*

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.

### *Article 151*

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.