



Council of the
European Union

Brussels, 17 March 2016
(OR. en)

7212/16

JUR 120
COUR 19
INST 109

COVER NOTE

From:	Mr Marc JAEGER, President of the General Court of the European Union
date of receipt:	15 March 2016
To:	Mr Bert KOENDERS, President of the Council
Subject:	Amendments to the Rules of Procedure of the General Court

Delegations will find attached a letter by the president of the General Court of 15 March 2016 submitting for the approval of the Council three sets of draft amendment to the Rules of Procedure of the General Court and the accompanying documents.



GENERAL COURT
OF THE
EUROPEAN UNION

President

Luxembourg, 15 March 2016

Mr Bert Koenders
President of the Council of the European Union
175, rue de la Loi
B -1048 BRUSSELS

Dear President,

With reference to the fifth paragraph of Article 254 of the Treaty on the Functioning of the European Union, applicable also to the Treaty establishing the European Atomic Energy Community in accordance with Article 106a thereof, I hereby submit for the approval of the Council three sets of draft amendments to the Rules of Procedure of the General Court.

The first set of draft amendments, appended as Annex I, is intended to take account of the recent changes made by the legislature to the structure of the Court of Justice of the European Union. Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council of 16 December 2015 amending Protocol No 3 on the Statute of the Court of Justice of the European Union (OJ 2015 L 341, p. 14) provides that increasing by seven the number of Judges of the General Court on 1 September 2016 will also require jurisdiction to hear and determine European Union civil service cases at first instance to be transferred to the General Court. That transfer of jurisdiction to rule, at first instance, on disputes between the Union and its officials and servants is the purpose of draft Regulation 2016/XXX of the European Parliament and of the Council, which the President of the Court of Justice of the European Union sent to the President of the European Parliament and the President of the Council on 17 November 2015. The Rules of Procedure of the General Court must therefore be amended in order to give that court an appropriate and permanent procedural framework for dealing at first instance with disputes between the Union and its officials and servants from 1 September 2016. It must be emphasised that the changes proposed by the General Court have been drawn up in close consultation with the Civil Service Tribunal and the Court of Justice.

The second draft amendment, appended as Annex 2, is of a formal nature and stems from a requirement under a regulation. Regulation (EU) 2015/2424 of the European Parliament and of the Council of 16 December 2015 amending Council Regulation (EC) No 207/2009 on the Community trade mark and Commission Regulation (EC) No 2868/95 implementing Council Regulation (EC) No 40/94 on the Community trade mark, and repealing Commission Regulation (EC) No 2869/95 on the fees payable to the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OJ 2015 L 341, p. 21) changes the name of the Office for Harmonisation in the Internal Market (Trade Marks and Designs). The Rules of Procedure of the General Court should therefore be amended to refer to the European Union Intellectual Property Office.

The third draft amendment, appended as Annex 3, is dictated by the need to make Article 105 of the Rules of Procedure of the General Court applicable. To that end, the rules that specifically apply to information or material produced before the General Court under Article 105 of those rules of procedure must be extended to appeals brought before the Court of Justice against decisions of the General Court. In order to ensure the continuity of this specific treatment and to guarantee that the rules that apply at first instance and the parallel rules proposed by the Court of Justice in an amendment of its own rules of procedure are perfectly complementary, it can no longer be the adoption of the General Court's decision closing the proceedings that determines whether relevant, confidential information or material is returned, as currently provided for in Article 105(10). The purpose of the third draft amendment is therefore to adapt the rule laid down in Article 105(10) of the Rules of Procedure of the General Court.

Each set of proposed amendments is accompanied by explanatory notes, to which reference should be made.

The draft amendments are enclosed in all the official languages.

Yours faithfully,

Marc JAEGER

– Draft –

AMENDMENTS TO THE RULES OF PROCEDURE OF THE GENERAL COURT

Explanatory notes

These draft amendments to the Rules of Procedure are intended to take account of the recent changes made by the legislature to the structure of the Court of Justice of the European Union.

Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council of 16 December 2015 (OJ 2015 L 341, p. 14) provides that increasing by seven the number of Judges of the General Court on 1 September 2016 will also require jurisdiction to hear and determine European Union civil service cases at first instance to be transferred to the General Court.

That transfer of jurisdiction to rule, at first instance, on disputes between the Union and its servants is the purpose of draft Regulation 2016/XXX of the European Parliament and of the Council, which the President of the Court of Justice of the European Union sent to the Presidents of the European Parliament and of the Council on 17 November 2015.

The draft regulation provides that the General Court is to exercise at first instance jurisdiction in disputes between the Union and its servants referred to in Article 270 TFEU, including disputes between all institutions and all bodies, offices or agencies, on the one hand, and their servants, on the other, in respect of which jurisdiction is conferred on the Court of Justice of the European Union.

That transfer of jurisdiction requires the Rules of Procedure of the General Court to be amended to include the provisions required to establish the procedural framework for disputes before the General Court at first instance between the Union and its servants.

In so far as civil service disputes fall within the category of direct actions, the procedures which the General Court has had at its disposal since 1 July 2015 already incorporate the main rules for dealing with cases in that category. However, such disputes have certain specific features which make it appropriate to modify some of the rules in force or to supplement them. That is particularly so when the Protocol on the Statute of the Court of Justice of the European Union expressly envisages amicable settlement as a means of resolving disputes.

The General Court has been guided by the relevant provisions of the Rules of Procedure of the Civil Service Tribunal. Differences in wording between the provisions of the Rules of Procedure of the Civil Service Tribunal and the provisions contained in the present draft may be justified by the need to preserve the overall consistency of the Rules of Procedure.

Lastly, in order to ensure continuity in the handling of cases that are to be transferred to it, the General Court intends to apply both the provisions of its Rules of Procedure and provisions put forward in this document which have been adapted to the specific characteristics of civil service litigation. With the benefit of an appropriate and permanent procedural framework, the General Court will be in a position to deal, from 1 September 2016, with all the civil service cases transferred, it being understood that, as Article 3 of Regulation 2016/XXX of the European Parliament and of the Council provides, the General Court is to continue dealing with those cases as it finds them at that date. For those reasons, transitional provisions are not necessary.

THE GENERAL COURT,

Having regard to the Treaty on the Functioning of the European Union, and in particular the fifth paragraph of Article 254 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a(1) thereof,

Having regard to the Protocol on the Statute of the Court of Justice of the European Union, and in particular Article 63 thereof,

Whereas Regulation 2016/XXX of the European Parliament and of the Council (OJ 2016 L XXX), which is due to take effect on 1 September 2016, provides that the General Court is to exercise at first instance jurisdiction in the disputes between the Union and its servants referred to in Article 270 TFEU, including disputes between all institutions and all bodies, offices or agencies, on the one hand, and their servants, on the other, in respect of which jurisdiction is conferred on the Court of Justice of the European Union,

Whereas it is in consequence appropriate to amend the Rules of Procedure of the General Court,

With the agreement of the Court of Justice,

With the approval of the Council given on XXX,

HAS ADOPTED THE FOLLOWING AMENDMENTS TO ITS RULES OF PROCEDURE:

Article 1

The Rules of Procedure of the General Court of 4 March 2015 (OJ 2015 L 105, p. 1) are hereby amended as follows:

1. In Article 1(2):

(a) the text in point (i) is replaced by the following:

‘(i) “direct actions” means actions brought on the basis of Articles 263 TFEU, 265 TFEU, 268 TFEU, 270 TFEU and 272 TFEU;’;

(b) the following point (j) is added:

‘(j) “Staff Regulations” means the Regulation laying down the Staff Regulations of Officials of the European Union and the Conditions of Employment of other servants of the European Union.’

Reasons

Article 1 of the Rules of Procedure must be supplemented in two respects.

In the first place, the transfer of jurisdiction to the General Court by virtue of Regulation 2016/XXX of the European Parliament and of the Council requires the scope of the expression ‘direct actions’ to be extended to actions brought on the basis of Article 270 TFEU. That provision must be interpreted in the light of Article 50a(1) of the Protocol on the Statute of the Court of Justice of the European Union, according to which the General Court is to exercise at first instance jurisdiction in the disputes between the Union and its servants referred to in Article 270 TFEU, ‘including disputes between all institutions and all bodies, offices or agencies, on the one hand, and their servants, on the other, in respect of which jurisdiction is conferred on the Court of Justice of the European Union’. Disputes referred to in that respect include disputes between the European Central Bank and its staff, which fall within the jurisdiction of the Court of Justice of the European Union in accordance with Article 36.2 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank, or between the European Investment Bank and its staff.

In the second place, since the expression ‘Staff Regulations’ is used repeatedly in the Rules of Procedure, it is essential that that expression be defined, as it is, moreover, in Article 1(1)(e) of the Rules of Procedure of the Civil Service Tribunal.

2. Article 29 is amended as follows:

(a) in paragraph 1(b), the words ‘cases brought pursuant to the fourth paragraph of Article 263 TFEU, the third paragraph of Article 265 TFEU and Article 268 TFEU’ are replaced by ‘cases brought pursuant to the fourth paragraph of Article 263 TFEU, the third paragraph of Article 265 TFEU, Article 268 TFEU and Article 270 TFEU’;

(b) paragraph 2(b) is renumbered paragraph 2(c);

(c) in paragraph 2, the following point is inserted as point (b):

‘(b) in an action brought pursuant to Article 270 TFEU in which a plea of illegality is expressly raised against an act of general application, unless the Court of Justice or the General Court has already given a ruling on the issues raised by that plea;’

Reasons

Article 29 of the Rules of Procedure, headed 'Delegation to a single Judge', requires amendment in two respects. It is necessary, first of all, to provide for a single Judge to have jurisdiction to rule on actions brought pursuant to Article 270 TFEU. That is the purpose of the amendment to Article 29(1)(b) of the Rules of Procedure. The corresponding provision of the Rules of Procedure of the Civil Service Tribunal is the first subparagraph of Article 15(1).

Secondly, it is necessary to prescribe a further case in which delegation to a single Judge is excluded, one that is itself subject to an exception. Although based on the second subparagraph of Article 15(1) of the Rules of Procedure of the Civil Service Tribunal, according to which ‘referral to a single Judge shall not be possible in cases which raise issues as to the legality of an act of general application, unless the Court of Justice, the General Court or the Tribunal has already given a ruling on those issues’, the proposed wording of the new point (b) of Article 29(2) of the Rules of Procedure nevertheless differs so as to take account of the disappearance of one of the three jurisdictions and to maintain consistency with the wording of the case referred to in point (a) of the same paragraph.

3. In Article 39(1), the first sentence is replaced by the following:

‘The officials and other servants whose task is to assist directly the President, the Judges and the Registrar shall be appointed under the conditions laid down by the Staff Regulations.’

Reasons

The text of Article 39(1) of the Rules of Procedure is to be amended in the light of the definition of Staff Regulations which it is proposed to insert in Article 1.

4. Article 78 is amended as follows:

- (a) paragraphs 2 to 5 are renumbered paragraphs 3 to 6;
- (b) the following is inserted as paragraph 2:

‘2. An application submitted pursuant to Article 270 TFEU shall be accompanied, where appropriate, by the complaint within the meaning of Article 90(2) of the Staff Regulations and the decision responding to the complaint, together with an indication of the dates on which the complaint was submitted and the decision notified.’

- (c) in paragraph 5, which is renumbered paragraph 6, the reference to ‘paragraphs 1 to 4’ is replaced by a reference to ‘paragraphs 1 to 5’.

Reasons

The text which it is proposed to insert as paragraph 2 is based on that of Article 50(2) of the Rules of Procedure of the Civil Service Tribunal. It is incumbent on the applicant to produce the complaint and, where appropriate, the administration’s response rejecting it, those two documents enabling an assessment to be made as to whether the application is admissible having regard to the time limit for bringing an action.

The numbering of the paragraphs of Article 78 referred to must be revised as a result.

5. In Article 80(2), the reference to ‘Article 78(5)’ is replaced by a reference to ‘Article 78(6)’.

Reasons

This amendment is a logical consequence of the proposed renumbering of the paragraph of Article 78 to which reference is made.

6. In Article 81(2), the reference to ‘Article 78(3) to (5)’ is replaced by a reference to ‘Article 78(4) to (6)’.

Reasons

This amendment is a logical consequence of the proposed renumbering of the paragraphs of Article 78 to which reference is made.

7. Article 86 is amended as follows:

- (a) paragraphs 3 to 6 are renumbered paragraphs 4 to 7;
- (b) the following is inserted as paragraph 3:

‘3. In cases brought pursuant to Article 270 TFEU, the modification of the application must be made by a separate document and, by way of derogation from paragraph 2, within the time limit laid down in Article 91(3) of the Staff Regulations within which the annulment of the measure justifying the modification of the application may be sought.’

Reasons

Article 86 of the Rules of Procedure specifies the conditions under which a main party may modify his application to take account of a new factor. The current text provides, inter alia, in paragraph 2 that the modification must be made within the time limit of two months laid down in the sixth paragraph of Article 263 TFEU.

It being considered desirable to allow for the modification of an application made pursuant to Article 270 TFEU, a paragraph must be added to the article since, under the Staff Regulations, the time limit within which the legality of an act affecting an official or a servant may be challenged in legal proceedings is three, not two months.

8. In Article 110, the following paragraph 4 is added:

‘4. In cases brought pursuant to Article 270 TFEU, the members of the formation of the Court and the Advocate General may in the course of the hearing invite the parties themselves to express their views on certain aspects of the case.’

Reasons

In view of the specific nature of civil service disputes, it is proposed to reproduce the rule laid down in Article 63(4) of the Rules of Procedure of the Civil Service Tribunal.

Although the Rules of Procedure provide for the parties themselves to be heard in the context of measures of inquiry (Article 91), the particular nature of civil service disputes warrants the insertion of a more flexible rule that will enable the official or servant concerned to state his view to the members of the formation of the Court at the hearing if they invite him to do so.

9. In Article 120, the words ‘or on the Civil Service Tribunal’ are deleted.

Reasons

The reference to the Civil Service Tribunal will be redundant as from 1 September 2016, in view of its dissolution. The reference to the Civil Service Tribunal should therefore be deleted.

10. In Article 124(1), the words ‘If, before the General Court has given its decision, the main parties reach a settlement of their dispute’ are replaced by the words ‘If, before the General Court has given its decision, the main parties reach an out-of-court settlement of their dispute’.

Reasons

Article 124 of the Rules of Procedure concerns amicable settlements which the main parties may reach ‘out of court’. That last detail was originally unnecessary, in so far as the Rules of Procedure do not provide for amicable settlement of disputes on the initiative of the court in contentious proceedings.

The transfer of jurisdiction to the General Court to rule on actions founded on Article 270 TFEU and the express reference to amicable settlement in Article 50a(2) of the Protocol on the Statute of the Court of Justice of the European Union necessitate the addition of a new chapter dealing with the procedure in relation to amicable settlements initiated by the General Court in cases brought pursuant to Article 270 TFEU. It is therefore considered appropriate, in the interests of clarity, to distinguish ‘out-of-court’ amicable settlements which the main parties may reach on their own initiative from amicable settlements initiated by the General Court, which are subject to compliance with specific provisions.

11. After Article 125, a new chapter comprising four articles is added:

‘Chapter 11a
PROCEDURE IN RELATION TO AMICABLE SETTLEMENTS INITIATED BY THE
GENERAL COURT IN CASES BROUGHT PURSUANT TO ARTICLE 270 TFEU

Article 125a
Procedure

1. The General Court may, at all stages of the procedure, examine the possibilities of an amicable settlement of all or part of the dispute between the main parties.
2. The General Court shall instruct the Judge-Rapporteur, assisted by the Registrar, to seek the amicable settlement of a dispute.

3. The Judge-Rapporteur may propose one or more solutions capable of putting an end to the dispute, adopt appropriate measures with a view to facilitating its amicable settlement and implement the measures which he has adopted to that end. He may, in particular:
 - (a) invite the main parties to supply information or particulars;
 - (b) invite the main parties to produce documents;
 - (c) invite to meetings the main parties' representatives, the main parties themselves or any official or servant of the institution empowered to negotiate an agreement;
 - (d) on the occasion of the meetings referred to in point (c), have contact with each of the main parties separately, if they consent to that.
4. Paragraphs 1 to 3 shall apply to proceedings for interim measures also.

Article 125b

Effect of the main parties' agreement

1. Where the main parties come to an agreement before the Judge-Rapporteur on a solution which brings the dispute to an end, they may request that the terms of that agreement be recorded in a document signed by the Judge-Rapporteur and by the Registrar. That document shall be served on the main parties and shall constitute an official record.
2. The case shall be removed from the register by reasoned order of the President. At the request of a main party with the agreement of the other main party, the terms of the agreement reached by the main parties shall be recorded in the order removing the case from the register.
3. The President shall give a decision as to costs in accordance with the agreement or, failing that, at his discretion. Where appropriate, he shall give a decision as to the costs of an intervener in accordance with Article 138.

Article 125c

Specific register and file

1. Material produced in the context of the amicable settlement procedure as provided for in Article 125a:
 - shall be entered in a specific register which shall not be subject to the rules laid down in Articles 36 and 37;
 - shall be placed in a file separate from the case file.

2. Material produced in the context of the amicable settlement procedure as provided for in Article 125a shall be brought to the attention of the main parties, with the exception of material which either of them has communicated to the Judge-Rapporteur in the separate meetings provided for in Article 125a(3)(d).
3. The main parties may have access to the material in the file separate from the case file as referred to in paragraph 1, with the exception of material which either of the main parties has communicated to the Judge-Rapporteur in the separate meetings provided for in Article 125a(3)(d).
4. An intervener may not have access to material in the file separate from the case file as referred to in paragraph 1.
5. The parties may examine the specific register referred to in paragraph 1 at the Registry.

Article 125d

Amicable settlement and judicial proceedings

No opinion expressed, suggestion made, proposal put forward, concession made or document drawn up for the purposes of the amicable settlement may be relied upon as evidence by the General Court or the main parties in the judicial proceedings.'

Reasons

The idea of an amicable settlement as an alternative means of resolving disputes between the Union and its staff was emphasised by the Council in its Decision of 2 November 2004 establishing the European Union Civil Service Tribunal (2004/752/EC, Euratom) (OJ 2004 L 333, p. 7), recital 7 of which states that 'the judicial panel should try cases by a procedure matching the specific features of the disputes that are to be referred to it, examining the possibilities for amicable settlement of disputes at all stages of the procedure', and also in Article 7(4) of Annex I to the Protocol on the Statute of the Court of Justice of the European Union which provides that, 'at all stages of the procedure, including the time when the application is filed, the Civil Service Tribunal may examine the possibilities of an amicable settlement of the dispute and may try to facilitate such settlement'.

In order to give full effect to those provisions, the Rules of Procedure of the Civil Service Tribunal have, since the very first version adopted on 25 July 2007 (OJ 2007 L 225, p. 1), contained a series of rules set out in a chapter dealing specifically with the amicable settlement of disputes.

The second version of the Rules of Procedure of the Civil Service Tribunal, adopted on 21 May 2014 (OJ 2014 L 206, p. 1), also contains a series of articles relating to the amicable settlement of disputes. It will be recalled in that respect that the three relevant articles of the Rules of Procedure of the Civil Service Tribunal (Articles 90 to 92), partly amended as compared to the earlier version, were recently approved by the Council on the basis of the reasons put forward by the Tribunal.

In its judicial practice, the Civil Service Tribunal has endeavoured to respond to the legislature's call for amicable settlements to be facilitated at all stages of the procedure. Of the 1 388 cases disposed of between 1 January 2006 and 31 December 2015, the Civil Service Tribunal initiated an amicable settlement procedure in 173 of them. It was able to bring about a successful conclusion in 81 cases.

Article 2(1) of draft Regulation 2016/XXX of the European Parliament and of the Council provides for an Article 50a to be inserted in the Statute, paragraph 2 of which provides that, 'at all stages of the procedure, including the time when the application is filed, the General Court may examine the possibilities of an amicable settlement of the dispute and may try to facilitate such settlement'. The General Court is thus reproducing the main provisions relating to amicable settlements in a separate chapter of its rules of procedure, the deliberately descriptive title of which, 'Procedure in relation to amicable settlements initiated by the General Court in cases brought pursuant to Article 270 TFEU', is intended to define unambiguously the scope of this very special procedure.

*The General Court intends to preserve the Civil Service Tribunal *acquis* while at the same time, for reasons relating to the general scheme of the Rules of Procedure, it has to add an article concerning the specific register and file, and to adapt the terminology in the light of the definitions in Article 1.*

Article 125a, as proposed, essentially reproduces the text of Article 90 of the Rules of Procedure of the Civil Service Tribunal. The text therefore makes the formation of the Court responsible for examining whether the dispute is capable of being resolved on the basis of an amicable settlement, and specifies the respective roles of the formation of the Court and of the Judge-Rapporteur, whose supervisory role in the search for such a settlement is confirmed.

However, it differs from Article 90 of the Rules of Procedure of the Civil Service Tribunal in two respects.

First, the General Court envisages examining the possibilities of an amicable settlement of all or part of the dispute 'between the main parties'. That simple difference of terminology as compared to the Civil Service Tribunal text, which refers to the dispute 'between the applicant and the defendant', is designed to take account of the terminology adopted in Article 1. Since an amicable settlement of a dispute is conceivable only as between the main parties, the proposed Article 125a refers to them exclusively.

Secondly, since the list of appropriate measures that may be adopted by the Judge-Rapporteur in order to reach an amicable settlement is not exhaustive, as confirmed by the use of the adverbial phrase ‘in particular’ in Article 125a(3), the General Court considers it unnecessary to refer in the text of that article to the option available under the Rules of Procedure of the Civil Service Tribunal of ‘[suggesting] to the parties that a mediator be appointed’. It considers, moreover, that prescribing that possibility in the Rules of Procedure would impose an obligation to specify, also in those rules, the procedures in accordance with which a mediator could be used. Lastly, it is pointed out, in so far as it might be relevant, that the Civil Service Tribunal has never availed itself of that option under its Rules of Procedure.

Article 125b is largely based on the text of Article 91 of the Rules of Procedure of the Civil Service Tribunal.

Subject to drafting changes and terminological adjustments, paragraph 1 corresponds to the first subparagraph of Article 91(1) of the Rules of Procedure of the Civil Service Tribunal.

Subject to drafting changes and terminological adjustments, paragraph 2 corresponds to the second and third subparagraphs of Article 91(1) of the Rules of Procedure of the Civil Service Tribunal. It should be noted that the expression ‘at the request of a main party with the agreement of the other main party’ was preferred to the ‘request of the applicant and defendant’ referred to in the text of the Rules of Procedure of the Civil Service Tribunal, in the interests of maintaining consistency with the reference in Article 69(c) of the Rules of Procedure of the General Court.

Paragraph 3 comprises two sentences. The first is identical to that in Article 91(3) of the Rules of Procedure of the Civil Service Tribunal. The second has been added to provide for cases in which a party has been given leave to intervene. In that situation, the order removing the case from the register which marks the successful outcome of an amicable settlement procedure must include a decision as to the costs of that intervener, even though he will not have taken part in the procedure involving the General Court and the main parties.

Article 125c has no equivalent in the Rules of Procedure of the Civil Service Tribunal, whose only provision concerning the specific treatment of documents produced in the context of the amicable settlement procedure is Article 21(2), according to which: ‘Documents drawn up for the purposes of an amicable settlement within the meaning of Article 90 shall be registered separately by the Registry.’

In order to distinguish the rules applicable to material produced in the context of the amicable settlement procedure from those which apply to procedural documents and items in judicial proceedings, the General Court wishes the rules relating to their treatment to be set out in a single article in the relevant chapter.

Paragraphs 1 to 5 of Article 125c govern, respectively:

- the procedure for registering material produced in the context of an amicable settlement, such material being entered in a specific register which is not subject to the rules laid down in Articles 36 and 37, and the placing of that material in a file separate from the case file (paragraph 1);*
- the exchange of material produced in the context of the amicable settlement, such material being brought to the attention of the main parties, with the exception of that which either of them has communicated to the Judge-Rapporteur in the separate meetings provided for in Article 125a(3)(d). Efforts to reach an agreement between the main parties may warrant those parties providing the court with any material that might assist it in seeking an agreement (paragraph 2);*
- access to the material in a file separate from the case file, which is subject to the same rules as those prescribed in the preceding indent (paragraph 3);*
- the position of the intervener who has no part to play in the amicable settlement procedure and is therefore not given access to material produced in the context of that special procedure (paragraph 4);*
- the possibility for the intervener, as for the main parties too, of examining the specific register, which merely lists the material produced in the context of the amicable settlement procedure but does not include details of the content of that material (paragraph 5).*

Article 125d essentially reproduces the title and content of Article 92 of the Rules of Procedure of the Civil Service Tribunal in prohibiting the information exchanged in the context of the amicable settlement from being used in the judicial proceedings, if the General Court's initiative is unsuccessful. It must be borne in mind in that regard that amicable settlement on the initiative of the General Court is based essentially on two considerations. First, this is a 'pause' in the contentious proceedings, which means that the information exchanged in the course of the amicable settlement must be 'leak-proof' as regards the subsequent conduct of the contentious proceedings. Secondly, it is necessary to guarantee the main parties' freedom of speech in order to facilitate negotiations between them, while at the same time ensuring that the exercise of that freedom is not harmful to them should the efforts to reach an amicable settlement end in failure.

12. Article 127 is amended as follows:

- (a) the heading 'Referral of a case to the Court of Justice or to the Civil Service Tribunal' is replaced by 'Referral of a case to the Court of Justice';
- (b) the words 'and in Article 8(2) of Annex I to the Statute' are deleted.

Reasons

Owing to the repeal of Annex I to the Protocol on the Statute of the Court of Justice of the European Union and the dissolution of the Civil Service Tribunal with effect from 31 August 2016, no further referral to that tribunal will be possible. The heading and text of Article 127 of the Rules of Procedure must therefore be amended to take account of that change.

13. In Article 130(7), the second sentence, ‘It shall refer the case to the Court of Justice or to the Civil Service Tribunal if the case falls within their jurisdiction.’ is replaced by ‘It shall refer the case to the Court of Justice if the case falls within the latter’s jurisdiction.’

Reasons:

Owing to the dissolution of the Civil Service Tribunal on 31 August 2016, it will no longer be possible to refer a case to it. A case which would have fallen within its jurisdiction before 1 September 2016 will fall within the jurisdiction of the General Court from that date. Article 130(7) of the Rules of Procedure must accordingly be modified to reflect that development.

14. In Article 135(1), the word ‘Exceptionally,’ is deleted.

Reasons

The deletion of the word ‘Exceptionally’ is proposed in view of the wording of Article 102(1) of the Rules of Procedure of the Civil Service Tribunal. The General Court considers that there cannot be two equitable regimes under which it could decide that an unsuccessful party is to pay only a proportion of the costs of the other party in addition to bearing his own, or even that he is not to be ordered to pay any, namely, on the one hand, one regime that would apply to all cases other than those brought pursuant to Article 270 TFEU, and, on the other, a regime that would apply to cases brought pursuant to Article 270 TFEU. In either case, the court can apply the option of apportioning the costs only if ‘equity so requires’. Since the application of the rule is always subject to that requirement of equity, the deletion of the word ‘Exceptionally,’ cannot have the effect of enabling the General Court to apply the rule on apportioning costs laid down in Article 135(1) at its discretion. The proposed amendment is therefore intended to enable the General Court to apportion costs having regard to a single concept of equity, irrespective of the nature of the case being determined by that court.

15. In Article 143(4), the reference to ‘Article 78(3) to (5)’ is replaced by a reference to ‘Article 78(4) to (6)’.

Reasons

This amendment is a logical consequence of the proposed renumbering of the paragraphs of Article 78 to which reference is made.

16. In Article 147(5):

- (a) the reference to ‘Article 78(3).’ is replaced by a reference to ‘Article 78(4).’;
- (b) the reference to ‘Article 78(5)’ is replaced by a reference to ‘Article 78(6)’.

Reasons

This amendment is a logical consequence of the proposed renumbering of the paragraphs of Article 78 to which reference is made.

17. Article 156 is amended as follows:

- (a) paragraphs 3 and 4 are renumbered paragraphs 4 and 5;
- (b) the following is inserted as paragraph 3:

‘3. In cases brought pursuant to Article 270 TFEU, an application of a kind referred to in paragraphs 1 and 2 may be presented as soon as the complaint under Article 90(2) of the Staff Regulations has been submitted, on the conditions laid down in Article 91(4) of those Regulations.’

Reasons

The text of the proposed new paragraph 3 of Article 156 of the Rules of Procedure corresponds to the third subparagraph of Article 115(1) of the Rules of Procedure of the Civil Service Tribunal. It is a rule specific to civil service cases which are preceded by a pre-litigation phase in which it is expressly provided that a complaint is lodged to challenge a decision taken by the administration relating to the official or servant concerned. In the circumstances referred to in Article 156(3), the application for interim measures may be lodged without waiting for the administration to express a view on the complaint. In that situation, the main proceedings are to be suspended, by means of a simple declaration of the Registrar, until such time as an implied or express decision rejecting that complaint is taken as provided for by Article 91(4) of the Staff Regulations.

18. In Article 173(5), the reference to ‘Article 78(3) to (5)’ is replaced by a reference to ‘Article 78(4) to (6)’.

Reasons

This amendment is a logical consequence of the proposed renumbering of the paragraphs of Article 78 to which reference is made.

19. In Article 175(4), the reference to ‘Article 78(3) to (5)’ is replaced by a reference to ‘Article 78(4) to (6)’.

Reasons

This amendment is a logical consequence of the proposed renumbering of the paragraphs of Article 78 to which reference is made.

20. Article 193 is amended as follows:

- (a) in paragraph 1, the words ‘or at the Registry of the Civil Service Tribunal’ are deleted;
- (b) paragraph 2 is deleted;
- (c) the number preceding the first paragraph is deleted.

Reasons

Article 193 of the Rules of Procedure provides in paragraph 1 that an appeal against a decision of the Civil Service Tribunal may be brought by lodging an application at the Registry of the General Court or at the Registry of the Civil Service Tribunal, and, in paragraph 2, that the Registry of the Civil Service Tribunal is immediately to transmit to the Registry of the General Court the file in the case at first instance and, where necessary, the appeal.

Owing to the dissolution of the Civil Service Tribunal on 31 August 2016, it will no longer be possible to bring an appeal by lodging an application at that tribunal, its Registry will cease to exist on that date and the files in closed and pending cases will be transferred to the General Court. Article 193 must accordingly be modified to reflect that development.

21. In Article 196(2), the words ‘Civil Service Tribunal’ are replaced by ‘General Court ruling as a court of first instance’, and the words ‘ruling as a court of appeal’ are added after the words ‘General Court’.

Reasons

Appeals brought against decisions of the Civil Service Tribunal as from 1 September 2016 will, as now, be examined by the General Court. However, the appellant will no longer be able to request that the case be referred back to the Civil Service Tribunal in the event of the decision under appeal being set aside. It is therefore necessary to provide for the possibility of requesting that the case be referred back to the General Court ruling as a court of first instance, and of setting out the reasons why the state of the proceedings does not permit a decision by the General Court ruling as a court of appeal. Although the effect of that change is limited in time, the General Court wishes to record that effect of the new legal position in its Rules of Procedure.

22. In Article 213(3), the words ‘and to the Civil Service Tribunal’ are deleted.

Reasons

In view of the dissolution of the Civil Service Tribunal, it will no longer be possible for decisions given pursuant to Article 256(2) TFEU to be communicated to that tribunal from 1 September 2016. The reference to that tribunal must therefore be deleted.

Article 2

These amendments to the Rules of Procedure, authentic in the languages referred to in Article 44 of these Rules, shall be published in the *Official Journal of the European Union* and shall enter into force on 1 September 2016.

Done at Luxembourg,

– Draft –

AMENDMENT TO THE
RULES OF PROCEDURE OF THE GENERAL COURT

Explanatory notes

On 16 December 2015, the European Parliament and the Council adopted Regulation (EU) 2015/2424 amending Council Regulation (EC) No 207/2009 on the Community trade mark and Commission Regulation (EC) No 2868/95 implementing Council Regulation (EC) No 40/94 on the Community trade mark, and repealing Commission Regulation (EC) No 2869/95 on the fees payable to the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OJ 2015 L 341, p. 21).

Article 1(7) of Regulation 2015/2424 provides that Article 2 of Regulation No 207/2009 is replaced by the following:

‘Article 2

Office

- 1. A European Union Intellectual Property Office (“the Office”) is hereby established.*
- 2. All references in Union law to the Office for Harmonisation in the Internal Market (trade marks and designs) shall be read as references to the Office.’*

In accordance with the first paragraph of Article 4 of Regulation 2015/2424, that regulation is to enter into force on 23 March 2016.

The change of name of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) means that the reference to that Office in Article 1(2)(g) of the Rules of Procedure of the General Court must be amended.

That is the purpose of this proposed amendment to the Rules of Procedure.

THE GENERAL COURT,

Having regard to the Treaty on the Functioning of the European Union, and in particular the fifth paragraph of Article 254 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a(1) thereof,

Having regard to the Protocol on the Statute of the Court of Justice of the European Union, and in particular Article 63 thereof,

Whereas Regulation (EU) 2015/2424 of the European Parliament and of the Council of 16 December 2015 amending Council Regulation (EC) No 207/2009 on the Community trade mark and Commission Regulation (EC) No 2868/95 implementing Council Regulation (EC) No 40/94 on the Community trade mark, and repealing Commission Regulation (EC) No 2869/95 on the fees payable to the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OJ 2015 L 341, p. 21) changes the name of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) and it is appropriate in consequence to amend the Rules of Procedure to include in them a reference to the European Union Intellectual Property Office,

With the agreement of the Court of Justice,

With the approval of the Council given on XXX,

HAS ADOPTED THE FOLLOWING AMENDMENT TO ITS RULES OF PROCEDURE:

Article 1

In Article 1(2)(g) of the Rules of Procedure of the General Court of 4 March 2015 (OJ 2015 L 105, p. 1), the reference to ‘the Office for Harmonisation in the Internal Market (Trade Marks and Designs)’ is replaced by a reference to ‘the European Union Intellectual Property Office’.

Article 2

This amendment to the Rules of Procedure, authentic in the languages referred to in Article 44 of the Rules, shall be published in the *Official Journal of the European Union* and shall enter into force on the day of its publication.

Done at Luxembourg,

– Draft –

AMENDMENT OF THE RULES OF PROCEDURE OF THE GENERAL COURT

Explanatory notes

This draft amendment of the Rules of Procedure is intended, first, to take account of the possibility of an appeal being brought before the Court of Justice against a decision of the General Court closing proceedings in which Article 105 has been applied, and, secondly, to permit the Court of Justice to exercise fully its powers as a court of appeal in the event that that decision is challenged.

To that end, it is necessary to amend the current regime which provides that the information or material which the General Court has, in carrying out the examination provided for in Article 105(5), considered relevant for the purpose of giving its ruling in the case and confidential is to be returned to the party concerned ‘as soon as the decision closing the proceedings ... is adopted’.

Consequently, it is proposed to make a distinction depending on whether or not the General Court’s decision has been appealed against within the period of two months laid down in the first paragraph of Article 56 of the Protocol on the Statute of the Court of Justice of the European Union.

If no appeal has been brought against the General Court’s decision within the period laid down in the Statute, it is proposed that the relevant, confidential information or material should be returned to the party concerned at the end of that period.

By contrast, where an appeal has been brought against the decision of the General Court within that time limit under the Statute, it is proposed that the relevant, confidential information or material should not be returned to the party concerned. In the light of the bringing of the appeal, that information or material is to be made available to the Court of Justice on the conditions laid down in the decision of the General Court, adopted pursuant to Article 105(11) of the Rules of Procedure of the General Court, determining the security rules for the protection of that information or material. The information or material in question would then be covered by the procedures specifically laid down by the Court of Justice.

THE GENERAL COURT,

Having regard to the Treaty on the Functioning of the European Union, and in particular the fifth paragraph of Article 254 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a(1) thereof,

Having regard to the Protocol on the Statute of the Court of Justice of the European Union, and in particular Article 63 thereof,

Whereas the information or material that is confidential and relevant for the purpose of ruling on the dispute, which has been produced in accordance with Article 105 and has not been returned during the proceedings, must be made available to the Court of Justice in order that it may fully exercise its powers as a court of appeal should the General Court's decision at the end of proceedings in which the specific regime of Article 105 has been applied be challenged,

Whereas, by contrast, that information or material must be returned to the main party that produced it if no appeal has been brought against the decision of the General Court within the time limit laid down by the Protocol on the Statute of the Court of Justice of the European Union,

Whereas it is in consequence appropriate to amend the Rules of Procedure of the General Court,

With the agreement of the Court of Justice,

With the approval of the Council given on XXX,

HAS ADOPTED THE FOLLOWING AMENDMENT OF ITS RULES OF PROCEDURE:

Article 1

Paragraph 10 of Article 105 of the Rules of Procedure of the General Court of 4 March 2015 (OJ 2015 L 105, p. 1) is replaced by the following:

'10. The information or material referred to in paragraph 5, which has not been withdrawn pursuant to paragraph 7 by the main party that produced it, shall be returned to the party concerned as soon as the period referred to in the first paragraph of Article 56 of the Statute has expired, unless, within that period, an appeal has been brought against the decision of the General Court. Where such an appeal is brought, the abovementioned information or material shall be made available to the Court of Justice on the conditions laid down in the decision referred to in paragraph 11.'

Reasons:

Article 105(10) of the Rules of Procedure provides that the information or material referred to in paragraph 5 of that article is to be returned to the party concerned 'as soon as the decision closing the proceedings ... is adopted'.

Extending the rules specifically applicable to information or material produced before the General Court under Article 105 of the Rules of Procedure to appeals brought before the Court of Justice against decisions of the General Court requires that wording to be amended. In order to ensure the continuity of this specific treatment and to guarantee that the rules that apply at first instance and the parallel rules proposed by the Court of Justice are perfectly complementary, it can no longer be the adoption of the General Court's decision closing the proceedings that determines whether relevant, confidential information or material is returned. The rules to be applied to that information or material depend on whether or not an appeal is brought before the Court of Justice.

If, at the end of the period laid down in the first paragraph of Article 56 of the Protocol on the Statute of the Court of Justice of the European Union, no appeal has been brought before the Court of Justice against the decision of the General Court closing the proceedings, the information or material which the General Court still has in its possession at the end of the first-instance proceedings is to be returned by the General Court to the main party that produced it.

If, within that same period, an appeal has been brought, the General Court is to make the information or material concerned available to the Court of Justice in a fully secure manner and in accordance with the requirements laid down in the General Court's decision adopted pursuant to Article 105(11) of the Rules of Procedure of the General Court. The rules to which that information or material is then subject until the end of the appeal proceedings are to be those laid down by the Court of Justice.

Article 2

This amendment of the Rules of Procedure, authentic in the languages referred to in Article 44 of the Rules, shall be published in the *Official Journal of the European Union* and shall enter into force on the day of its publication.

Done at Luxembourg,