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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Draft Amendments to the Rules of Procedure of the Court of Justice

Delegations will find attached a letter dated 27 February 2024 from Mr. Koen Lenaerts, President of the Court of Justice of the European Union, to Ms Hadja Lahbib, President of the Council of the European Union, transmitting draft amendments to the Rules of Procedure of the Court of Justice.

7225/24

EN



COURT OF JUSTICE
OF THE
EUROPEAN UNION

President

Luxembourg, 27 February 2024

*Ms Hadja Lahbib
President of the Council of the
European Union
Rue de la Loi, 175
B-1048 Brussels*

Dear President,

With reference to the sixth paragraph of Article 253 of the Treaty on the Functioning of the European Union and Article 106a of the Treaty establishing the European Atomic Energy Community, I am pleased to submit, for the Council's approval, the enclosed draft amendments to the Rules of Procedure of the Court of Justice.

The purpose of these draft amendments is, first, to insert in the Rules of Procedure the necessary provisions for the implementation of the new Article 50b of the Protocol on the Statute of the Court of Justice of the European Union, conferring jurisdiction on the General Court to hear and determine questions referred for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union in the specific areas laid down by the Statute.

The purpose of the draft amendments is, second, to supplement, refine or clarify the existing provisions of the Rules of Procedure by taking account, in particular, of the experience gained in implementing those rules during the health crisis linked to the COVID-19 pandemic, and to establish a clear legal framework for making written observations lodged in preliminary ruling cases available online, and for broadcasting hearings on the internet.

The text is enclosed in all the official languages and includes explanatory notes, to which I should like to draw your attention.

Yours faithfully,

Koen Lenaerts

DRAFT AMENDMENTS TO THE RULES OF PROCEDURE OF THE COURT OF JUSTICE

Explanatory statement

The present draft amendments to the Rules of Procedure of the Court of Justice are made on the basis of the sixth paragraph of Article 253 of the Treaty on the Functioning of the European Union and pursue a twofold objective. The first objective is to set out the detailed rules for the implementation of the reform process initiated by the request submitted by the Court of Justice on 30 November 2022 with a view to amending Protocol No 3 on the Statute of the Court of Justice of the European Union ('the Statute').¹ The second objective is to supplement, refine or clarify the existing provisions of the Rules of Procedure by taking into account both the experience gained in implementing those rules, especially during the health crisis linked to the COVID-19 pandemic, and the need to bring European justice ever closer to Union citizens, inter alia by making available online the observations lodged in preliminary ruling cases and by broadcasting hearings on the internet.

The most important part of the present draft amendments is, without a doubt, that relating to the request submitted by the Court of Justice with a view to amending the Statute. Against the background of sustained high levels of judicial activity marked by both the volume and the complexity of cases brought before the Court of Justice, that request aims, first, to lay down the specific areas in which the General Court is to have jurisdiction, pursuant to Article 256(3) of the Treaty on the Functioning of the European Union, to hear and determine questions referred for a preliminary ruling under Article 267 of the Treaty and, second, to extend the material scope of the mechanism for the determination of whether an appeal is allowed to proceed, which entered into force on 1 May 2019.

While the main elements of that reform are set out in the body of the legislative request itself, certain practical arrangements for its implementation must be defined in the Rules of Procedure of the two courts constituting the Court of Justice of the European Union. That is the central purpose of the present draft amendments, as far as the Court of Justice is concerned.

¹ Council Document 15936/22 of 12 December 2022 amending Protocol No 3 on the Statute of the Court of Justice of the European Union.

The draft amendments seek, in the first place, to set out the detailed rules for the initial handling of requests for a preliminary ruling referred to the Court of Justice under Article 267 of the Treaty on the Functioning of the European Union in order to determine, promptly, whether those requests come exclusively within one or more of the specific areas referred to in the first paragraph of the new Article 50b of the Statute – and, consequently, whether they are to be dealt with by the General Court – or whether those requests also concern other areas or raise independent questions relating to the interpretation of, inter alia, primary law or the Charter of Fundamental Rights of the European Union, in which case they are to be dealt with by the Court of Justice.

The draft amendments seek, in the second place, to set out the detailed rules for handling in the best possible manner requests for a preliminary ruling which, having been transmitted to the General Court by the Court of Justice, are referred back to the Court of Justice by the General Court, in accordance with the second subparagraph of Article 256(3) of the Treaty on the Functioning of the European Union, on the ground that they require a decision of principle likely to affect the unity or consistency of Union law. In the interests of the parties to the main proceedings and of legal certainty, it is important that those requests be dealt with expeditiously by the Court of Justice.

In the third place, the draft amendments finally complete the mechanism existing under Title VI of the Rules of Procedure of the Court of Justice for the review of decisions of the General Court, by providing that the General Court, the referring court or tribunal and the interested persons referred to in Article 23 of the Statute are to be informed not only as regards the very existence of a proposal from the First Advocate General to review a decision and the actions to be taken on that proposal by the reviewing Chamber, but also as regards the absence, at the end of the one-month period referred to in Article 62 of the Statute, of a proposal to review and, consequently, the fact that the General Court's answers to the questions raised by the referring court or tribunal are final.

As noted above, the present draft amendments pursue a second objective, which is to supplement, refine or clarify existing provisions of the Rules of Procedure in the light of the experience gained in implementing those rules, and, moreover, to bring the Court ever closer to Union citizens.

With that in mind, the draft amendments thus draw the lessons learnt from the health crisis by formally including in the Rules of Procedure the possibility that a party or that party's representative may, in certain circumstances, participate in hearings by videoconference, subject to certain conditions and taking into account a set of technical parameters (see new Article 78).

In order to enable national courts and tribunals and all Union citizens to follow a hearing remotely, without having to travel to Luxembourg, the draft amendments also make provision for hearings to be broadcast, and for the parties to the proceedings to be given prior notification thereof, allowing them to put forward grounds or circumstances that may justify a decision not to broadcast (see draft Article 80a).

Lastly, in the Title relating to references for a preliminary ruling, the draft amendments clarify, in a number of important respects, matters relating to, inter alia, the protection of personal data, the determination of the participants in preliminary ruling proceedings and the availability online, after the case has been closed, of written observations submitted by the interested persons referred to in Article 23 of the Statute, unless they raise objections (see Articles 95 to 97 of the Rules of Procedure).

Further ad hoc clarification is also provided in Articles 48, 57, 82, 106 and 125 of the Rules of Procedure, concerning, respectively, the methods of service and lodging of procedural documents, the delivery of the Opinion of the Advocate General, the transmission of procedural documents in cases subject – or likely to be subject – to an expedited procedure and the transmission of documents to the European Parliament, the Council and the European Commission in direct actions.

AMENDMENTS TO THE RULES OF PROCEDURE OF THE COURT OF JUSTICE

THE COURT OF JUSTICE,

Having regard to the Treaty on the Functioning of the European Union, and in particular the sixth paragraph of Article 253 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 it is appropriate to set out, in the Rules of Procedure, the detailed rules for the implementation of Regulation (EU, Euratom) .../... [number] of the European Parliament and of the Council of ... [date] amending Protocol No 3 on the Statute of the Court of Justice of the European Union,² and to set out, in particular, the procedures for the initial handling of requests for a preliminary ruling referred to the Court of Justice under Article 267 of the Treaty on the Functioning of the European Union in order to determine which court has jurisdiction to deal with them,

Whereas it is necessary also to insert in these Rules the requisite provisions to ensure that requests for a preliminary ruling handled by the General Court that are referred to the Court of Justice, in accordance with the second subparagraph of Article 256(3) of the Treaty on the Functioning of the European Union, on the ground that they require a decision of principle likely to affect the unity or consistency of Union law, are dealt with in a timely manner,

Whereas it is appropriate to supplement the provisions of the Rules of Procedure to provide for the General Court, the referring court or tribunal and the interested persons referred to in Article 23 of the Statute to be informed if the First Advocate General has made no proposal to review a decision of the General Court by the end of the one-month period referred to in Article 62 of the Statute,

Whereas these Rules should also be supplemented in order to take into account the experience gained during the health crisis and provision should be made for parties or their representatives to be able to make oral submissions by videoconference in certain circumstances and subject to certain legal and technical conditions,

Whereas it is appropriate, moreover, to insert a provision concerning the broadcasting of hearings before the Court of Justice in order to allow Union citizens and the courts or tribunals that referred a request for a preliminary ruling to the Court of Justice to follow those hearings remotely, without having to travel to Luxembourg, while

² OJ L ..., [number and date of publication], p. ...

ensuring that the parties to the proceedings are given appropriate information and the opportunity to put forward, where appropriate, reasons why a specific hearing should not be broadcast,

Whereas in order to provide proper guidance to courts and tribunals and Union citizens on the meaning and scope of the decisions given by the Court of Justice, it is appropriate, in the same vein, to ensure that the written observations submitted by an interested person referred to in Article 23 of the Statute are made available online within a reasonable time after the case has been closed, unless that person raises objections to the publication of those observations,

Whereas, lastly, it is necessary to clarify or refine the scope of certain provisions of the Rules of Procedure relating to, inter alia, the determination of the participants in preliminary ruling proceedings, developments with regard to Union rules on the protection of personal data and the methods of lodging and service of procedural documents, following recent technological developments,

With the approval of the Council given on ...,

HAS ADOPTED THE FOLLOWING AMENDMENTS TO ITS RULES OF PROCEDURE:

Article 1

The Rules of Procedure of the Court of Justice of 25 September 2012³ are hereby amended as follows:

(1) Article 48 is replaced by the following:

Article 48

Methods of service

1. Where the Statute or these Rules require that a document be served on a person, the Registrar shall ensure that service is effected either by electronic means or 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 receipt.

³ OJ L 265, 29 September 2012, p. 1, as amended on 18 June 2013 (OJ L 173, 26 June 2013, p. 65), 19 July 2016 (OJ L 217, 12 August 2016, p. 69), 9 April 2019 (OJ L 111, 25 April 2019, p. 73) and 26 November 2019 (OJ L 316, 6 December 2019, p. 103).

2. The Court shall determine, by decision, 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*.
3. Where the addressee has agreed that service is to be effected on him by electronic means, in accordance with the criteria determined by the Court, any procedural document, including a judgment or order of the Court, shall be served by such means. Otherwise, service shall be effected at the addressee'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 receipt. The Registrar shall prepare and certify the copies of the documents to be served.
4. Where, for technical reasons or on account of the nature or length of the document, a procedural document cannot be transmitted by electronic means, the document shall be served at the addressee's address for service or, if the addressee has not specified an address for service, at his address in accordance with the procedures laid down in paragraph 3 of this Article. The addressee shall be so informed by any technical or electronic means of communication available to the Court and to the addressee. Service shall then be deemed to have been effected on the addressee by registered post on the 10th day following the lodging of the registered letter at the post office of the place in which the 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 informed as referred to above, that the document to be served has not reached him.

While the transmission of documents by electronic means was still relatively limited in 2012, when these Rules of Procedure entered into force, that is no longer the case in 2024, since virtually all procedural documents are lodged or served by means of the e-Curia application.

The amendment to Article 48 is intended to take into account that development by bringing that preferred means of communication to the forefront. Having listed, in the first paragraph, the three methods of service available, the Court thus recalls, in the second and third paragraphs, that preference is to be given to service of procedural documents by electronic means, where the addressee has agreed that service is to be effected by such means, in accordance with the criteria determined by the Court.⁴ It is only in the absence of such agreement and where the addressee therefore does not have an e-Curia account – or if a document cannot be served by electronic means either for technical reasons or due to the nature or length of the document – that a document is to be served in another way, namely by registered post with a form for acknowledgement of receipt or by hand delivery.

⁴ See Decision of the Court of Justice of 16 October 2018 on the lodging and service of procedural documents by means of e-Curia, OJ L 293, 20 November 2018, p. 36.

Given the gradual disappearance of fax as a standard means of communication, the reference to 'telefax' is to be replaced by a more general reference to the technical or electronic means of communication available to the Court and to the addressee of the document(s) served.

Lastly, in order to avoid any ambiguity concerning the nature of the documents served by the Court, a reference to the Statute has been added to Article 48(1) since the requirement to serve certain procedural documents arises not only from the Rules of Procedure but also, in certain cases, from the Statute itself. That is the case, inter alia, for service of the request for a preliminary ruling under Article 23 of the Statute.

(2) Article 57 is amended as follows:

- (a) Paragraph 2 is deleted.
- (b) Paragraphs 3 to 8 are renumbered as paragraphs 2 to 7.
- (c) The new paragraph 6 is amended as follows:

‘Without prejudice to the provisions of paragraphs 1 to 5, the date on and time at which a copy of the signed original of a procedural document, including the schedule of items and documents referred to in paragraph 3, is received at the Registry by a technical or electronic means of communication available to the Court shall be deemed to be the date and time of lodging for the purposes of compliance with the procedural time limits, provided that the signed original of the procedural document, accompanied by the annexes thereto, is lodged at the Registry no later than 10 days thereafter. Article 51 of these Rules shall not apply to the latter time limit.’

- (d) The new paragraph 7 is amended as follows:

‘Without prejudice to paragraphs 2 to 5, the Court shall determine, by decision, 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*.’

The amendment to this Article is in line with the amendment to Article 48. Indeed, given that at present the Court and the parties to the proceedings communicate essentially by electronic means, thanks to the e-Curia application, it no longer makes much sense for the parties to lodge copies of procedural documents in paper form or certified copies. The Court therefore proposes to remove the requirement in Article 57(2) to do so, and itself to prepare the necessary copies in the rather unlikely event that a procedural document must be served on an addressee who does not yet have an e-Curia account.

The changes to Article 57(6) and (7) are the inevitable consequence of the deletion of paragraph 2 and of the renumbering of the successive paragraphs of Article 57. The wording of paragraph 7 has also been slightly amended to the extent that, as noted above, the Court has already adopted the decision determining the criteria for service of a procedural document by electronic means and the criteria for a document sent to the Registry by electronic means to be deemed to be the original of that document.

(3) Article 78, the content of which is now in the new Article 80(1), is replaced by the following:

‘Article 78

Participation in a hearing of oral argument by videoconference

1. Where health, security or other serious reasons prevent the representative of a party or of an interested person referred to in Article 23 of the Statute from participating in a hearing in person, that representative may be authorised to take part in the hearing by videoconference. That rule shall also apply to the parties to the main proceedings where, in accordance with the national rules of procedure applicable, those parties are permitted to bring or defend court proceedings without being represented by a lawyer.
2. The request to participate in the hearing by videoconference shall be made by a separate document as soon as the reason for the impediment is known and shall state the precise nature of the impediment.
3. The President shall decide on the request as soon as possible.
4. The use of videoconferencing shall not be possible in the event of a decision by the Court to hear a case *in camera* pursuant to Article 79 of these Rules.
5. The technical conditions to be satisfied by those wishing to participate in a hearing by videoconference shall be laid down in the Practice Directions to parties adopted on the basis of Article 208 of these Rules.’

Even if participation in person is the normal and preferred form of participation in hearings of oral argument in so far as it is the only way to allow for a direct and spontaneous exchange between the members of the formation of the Court and the Advocate General, on the one hand, and the parties and their representatives, on the other, the health crisis showed that it was not always possible for a party or a representative to travel to the premises of the Court of Justice of the European Union in Luxembourg. A special mechanism was therefore introduced from the end of May 2020 to enable the parties’ representatives or the representatives of the interested persons referred to in Article 23 of the Statute – or, in preliminary ruling cases, the parties themselves where, in accordance with national rules of procedure, those

parties are permitted to bring or defend court proceedings without being represented by a lawyer – to make oral submissions remotely by videoconference, subject to certain technical requirements to ensure good sound and image quality and that there are no problems linked to simultaneous interpretation.

This provision is intended to draw the lessons from that experience by formally including in the Rules of Procedure the possibility of making oral submissions remotely.

The wording of the new Article 78 is modelled directly on the wording of Article 107a of the Rules of Procedure of the General Court, agreed on by the Council on 18 November 2022.⁵ Like that Article, Article 78 recalls the reasons which might lead to the organisation of a videoconference (paragraph 1), the procedure to be followed by the person who intends to make use of the possibility of participating in the hearing by videoconference (paragraph 2), the authority called upon to rule on the request to make oral submissions remotely (paragraph 3) and the fact that videoconferencing is ruled out in the very unlikely event that the Court decides to hear a case in camera (paragraph 4).

The only amendments as compared to the wording of Article 107a of the Rules of Procedure of the General Court concern, on the one hand, the author of the request to make oral submissions remotely, who may be the representative of a party to the proceedings but also the party himself in so far as, in preliminary ruling cases, the parties to the main proceedings may, in certain circumstances, bring or defend court proceedings without being represented by a lawyer where the national rules of procedure allow them to do so (paragraph 1).

The other amendment concerns, on the other hand, the reference to technical conditions which must be satisfied in order for a person to be able to participate in a hearing by videoconference, which, at the Court, will be set out in the Practice Directions to parties adopted on the basis of Article 208 of the Rules of Procedure (paragraph 5).

(4) Article 80 is replaced by the following:

‘Article 80

Conduct of the hearing

1. The oral proceedings shall be opened and directed by the President, who shall be responsible for the proper conduct of the hearing.
2. The members of the formation of the Court and the Advocate General may in the course of the hearing put questions to the agents, advisers or lawyers of the

⁵ Amendments to the Rules of Procedure of the General Court, OJ L 44, 14 February 2023, p. 8.

parties and, in the circumstances referred to in Article 47(2) of these Rules, to the parties to the main proceedings or to their representatives.’

The amendment to this provision is of a purely formal nature. The new Article 80 merely brings together two provisions which were previously separate, namely Article 78, concerning the conduct of oral proceedings by the President, and Article 80, concerning the questions put to the parties or to their representatives. The wording of those two provisions remains the same but is now set out in a single Article which contains two paragraphs, concerning the conduct of the hearing.

(5) The following Article is inserted after Article 80:

‘Article 80a

Broadcasting of hearings

1. Hearings of the Court may be broadcast. Where the Court intends to broadcast a hearing, the parties or the interested persons referred to in Article 23 of the Statute shall be so informed by the Registry when they are given notice to attend the hearing.
2. A party or an interested person referred to in Article 23 of the Statute who considers that the hearing which he has been given notice to attend should not be broadcast shall inform the Court of this as soon as possible, setting out in detail the circumstances that justify a decision not to broadcast the hearing.
3. The President shall decide on that request as soon as possible, after hearing the Judge-Rapporteur and the Advocate General.
4. The Court shall determine, by way of decision, the rules and arrangements for implementing the broadcasting of hearings. That decision shall be published in the *Official Journal of the European Union*.

Although the principle that hearings are to be public is enshrined in Article 31 of the Statute and covers, as such, all forms of ‘public’ hearings, whether through participation in a hearing in person on the premises of the Court of Justice of the European Union or through remote participation in the hearing via broadcasting on the internet, it nevertheless seemed useful to insert in the Rules of Procedure an express provision on the broadcasting of hearings in order to provide a better framework for that practice.

The objective pursued by the insertion of this new Article is twofold.

The first objective is to inform the parties or the interested persons referred to in Article 23 of the Statute that a hearing which they have been given notice to attend may be broadcast on the internet, thereby enabling these parties or interested persons to make their views known in good time before the hearing if they consider that there are special circumstances that justify a decision not to broadcast the hearing (see paragraphs 1 and 2 of Article 80a).

The second objective is to provide a clear decision-making framework where a request not to broadcast the hearing has been made, with the President of the formation of the Court to which the case has been referred being required to rule swiftly on that request, having sought the opinion of the Judge-Rapporteur and of the Advocate General responsible for the case (see Article 80a(3)).

The last paragraph of Article 80a provides that the rules and arrangements for implementing the broadcasting of hearings are to be set out in a decision of the Court, which is to be published, in all the languages, in the Official Journal of the European Union. These rules and arrangements are currently available on the website of the Court of Justice of the European Union and relate to, inter alia, the broadcasting period, the interpretation of what is said at the hearing and the protection of the personal data of the persons present at the hearing.

(6) Article 82 is amended as follows:

(a) A new paragraph 2 is inserted after paragraph 1. It is worded as follows:

‘Where no hearing takes place, the Opinion shall be delivered on the date announced by the Advocate General.’

(b) The current paragraph 2 is renumbered as paragraph 3.

While Article 82 of the Rules of Procedure provides that the Opinion of the Advocate General is to be delivered after the close of the hearing, it is silent as to the date on which the Opinion is to be delivered in cases where the Court decides to give judgment without a hearing. The purpose of this amendment is to fill that gap by inserting a new paragraph in the Article concerning the Opinion of the Advocate General, stating that, where no hearing takes place, the date of delivery of the Opinion is to be announced by the Advocate General.

(7) The following Article is inserted after Article 93:

‘Article 93a

Preliminary analysis of requests for a preliminary ruling

1. Where the Court of Justice is seised of a request for a preliminary ruling, the Registry shall transmit that request forthwith to the President, the Vice-President and the First Advocate General.
2. If, after analysing the request for a preliminary ruling, the President, having heard the Vice-President and the First Advocate General, considers that the request comes exclusively within one or more of the specific areas referred to in the first paragraph of Article 50b of the Statute, he shall so inform the Registry, which shall forthwith transmit the request to the Registry of the General Court. The proceedings shall then continue before the General Court in accordance with the provisions of its Rules of Procedure.
3. If, following that analysis and after hearing the Vice-President and the First Advocate General, the President considers that although the request for a preliminary ruling comes within one or more of the specific areas referred to in the first paragraph of Article 50b of the Statute, it also concerns other areas or raises independent questions relating to the interpretation of primary law, public international law, general principles of Union law or the Charter of Fundamental Rights of the European Union, within the meaning of the second paragraph of Article 50b of the Statute, he shall immediately refer the request to the Court of Justice. If the Court of Justice considers that the request comes exclusively within one or more of the specific areas referred to in the first paragraph of Article 50b of the Statute, the Registry of the Court of Justice shall transmit that request forthwith to the Registry of the General Court and the proceedings shall continue before the General Court in accordance with the provisions of its Rules of Procedure. Otherwise, the proceedings shall continue before the Court of Justice in accordance with the provisions of these Rules.
4. Where a request for a preliminary ruling is transmitted to the Registry of the General Court in accordance with paragraph 2 or 3 of this Article, the Registry of the Court of Justice shall so inform the referring court or tribunal.'

As is apparent from the wording of the first subparagraph of Article 256(3) of the Treaty on the Functioning of the European Union, the jurisdiction of the General Court to hear and determine questions referred for a preliminary ruling under Article 267 of the Treaty is not a general jurisdiction, extending to all areas covered by Union law. Its jurisdiction to give preliminary rulings is to be exercised in specific areas laid down by the Statute. These areas are referred to in the first paragraph of the new Article 50b of the Statute.

In so far, however, as requests for a preliminary ruling may concern several areas, including areas not listed in the first paragraph of the new Article 50b of the Statute, or may raise independent questions relating to the interpretation of primary law, public international law, general principles of Union law or the Charter of Fundamental Rights of the European Union, within the meaning of the second

paragraph of Article 50b of the Statute, it was decided, for reasons of legal certainty and of expedition, and in order to facilitate the task of the national courts, that all such requests must be submitted to a single court – the Court of Justice – which is required to verify, ‘in accordance with the detailed rules set out in its Rules of Procedure’, that the request comes exclusively within one or more of the specific areas in respect of which jurisdiction to give preliminary rulings is conferred on the General Court.

That is precisely what the present Article aims to achieve. The first paragraph of that Article therefore provides that the request for a preliminary ruling is to be transmitted immediately to the body within the Court of Justice that is responsible for carrying out that verification, and the subsequent paragraphs specify the rules applicable after verification and the procedure to be followed where a request for a preliminary ruling appears not to come exclusively within the specific areas referred to in the first paragraph of the new Article 50b of the Statute.

As is clear from the proposed Article, it is the President, assisted by the Vice-President and the First Advocate General, who constitute, within the Court of Justice, the body responsible for carrying out the preliminary analysis of all requests for a preliminary ruling. The choice that was made in that regard shows the importance which the Court attaches to the proper functioning of that system, but it also stems from practical considerations, since the President and the First Advocate General already, in fact, receive all of the cases submitted to the Court, for the purposes of ruling on procedural questions which may arise at that stage and for the purposes of assigning those cases to a Judge-Rapporteur and to an Advocate General, respectively.

Here, it is not yet a question of assigning the case to a Judge-Rapporteur or to an Advocate General. The sole purpose of transmitting the request for a preliminary ruling immediately to the President, the Vice-President and the First Advocate General is to enable them to analyse the subject matter of that request and, on completion of that analysis, to determine whether it comes exclusively within one or more of the specific areas referred to in the first paragraph of Article 50b of the Statute – and thus within the jurisdiction of the General Court – or whether that request also concerns other areas or other questions, in which case it falls within the jurisdiction of the Court of Justice.

In the first case, the request will be transmitted immediately by the Registry of the Court of Justice to the Registry of the General Court and the proceedings will continue before the General Court, in accordance with the provisions of its Rules of Procedure.

In the second case, the request will be dealt with by the Court of Justice and the proceedings will continue in accordance with the usual provisions of the Rules of Procedure of the Court of Justice.

However, as is clear from the third paragraph of this Article, a request for a preliminary ruling which comes within one or more of the specific areas referred to in the first paragraph of Article 50b of the Statute may be dealt with by the Court of Justice only when the general meeting of the Court of Justice has established that the request does not come exclusively within those specific areas, either because it also concerns other areas, or because it raises independent questions relating to the interpretation of primary law, public international law, the general principles of Union law or the Charter of Fundamental Rights of the European Union, within the meaning of the second paragraph of Article 50b of the Statute. Provision is made in that respect for the President to refer the request to the general meeting, which is composed of all the Members of the Court, if he considers, having analysed the request for a preliminary ruling and consulted the Vice-President and the First Advocate General, that it does not come exclusively within one or more of the specific areas referred to in the first paragraph of Article 50b of the Statute.

The last paragraph of Article 93a concerns the obligation to inform the national court or tribunal which has referred a question to the Court of Justice for a preliminary ruling. Since the third paragraph of Article 50b of the Statute provides that every request for a preliminary ruling is to be submitted to the Court of Justice, it is important that the national courts and tribunals are kept informed as to the action to be taken with regard to their request and, in particular, as to which court has jurisdiction to rule on the questions they have raised. Article 93a(4) therefore provides that the referring court or tribunal is to be informed by the Registry of the Court of Justice as soon as its request is transmitted to the Registry of the General Court pursuant to paragraph 2 or 3.

(8) Article 95 is replaced by the following:

‘Article 95

Anonymisation and omission of personal data

1. Where the referring court or tribunal has rendered anonymous the request for a preliminary ruling or has decided to omit data relating to natural persons or entities concerned by the main proceedings, whether parties or third parties to those proceedings, the Court shall respect that anonymisation or omission in the proceedings pending before it.
2. At the request of the referring court or tribunal, of a party to the main proceedings or of its own motion, the Court may also render anonymous the request for a preliminary ruling or decide to omit personal data relating to one or more natural persons concerned by the main proceedings, whether parties or third parties to those proceedings.’

*Like Article 66 of the Rules of Procedure of the General Court, recently amended, the objective of the proposed amendment is to take account of developments with regard to Union rules on the protection of personal data and, in particular, Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.*⁶

The new version of Article 95(1) of the Rules of Procedure of the Court of Justice thus no longer refers solely to the situation in which the referring court or tribunal may have anonymised a request for a preliminary ruling, but it also refers to that in which the referring court or tribunal has decided to omit data relating to natural persons or entities concerned by the dispute in the main proceedings, whether parties or third parties to those proceedings. In both situations, the Court, in the proceedings pending before it, must of course respect the anonymisation or omission introduced by the referring court or tribunal.

The same applies to the second paragraph of that Article, which again provides that the Court may render anonymous the request for a preliminary ruling or omit, in whole or in part, personal data relating to persons concerned by the dispute in the main proceedings.

(9) Article 96 is amended as follows:

(a) A new point (d) is inserted after point (c). It is worded as follows:

‘(d) the European Parliament, the Council and the European Central Bank, where they consider that they have a particular interest in the questions raised by the request for a preliminary ruling,’

(b) The current points (d) to (f) are renumbered as points (e) to (g).

(c) A new paragraph is inserted after paragraph 2. It is worded as follows:

‘3. Statements of case or written observations lodged under this Article shall be published on the website of the Court of Justice of the European Union after delivery of the judgment or service of the order closing the proceedings on the interested persons referred to in Article 23 of the Statute, unless any of those interested persons raises objections to the publication of that person’s statement of case or observations. Such objections, which need not state the reasons on which they are based and which cannot be challenged before the Court of Justice or the General Court, must be communicated to the Registry, by separate document, within three months after the case has been closed. Where an objection is communicated, reference thereto shall be made

⁶ OJ L 295, 21 November 2018, p. 39.

on the above website and the statement of case or observations concerned shall not be published, even in part. If the interested person subsequently withdraws the objection to the publication of the statement of case or observations, that statement of case or those observations shall be published on the website as soon as that objection is withdrawn.’

The amendment to this Article follows on from the discussions surrounding the adoption by the European Parliament and the Council of the legislative request submitted by the Court in November 2022, which led to the amendment of Article 23 of the Statute.

It is intended, first, to supplement the list of potential participants in the preliminary ruling procedure by referring expressly to the European Parliament, the Council and the European Central Bank which, as is apparent from the new wording of Article 23 of the Statute, may have a particular interest in submitting observations on the questions raised by the request for a preliminary ruling, even if the interpretation or validity of one of their acts is not at issue. This addition does not, of course, affect the ability of a Union institution, body, office or agency to submit observations where the validity or interpretation of an act which they have adopted is at issue. The ability to do so derives from the new point (e) of Article 96(1) of these Rules, given that the term ‘institution’ is a defined term in Article 1(2)(a) of these Rules that covers Union bodies, offices and agencies.

This provision seeks, second, to provide for the online publication, on the website of the Court of Justice of the European Union, of statements of case or observations lodged by interested persons referred to in Article 23 of the Statute, albeit that such publication will take place only after the case has been closed, in order to preserve the quality and serenity of the judicial proceedings, and only if the author of the observations lodged does not object.

In order to ensure, however, an appropriate balance between compliance with any wish for non-publication expressed by the author of the written observations and the need to guarantee national courts and tribunals and Union citizens easy and rapid access to all the documents lodged in a preliminary ruling case which enable the meaning and scope of the decision given by the Court to be fully understood, it is necessary to specify the substantive and temporal conditions under which an interested person referred to in Article 23 of the Statute may object to the publication of that person’s own observations.

To that end, the new Article 96(3) provides, first, that an interested person who does not wish those observations to be published on the website of the Court of Justice of the European Union, for whatever reason, must expressly request this by separate document, distinct from the observations themselves, and, second, that that request must be made no later than three months after the case has been closed by the Court. The purpose of that time limit is both to give the author of the observations lodged

sufficient time to become aware of the Court's decision and to assess the potential impact on the publication (or non-publication) of the observations, and to allow the Court to carry out the technical operations necessary for the observations lodged to be made available online, including any redaction of personal data which might prove necessary.

As noted above, the Court will not publish the observations of an interested person referred to in Article 23 of the Statute if that person has expressed a wish to that effect, whatever the underlying reasons for it, such as, for example, the desire to await the outcome of the dispute in the main proceedings before the referring court or tribunal, or the outcome in parallel proceedings in another case pending before the Court. In this context, it should be noted that the Court will not adopt any decision that would be open to challenge before the Courts of the European Union. The Court will merely either publish, in their entirety, the statements of case or observations lodged in a case, or not publish them at all if one or more requests have been made to that effect. However, non-publication is not irreversible. The documents in question may be published at a later stage if their author withdraws any objection, for example at the end of the national procedure.

(10) Article 97(3) is replaced by the following:

‘As regards the representation and attendance of the parties to the main proceedings, the Court shall take account of the rules of procedure in force before the court or tribunal which made the reference. In the event of any doubt as to whether a person may represent a party to the main proceedings or as to whether such a party may bring or defend court proceedings without a representative, the Court may obtain information from the referring court or tribunal on the national rules of procedure applicable.’

In the version currently in force, Article 97(3) of the Rules of Procedure states that the Court is to take account of the rules of procedure in force before the court or tribunal which made the reference, but it refers only to doubts as to whether a person may represent a party to the main proceedings under national law, without mentioning any doubts which the Court may sometimes entertain as to whether a party to the main proceedings may act in his own name without a representative. It is well established that that possibility exists in certain Member States, either generally or specifically, in the context of certain types of litigation or before certain courts or tribunals.

The purpose of the proposed amendment is to reflect the current situation faithfully and to make it possible for the Court to obtain information from the referring court or tribunal about the procedural rules of national law applicable not only where there is doubt as to whether a person may represent a party to the main proceedings, but also as to whether that party may represent himself.

(11) Article 106 is replaced by the following:

‘Article 106

Transmission of procedural documents

1. The procedural documents referred to in the preceding Article shall be deemed to have been lodged on the transmission to the Registry, by any technical or electronic means of communication available to the Court, of a copy of the signed original and the items and documents relied on in support of it, together with the schedule referred to in Article 57(3). The original of the document and the annexes referred to above shall be sent to the Registry immediately.
2. Where the preceding Article requires that a document be served on or communicated to a person, such service or communication shall be effected by electronic means, in accordance with the criteria determined by the Court, where the addressee has agreed that service is to be effected on him by those means. Otherwise, such service or communication shall be effected by transmission of a copy of the document by any technical or electronic means of communication available to the Court and to the addressee.’

The amendment to this Article follows on from the amendment to Articles 48 and 57.

First, it takes into account the fact that the reference to telefax is to be replaced by a broader reference to technical or electronic means of communication and that the paragraphs of Article 57 are to be renumbered following the deletion of the obligation to lodge certified copies of procedural documents.

Second, it recalls that the Court prefers communications made by electronic means, via the e-Curia application. Only if the addressee of a document that is to be served does not have an e-Curia account will the Court send documents by other technical or electronic means, such as email.

(12) The following Chapter, entitled ‘Procedure following referral’, is inserted in Title III, after Article 114:

‘Chapter 4

PROCEDURE FOLLOWING REFERRAL

Article 114a

Requests for a preliminary ruling referred by the General Court

1. Where the General Court, pursuant to the second subparagraph of Article 256(3) of the Treaty on the Functioning of the European Union, refers to the Court of Justice a request for a preliminary ruling requiring a decision of principle likely to affect the unity or consistency of Union law, that request shall be dealt with expeditiously.
2. The President shall forthwith designate the Judge-Rapporteur responsible for the case and the First Advocate General shall designate an Advocate General.
3. If he considers it necessary, the President shall set a time limit within which the interested persons referred to in Article 23 of the Statute may lodge statements of case or written observations.
4. The Court of Justice shall give its ruling as soon as possible, where appropriate after hearing the oral observations of the interested persons referred to in Article 23 of the Statute and the Opinion of the Advocate General.
5. The same procedure shall apply where the General Court finds, pursuant to the second paragraph of Article 54 of the Statute, that it does not have jurisdiction to rule on a request for a preliminary ruling and refers the case to the Court of Justice.’

While the General Court has jurisdiction to rule on all requests for a preliminary ruling coming exclusively within the specific areas referred to in the first paragraph of Article 50b of the Statute, it may nevertheless be faced with a case requiring a decision of principle likely to affect the unity or consistency of Union law. In such circumstances, the second subparagraph of Article 256(3) of the Treaty on the Functioning of the European Union provides that the General Court may refer the case to the Court of Justice.

The purpose of this provision is to clarify the procedure to be followed by the Court of Justice in that particular situation.

First, it establishes the principle that the case referred by the General Court is to be dealt with expeditiously by the Court of Justice, which is explained by the fact that several months are likely to have elapsed since the case was initiated and by the need, once the question of principle has been identified, for that question of principle to be swiftly clarified by the Court of Justice (see the first paragraph of the proposed Article).

In the subsequent paragraphs, the provision then specifies the practical implications of this swift handling, which consist in the immediate designation of the Judge-Rapporteur and of the Advocate General responsible for the case (paragraph 2) and, if necessary, in setting (and communicating to the parties) the time limit within which

the interested persons referred to in Article 23 of the Statute may lodge written observations (paragraph 3).

Lastly, it refers to the need for the Court of Justice to give its ruling as soon as possible, where appropriate after holding a hearing following the written part of the procedure, and after hearing the Opinion of the Advocate General (paragraph 4).

The last paragraph merely provides for the same rules to apply where, exceptionally, the General Court, following its analysis of the request for a preliminary ruling or of the observations lodged by the interested persons referred to in Article 23 of the Statute, finds that it does not have jurisdiction to deal with that request and refers the case to the Court of Justice, pursuant to the second paragraph of Article 54 of the Statute. Since, here too, the proceedings are likely to have commenced several months earlier, it is important that the Court of Justice should be able to rule swiftly on the questions raised by the referring court or tribunal.

(13) Chapter 4 of Title III is renumbered as Chapter 5 of Title III.

This renumbering follows on from the insertion in Title III of the Rules of Procedure of a new Chapter 4 concerning the procedure before the Court of Justice following referral of a request for a preliminary ruling by the General Court. The current Chapter 4, on legal aid, therefore becomes Chapter 5. No changes are made to the content of that chapter.

(14) Article 121(2) is replaced by the following:

‘2. In addition to, or instead of, specifying an address for service as referred to in paragraph 1, the application may state that the lawyer or agent agrees that service is to be effected on him by any technical or electronic means of communication available to the Court and to that lawyer or agent.’

The amendment to this Article is a consequence of the amendment to Article 48 of these Rules. Given the gradual disappearance of fax as a standard means of communication, the reference to ‘telefax’ is again to be replaced here by a more general reference to the technical or electronic means of communication available to the Court and to the addressee of the document(s) served.

(15) Article 125 is replaced by the following:

‘Article 125

Transmission of documents

Where the European Parliament, the Council or the European Commission is not a party to a case, the Court shall send to them copies of the application and of the defence, or of the plea of lack of competence or inadmissibility, as the case may be, without the annexes thereto, to enable them to assess whether the inapplicability of one of their acts is being invoked under Article 277 TFEU.’

While the current version of Article 125 of the Rules of Procedure requires the Court to send to the European Parliament, the Council and the Commission copies of the application and of the defence it receives, the Article is silent as to what happens to pleas of lack of competence or inadmissibility that may be raised by a defendant. Even if such pleas are rare in the context of actions brought before the Court, they may be of some interest to the aforementioned institutions in so far as they may call into question the applicability of one of their acts.

For that reason, it is proposed that the Court’s obligation to send copies be extended to include those pleas and to make provision for copies of the pleas of lack of competence or inadmissibility, without the annexes thereto, to be sent also to the European Parliament, the Council and the Commission, in order to enable them to assess whether the inapplicability of one of their acts is being invoked under Article 277 TFEU. Article 125 of the Rules of Procedure of the Court of Justice reproduces, in that regard, the terms of Article 82 of the Rules of Procedure of the General Court, as recently amended.

(16) The following Article is inserted after Article 193:

‘Article 193a

No proposal to review

If, on the expiry of the period referred to in the second paragraph of Article 62 of the Statute, no proposal to review the decision of the General Court has been made by the First Advocate General, the Registrar shall forthwith so inform the General Court, the referring court or tribunal and the interested persons referred to in Article 23 of the Statute.’

While the Rules of Procedure already describe in detail the procedure followed by the Court when it receives a proposal for review from the First Advocate General, they say nothing about the situation where, on the expiry of the time limit prescribed for the First Advocate General, no proposal for review has been made.

In so far, however, as the answers given by the General Court to the questions raised by the referring court or tribunal do not take effect until the expiry of the time limits laid down in the second paragraph of Article 62 of the Statute, there is a clear interest in informing the parties concerned by the decision of the General Court, and in particular the referring court or tribunal, the parties to the main proceedings and all

interested persons who participated in the proceedings before the General Court, as soon as possible of the absence of a proposal to review and, consequently, of the fact that the decision of the General Court is final.

This is what this Article aims to achieve. Provision is made for the Registry to inform the General Court, the referring court or tribunal and the interested persons referred to in Article 23 of the Statute accordingly, and, at the same time, a warning will be posted on the website of the Court of Justice of the European Union concerning the fact that the decision of the General Court is final.

Article 2

These amendments to the Rules of Procedure, which are authentic in the languages referred to in Article 36 of these Rules, shall be published in the *Official Journal of the European Union* and shall enter into force on the first day of the month following that of their publication.

Done at Luxembourg, ...