



**COUNCIL OF
THE EUROPEAN UNION**

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COVER NOTE

from : Mr V. SKOURIS, President of the Court of Justice
date of receipt : 4 February 2008
to : Mr Dimitrij Rupel, President of the Council of the European Union
Subject : Proposed amendments to the Rules of Procedure of the Court of Justice
incorporating provisions necessary to govern the conduct of the **review
procedure**

Mr President,

I refer to the sixth paragraph of Article 223 of the EC Treaty and the sixth paragraph of Article 139 of the EAEC Treaty and am writing to submit the amendments to the Rules of Procedure of the Court of Justice set out in the Annex to this letter for approval by the Council.

The proposed amendments relate to the incorporation into the Rules of Procedure of the provisions necessary to govern the conduct of the review procedure provided for in the second paragraph of Article 225 of the EC Treaty and the second paragraph of Article 140a of the EAEC Treaty, the principles governing which are set out in Articles 62 to 62b of the Protocol on the Statute of the Court of Justice.

The proposed amendments are accompanied by explanatory notes, to which reference should be made.

The amendments are attached in all the official languages.

Lastly, I should indicate for the sake of good order that I am sending to you at the same time, by separate letter, a draft Council Decision amending the Rules of Procedure as regards the language rules which are to apply to the review procedure.
(Complimentary close).

(s.) Vassilios SKOURIS

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

Article 225(2) of the EC Treaty and Article 140a(2) of the EAEC Treaty provide that, where the Court of First Instance has given a ruling on an action brought against a decision of a judicial panel set up under Article 225a of the EC Treaty or Article 140b of the EAEC Treaty, the decision of the Court of First Instance ('the decision on appeal') may, exceptionally, be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of Community law being affected.

Article 225(3) of the EC Treaty and Article 140a(3) of the EAEC Treaty provide, in similar terms, that, where the Court of First Instance has given a ruling on questions referred for a preliminary ruling under Article 234 of the EC Treaty or Article 150 of the EAEC Treaty in specific areas laid down by the Statute, the decision of the Court of First Instance may, exceptionally, be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of Community law being affected.

Articles 62 to 62b of the Statute specify the conditions and limits applying to the review by the Court of Justice of decisions on appeal and of decisions on references for a preliminary ruling delivered by the Court of First Instance and lay down certain detailed rules governing the review procedure.

Article 62 of the Statute thus provides that the First Advocate General may, in the month following the delivery of the decision by the Court of First Instance, propose that Court of Justice review the decision where he considers that there is a serious risk of the unity or consistency of Community law being affected, and that, within one month of receiving the proposal, the Court of Justice is to decide whether or not the decision should be reviewed.

If the Court of Justice decides that a decision should be reviewed, Article 62a of the Statute provides that it is to give a ruling on the questions which are subject to review by means of an urgent procedure on the basis of the file forwarded to it by the Court of First Instance. Those referred to in Article 23 of the Statute and, where the decision to be reviewed is a decision on appeal, the parties to the proceedings before the Court of First Instance, are entitled to lodge statements or written observations relating to the questions which are subject to review within a period prescribed for that purpose. The Court of Justice may decide that there is to be an oral procedure before giving a ruling.

Lastly, Article 62b of the Statute provides essentially that the proposal of the First Advocate General and the decision of the Court of Justice to review a decision of the Court of First Instance are to have suspensory effect where the decision in question is a decision on a reference for a preliminary ruling, but not in cases involving a decision on appeal, and the article specifies the effects of the decision of the Court of Justice on conclusion of the review procedure.

The European Union Civil Service Tribunal was established by Council Decision (2004/752/EC, Euratom) of 2 November 2004 (OJ 2004 L 333, p. 7) and took up its duties on 12 December 2005. Accordingly, appeals against the decisions of the Civil Service Tribunal may already be brought before the Court of First Instance.

The purpose of these draft amendments is to insert in the Rules of Procedure, in a new Title IVa to be entitled “Review of decisions of the Court of First Instance”, the provisions necessary to govern the conduct of the review procedure provided for in the above-mentioned provisions of the Treaties and the Statute, together with a number of detailed rules not set out in the Statute. The proposed provisions concern the review of decisions given by the Court of First Instance both on appeal and on references for a preliminary ruling, although decisions of the latter kind are not yet adopted.

First, it is necessary at an organisational level to determine the formation which, in the month following the proposal of the First Advocate General, is to decide whether or not a decision of the Court of First Instance is to be reviewed (Article 123b).

Secondly, it is necessary to lay down detailed rules governing the arrangements under which the Court of First Instance is to inform the Court of Justice of decisions which may be subject to review (Article 123c).

Thirdly, it is necessary to lay down detailed rules governing the submission of a proposal of the First Advocate General that a decision of the Court of First Instance should be reviewed, the detailed rules governing any decision whether or not to act on such a proposal, and the detailed rules governing the provision of information to the Court of First Instance, the parties and, where appropriate, the national court (Article 123d).

Fourthly, it is necessary to lay down detailed rules governing the urgent procedure referred to in Article 62a of the Statute as regards the service of the decision of the Court of Justice on the parties and other persons having an interest, the period for the presentation by those parties and other persons of any statements or written observations and the subsequent stages of the procedure leading to the adoption of the decision of the Court of Justice on the questions subject to review (Article 123e).

Lastly, it is appropriate to specify the rules governing the language arrangements applicable to the review procedure, and a draft decision of the Council amending the Rules of Procedure of the Court of Justice for that purpose has been sent to the Council (Article 123a).

THE COURT,

Having regard to the Treaty establishing the European Community, and in particular the sixth paragraph of Article 223 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular the sixth paragraph of Article 139 thereof,

Whereas:

(1) Article 225(2) and (3) of the EC Treaty and Article 140a(2) and (3) of the EAEC Treaty provide that there is to be a procedure for the review by the Court of Justice of decisions of the Court of First Instance where that Court has ruled on an appeal brought against a decision of a judicial panel or has given a ruling on questions referred for a preliminary ruling in specific areas laid down by the Statute;

(2) The conditions and limits applying to the review procedure have been laid down in Articles 62 to 62b of the Protocol on the Statute of the Court of Justice;

(3) The Rules of Procedure should regulate the conduct of the review procedure and lay down certain detailed rules to govern it.

With the Council's approval given on,

HAS ADOPTED THE FOLLOWING AMENDMENTS TO ITS RULES OF PROCEDURE:

Article 1

The Rules of Procedure of the Court of Justice of the European Communities of 19 June 1991 (OJ L 176, 4.7.1991, p. 7, with corrigendum in OJ L 383, 29.12.1992, p. 117), as amended on 21 February 1995 (OJ L 44, 28.2.1995, p. 61), 11 March 1997 (OJ L 103, 19.4.1997, p. 1, with corrigendum in OJ L 351, 23.12.1997, p. 72), 16 May 2000 (OJ L 122, 24.5.2000, p. 43), 28 November 2000 (OJ L 322, 19.12.2000, p. 1), 3 April 2001 (OJ L 119, 27.4.2001, p. 1), 17 September 2002 (OJ L 272, 10.10.2002, p. 24, with corrigendum in OJ L 281, 19.10.2002, p. 24), 8 April 2003 (OJ L 147, 14.6.2003, p. 17), 19 April 2004 (OJ L 132, 29.4.2004, p. 2), 20 April 2004 (OJ L 127, 29.4.2004, p. 107), 12 July 2005 (OJ L 203, 4.8.2005, p. 19), 18 October 2005 (OJ L 288, 29.10.2005, p. 51) and 18 December 2006 (OJ L 386, 29.12.2006, p. 44) are hereby amended as follows:

1. The following shall be inserted after Article 123:

“TITLE IVA

REVIEW OF DECISIONS OF THE COURT OF FIRST INSTANCE

[Article 123a]

It is intended to make provision in this article for the language arrangements which are to apply to the review procedure. Article 64 of the Statute of the Court of Justice provides that the rules governing the language arrangements applicable at the Court of Justice may be amended only in accordance with the procedure laid down for amending the Statute, that is to say, by decision of the Council, acting unanimously at the request of the Court of Justice and after consulting the European Parliament and the Commission. A draft decision of the Council amending the Rules of Procedure of the Court of Justice and inserting a new Article 123a in those Rules has been sent to the Council at the same time as this draft.

Article 123b

A special Chamber shall be set up for the purpose of deciding, in accordance with Article 123d, whether a decision of the Court of First Instance is to be reviewed in accordance with Article 62 of the Statute.

That Chamber shall be composed of the President of the Court and of four of the Presidents of the Chambers of five Judges designated according to the order of precedence laid down in Article 6 of these Rules.

It appears indispensable that the decision as to whether or not a proposal of the First Advocate General is to be acted upon should be taken by a restricted formation of five Judges.

The Statute provides that such a decision must be taken within one month of receipt of the proposal of the First Advocate General, and that proposal must itself be made within one month of delivery of the decision of the Court of First Instance. Under the Court of Justice's normal procedures, the decision would fall to be taken by a formation of the Court to which the general meeting had referred the decision on the basis of a preliminary report drawn up by the Judge-Rapporteur. Given the time-limits imposed by the Statute, however, it does not appear realistic to seek to operate such a procedure, which would involve all the Members of the Court.

For that purpose, it is proposed to establish a special Chamber composed of the President of the Court and four Presidents of Chambers of five Judges, four being the current number of Chambers of five Judges. The Presidents of the Chambers of five Judges are elected for three years, take part in all the decisions of their Chamber and take part with the President of the Court in all the decisions of the Grand Chamber. They accordingly constitute a stable formation, fully familiar with the case-law of the Court.

Article 123c

As soon as the date for the delivery of a decision to be given under Article 225(2) or (3) of the EC Treaty or Article 140a(2) or (3) of the EAEC Treaty is fixed, the Registry of the Court of First Instance shall inform the Registry of the Court of Justice. The decision shall be communicated immediately upon its delivery.

It is proposed to provide that the Registry of the Court of First Instance is to inform the Registry of the Court of Justice as soon as the date of delivery of a decision which may be subject to review is fixed. That information will allow the First Advocate General to start his consideration of the case forthwith on the basis, in particular, of the decision of the judicial panel, in the case of a decision delivered by the Court of First Instance on appeal.

It is proposed to provide also that the Registry of the Court of First Instance should communicate a copy of the decision in question, which may be an order disposing of the case, not delivered in open Court.

Article 123d

The proposal of the First Advocate General to review a decision of the Court of First Instance shall be forwarded to the President of the Court of Justice and notice of that transmission shall be given to the Registrar at the same time. Where the decision of the Court of First Instance has been given under Article 225(3) of the EC Treaty or Article 140a(3) of the EAEC Treaty, the Registrar shall forthwith inform the Court of First Instance, the national court and the parties to the proceedings before the Court of First Instance of the proposal to review.

As soon as the proposal to review has been received, the President shall designate the Judge-Rapporteur from among the Judges of the Chamber referred to in Article 123b.

That Chamber, acting on a report from the Judge-Rapporteur, shall decide whether the decision of the Court of First Instance is to be reviewed. The decision to review the decision of the Court of First Instance shall indicate the questions which are to be reviewed.

Where the decision of the Court of First Instance has been given under Article 225(2) of the EC Treaty or Article 140a(2) of the EAEC Treaty, the Court of First Instance and the parties to the proceedings before it shall forthwith be informed by the Registrar of the decision of the Court of Justice to review the decision of the Court of First Instance.

Where the decision of the Court of First Instance has been given under Article 225(3) of the EC Treaty or Article 140a(3) of the EAEC Treaty, the Court of First Instance, the national court and the parties to the proceedings before that Court shall forthwith be informed by the Registrar of the decision of the Court of Justice as to whether or not the decision of the Court of First Instance is to be reviewed. Notice of a decision to review the decision of the Court of First Instance shall be given in the *Official Journal of the European Union*.

The proposed article concerns the first stage of the review procedure, that is to say, the detailed rules relating to the submission of a proposal of the First Advocate General and those relating to a decision by the Court of Justice as regards that proposal. For that first stage of the procedure, which is internal to the Court, Article 62 of the Statute imposes mandatory time-limits: the proposal of the First Advocate General must be made within one month of delivery of the decision by the Court of First Instance and the decision of the Court of Justice on the proposal must be made within one month of receiving the proposal. In order for those time-limits to be met, the procedure must be straightforward.

It is therefore proposed to provide that the First Advocate General is to forward his proposal to review a decision of the Court of First Instance directly to the President of the Court of Justice. On receipt of that proposal, the President will designate a Judge-Rapporteur from among the Presidents of Chamber forming part of the Chamber referred to in Article 123b and will forward the proposal to him. As soon as possible thereafter, the Judge-Rapporteur will prepare a report on that proposal, proposing the action to be taken, and will submit the report to that Chamber.

It is necessary, however, to provide at this stage of the procedure for certain information to be made available to the courts and the parties concerned by the review procedure.

In cases involving a decision of the Court of First Instance on a reference for a preliminary ruling, under the second paragraph of Article 62b of the Statute, both the proposal of the First Advocate

General to review the decision and the decision of the Court of Justice to undertake a review have a suspensory effect on the answers given by the Court of First Instance to the questions referred. It is accordingly necessary to inform the Court of First Instance and the national court which made the reference for a preliminary ruling, as well as the parties to the proceedings before the national court, of a proposal for review by the First Advocate General (the first paragraph of the proposed article) and of the decision taken by the Court of Justice in relation to that proposal, whatever its terms may be (the fifth paragraph of the proposed article). Because of its suspensory effect, the decision of the Court of Justice to initiate the review procedure should also be publicised by way of a notice in the Official Journal.

Where, by contrast, a decision of the Court of First Instance on appeal is involved, the proposal of the First Advocate General and the decision of the Court of Justice to review a decision of the Court of First Instance do not, in terms of the first paragraph of Article 62b of the Statute, have suspensory effect. In that case, it appears appropriate merely to inform the Court of First Instance and the parties to the proceedings before it of the decision of the Court of Justice to review the decision of the Court of First Instance (the fourth paragraph of the proposed article). Notification of that decision, which starts the period for lodging statements or written observations, can be given only once the requisite translations of the decision have been prepared (see the first paragraph of Article 123e).

Article 123e

The decision to review a decision of the Court of First Instance shall be notified to the parties and other persons referred to in the second paragraph of Article 62a of the Statute. The notification to the Member States, and the States, other than the Member States, which are parties to the EEA Agreement, as well as the EFTA Surveillance Authority, shall be accompanied by a translation of the decision of the Court of Justice in accordance with the provisions of the first and second subparagraphs of Article 104(1) of these Rules. The decision of the Court of Justice shall also be communicated to the Court of First Instance and, in cases involving a decision given by that Court under Article 225(3) of the EC Treaty or Article 140a(3) of the EAEC Treaty, to the national court concerned.

Within one month of the notification referred to in the preceding paragraph, the parties and other persons to whom the decision of the Court of Justice has been notified may lodge statements or written observations on the questions which are subject to review.

As soon as a decision to review a decision of the Court of First Instance has been taken, the First Advocate General shall assign the review to an Advocate General.

After designating the Judge-Rapporteur, the President shall fix the date on which the latter is to present a preliminary report to the general meeting of the Court. That report shall contain the recommendations of the Judge-Rapporteur as to whether any preparatory steps should be taken, as to the formation of the Court to which the review should be assigned and as to whether a hearing should take place, and also as to the manner in which the Advocate General should present his views. The Court shall decide, after hearing the Advocate General, what action to take upon the recommendations of the Judge-Rapporteur.

Where the decision of the Court of First Instance which is subject to review was given under Article 225(2) of the EC Treaty or Article 140a(2) of the EAEC Treaty, the Court of Justice shall make a decision as to costs.”

The article proposed here concerns the second stage of the review procedure, that is to say, the procedure following a decision of the Court of Justice to review a decision of the Court of First Instance. This part of the procedure is no longer internal to the Court and involves the participation, in particular, of the Member States and the institutions.

In accordance with Article 62a of the Statute, the decision to initiate the review procedure must thus be notified to the persons referred to in Article 23 of the Statute, that is to say, the Member States, the European Parliament, the Council and the Commission, the States, other than the Member States, which are parties to the EEA Agreement and the EFTA Surveillance Authority, together with the parties to the proceedings before the Court of First Instance in cases involving a decision on appeal, and the parties to the main proceedings in cases involving a decision given on a reference for a preliminary ruling. In order to facilitate the participation of the Member States in the review procedure, it is proposed to provide that notification of the decision to review is to be accompanied by translations of that decision in the same way as is currently the case with the notification of a reference for a preliminary ruling.

Article 62a of the Statute provides that the Court of Justice is to give a ruling on the review by means of an urgent procedure and it is proposed to specify a period of one month for the

submission of statements or written observations.

As regards the formation of the Court called upon to give a ruling on the questions which are subject to review, there may be some circumstances in which this should be the Full Court, notwithstanding the difficulty of addressing complex situations in such a large formation. In other circumstances, however, it would be appropriate for a smaller formation, such as the Grand Chamber, or a Chamber of three or five Judges, to decide the legal points at issue. For those reasons, it is proposed to retain the normal system of assigning cases to a formation of the Court and to provide that the formation having jurisdiction to give a ruling on the questions which are subject to review will be determined by the Court in general meeting, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General.

With respect to the role of the Advocate General in the review procedure, two partly contradictory requirements must be reconciled, namely, first, the fact that that procedure is initiated when there is, in the Court's view, a serious risk of the unity or consistency of Community law being affected – which, because of the very existence of such a risk, could mean that the Advocate General should deliver a formal Opinion in every case – and, secondly, the need to give a ruling on the questions which are subject to review under an urgent procedure which, in some cases, might leave insufficient time for the delivery of a formal Opinion at a hearing. For those reasons, it is proposed to incorporate a degree of flexibility into the provision and to leave it to the Court in general meeting, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, to decide in each case whether an Opinion should be delivered or whether the Advocate General should present his views in closed session.

Lastly, it is appropriate to provide that, where the decision for review is a decision on appeal, the Court of Justice should make a decision as to costs.

2. Article 123a shall become Article 123f and Article 123b shall become Article 123g.

The provision is necessary because of the insertion of the new provisions as Articles 123a to 123e.

Article 2

These amendments to the Rules of Procedure, which are authentic in the languages referred to in Article 29(1) 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 second month following their publication.

