

Protocol (No 11) on the Statute of the Court of Justice of the European Community (17 April 1957) - consolidated version 1997

Caption: Version including the text of the Protocol of 17 April 1957 as last amended by Articles 6 and 12 of the Treaty of Amsterdam of 2 October 1997.

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Protocol on the Statute of the Court of Justice of the European Community

TITLE I JUDGES AND ADVOCATES-GENERAL.....
TITLE II ORGANIZATION.....
TITLE III PROCEDURE.....
TITLE IV THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES.....

[Version including the text of the Protocol of 17 April 1957 as last amended by Articles 6 and 12 of the Treaty of Amsterdam of 2 October 1997 (OJ C 340 of 10.11.1997, p. 1).]

THE HIGH CONTRACTING PARTIES TO THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY.

DESIRING to lay down the Statute of the Court provided for in Article 245 of this Treaty,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing the European Community.

Article 1

The Court established by Article 7 of this Treaty shall be constituted and shall function in accordance with the provisions of this Treaty and of this Statute.

TITLE I JUDGES AND ADVOCATES-GENERAL

Article 2

Before taking up his duties each Judge shall, in open court, take an oath to perform his duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

Article 3

The Judges shall be immune from legal proceedings. After they have ceased to hold office, they shall continue to enjoy immunity in respect of acts performed by them in their official capacity including words spoken or written.

The Court, sitting in plenary session, may waive the immunity.

Where immunity has been waived and criminal proceedings are instituted against a Judge, he shall be tried, in any of the Member States, only by the Court competent to judge the members of the highest national judiciary.

'Articles 12 to 15 and 18 of the Protocol on the privileges and immunities of the European Communities shall apply to the Judges, Advocates-General, Registrar and Assistant Rapporteurs of the Court of Justice, without prejudice to the provisions relating to immunity from legal proceedings of Judges which are set out in the preceding paragraphs.'

Article 4

The Judges may not hold any political or administrative office.

They may not engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the Council.

When taking up their duties, they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom, in particular the duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.

Any doubt on this point shall be settled by decision of the Court.

Article 5

Apart from normal replacement, or death, the duties of a Judge shall end when he resigns.

Where a Judge resigns, his letter of resignation shall be addressed to the President of the Court for transmission to the President of the Council. Upon this notification a vacancy shall arise on the bench.

Save where Article 6 applies, a Judge shall continue to hold office until his successor takes up his duties.

Article 6

A Judge may be deprived of his office or of his right to a pension or other benefits in its stead only if, in the unanimous opinion of the Judges and Advocates-General of the Court, he no longer fulfils the requisite conditions or meets the obligations arising from his office. The Judge concerned shall not take part in any such deliberations.

The Registrar of the Court shall communicate the decision of the Court to the President of the European Parliament and to the President of the Commission and shall notify it to the President of the Council.

In the case of a decision depriving a Judge of his office, a vacancy shall arise on the bench upon this latter notification.

Article 7

A Judge who is to replace a member of the Court whose term of office has not expired shall be appointed for the remainder of his predecessor's term.

Article 8

The provisions of Articles 2 to 7 shall apply to the Advocates-General.

TITLE II ORGANIZATION

Article 9

The Registrar shall take an oath before the Court to perform his duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

Article 10

The Court shall arrange for replacement of the Registrar on occasions when he is prevented from attending the Court.

Article 11

Officials and other servants shall be attached to the Court to enable it to function. They shall be responsible to the Registrar under the authority of the President.

Article 12

On a proposal from the Court, the Council may, acting unanimously, provide for the appointment of Assistant Rapporteurs and lay down the rules governing their service. The Assistant Rapporteurs may be required, under conditions laid down in the Rules of Procedure, to participate in preparatory inquiries in cases pending before the Court and to cooperate with the Judge who acts as Rapporteur.

The Assistant Rapporteurs shall be chosen from persons whose independence is beyond doubt and who possess the necessary legal qualifications; they shall be appointed by the Council. They shall take an oath before the Court to perform their duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

Article 13

The Judges, the Advocates-General and the Registrar shall be required to reside at the place where the Court has its seat.

Article 14

The Court shall remain permanently in session. The duration of the judicial vacations shall be determined by the Court with due regard to the needs of its business.

Article 15

Decisions of the Court shall be valid only when an uneven number of its members is sitting in the deliberations. Decisions of the full Court shall be valid if nine members are sitting. Decisions of the Chambers consisting of three or five Judges shall be valid only if three Judges are sitting. Decisions of the Chambers consisting of seven Judges shall be valid only if five Judges are sitting. In the event of one of the Judges of a Chamber being prevented from attending, a Judge of another Chamber may be called upon to sit in accordance with conditions laid down in the Rules of Procedure.

Article 16

No Judge or Advocate-General may take part in the disposal of any case in which he has previously taken part as agent or adviser or has acted for one of the parties, or in which he has been called upon to pronounce as a member of a court or tribunal, of a commission of inquiry or in any other capacity.

If, for some special reason, any Judge or Advocate-General considers that he should not take part in the

judgment or examination of a particular case, he shall so inform the President. If, for some special reason, the President considers that any Judge or Advocate-General should not sit or make submissions in a particular case, he shall notify him accordingly.

Any difficulty arising as to the application of this Article shall be settled by decision of the Court.

A party may not apply for a change in the composition of the Court or of one of its Chambers on the grounds of either the nationality of a Judge or the absence from the Court or from the Chamber of a Judge of the nationality of that party.

TITLE III PROCEDURE

Article 17

The States and the institutions of the Community shall be represented before the Court by an agent appointed for each case; the agent may be assisted by an adviser or by a lawyer.

The States, other than the Member States, which are parties to the Agreement on the European Economic Area, and also the EFTA Surveillance Authority referred to in that Agreement, shall be represented in same manner.

Other parties must be represented by a lawyer.

Only a lawyer authorised to practise before a court of a Member State or of another State which is a party to the Agreement on the European Economic Area may represent or assist a party before the Court.

Such agents, advisers and lawyers shall, when they appear before the Court, enjoy the rights and immunities necessary to the independent exercise of their duties, under conditions laid down in the Rules of Procedure.

As regards such advisers and lawyers who appear before it, the Court shall have the powers normally accorded to courts of law, under conditions laid down in the Rules of Procedure.

University teachers being nationals of a Member State whose law accords them a right of audience shall have the same rights before the Court as are accorded by this Article to lawyers entitled to practise before a court of a Member State.

Article 18

The procedure before the Court shall consist of two parts: written and oral.

The written procedure shall consist of the communication to the parties and to the institutions of the Community whose decisions are in dispute, of applications, statements of case, defences and observations, and of replies, if any, as well as of all papers and documents in support or of certified copies of them.

Communications shall be made by the Registrar in the order and within the time laid down in the Rules of Procedure.

The oral procedure shall consist of the reading of the report presented by a Judge acting as Rapporteur, the hearing by the Court of agents, advisers and lawyers entitled to practise before a court of a Member State and of the submissions of the Advocate-General, as well as the hearing, if any, of witnesses and experts.

Article 19

A case shall be brought before the Court by a written application addressed to the Registrar. The application shall contain the applicant's name and permanent address and the description of the signatory, the name of the party or names of the parties against whom the application is made, the subject-matter of the dispute, the form of order sought and a brief statement of the pleas in law on which the application is based.

The application shall be accompanied, where appropriate, by the measure the annulment of which is sought or, in the circumstances referred to in Article 232 of this Treaty, by documentary evidence of the date on which an institution was, in accordance with that Article, requested to act. If the documents are not submitted with the application, the Registrar shall ask the party concerned to produce them within a reasonable period, but in that event the rights of the party shall not lapse even if such documents are produced after the time-limit for bringing proceedings.

Article 20

In the cases governed by Article 234 of this Treaty, the decision of the court or tribunal of a Member State which suspends its proceedings and refers a case to the Court shall be notified to the Court by the court or tribunal concerned. The decision shall then be notified by the Registrar of the Court to the parties, to the Member States and to the Commission, and also to the Council or to the European Central Bank if the act the validity or interpretation of which is in dispute originates from one of them, and to the European Parliament and the Council if the act the validity or interpretation of which is in dispute was adopted jointly by those two institutions.

Within two months of this notification, the parties, the Member States, the Commission and, where appropriate, the European Parliament, the Council and the European Central Bank, shall be entitled to submit statements of case or written observations to the Court.

The decision of the aforesaid court or tribunal shall, moreover, be notified by the Registrar of the Court to the States, other than the Member States, which are parties to the Agreement on the European Economic Area and also to the EFTA Surveillance Authority referred to in that Agreement which may, within two months of notification, where one of the fields of application of that Agreement is concerned, submit statements of case or written observations to the Court.

Article 21

The Court may require the parties to produce all documents and to supply all information which the Court considers desirable. Formal note shall be taken of any refusal.

The Court may also require the Member States and institutions not being parties to the case to supply all information which the Court considers necessary for the proceedings.

Article 22

The Court may at any time entrust any individual, body, authority, committee or other organization it chooses with the task of giving an expert opinion.

Article 23

Witnesses may be heard under conditions laid down in the Rules of Procedure.

Article 24

With respect to defaulting witnesses the Court shall have the powers generally granted to courts and tribunals and may impose pecuniary penalties under conditions laid down in the Rules of Procedure.

Article 25

Witnesses and experts may be heard on oath taken in the form laid down in the Rules of Procedure or in the manner laid down by the law of the country of the witness or expert.

Article 26

The Court may order that a witness or expert be heard by the judicial authority of his place of permanent residence.

The order shall be sent for implementation to the competent judicial authority under conditions laid down in the Rules of Procedure. The documents drawn up in compliance with the letters rogatory shall be returned to the Court under the same conditions.

The Court shall defray the expenses, without prejudice to the right to charge them, where appropriate, to the parties.

Article 27

A Member State shall treat any violation of an oath by a witness or expert in the same manner as if the offence had been committed before one of its courts with jurisdiction in civil proceedings. At the instance of the Court, the Member State concerned shall prosecute the offender before its competent court.

Article 28

The hearing in court shall be public, unless the Court, of its own motion or on application by the parties, decides otherwise for serious reasons.

Article 29

During the hearings the Court may examine the experts, the witnesses and the parties themselves. The latter, however, may address the Court only through their representatives.

Article 30

Minutes shall be made of each hearing and signed by the President and the Registrar.

Article 31

The case list shall be established by the President.

Article 32

The deliberations of the Court shall be and shall remain secret.

Article 33

Judgments shall state the reasons on which they are based. They shall contain the names of the Judges who took part in the deliberations.

Article 34

Judgments shall be signed by the President and the Registrar. They shall be read in open court.

Article 35

The Court shall adjudicate upon costs.

Article 36

The President of the Court may, by way of summary procedure, which may, in so far as necessary, differ from some of the rules contained in this Statute and which shall be laid down in the Rules of Procedure, adjudicate upon applications to suspend execution, as provided for in Article 242 of this Treaty, or to prescribe interim measures in pursuance of Article 243, or to suspend enforcement in accordance with the last paragraph of Article 256.

Should the President be prevented from attending, his place shall be taken by another Judge under conditions laid down in the Rules of Procedure.

The ruling of the President or of the Judge replacing him shall be provisional and shall in no way prejudice the decision of the Court on the substance of the case.

Article 37

Member States and institutions of the Community may intervene in cases before the Court.

The same right shall be open to any other person establishing an interest in the result of any case submitted to the Court, save in cases between Member States, between institutions of the Community or between Member States and institutions of the Community.

Without prejudice to the preceding paragraph, the States, other than the Member States, which are parties to the Agreement on the European Economic Area, and also the EFTA Surveillance Authority referred to in that Agreement, may intervene in cases before the Court where one of the fields of application of that Agreement is concerned.

An application to intervene shall be limited to supporting the form of order sought by one of the parties.

Article 38

Where the defending party, after having been duly summoned, fails to file written submissions in defence, judgment shall be given against that party by default. An objection may be lodged against the judgment within one month of it being notified. The objection shall not have the effect of staying enforcement of the judgment by default unless the Court decides otherwise.

Article 39

Member States, institutions of the Community and any other natural or legal persons may, in cases and under conditions to be determined by the Rules of Procedure, institute third party proceedings to contest a judgment rendered without their being heard, where the judgment is prejudicial to their rights.

Article 40

If the meaning or scope of a judgment is in doubt, the Court shall construe it on application by any party or any institution of the Community establishing an interest therein.

Article 41

An application for revision of a judgment may be made to the Court only on discovery of a fact which is of such a nature as to be a decisive factor, and which, when the judgment was given, was unknown to the Court and to the party claiming the revision.

The revision shall be opened by a judgment of the Court expressly recording the existence of a new fact, recognising that it is of such a character as to lay the case open to revision and declaring the application admissible on this ground.

No application for revision may be made after the lapse of 10 years from the date of the judgment.

Article 42

Periods of grace based on considerations of distance shall be determined by the Rules of Procedure.

No right shall be prejudiced in consequence of the expiry of a time-limit if the party concerned proves the existence of unforeseeable circumstances or of *force majeure*.

Article 43

Proceedings against the Community in matters arising from non-contractual liability shall be barred after a period of five years from the occurrence of the event giving rise thereto. The period of limitation shall be interrupted if proceedings are instituted before the Court or if prior to such proceedings an application is made by the aggrieved party to the relevant institution of the Community. In the latter event the proceedings must be instituted within the period of two months provided for in Article 230; the provisions of the second paragraph of Article 232 shall apply where appropriate.

TITLE IV THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES

Article 44

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

Article 45

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

The President of the Court of Justice and the President of the Court of First Instance shall determine, by common accord, the conditions under which officials and other servants attached to the Court of Justice shall render their services to the Court of First Instance to enable it to function. Certain officials or other servants shall be responsible to the Registrar of the Court of First Instance under the authority of the President of the Court of First Instance.

Article 46

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

Such further and more detailed provisions as may be necessary shall be laid down in the Rules of Procedure established in accordance with Article 225(4) of the Treaty. The Rules of Procedure may derogate from the fourth paragraph of Article 37 and from Article 38 of this Statute in order to take account of the specific features of litigation in the field of intellectual property.

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

Article 47

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

Where the Court of First Instance finds that it does not have jurisdiction to hear and determine an action in respect of which the Court of Justice has jurisdiction, it shall refer that action to the Court of Justice; likewise, where the Court of Justice finds that an action falls within the jurisdiction of the Court of First Instance, it shall refer that action to the Court of First Instance, whereupon that Court may not decline jurisdiction.

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

Article 48

Final decisions of the Court of First Instance, decisions disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility, shall be notified by the Registrar of the Court of First Instance to all parties as well as all Member States and the Community institutions even if they did not intervene in the case before the Court of First Instance.

Article 49

An appeal may be brought before the Court of Justice, within two months of the notification of the decision appealed against, against final decisions of the Court of First Instance and decisions of that Court disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility.

Such an appeal may be brought by any party which has been unsuccessful, in whole or in part, in its submissions. However, interveners other than the Member States and the Community institutions may bring such an appeal only where the decision of the Court of First Instance directly affects them.

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

Article 50

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

The parties to the proceedings may appeal to the Court of Justice against any decision of the Court of First Instance made pursuant to Articles 242 or 243 or the fourth paragraph of Article 256 of this Treaty within two months from their notification.

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

Article 51

An appeal to the Court of Justice shall be limited to points of law. It shall lie on the grounds of lack of competence of the Court of First Instance, a breach of procedure before it which adversely affects the interests of the appellant as well as the infringement of Community law by the Court of First Instance.

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

Article 52

Where an appeal is brought against a decision of the Court of First Instance, the procedure before the Court of Justice shall consist of a written part and an oral part. In accordance with conditions laid down in the Rules of Procedure the Court of Justice, having heard the Advocate-General and the parties, may dispense with the oral procedure.

Article 53

Without prejudice to Articles 242 and 243 of this Treaty, an appeal shall not have suspensory effect.

By way of derogation from Article 244 of this Treaty, decisions of the Court of First Instance declaring a regulation to be void shall take effect only as from the date of expiry of the period referred to in the first paragraph of Article 49 of this Statute or, if an appeal shall have been brought within that period, as from the date of dismissal of the appeal, without prejudice, however, to the right of a party to apply to the Court of Justice, pursuant to Articles 242 and 243 of this Treaty, for the suspension of the effects of the regulation which has been declared void or for the prescription of any other interim measure.

Article 54

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

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

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

Article 55

The Rules of Procedure of the Court provided for in Article 245 of this Treaty shall contain, apart from the provisions contemplated by this Statute, any other provisions necessary for applying and, where required, supplementing it.

Article 56

The Council may, acting unanimously, make such further adjustments to the provisions of this Statute as may be required by reason of measures taken by the Council in accordance with the last paragraph of Article 221 of this Treaty.

Article 57

(repealed)

Done at Brussels this seventeenth day of April in the year one thousand nine hundred and fifty seven.