

Council Decision 88/591/ECSC, EEC, Euratom - consolidated version (24 October 1988)

Caption: Consolidated version of the Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities, such as applied before the entry into force of the Treaty of Nice.

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Consolidation CVCE.

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Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities (consolidated version)

[Consolidated version of the Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 ⁽¹⁾, taking into account the amendments made by the Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 ⁽²⁾; the Council Decision 94/149/ECSC, EC of 7 March 1994 ⁽³⁾; the Article 17 of the Act of Accession 1994 in the version set out in Article 10 of the Decision of the Council of 1 January 1995 ⁽⁴⁾; and the Council Decision 1999/291/EC, ECSC, Euratom of 26 April 1999 ⁽⁵⁾]

Article 1

A Court, to be called the Court of First Instance of the European Communities, shall be attached to the Court of Justice of the European Communities. Its seat shall be at the Court of Justice.

Article 2

1. The Court of First Instance shall consist of 15 members.
2. The members shall elect the President of the Court of First Instance from among their number for a term of three years. He may be re-elected.
3. The members of the Court of First Instance may be called upon to perform the task of an Advocate-General. It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on certain cases brought before the Court of First Instance in order to assist the Court of First Instance in the performance of its task.

The criteria for selecting such cases, as well as the procedures for designating the Advocates General, shall be laid down in the Rules of Procedure of the Court of First Instance.

A member called upon to perform the task of Advocate-General in a case may not take part in the judgment of the case.

4. The Court of First Instance shall sit in chambers of three or five judges. The composition of the chambers and the assignment of cases to them shall be governed by the Rules of Procedure. In certain cases governed by the Rules of Procedure the Court of First Instance may sit in plenary session or be constituted by a single judge.

5. Article 21 of the Protocol on Privileges and Immunities of the European Communities and Article 6 ⁽⁶⁾ of the Treaty establishing a Single Council and a Single Commission of the European Communities shall apply to the members of the Court of First Instance and to its Registrar.

Article 3

The Court of First Instance shall exercise at first instance the jurisdiction conferred on the Court of Justice by the Treaties establishing the Communities and by the acts adopted in implementation thereof, save as otherwise provided in an act setting up a body governed by Community law:

- (a) in disputes as referred to in Article 179 of the EC Treaty ⁽⁷⁾ and Article 152 of the EAEC Treaty;
- (b) in actions brought by natural or legal persons pursuant to the second paragraph of Article 33, Article 35, the first and second paragraphs of Article 40 and Article 42 ⁽⁸⁾ of the ECSC Treaty;
- (c) in actions brought by natural or legal persons pursuant to the second paragraph of Article 173, the third paragraph of Article 175 and Articles 178 and 181 ⁽⁸⁾ of the EEC Treaty ⁽⁹⁾;

(d) in actions brought by natural or legal persons pursuant to the second paragraph of Article 146, the third paragraph of Article 148 and Articles 151 and 153 ⁽⁸⁾ of the EAEC Treaty.

Article 4

Save as hereinafter provided ⁽¹⁰⁾, Articles 34, 36, 39, 44 and 92 of the ECSC Treaty, Articles 172, 174, 176, 184 to 187 and 192 of the EC Treaty ⁽¹¹⁾, and Articles 49, 83, 144b, 147, 149, 156 to 159 and 164 of the EAEC Treaty shall apply to the Court of First Instance.

Article 5

The following provisions shall be inserted after Article 43 of the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community:

‘TITLE IV:

THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES

Rules concerning the members of the Court of First Instance and its organization

Article 44

Articles 2, 3, 4, 6 to 9, the first paragraph of Article 13, Article 17, the second paragraph of Article 18 and Article 19 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 7 shall be adopted by that Court after hearing the Court of First Instance.

Registrar and staff

Article 45

The Court of First Instance shall appoint its Registrar and lay down the rules governing his service. Articles 9 and 14 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.

Procedure before 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 Articles 41 and 42.

Such further and more detailed provisions as may be necessary shall be laid down in the Rules of Procedure established in accordance with Article 32d (4) of this Treaty.

Notwithstanding the fourth paragraph of Article 21 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.

Appeals to the Court of Justice

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 within 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 the second or third paragraphs of Article 39 or the third paragraph of Article 92 of the 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 33 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.

Procedure before the Court

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.

Suspensory effect

Article 53

Without prejudice to the second and third paragraphs of Article 39 of this Treaty, an appeal shall not have suspensory effect.

By way of derogation from Article 44 of this Treaty, decisions of the Court of First Instance declaring a general decision or general recommendation 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 the second and third paragraphs of Article 39 of this Treaty, for the suspension of the effects of the decision which has been declared void or for the prescription of any other interim measure.

The decision of the Court of Justice on the appeal

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 6

The former Articles 44 and 45 of the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community shall become Articles 55 and 56 respectively.

Article 7

The following provisions shall be inserted after Article 43 of the Protocol on the Statute of the Court of Justice of the European Economic Community:

'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 168a (4) of this Treaty.

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 within 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 Article 185 or 186 or the fourth paragraph of Article 192 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 185 and 186 of this Treaty, an appeal shall not have suspensory effect.

By way of derogation from Article 187 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 185 and 186 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 8

The former Articles 44, 45 and 46 of the Protocol on the Statute of the Court of Justice of the European Economic Community shall become Articles 55, 56 and 57 respectively

Article 9

The following provisions shall be inserted after Article 44 of the Protocol on the Statute of the Court of the Justice of the European Atomic Energy Community:

'TITLE IV:

THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES

Article 45

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 46

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 47

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

exception of Articles 20 and 21.

Such further and more detailed provisions as may be necessary shall be laid down in the Rules of Procedure established in accordance with Article 140a (4) of this Treaty.

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

Article 48

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 49

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 50

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 51

Any person whose application to intervene has been dismissed by the Court of First Instance may appeal to the Court of Justice within 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 Article 157 or 158 or the third paragraph of Article 164 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 37 of this Statute.

Article 52

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 53

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 54

Without prejudice to Articles 157 and 158 of this Treaty, an appeal shall not have suspensory effect.

By way of derogation from Article 159 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 50 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 157 and 158 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 55

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 10

The former Articles 45, 46 and 47 of the Protocol on the Statute of the Court of Justice of the European Atomic Energy Community shall become Articles 56, 57 and 58 respectively.

Article 11

The first President of the Court of First Instance shall be appointed for three years in the same manner as its members. However, the Governments of the Member States may, by common accord, decide that the procedure laid down in Article 2 (2) shall be applied.

The Court of First Instance shall adopt its Rules of Procedure immediately upon its constitution.

Until the entry into force of the Rules of Procedure of the Court of First Instance, the Rules of Procedure of the Court of Justice shall apply *mutatis mutandis*.

Article 12

Immediately after all members of the Court of First Instance have taken oath, the President of the Council shall proceed to choose by lot the members of the Court of First Instance whose terms of office are to expire at the end of the first three years in accordance with Article 32d (3) of the ECSC Treaty, Article 168a (3) of the EEC Treaty, and Article 140a (3) of the EAEC Treaty.

Article 13

This Decision shall enter into force on the day following its publication in the *Official Journal of the European Communities*, with the exception of Article 3, which shall enter into force on the date of the publication in the *Official Journal of the European Communities* of the ruling by the President of the Court of Justice that the Court of First Instance has been constituted in accordance with law ⁽¹²⁾.

Article 14

Cases referred to in Article 3 of which the Court of Justice is seised on the date on which that Article enters into force but in which the preliminary report provided for in Article 44 (1) of the Rules of Procedure of the Court of Justice has not yet been presented shall be referred to the Court of First Instance.

(1) OJ C 215 of 21.08.1989, p. 1.

(2) OJ L 144 of 16.6.1993, p. 21.

(3) OJ L 66 of 10.3.1994, p. 29.

(4) OJ L 1 of 1.1.1995, p. 1.

(5) OJ L 114 of 1.5.1999, p. 52.

(6) This article was repealed by Article P(1) of the Maastricht Treaty.

(7) Now Article 236.

(8) By virtue of Article 3 of Council Decision 93/350/Euratom, ECSC, EEC, the provisions relating to actions brought under Article 42 of the ECSC Treaty, Article 238 (ex Article 181) of the EC Treaty or Article 153 of the EAEC Treaty apply only to contracts concluded after 31 July 1993.

(9) Now the fourth paragraph of Article 230, the third paragraph of Article 232, Article 235 and Article 238 respectively.

(10) Articles 5 to 10 amended the Statutes of the Court of Justice.

(11) Now Articles 229, 231, 233, 241 to 244 and 256.

(12) See the Decision of the President of the Court of Justice made on 11 October 1989 and published in OJ L 317 of 31.10.1989, p. 48.