

RULES OF PROCEDURE OF THE EFTA COURT OF XXXX 2018

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THE EFTA COURT,

Having regard to Article 108(2) of the Agreement on the European Economic Area,

Having regard to the competences conferred on the Court by the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, in particular its Article 43(2), and Article 43 of Protocol 5 to that Agreement (Statute of the Court),

Having regard to the approval given by the Governments of the EFTA States,

ADOPTS THE FOLLOWING RULES OF PROCEDURE:

INTRODUCTORY PROVISIONS

Article 1
Definitions

(old RoP Article 1; ECJ RoP Article 1; GC RoP Article 1)

1. In these Rules:

- (a) ‘EEA Agreement’ means the Agreement on the European Economic Area, its Protocols and Annexes;
- (b) ‘SCA’ means the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, its Protocols and Annexes;
- (c) ‘Statute’ means Protocol 5 to the SCA on the Statute of the EFTA Court;
- (d) ‘EFTA State’ means a Member of the European Free Trade Association which is a Party to the EEA Agreement and to the SCA;
- (e) ‘EU Member State’ means a Member State of the European Union which is a Party to the EEA Agreement;
- (f) ‘interested persons’ means the States and institutions authorised, pursuant to Article 20 of the Statute, to submit statements of case or observations to the Court, including, where appropriate, the institution, office, body or agency that adopted the act the interpretation of which is in dispute, or whose draft forms the basis of a contested decision by the EFTA Surveillance Authority;
- (g) ‘party’ and ‘parties’, unless otherwise specified, means any party to the proceedings, including interveners;
- (h) ‘main party’ and ‘main parties’ means the applicant or the defendant or both of them, as the case may be;

- (i) ‘ad hoc Judge’ refers to a person replacing a Judge chosen from a list established by common accord by the Governments of the EFTA States as set down in the fourth paragraph of Article 30 SCA. Such person shall be selected from those persons on the list who were nominated by the Government that nominated the regular Judge who is to be replaced.

2. All references to the masculine shall be understood as referring to all genders as appropriate.

Article 2

Purpose

(new; ECJ RoP Article 2; GC RoP Article 2)

These Rules implement and supplement, insofar as necessary, the relevant provisions of the EEA Agreement, the SCA, and the Statute.

TITLE I

ORGANISATION OF THE COURT

Chapter 1

JUDGES

Article 3

Commencement of a Judge’s term of office

(old RoP Article 2; ECJ RoP Article 3; GC RoP Article 4)

The term of office of a Judge shall begin on the date laid down in his instrument of appointment. In the absence of any provisions regarding the date, the term shall begin on the date of the instrument.

Article 4

Taking of the oath

(old RoP Article 3(1); ECJ RoP Article 4; GC RoP Article 5)

Before taking up his duties, a Judge shall, in accordance with Article 2 of the Statute, at the first public sitting of the Court which he attends after his appointment, take the following oath or, in the alternative, make the following solemn declaration:

“I [swear/solemnly promise] that I will perform my duties impartially and conscientiously; I [swear/solemnly promise] that I will preserve the secrecy of the deliberations of the EFTA Court.”

Article 5

Solemn undertaking

(old RoP Article 3(2); ECJ Article 5; GC RoP Article 6)

Immediately after taking the oath, a Judge shall, in accordance with Article 4 of the Statute, sign a declaration by which he solemnly undertakes that, both during and after his term of office, he will respect the obligations arising therefrom, and in particular the duty to behave with integrity and discretion as regards the acceptance, after he has ceased to hold office, of certain appointments or benefits.

Article 6

Depriving a Judge of his office

(old RoP Article 4; ECJ RoP Article 6; GC RoP Article 7)

1. Where the Court is called upon, pursuant to Article 6 of the Statute, to decide whether a Judge no longer fulfils the requisite conditions or no longer meets the obligations arising from his office, the President

shall invite the Judge concerned to make representations to the Court, in closed session and in the absence of the Registrar.

2. The Court shall give a decision in the absence of the Registrar. The Judge concerned shall not take part in the deliberations.

Article 7

Order of seniority

(old RoP Article 5; ECJ RoP Article 7; GC RoP Article 8)

1. The seniority of Judges shall be calculated according to the date on which they took up their duties.
2. Where there is equal seniority in office, the order of seniority shall be determined by age.
3. Judges whose terms of office are renewed shall retain their former seniority.
4. Judges chosen from the list provided for in the fourth paragraph of Article 30 SCA shall rank after the regular Judges. If two or more such Judges are acting in the same case, their internal rank shall be determined by age.

Chapter 2

PRESIDENCY

Article 8

Election of the President

(old RoP Article 6; ECJ RoP Article 8; GC RoP Article 9)

1. The Judges shall, in accordance with the third paragraph of Article 30 SCA, elect one of their number as President for a term of three years.
2. If the office of the President falls vacant before the normal date of expiry of the term thereof, the Court shall elect a successor for the remainder of the term.
3. The elections provided for in this Article shall be by secret ballot. If a Judge obtains an absolute majority he shall be elected. If no Judge obtains an absolute majority, a second ballot shall be held and the Judge obtaining the most votes shall be elected. Where two or more Judges obtain an equal number of votes the oldest of them shall be deemed elected.
4. The name of the President elected in accordance with this Article shall be published in the EEA Section of and the EEA Supplement to the *Official Journal of the European Union*.

Article 9

Responsibilities of the President

(old RoP Article 7; ECJ RoP Article 9; GC RoP Article 10)

1. The President shall represent the Court.
2. The President shall direct the judicial business and the administration of the Court. He shall preside at hearings, deliberations, and administrative meetings.
3. The President shall ensure the proper functioning of the Court.

Article 10

Where the President is prevented from acting

(old RoP Article 9; ECJ RoP Article 13; GC RoP Article 12)

When the President is prevented from acting or when the office of president is vacant, the functions of President shall be exercised by one of the other Judges, according to the order of seniority laid down in Article 7.

Article 11

Designation of the Judge-Rapporteur

(old RoP Article 8; ECJ RoP Article 15; GC RoP Articles 25 and 26)

1. As soon as possible after the document initiating proceedings has been lodged, the President shall designate a Judge to act as Rapporteur in the case.
2. The Court shall lay down criteria, by which, as a rule, cases are to be assigned to Judges.
3. The President shall take the necessary steps to designate another Judge to act as Rapporteur if the designated Judge-Rapporteur is prevented from acting.

Chapter 3 REGISTRY

Article 12

Appointment of the Registrar

(old RoP Article 10; ECJ RoP Article 18; GC RoP Article 32)

1. The Court shall appoint the Registrar.
2. When the post of Registrar is vacant, persons interested in the position shall be invited by public advertisement to submit their applications within a period of not less than three weeks, accompanied by full details of their age, nationality, university degrees, knowledge of languages, present and past occupations, and judicial and international experience.
3. The appointment shall be made following the procedure laid down in Article 8(3).
4. The Registrar shall be appointed for a term of three years. He may be reappointed. The Court may decide to renew the term of office of the incumbent Registrar without availing itself of the procedure laid down in paragraph 2 of this Article.
5. The Registrar shall take the oath set out in Article 4 and sign the declaration provided for in Article 5.
6. The Registrar may be deprived of his office only if he no longer fulfils the requisite conditions or no longer meets the obligations arising from his office. The Court shall take its decision after giving the Registrar an opportunity to make representations.
7. If the office of Registrar falls vacant before the normal date of expiry of the term thereof, the Court shall appoint a new Registrar for a term of three years.
8. The name of the Registrar elected in accordance with this Article shall be published in the EEA Section of and the EEA Supplement to the *Official Journal of the European Union*.

Article 13

Deputy Registrar

(old RoP Article 11; ECJ RoP Article 19; GC RoP Article 33)

The Court may, in accordance with the procedure laid down in respect of the Registrar, appoint a Deputy Registrar to assist the Registrar and to take his place if he is prevented from acting.

Article 14

Where the Registrar and Deputy Registrar are prevented from acting
(old RoP Article 12; ECJ RoP n/a; GC RoP Article 34)

Where the Registrar is prevented from acting and, if necessary, where the Deputy Registrar is so prevented, the President shall designate an official to carry out the duties of Registrar.

Article 15

Responsibilities of the Registrar
(old RoP Articles 13, 15 and 16; ECJ RoP Article 20; GC RoP Article 35)

1. The Registrar shall be responsible, under the authority of the President, for the acceptance, transmission, and custody of all documents and for effecting service as provided for by these Rules.
2. The Registrar shall assist the Judges in all their official functions.
3. The Registrar shall have custody of the seals and shall be responsible for the records. He shall be in charge of the publications of the Court and, in particular, the EFTA Court Reports, and of the publication on the internet of documents concerning the Court.
4. He shall be responsible, under the authority of the President, for the management of the staff and the administration of the Court, and for its financial management and its accounts, including the preparation and implementation of the budget.
5. Instructions to the Registrar shall be adopted by the Court acting on a proposal from the President.
6. Unless provided otherwise in these Rules, the Registrar shall attend the sittings of the Court.

Article 16

Keeping of the register
(old RoP Article 14; ECJ RoP Article 21; GC RoP Article 36)

1. There shall be kept in the Registry, under the responsibility of the Registrar, a register in which all pleadings and supporting items and documents lodged shall be entered in the order in which they are submitted.
2. When a document has been registered, the Registrar shall make a note to that effect on the original and, if a party so requests, on any copy submitted for the purpose.
3. Entries in the register and the notes provided for in the preceding paragraph shall be authentic.
4. Rules for the keeping of the register shall be prescribed by the Instructions to the Registrar referred to in Article 15(5).
5. A notice shall be published in the EEA Section of and the EEA Supplement to the *Official Journal of the European Union* indicating the date of registration of an application initiating proceedings, the names of the parties, the form of order sought by the applicant and a summary of the pleas in law and of the main supporting arguments or, as the case may be, the date of lodging of a request for an advisory opinion, the identity of the referring court or tribunal, the parties to the main proceedings and the questions referred to the Court.

Article 17
Consultation of the register and of judgments and orders
(old RoP Article 14(5); ECJ RoP Article 22; GC RoP Articles 37 and 38)

1. Anyone may consult the register at the Registry and obtain copies or extracts, including certified copies of judgments and orders, on payment of a charge on a scale fixed by the Court on a proposal from the Registrar.
2. The parties to a case may, subject to Articles 61 and 62, on payment of the appropriate charge, as fixed according to the preceding paragraph, obtain certified copies of procedural documents and authenticated copies of orders and judgments.
3. No third party, private or public, may have access to the file in a case without the express authorisation of the President, once the parties have been heard. Such authorisation may be granted, in whole or in part, only upon written request accompanied by a detailed explanation of the third party's legitimate interest in having access to the file.
4. Rules concerning access to the Court's historical archives shall be laid down by the Court.

Article 18
Authorisation to provide registry functions
(new; ECJ RoP n/a; GC RoP n/a)

The Court may authorise the Registry to provide registry functions to judicial bodies of an international nature.

Chapter 4
OFFICIALS AND OTHER SERVANTS

Article 19
Appointment
(old RoP Article 18; ECJ RoP n/a; GC RoP Article 39(3))

1. The officials and other servants of the Court shall be appointed in accordance with the provisions of the Staff Regulations for the EFTA Court.
2. Before taking up his duties, an official or other servant shall take the following oath or, in the alternative, make the following solemn declaration, before the President, in the presence of the Registrar:

“I [swear/solemnly promise] that I will perform loyally, discreetly and conscientiously the duties assigned to me by the EFTA Court.”

Article 20
Organisation
(old RoP Article 19; ECJ RoP n/a; GC RoP n/a)

The organisation of the Court shall be laid down, and may be modified, by the Court.

Chapter 5
THE WORKING OF THE COURT

Article 21

Hearings

(old RoP Article 21; ECJ RoP Article 23; GC RoP Article 40)

1. The dates and times of the hearings of the Court shall be fixed by the President.
2. The Court may choose to hold sittings in a place other than that in which the Court has its seat.

Article 22

Calendar of judicial business

(old RoP Article 24; ECJ RoP Article 24; GC RoP Article 41)

1. Subject to any special decision of the Court, its judicial vacations shall be as follows:
 - from 18 December to 10 January,
 - from the Sunday before Easter to the second Sunday after Easter,
 - from 15 July to 15 September.
2. The dates of the judicial vacations and the list of official holidays shall be published annually in the EEA Section of and the EEA Supplement to the *Official Journal of the European Union*.
3. In a case of urgency, the President may convene the Judges during the judicial vacations.
4. The Court shall observe the official holidays of the place in which it has its seat.
5. The Court may, in proper circumstances, grant leave of absence to any Judge.

Article 23

Withdrawal and excusing of a Judge

(new; ECJ RoP n/a; GC RoP Article 16)

1. Where a Judge considers, in accordance with the first and second paragraphs of Article 15 of the Statute, that he should not take part in the disposal of a case, he shall so inform the President, who shall exempt him from sitting.
2. Where the President considers that a Judge should not, in accordance with the first and second paragraphs of Article 15 of the Statute, take part in the disposal of a case, he shall notify the Judge concerned and shall hear that Judge before giving his decision.
3. In accordance with the third paragraph of Article 15 of the Statute, any difficulty arising as to the application of this Article shall be settled according to the fourth paragraph of Article 30 SCA.
4. Where pursuant to this Article a Judge is withdrawn or excused from sitting, an ad hoc Judge shall be chosen to replace him, in accordance with the fourth paragraph of Article 30 SCA.

Article 24
Where a Judge is prevented from acting
(new; ECJ RoP n/a; GC RoP Article 17)

If the Court is not complete as a result of a Judge's being prevented from acting, an ad hoc Judge shall be chosen to replace him, in accordance with the fourth paragraph of Article 30 SCA.

Article 25
Decisions of the Court - quorum
(old RoP Article 22; ECJ RoP n/a; GC RoP Articles 22 to 24)

1. Decisions of the Court shall be valid only when all the Judges have participated in the deliberations.
2. If, as a result of a Judge's being prevented from acting, exempted from acting, or withdrawn so that the Court is incomplete, an ad hoc Judge shall be chosen to replace that Judge, in accordance with the fourth paragraph of Article 30 SCA.
3. Decisions of the Court on administrative matters may be adopted with two Judges present. In such cases, the President shall have a casting vote.

Article 26
Drawing-up of minutes
(old RoP Article 23(7); ECJ RoP Article 26; GC RoP Article 43)

1. Where the Court sits in the presence of the Registrar, the Registrar shall, if necessary, draw up minutes, which shall be signed by the President and by the Registrar.
2. Where the Court sits without the Registrar being present, the President shall, if necessary, instruct the most junior Judge, according to the order of seniority laid down in Article 7 of these Rules, to draw up minutes, which shall be signed by that Judge and by the President.

Article 27
Deliberations
(old RoP Article 23; ECJ RoP Article 32; GC RoP Article 21)

1. When a hearing has taken place, only those Judges who participated in that hearing shall take part in the deliberations.
2. Every Judge taking part in the deliberations shall state his opinion and the reasons for it.
3. The conclusions reached by the majority of the Judges after final discussion shall determine the decision of the Court.
4. The deliberations of the Court shall be and shall remain secret.
5. If the deliberations of the Court concern questions of its own administration, the Registrar shall be present, unless the Court decides to the contrary.

Chapter 6
LANGUAGES

Article 28

Language of the Court

(old RoP Article 25; ECJ RoP Article 38; GC RoP Article 46)

1. The language of the Court shall be English. This shall apply to the whole procedure including deliberations, decisions, and minutes of the Court.
2. English shall be used in the written and the oral part of the procedure, unless otherwise provided in these Rules.
3. Without prejudice to Article 29, all supporting documents submitted to the Court shall be in English or be accompanied by a translation into English, unless the Court decides otherwise.
4. In the case of lengthy documents, translations may be confined to extracts. However, the Court may, of its own motion or at the request of a party, at any time call for a complete or fuller translation.
5. The Court may, at the request of a party or intervener other than an interested party, allow this party or intervener to address and be addressed by the Court in an official language of an EFTA State or of the European Union in the oral part of the procedure. The Court shall arrange for interpretation to and from English. Such a request shall be submitted at least six weeks in advance of the oral part of the procedure.

Article 29

Advisory opinion procedure

(old RoP Article 27; ECJ RoP Article 37(3); GC RoP n/a)

1. Where a request for an advisory opinion is referred to the Court in accordance with Article 34 SCA, the requesting court or tribunal is entitled to make its request in the language in which the case is dealt with before that court or tribunal. The Court shall arrange for translation into English.
2. The requesting court or tribunal and the parties to the dispute before it may submit documents to the Court in the language in which the case is dealt with before that court or tribunal. Such documents shall be translated into English to the extent that it is found necessary by the Court. The Court shall arrange for the translation.
3. The Court shall arrange for translation of the report for the hearing in order to also make it available in the language in which the case is dealt with before the requesting court or tribunal.
4. Parties to the dispute before the requesting court or tribunal are entitled orally to address and be addressed by the Court in the language in which the case is dealt with before that court or tribunal. The Court shall arrange for interpretation to and from English. A party wishing to use such a language shall inform the Registrar at least six weeks in advance of the oral part of the procedure.
5. The judgment of the Court shall be given in English and in the language in which the request was made. The judgment shall be authentic in these languages.

Article 30

Witnesses

(old RoP Article 26; ECJ RoP 38(7); GC RoP Article 46(6))

Where a witness or expert states that he is unable to express himself adequately in English, the Court may authorise him to give his evidence in another language. The Court shall arrange for interpretation. Such a request shall normally be submitted at least six weeks in advance of the oral part of the procedure.

Article 31
Publications of the Court
(new; ECJ RoP Article 40; GC RoP Article 48)

1. Publications of the Court shall be issued in English, German, Icelandic, or Norwegian.
2. The Court's Annual Report shall contain the authentic language versions of its reports, orders, judgments, and other judicial decisions.

TITLE II
COMMON PROCEDURAL PROVISIONS

Chapter 1
RIGHTS AND OBLIGATIONS OF AGENTS, ADVISERS AND LAWYERS

Article 32
Privileges, immunities and facilities
(old RoP Article 28; ECJ RoP Article 43; GC RoP Article 52)

1. Agents, advisers and lawyers who appear before the Court or before any judicial authority to which the Court has addressed letters rogatory, shall enjoy immunity in respect of words spoken or written by them concerning the case or the parties.
2. Agents, advisers and lawyers shall also enjoy the following privileges and facilities:
 - (a) any papers and documents relating to the proceedings shall be exempt from both search and seizure. In the event of a dispute, the customs officials or police may seal those papers and documents; they shall then be immediately forwarded to the Court for inspection in the presence of the Registrar and of the person concerned;
 - (b) agents, advisers and lawyers shall be entitled to such allocation of foreign currency as may be necessary for the performance of their duties;
 - (c) agents, advisers and lawyers shall be entitled to travel in the course of duty without hindrance.

Article 33
Status of the parties' representatives
(old RoP Article 29; ECJ RoP Article 44; GC RoP Article 53)

1. In order to qualify for the privileges, immunities and facilities specified in Article 32, persons entitled to them shall furnish proof of their status as follows:
 - (a) agents shall produce an official document issued by the party for whom they act, who shall immediately serve a copy thereof on the Registrar;
 - (b) lawyers shall produce a certificate that they are authorised to practice before a court of a State that is a party to the EEA Agreement, and, where the party whom they represent is a legal person governed by private law, an authority to act issued by that person;
 - (c) advisers shall produce an authority to act issued by the party whom they are assisting.
2. The Registrar shall provide them with a certificate, if required. The validity of this certificate shall be limited to a specified period, which may be extended or curtailed according to the duration of the

proceedings.

Article 34

Waiver of immunity

(old RoP Article 30; ECJ RoP Article 45; GC RoP Article 54)

1. The privileges, immunities and facilities specified in Article 32 are granted exclusively in the interests of the proper conduct of proceedings.
2. The Court may waive immunity where it considers that the proper conduct of proceedings will not be hindered thereby.

Article 35

Exclusion from the proceedings

(old RoP Article 31; ECJ RoP Article 46; GC RoP Article 55)

1. If the Court or the President considers that the conduct of an agent, adviser or lawyer before the Court, the President, a Judge or the Registrar is incompatible with the dignity of the Court or with the requirements of the proper administration of justice, or that such agent, adviser or lawyer is using his rights for purposes other than those for which they were granted, it shall inform the person concerned. If the Court informs the competent authorities to whom the person concerned is answerable, a copy of the letter sent to those authorities shall be forwarded to the person concerned.
2. On the same grounds, the Court may at any time, having heard the person concerned, decide to exclude an agent, adviser or lawyer from the proceedings by reasoned order. That order shall have immediate effect.
3. Where an agent, adviser or lawyer is excluded from the proceedings, the proceedings shall be suspended for a period fixed by the President in order to allow the party concerned to appoint another agent, adviser or lawyer.
4. Decisions taken under this Article may be rescinded.

Article 36

University teachers and parties to the main proceedings

(new; ECJ RoP Article 47; GC RoP Article 56)

1. The rules in this Chapter shall apply to university teachers who have a right of audience before the Court in accordance with Article 17 of the Statute.¹
2. They shall also apply, in the context of references for an advisory opinion, 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, and to persons authorised under those rules to represent them.

¹ This provision is subject to the approval of an amendment to the Statute.

Chapter 2
NOTIFICATION AND SERVICE

Article 37
Notification of requests for advisory opinions
(old RoP Article 97; ECJ RoP n/a; GC RoP n/a)

In cases governed by Article 34 SCA, the court or tribunal of an EFTA State that suspends its proceedings and refers a case to the Court shall notify the Court of its decision. The decision shall then be notified by the Registrar to the parties and interested persons, accompanied by a translation into English of the request.

Article 38
Methods of service
(old RoP Article 75; ECJ RoP Article 48; GC RoP Article 57)

1. Documents may be served on a person by post, in accordance with paragraph 2, or by telefax or any other technical means of communication, in accordance with paragraphs 3 to 5. Where a document is to be served on an interested person, service is effected on the day on which the interested person concerned has been notified by post or by telefax or by any other technical means of communication that the document is available at the Court.

2. Where these Rules require that a document be served on a person, the Registrar shall ensure that service is effected at that person'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 a receipt. The Registrar shall prepare and certify the copies of documents to be served, save where the parties themselves supply the copies in accordance with Article 54(3).

3. Where the addressee has agreed that service is to be effected on him by telefax or any other technical means of communication, any procedural document, including a judgment or order of the Court, may be served by the transmission of a copy of the document by such means.

4. Where, for technical reasons or on account of the nature or length of the document, such transmission is impossible or impracticable, the document shall be served, if the addressee has not specified an address for service, at his address in accordance with the procedures laid down in paragraph 2 of this Article. The addressee shall be so informed by telefax or any other technical means of communication. 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 by telefax or any other technical means of communication, that the document to be served has not reached him.

5. The Court may, by decision, determine the criteria for a pleading to be served by electronic or other technical means. That decision shall be published in the EEA Section of and the EEA Supplement to *the Official Journal of the European Union*, and shall be included in Annex I to these Rules.

Chapter 3
TIME-LIMITS

Article 39
Calculation of time-limits
(old RoP Article 76; ECJ RoP Article 49; GC RoP Article 58)

1. Any procedural time-limit prescribed by the EEA Agreement, the SCA, the Statute, or these Rules shall be calculated as follows:

- (a) where a time-limit expressed in days, weeks, months or years is to be calculated from the

moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be counted as falling within the time-limit in question;

- (b) a time-limit expressed in weeks shall end with the expiry of whichever day in the last week is the same day of the week as the day during which the event or action from which the time-limit is to be calculated occurred or took place.
- (c) a time-limit expressed in months or in years shall end with the expiry of whichever day in the last month or year falls on the same date as the day during which the event or action from which the time-limit is to be calculated occurred or took place. If, in a time-limit expressed in months or in years, the day on which it should expire does not occur in the last month, the time-limit shall end with the expiry of the last day of that month;
- (d) where a time-limit is expressed in months and days, it shall first be calculated in whole months, then in days;
- (e) time-limits shall include the official holidays referred to in Article 22, Saturdays, and Sundays;
- (f) time-limits shall not be suspended during the judicial vacations referred to in Article 22.

2. If the time-limit would otherwise end on a Saturday, Sunday, or an official holiday, it shall be extended until the end of the first following working day.

Article 40

Proceedings against a measure adopted by the EFTA Surveillance Authority

(old RoP Article 77; ECJ RoP Article 50; GC RoP Article 59)

The time-limit allowed for initiating proceedings against a measure adopted by the EFTA Surveillance Authority shall run from the day following the receipt by the person concerned of notification of the measure or, where the measure is published, from the end of the fourteenth day after publication thereof in the EEA Section of and the EEA Supplement to the *Official Journal of the European Union*.

Article 41

Distance

(old RoP second paragraph of Article 78; ECJ RoP Article 51; GC RoP Article 60)

Any time-limit prescribed by the EEA Agreement, the SCA, the Statute, or these Rules may not be extended on considerations of distance alone.

Article 42

Setting and extension of time-limits

(old Article 78; ECJ RoP Article 52; GC RoP Article 61 and 62)

1. Any time-limit prescribed pursuant to these Rules may be extended by whoever prescribed it.
2. The President may delegate to the Registrar power of signature for the purposes of fixing certain time-limits which, pursuant to these Rules, it falls to him to prescribe, or of extending such time-limits.
3. A procedural document lodged at the Registry after expiry of the time-limit set by the President or by the Registrar pursuant to these Rules may be accepted only pursuant to a decision of the President to that effect.

Chapter 4
DIFFERENT PROCEDURES FOR DEALING WITH CASES

Article 43
Procedures for dealing with cases
(old RoP Article 42; ECJ RoP Article 53; GC RoP Articles 63 and 67)

1. Without prejudice to the special provisions laid down in the Statute or in these Rules, the procedure before the Court shall consist of a written part and an oral part.
2. Without prejudice to the provisions contained in paragraphs 3 to 5, the Court shall deal with the cases before it in the order in which they become ready for examination. Where the preparatory inquiries in several cases are completed simultaneously, the order in which they are to be dealt with shall be determined by the dates of entry in the register of the applications initiating them respectively.
3. The President may in special circumstances decide that a case be given priority over others.
4. A request for an advisory opinion may be dealt with under an expedited procedure in accordance with the conditions provided for in Chapter 2 of Title III.
5. A direct action may be dealt with under an expedited procedure in accordance with the conditions provided for in Chapter 5 of Title IV.

Article 44
Anonymity and omission of certain information vis-à-vis the public
(new; ECJ RoP n/a; GC RoP Article 66)

On a reasoned application by a party, made by a separate document, or of its own motion, the Court may omit the name of a party to the dispute or of other persons mentioned in connection with the proceedings, or certain information, from those documents relating to a case to which the public has access, if there are legitimate reasons for keeping the identity of a person or the information confidential.

Article 45
Joinder
(old RoP Article 39; ECJ RoP Article 54; GC RoP Article 68)

1. The Court may, at any time, after giving the parties an opportunity to express their views, order that two or more cases of the same type concerning the same subject-matter shall, on account of the connection between them, be joined for the purposes of the written or the oral part of the procedure or of the decision which closes the proceedings. The cases may subsequently be disjoined.
2. All the parties to the joined cases may examine the files in the cases concerned at the Registry. The President may, however, on application by a party, order that certain confidential information from the case-file be excluded from that consultation.
3. Without prejudice to paragraph 2, procedural documents included in the files of the cases concerned by the joinder shall be served on the parties to the joined cases, provided that the representatives of those parties request it and have agreed to the method of service referred to in Article 38(5).

Article 46
Splitting of proceedings
(new; ECJ RoP n/a; GC RoP n/a)

The Court may, at any time, after giving the parties an opportunity to express their views, order that a case shall be split for the purposes of the written or the oral part of the procedure or of the decision which closes the proceedings, where it would be more expeditious for the subject-matter to be addressed by way of separate proceedings. The separate proceedings may subsequently be joined.

Article 47
Stay of proceedings
(old RoP Article 79; ECJ RoP Article 55; GC RoP Articles 69 to 71)

1. Proceedings may be stayed:
 - (a) at the request of a main party with the agreement of the other main party; or
 - (b) where the proper administration of justice so requires.
2. The decision to stay proceedings shall be taken by the President after hearing the Judge-Rapporteur and, save in the case of advisory opinions, the parties.
3. The proceedings may be resumed by decision of the President adopted following the same procedure laid down in paragraph 2, unless the decision to stay fixes the length of the stay.
4. The decisions referred to in paragraphs 1 and 2 shall be served on the parties and interested persons.
5. The stay of proceedings shall take effect on the date indicated in the decision to stay or, in the absence of such indication, on the date of that decision.
6. During the period in which proceedings are stayed, all procedural time-limits shall be suspended, except for the time-limit prescribed in Article 112 for an application to intervene.
7. A decision ordering that the proceedings be resumed before the end of the stay, or as referred to in paragraph 8, shall be taken in accordance with the procedure laid down in paragraph 2.
8. Where the decision to stay does not fix the length of stay, it shall end on the date indicated in the decision to resume the proceedings or, in the absence of such indication, on the date of the latter decision.
9. From the date of resumption of proceedings following a stay, any suspended procedural time-limits shall be replaced by new time-limits set by the President and time shall begin to run from the date of that resumption.

Article 48
Deferment of the determination of a case
(old RoP Article 42(2); ECJ RoP Article 56; GC RoP n/a)

The President may in special circumstances, after hearing the parties, either on his own initiative or at the request of one of the parties, defer a case to be dealt with at a later date. On a joint application by the parties, the President may order that a case be deferred.

Chapter 5
LEGAL AID

Article 49
Legal aid

(old RoP Article 72(1); ECJ RoP Article 115(1); GC RoP Article 146(1))

1. Any party who, because of his economic situation, is wholly or in part unable to meet the costs of the proceedings before the Court may at any time apply for legal aid. The economic situation shall be assessed, taking into account objective factors such as income, capital, and family circumstances.
2. Legal aid shall cover, in whole or in part, the costs involved in legal assistance and representation by a lawyer in proceedings before the Court. The cashier of the Court shall be responsible for these costs.

Article 50
Application for legal aid

(old RoP Article 72(1), (2) and (3); ECJ RoP Article 115(2) and (3); GC RoP Articles 146(2) and 147)

1. The application shall be accompanied by all information and supporting documents making it possible to assess the applicant's financial situation, such as a certificate issued by a competent national authority attesting to his financial situation.
2. The application for legal aid need not be made through a lawyer.
3. In advisory opinion proceedings, if the applicant has already obtained legal aid before the referring court or tribunal, he shall produce the decision of that court or tribunal and specify what is covered by the sums already granted.
4. In direct actions, an application for legal aid may be made before the action has been brought or while it is pending. If the application is made before the action has been brought, the applicant must briefly state the subject-matter of the proposed action, the facts of the case, and the arguments in support of the action. The application must be accompanied by supporting documents in that regard.

The introduction of an application for legal aid shall, for the person who made it, suspend the time-limit prescribed for the bringing of an action until the date of service of the order making a decision on that application or, in the cases referred to in Article 51(4), of the order designating the lawyer instructed to represent the applicant.

Legal aid shall be refused if the action in respect of which the application is made appears to be manifestly inadmissible or manifestly unfounded.

The Court shall invite the other party to submit its written observations unless it is already apparent from the information produced that the conditions laid down in Article 49(1) have not been satisfied or that the preceding subparagraph shall apply.

Article 51
Decision on the application for legal aid
(old RoP Article 72(3) to (6); ECJ RoP Article 116; GC RoP Article 148)

1. The President shall assign the application for legal aid, as soon as it is lodged, to a Judge-Rapporteur, who shall put forward, promptly, a proposal regarding the action to be taken.
2. The decision to grant legal aid, in full or in part, or to refuse it shall be taken by the Court on a proposal from the Judge-Rapporteur.

3. The Court shall give its decision by way of order. Where the application for legal aid is refused in whole or in part, the order shall state the reasons for that refusal.

4. Any order granting legal aid may designate a lawyer to represent the person concerned if that lawyer has been proposed by the applicant in the application for legal aid and has agreed to represent the applicant before the Court.

5. If the applicant has not indicated his choice of lawyer, or if the Court considers that his choice is unacceptable, the Registrar shall send a copy of the order and of the application for legal aid to the authority named in Annex II being the competent authority of the EFTA State concerned.

6. The lawyer instructed to represent the applicant shall be designated by way of order, having regard to the suggestions made by the applicant or to the suggestions made by the authority referred to in paragraph 5, as the case may be.

4. An order granting legal aid may specify an amount to be paid to the lawyer instructed to represent the person concerned or fix a limit which the lawyer's disbursements and fees may not, in principle, exceed. It may provide for a contribution to be made by the person concerned to the costs referred to in Article 52(1), having regard to his economic situation.

Article 52

Advances and responsibility for costs

(old RoP Article 72(8); ECJ RoP Article 117; GC RoP Article 149)

1. Where legal aid is granted, the cashier of the Court shall be responsible, where applicable within the limits set by the Court, for costs involved in the assistance and representation of the applicant before the Court. At the request of the applicant or his representative, an advance on those costs may be paid.

2. In direct actions, where, by virtue of the decision closing the proceedings, the recipient of legal aid has to bear his own costs, the President shall by way of reasoned order fix the lawyer's disbursements and fees which are to be paid by the cashier of the Court. He may refer the matter to the Court.

Where, in the decision closing the proceedings, the Court has ordered another party to pay the costs of the recipient of legal aid, that other party shall be required to refund to the cashier of the Court any sums advanced by way of legal aid.

The Registrar shall take steps to obtain the recovery of the sums referred to in the preceding subparagraph from the party ordered to pay them.

Where the recipient of the aid is unsuccessful, the Court may, in ruling as to costs in the decision closing the proceedings, if equity so requires, order that one or more parties should bear their own costs or that those costs should be borne, in whole or in part, by the cashier of the Court by way of legal aid.

Article 53

Withdrawal of legal aid

(old RoP Article 72(7); ECJ RoP Article 118; GC RoP Article 150)

If the circumstances which led to the grant of legal aid alter during the proceedings, the Court may, of its own motion or on request, withdraw that legal aid, having heard the person concerned. An order withdrawing legal aid shall contain a statement of reasons.

Chapter 6
WRITTEN PROCEDURE

Article 54

Lodging of pleadings

(old RoP Article 32; ECJ RoP Article 57; GC RoP Article 73)

1. Pleadings may be lodged physically, in accordance with paragraphs 2 to 7, or by electronic or other technical means, in accordance with paragraph 8.
2. The original of every pleading must bear the handwritten signature of the party's agent or lawyer, or, in the case of observations submitted in the context of advisory opinion proceedings, that of the party to the main proceedings or his representative, if the national rules of procedure applicable to those main proceedings so permit.
3. The original, accompanied by all annexes referred to therein, shall be lodged together with five copies for the Court and, in the case of proceedings other than advisory opinion proceedings, a copy for every other party to the proceedings. Copies shall be certified by the party lodging them.
4. All pleadings shall bear a date. In the calculation of procedural time-limits, only the date of lodging the original pleadings at the Registry shall be taken into account.
5. To every pleading there shall be annexed a file containing the items and documents relied on in support of it, together with a schedule listing them.
6. Where in view of the length of an item or document only extracts from it are annexed to the pleadings, the whole item or document or a full copy of it shall be lodged at the Registry.
7. Without prejudice to the provisions in the preceding paragraphs of this Article, the date on which a copy of the signed original of a pleading, including the schedule of items and documents referred to in paragraph 5, is received at the Registry by telefax, electronic or other technical means of communication available to the Court shall be deemed to be the date of lodging for the purposes of compliance with procedural time-limits, provided that the signed original of the pleading, accompanied by the annexes and copies referred to in paragraph 3, is lodged at the Registry no later than 10 days thereafter.
8. Without prejudice to paragraphs 4 to 6, the Court may by decision determine the criteria for a pleading sent to the Registry by electronic or other technical means to be deemed to be the original of that document. That decision shall be published in the EEA Section of and the EEA Supplement to the *Official Journal of the European Union*, and shall be included in Annex I to these Rules.

Article 55

Page limitation

(new; ECJ RoP n/a; GC RoP n/a)

1. Depending on the subject matter and the circumstances of the case, the maximum number of pages shall be as follows:
 - 50 pages for the application and defence;
 - 25 pages for the reply and the rejoinder;
 - 20 pages for an objection to admissibility and observations thereon;
 - 20 pages for a statement in intervention and 15 pages for observations thereon;
 - 50 pages for written observations submitted under Article 20 of the Statute and Article 91(1) of these Rules.
2. Authorisation to exceed those maximum lengths shall be given by the President only in cases involving particularly complex legal or factual issues.

Article 56
Adversarial procedure
(new; ECJ RoP n/a; GC RoP Article 64)

1. The Court shall take into consideration only those documents which have been made available to the lawyers and agents of the parties and on which they have been given an opportunity of expressing their views, subject to the provisions of Articles 45(2), 61, 62 and 114.
2. Without prejudice to Article 110, the Court may reject documents submitted after the written part of the procedure has been closed.

Chapter 7
PRELIMINARY REPORT

Article 57
Preliminary report
(old RoP Article 40; ECJ RoP Article 59; GC RoP Article 87)

1. When the written part of the procedure is closed, the President shall fix a date on which the Judge-Rapporteur is to present his preliminary report to the Court.
2. The preliminary report shall contain proposals as to whether particular measures of organisation of procedure, measures of inquiry or, where appropriate, requests to the referring court or tribunal for clarification should be undertaken. It shall also contain the Judge-Rapporteur's proposals, if any, as to whether to dispense with a hearing.
3. The Court shall decide what action to take on the proposals of the Judge-Rapporteur.

Chapter 8
MEASURES OF ORGANISATION OF PROCEDURE AND
MEASURES OF INQUIRY

Article 58
Measures of organisation of procedure and measures of inquiry
(old RoP Article 38; ECJ RoP n/a; GC RoP Article 88)

1. At any stage of the proceedings, the Court may prescribe any measure of organisation of procedure or any measure of inquiry referred to in the following Articles, or order that a previous inquiry be repeated or expanded.
2. The measures of organisation of procedure or any measure of inquiry, which the Court has ordered, may be conducted by the Court itself, or be assigned to the Judge-Rapporteur.

Article 59
Measures of organisation of procedure
(old RoP Article 49; ECJ RoP Article 61; GC RoP Article 89)

1. The purpose of measures of organisation of procedure shall be to ensure that cases are prepared for hearing, procedures carried out, and disputes resolved under the best possible conditions.
2. Measures of organisation of procedure shall, in particular, have as their purpose:

- (a) to ensure the efficient conduct of the written and the oral part of the procedure and facilitate the taking of evidence;
 - (b) to determine the points on which the parties must present further argument or which call for measures of inquiry;
 - (c) to clarify the forms of order sought by the parties, their pleas in law and arguments and the points at issue between them;
 - (d) to facilitate the amicable settlement of disputes.
3. Measures of organisation of procedure may, in particular, consist of:
- (a) putting questions to the parties;
 - (b) inviting the parties to make written or oral submissions on certain aspects of the proceedings;
 - (c) asking the parties or third parties for information or particulars;
 - (d) asking the parties to produce documents or any papers relating to the case;
 - (e) summoning the parties' agents, advisers, lawyers or the parties in person to meetings.
4. Each party may, at any stage of the procedure, propose the adoption or modification of measures of organisation of procedure. Such proposal shall be made by way of a separate document or be made in a separate section of the pleading in question. In such cases, the other parties shall be heard before the measures concerned are prescribed.
5. Where the procedural circumstances so require, the Registrar shall inform the parties of the measures envisaged by the Court and shall give them an opportunity to submit comments orally or in writing.

Article 60
Measures of inquiry
(old RoP Article 50; ECJ RoP Articles 64 and 65; GC RoP Articles 91 and 92)

1. The Court shall prescribe the measures of inquiry that it considers appropriate by means of an order setting out the facts to be proved. The order shall be served on the parties.
2. Before the Court decides on the measures of inquiry referred to in paragraph 3(c) to (e), the Registrar shall inform the parties of the measures envisaged by the Court and shall give them an opportunity to make comments orally or in writing.
3. Without prejudice to Articles 21 and 22 of the Statute, the following measures of inquiry may be adopted:
- (a) the personal appearance of the parties;
 - (b) a request for information and production of documents;
 - (c) oral testimony;
 - (d) the commissioning of an expert's report;
 - (e) an inspection of the place or thing in question.
4. Evidence may be submitted in rebuttal and previous evidence may be amplified.

5. The parties shall be entitled to attend the measures of inquiry.

Article 61
Treatment of confidential information and material
(new; ECJ RoP n/a; GC RoP Article 103)

1. Where it is necessary for the Court to examine, on the basis of the matters of law and of fact relied on by a main party, the confidentiality, vis-à-vis the other main party, of certain information or material produced before the Court following a measure of inquiry referred to in Article 60 that may be relevant in order for the Court to rule in a case, that information or material shall not be communicated to that other party at the stage of such examination.
2. Where the Court concludes in the examination provided for in paragraph 1 that certain information or material produced before it is relevant in order for it to rule in the case and is confidential vis-à-vis the other main party, it shall weigh that confidentiality against the requirements linked to the right to effective judicial protection, particularly observance of the adversarial principle.
3. After weighing up the matters referred to in paragraph 2, the Court may decide to bring the confidential information or material to the attention of the other main party, making its disclosure subject, if necessary, to the giving of specific undertakings, or it may decide not to communicate such information or material, specifying, by reasoned order, the procedures enabling the other main party, to the greatest extent possible, to make his views known, including ordering the production of a non-confidential version or a non-confidential summary of the information or material, containing the essential content thereof.

Article 62
Documents to which access has been denied by the EFTA Surveillance Authority
(new; ECJ RoP n/a; GC RoP Article 104)

Where a document to which access has been denied by the EFTA Surveillance Authority has been produced before the Court in proceedings relating to the legality of that denial, that document shall not be communicated to the other parties.

Chapter 9
SUMMONING AND EXAMINATION OF WITNESSES AND EXPERTS

Article 63
Oral testimony
(old RoP Article 52(1) and (2); ECJ RoP Article 66, GC RoP Article 93)

1. The Court may, either of its own motion or at the request of a party, order that certain facts be proved by a witness. A request by a party for the examination of a witness shall state precisely about what facts and for what reasons the witness should be examined. The Court shall rule by reasoned order on the request.
2. Witnesses shall be summoned by an order of the Court containing the following information:
 - (a) the name and address of the witness;
 - (b) an indication of the facts about which the witness is to be examined;
 - (c) where appropriate, particulars of the arrangements made by the Court for reimbursement of expenses incurred by the witness, and of the penalties which may be imposed on defaulting witnesses.
3. The order shall be served on the parties and the witnesses.

Article 64
Examination of witnesses
(old RoP Article 52(4) to (6); ECJ RoP Article 67 and 68; GC RoP Article 94)

1. After the identity of the witness has been established, the President shall inform him that he will be required to vouch for the truth of his evidence in the manner laid down in these Rules and that any violation by him of this requirement constitutes an offence under Article 26 of the Statute.

2. The witness shall, before giving his evidence, take the following oath or, in the alternative, make the following solemn declaration:

‘I [swear/solemnly promise] that I will tell the truth, the whole truth and nothing but the truth.’

The Court may, after hearing the parties, exempt a witness from taking the oath or making the solemn declaration.

3. The witness shall give his evidence to the Court, the parties having been given notice to attend. After the witness has given his main evidence, the President, at the request of a party or of his own motion, and the other Judges, may put questions to him. Subject to the control of the President, questions may be put to witnesses by the representatives of the parties.

Article 65
Expert’s report
(old RoP Article 53; ECJ RoP Articles 70 and 71; GC RoP Article 96)

1. The Court may order that an expert’s report be obtained. The order appointing the expert shall define his task and set a time-limit within which he is to submit his report.

2. The expert shall receive a copy of the order, together with all the documents necessary for carrying out his task. He shall be under the supervision of the Judge-Rapporteur, who may be present during his investigation and who shall be kept informed of his progress in carrying out his task.

3. At the request of the expert, the Court may order the examination of witnesses. Their examination shall be carried out in accordance with Article 64.

4. The expert may give his opinion only on points which have been expressly referred to him.

5. After the expert has submitted his report and that report has been served on the parties, the Court may order that the expert be examined, the parties having been given notice to attend. The President, at the request of one of the parties or on his own motion, and the other Judges may put questions to the expert. Subject to the control of the President, questions may be put to the expert by the representatives of the parties.

6. The expert shall, after submitting his report, take the following oath or, in the alternative, make the following solemn declaration, before the Court:

‘I [swear/solemnly promise] that I have conscientiously and impartially carried out my task.’

The Court may, after hearing the parties, exempt the expert from taking the oath or making the solemn declaration.

Article 66
Duties of witnesses and experts
(old RoP Article 55; ECJ RoP Article 69; GC RoP Articles 95 and 98)

1. A witness who has been duly summoned shall obey the summons and attend for examination, unless he proffers a valid excuse to the Court.
2. If without good reason a witness who has been duly summoned fails to appear before the Court, the Court may impose upon him a pecuniary penalty not exceeding EUR 5 000 and may order that a further summons be served on the witness at his own expense.²
3. The same penalty may be imposed upon a witness who, without good reason, refuses to give evidence or to take the oath.
4. If the witness proffers a valid excuse to the Court, the pecuniary penalty imposed on him may be cancelled. The pecuniary penalty imposed may be reduced at the request of the witness where he establishes that it is disproportionate to his income.
5. The Court may, in accordance with Article 26 of the Statute, decide to report to the competent authority of the EFTA State referred to in Annex II any defaulting witness or any case of perjury on the part of a witness or expert. The Registrar shall be responsible for communicating the decision of the Court. The decision shall set out the facts and circumstances on which the report is based.

Article 67

Objection to a witness or expert

(old RoP Article 56; ECJ RoP Article 72; GC RoP Article 99)

1. If one of the parties objects to a witness or to an expert on the ground that he is not a competent or proper person to act as a witness or expert or for any other reason, or if a witness or expert refuses to give evidence, to take the oath or to make a solemn affirmation equivalent thereto, the matter shall be resolved by the Court.
2. An objection to a witness or to an expert shall be raised within two weeks after service of the order summoning the witness or appointing the expert. The statement of objection must set out the grounds of objection and indicate the nature of any evidence offered.

Article 68

Witnesses' and experts' costs

(old RoP Article 57; ECJ RoP Article 73; GC RoP Article 100)

1. Witnesses and experts shall be entitled to reimbursement of their travel and subsistence expenses.
2. Where the Court orders the examination of witnesses or an expert's report, it may request the main parties or one of them to lodge security for the witnesses' costs or the costs of the expert's report.
3. The cashier of the Court shall advance the funds necessary in connection with the examination of any witness or the commissioning of an expert's report which the Court requested of its own motion.
4. Witnesses shall be entitled to compensation for loss of earnings, and experts to fees for their services. The cashier of the Court shall pay witnesses and experts these sums after they have carried out their respective duties or tasks.

Article 69

Minutes of inquiry hearings

(old RoP Article 52(7) and 59; ECJ RoP Article 74; GC RoP Article 102)

1. The Registrar or a Judge designated by the President shall draw up minutes of every inquiry hearing.

² The provisions in paragraphs 2 to 4 are subject to the approval of an amendment to the Statute.

The minutes shall be signed by the President or by the Judge-Rapporteur responsible for conducting the examination of the witness or expert, and by the Registrar or the Judge designated to draw up the minutes. Before the minutes are thus signed, witnesses shall be given an opportunity to check the content of the minutes and to sign them.

2. The minutes shall constitute an official record.

Article 70

Letters rogatory

(old RoP Article 58; ECJ RoP n/a; GC RoP Article 101)

1. The Court may, on application by a party or of its own motion, issue letters rogatory for the examination of witnesses or experts.

2. Letters rogatory shall be issued in the form of an order, which shall contain the surname, forenames, description and address of the witness or expert, set out the facts on which the witness or expert is to be examined, name the parties, their agents, lawyers or advisers, indicate their addresses for service and briefly describe the subject-matter of the proceedings.

Notice of the order shall be served on the parties by the Registrar.

3. The Registrar shall send the order to the competent authority of the EFTA State referred to in Annex II in whose territory the witness or expert is to be examined.

Where necessary, the order shall be accompanied by a translation into the official language or languages of the State to which it is addressed.

The authority named pursuant to the first subparagraph shall pass on the order to the judicial authority which is competent according to its national law.

The competent judicial authority shall give effect to the letters rogatory in accordance with its national law. After implementation, the competent judicial authority shall transmit to the authority named pursuant to the first subparagraph the order embodying the letters rogatory, any documents arising from the implementation, and a detailed statement of costs. These documents shall be sent to the Registrar.

The Registrar shall be responsible for the translation of the documents into English.

4. The Court shall defray the expenses occasioned by the letters rogatory without prejudice to the right to charge them, where appropriate, to the parties.

Chapter 10

ORAL PART OF THE PROCEDURE

Article 71

Opening date

(old RoP Articles 40(2) and 41(1); ECJ RoP Article 75; GC RoP Articles 107)

The President shall fix the opening date of the oral part of the procedure once all measures of organisation of procedure or measures of inquiry instituted during the written procedure, if any, have been completed.

Article 72

Dispensing with the oral part of the procedure and communication of the Report for the Hearing

(old RoP Article 41(2) and 97(4); ECJ RoP Article 76; GC RoP Article 106(3))

1. The Court may, acting on the preliminary report from the Judge-Rapporteur, with the express consent

of the parties, decide to dispense with the oral part of the procedure, if it considers, on reading the written pleadings or observations lodged during the written procedure, that it has sufficient information to give a ruling.

2. The preceding paragraph shall not apply where a request for a hearing, stating reasons, has been submitted by an interested person who did not participate in the written procedure.

3. Before the oral part of the procedure, a report for the hearing from the Judge-Rapporteur shall be communicated to the parties and interested persons.

Article 73

Absence of the parties from the hearing (new; ECJ RoP n/a; GC RoP Article 108)

1. Where a party informs the Court that he will not be present at the hearing or where the Court finds at the hearing that a party who has been duly given notice to attend is absent without excuse, the hearing shall proceed in the absence of the party concerned.

2. Where the main parties indicate to the Court that they will not be present at the hearing, the President shall decide whether the oral part of the procedure may be closed.

Article 74

Joint hearing (new; ECJ RoP Article 77; GC RoP n/a)

If the similarities between two or more cases of the same type so permit, the Court may decide to hold a joint hearing of those cases.

Article 75

Conduct of oral proceedings (old RoP Article 43; ECJ RoP Article 78; GC RoP Article 110)

Oral proceedings shall be directed by the President, who shall be responsible for the proper conduct of the hearing.

Article 76

Cases heard in camera (old RoP Article 43(2); ECJ RoP Article 79; GC RoP Article 109)

1. For serious reasons the Court may decide to hear a case *in camera*, in accordance with Article 27 of the Statute. This may also apply to cases referred for an advisory opinion, upon request of the referring court or tribunal.

2. The request by a party for a case to be heard *in camera* must include reasons and specify whether it concerns all or part of the hearing. Where a party makes such a request, the Court shall decide upon it after hearing the parties.

3. The oral proceedings in cases heard *in camera* shall not be published.

Article 77

Addressing the Court (old RoP Article 45; ECJ RoP n/a; GC RoP Article 110(2))

Unless Article 92(3) applies, a party may address the Court only through his agent, adviser or lawyer.

Article 78

Closing of the oral part of the procedure
(old RoP Article 46; ECJ RoP Article 81; GC RoP Article 111)

After the parties and interested persons have presented oral arguments, the President shall declare the oral part of the procedure closed.

Article 79

Opening or reopening of the oral part of the procedure
(old RoP Article 47; ECJ RoP Article 83; GC RoP Article 113)

The Court may at any time order the opening or reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated between the parties or the interested persons.

Article 80

Minutes of the hearing
(old RoP Article 48; ECJ RoP Article 84; GC RoP Article 114)

1. The Registrar or a Judge designated by the President shall draw up minutes of every hearing in accordance with Article 26.
2. The minutes shall contain the date and place of the hearing, the names of the Judges and the Registrar present, the reference to the case, the names of the parties, the names and descriptions of the parties' agents, advisers and lawyers, an indication of any documents lodged by the parties in the course of the hearing, and the decisions of the Court or the President, given at the hearing.
3. The minutes shall be signed by the President and by the Registrar. They shall constitute an official record.
4. The parties and interested persons may inspect the minutes at the Registry and obtain copies at their own expense.

Chapter 11

JUDGMENTS AND ORDERS

Article 81

Information on the date of delivery of judgments
(new; ECJ RoP Article 86; GC RoP Article 116)

The parties and interested persons shall be informed of the date of delivery of a judgment.

Article 82

Content of a judgment
(old RoP Article 60; ECJ RoP Article 87; GC RoP Article 117)

A judgment shall contain:

- (a) a statement that it is the judgment of the Court;

- (b) the date of delivery;
- (c) the names of the President and of the Judges who took part in the deliberations, with an indication as to the name of the Judge-Rapporteur;
- (d) the name of the Registrar;
- (e) a description of the parties or of the interested persons who participated in the proceedings;
- (f) the names of their representatives;
- (g) in the case of direct actions, a statement of the forms of order sought by the parties;
- (h) where applicable, the date of the hearing;
- (i) a summary of the facts;
- (j) a summary of the pleadings of the parties;
- (k) the grounds for the decision;
- (l) the operative part of the judgment, including, where appropriate, the decision as to costs.

Article 83

Delivery and service of a judgment

(old RoP Article 61; ECJ RoP Article 88; GC RoP Article 118)

1. The judgment shall be delivered in open court; the parties shall be given notice to attend to hear it.
2. The original of the judgment, signed by the President, by the Judges who took part in the deliberations and by the Registrar, shall be sealed and deposited at the Registry; certified copies of the judgment shall be served on the parties and, where applicable, the referring court or tribunal, and the interested persons.
3. The Registrar and the President shall record on the original of the judgment the date on which it was delivered.

Article 84

Content of an order

(new; ECJ RoP Article 89; GC RoP Article 119)

1. An order shall contain:
 - (a) a statement that it is the order of the Court or of the President, as the case may be;
 - (b) the date of its adoption;
 - (c) an indication as to the legal basis of the order;
 - (d) the names of the President and, where applicable, the Judges who took part in the deliberations, with an indication as to the name of the Judge-Rapporteur;
 - (e) the name of the Registrar;
 - (f) a description of the parties or of the parties to the main proceedings;

- (g) the names of their representatives;
 - (h) the operative part of the order, including, where appropriate, the decision as to costs.
2. Where, in accordance with these Rules, an order must be reasoned, it shall in addition contain:
- (a) in the case of direct actions, a statement of the forms of order sought by the parties;
 - (b) a summary of the facts;
 - (c) a summary of the pleadings;
 - (d) the grounds for the decision.

Article 85
Signature and service of an order
(new; ECJ RoP Article 90; GC RoP Article 120)

The original of the order, signed by the President and by the Registrar, shall be sealed and deposited at the Registry; certified copies of the order shall be served on the parties and, where applicable, the referring court or tribunal, and the interested persons.

Article 86
Binding nature of judgments and orders
(old RoP Article 62; ECJ RoP Article 91; GC RoP Article 121)

- 1. A judgment shall be binding from the date of its delivery.
- 2. An order shall be binding from the date of its service.

Article 87
Publication
(new; ECJ RoP Article 92; GC RoP Article 122)

- 1. A notice containing the date and the operative part of the judgment or order of the Court which closes the proceedings shall be published in the EEA Section of and the EEA Supplement to the *Official Journal of the European Union*.
- 2. The Court shall publish its reports, orders, judgments, and other judicial decisions on its website.
- 3. The Court may decide to issue its Annual Report electronically, subject to Article 31(2).

Article 88
Rectification of judgments and orders
(old RoP Article 63; ECJ RoP Articles 103 and 154; GC RoP Article 164)

- 1. Without prejudice to the provisions relating to the interpretation of judgments, the Court may, of its own motion, or at the request of a party or interested person made within two weeks after the delivery of a judgment or service of the order, rectify clerical mistakes, errors in calculation, and obvious inaccuracies affecting judgments and orders.
- 2. The requests and applications for rectification shall be assigned to the Judge-Rapporteur who was responsible for the case to which the request or application relates. The President shall take the necessary steps to designate another Judge to act as Rapporteur if the designated Judge-Rapporteur is prevented from

acting.

3. Where the request for rectification concerns the operative part or one of the grounds constituting the necessary support for the operative part, the parties, whom the Registrar shall duly inform, may submit written observations within a time-limit prescribed by the President.

4. The Court shall take its decision in closed session.

5. The original of the rectification order shall be annexed to the original of the rectified decision. A note of this order shall be made in the margin of the original of the rectified decision.

TITLE III ADVISORY OPINION PROCEDURE

Chapter 1 GENERAL PROVISIONS

Article 89

*Content of the request for an advisory opinion
(old RoP Article 96(3); ECJ RoP Article 94; GC RoP n/a)*

1. The request for an advisory opinion shall be accompanied by a summary of the case before the national court or tribunal, including a description of the facts of the case as well as a presentation of the provisions of national law at issue and, where appropriate, the relevant national case law necessary to enable the Court to assess the question to which a reply is sought.

2. The request shall be accompanied by a statement of the reasons which prompted the referring court or tribunal to seek the advisory opinion.

Article 90

Anonymity

(new; ECJ RoP Article 95; GC RoP n/a)

1. Where anonymity has been granted by the referring court or tribunal, the Court shall respect that anonymity in the proceedings pending before it.

2. At the request of the referring court or tribunal, at the duly reasoned request of a party to the main proceedings or of its own motion, the Court may also, if it considers it necessary, render anonymous one or more persons or entities concerned by the case.

Article 91

*Participation in advisory opinion proceedings
(old RoP Article 97(1); ECJ RoP Article 96; GC RoP n/a)*

1. Within two months of the notification by the Registrar under Article 37, the parties to the main proceedings and interested persons shall be entitled to submit statements of case or written observations to the Court.

2. Non-participation in the written procedure does not preclude participation in the oral part of the procedure.

Article 92

*Parties to the main proceedings
(old RoP Article 97(2); ECJ RoP Article 97; GC RoP n/a)*

1. The parties to the main proceedings are those who are determined as such by the referring court or tribunal in accordance with national rules of procedure.

2. Where the referring court or tribunal informs the Court that a new party has been admitted to the main proceedings, when the proceedings before the Court are already pending, that party must accept the case as he finds it at the time when the Court was so informed. That party shall receive a copy of every pleading already served on the parties to the main proceedings and interested persons.

3. 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 introduced the request. In the event of any doubt as to whether a person may under national law represent a party to the main proceedings, the Court may obtain information from the referring court or tribunal on the rules of procedure applicable.

Article 93

Translation and service of the request for an advisory opinion

(old RoP Article 97(1); ECJ RoP Article 98; GC RoP n/a)

Requests for an advisory opinion shall be served in the original version, accompanied by an English translation, pursuant to Article 38.

Article 94

Reply by reasoned order

(old RoP Article 97(3); ECJ RoP Article 99; GC RoP n/a)

Where a question referred to the Court for an advisory opinion is manifestly identical to a question on which the Court has already ruled or given an opinion, the Court may at any time, on a proposal from the Judge-Rapporteur, after asking for clarification pursuant to Article 95 from the court or tribunal which referred the question to it and hearing any observations submitted by the parties to the main proceedings and interested persons, give its decision by reasoned order in which reference is made to its previous judgment or opinion.

Article 95

Request for clarification

(old RoP Article 96(4); ECJ RoP Article 101; GC RoP n/a)

1. Without prejudice to the measures of organisation of procedure and measures of inquiry provided for in these Rules, the Court may request clarification from the referring court or tribunal within a time-limit prescribed by the Court.

2. The reply of the referring court or tribunal to that request shall be served on the parties to the main proceedings and interested persons.

Article 96

Costs of the advisory opinion proceedings

(old RoP Article 97(5); ECJ RoP Article 102; GC RoP n/a)

It shall be for the referring court or tribunal to decide as to the costs of the advisory opinion proceedings.

Article 97

Interpretation of advisory opinions

(new; ECJ RoP Article 104; GC RoP n/a)

1. Article 138 relating to the interpretation of judgments and orders shall not apply to decisions given in reply to a request for an advisory opinion.

2. It shall be for the national courts or tribunals to assess whether they consider that sufficient guidance is given by an advisory opinion, or whether it appears to them that a further reference to the Court is required.

Chapter 2 EXPEDITED PROCEDURE

Article 98 *Expedited procedure* *(old RoP Article 97a; ECJ RoP Article 105; GC RoP n/a)*

1. At the request of the national court or, exceptionally, of his own motion, the President, after hearing the Judge-Rapporteur, may decide to apply an expedited procedure derogating from the provisions of these Rules to a reference for an advisory opinion, where the circumstances referred to establish that a ruling on the question put to the Court is a matter of urgency.

2. In that event, the President may immediately fix the date for the hearing, which shall be notified to the parties to the main proceedings and interested persons when the decision making the reference is served.

3. The parties to the main proceedings and interested persons may lodge statements of case or written observations within a period prescribed by the President, which shall not be less than 15 days.³ The President may request that they restrict the matters addressed in their statement of case or written observations to the essential points of law raised by the question referred.

4. The statements of case or written observations, if any, shall be notified to the parties to the main proceedings and interested persons prior to the hearing.

Article 99 *Lodging and transmission of pleadings* *(new; ECJ RoP Article 106; GC RoP n/a)*

1. The date on which a copy of the signed original of statements of case or written observations, including schedule of documents referred to in Article 54(5), is received at the Registry by telefax, electronic or other technical means of communication available to the Court shall be deemed to be the date of submission for the purposes of compliance with the time-limits for taking steps in proceedings, provided that the signed original of the statements of case or written observations, accompanied by the annexes and copies referred to in Article 54(3), is lodged at the Registry no later than five days thereafter.

2. Where Article 98 requires that a document be served on or communicated to a person, such service or communication may be effected by transmission of a copy of the document by telefax or any other technical means of communication available to the Court and the addressee.

TITLE IV DIRECT ACTIONS

Chapter 1 REPRESENTATION OF THE PARTIES

Article 100

³ This provision is subject to the approval of an amendment to the Statute.

Obligation to be represented
(old RoP Article 33(3); ECJ RoP Article 119; GC RoP Article 51)

1. A party may be represented only by his agent or lawyer.
2. Agents and lawyers must lodge at the Registry an official document or an authority to act issued by the party whom they represent.
3. The lawyer acting for a party must also lodge at the Registry a certificate that he is authorised to practice before a court of an EFTA State or of an EU Member State.

Chapter 2
WRITTEN PROCEDURE

Article 101
Content of the application
(old RoP Article 33(1) and 33(5); ECJ RoP Article 120; GC RoP Article 76)

1. An application of the kind referred to in Article 19 of the Statute shall state:
 - (a) the name and address of the applicant;
 - (b) the name of the party against whom the application is made;
 - (c) the subject-matter of the proceedings, the pleas in law and arguments relied on and a summary of those pleas in law;
 - (d) the form of order sought by the applicant;
 - (e) where appropriate, any evidence produced or offered in support.
2. An application made by a legal person governed by private law shall be accompanied by:
 - (a) the instrument or instruments constituting or regulating that legal person or a recent extract from the register of companies, firms or associations or any other proof of its existence in law;
 - (b) proof that the authority granted to the applicant's lawyer has been properly conferred on him by someone authorised for that purpose.

Article 102
Information relating to service
(old RoP Article 33(2); ECJ RoP Article 121; GC RoP Article 77)

1. For the purpose of the proceedings, the application shall state an address for service. It shall indicate the name of the person who is authorised and has expressed willingness to accept service.
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 telefax or any other technical means of communication.
3. If the application does not comply with the requirements referred to in paragraphs 1 and 2, all service on the party concerned for the purpose of the proceedings shall be effected, for so long as the defect has not been cured, by registered letter addressed to the agent or lawyer of that party. By way of derogation from Article 38, service shall then be deemed to be duly effected by the lodging of the registered letter at the post office of the place in which the Court has its seat.

Article 103
Annexes to the application
(old RoP Article 33(4) and (6); ECJ RoP Article 122; GC RoP Article 78)

1. The application shall be accompanied, where appropriate, by the documents specified in the second paragraph of Article 19 of the Statute.
2. The application shall, in the circumstances referred to in Article 37 SCA, be accompanied by documentary evidence of the date on which the EFTA Surveillance Authority was, in accordance with that Article, requested to act.

Article 104
Modification of the application
(new; ECJ RoP n/a; GC RoP Article 86)

1. Where a decision of the EFTA Surveillance Authority, the annulment of which is sought, is replaced or amended by another decision of the EFTA Surveillance Authority with the same subject-matter, the applicant may, before the oral part of the procedure is closed, or before the decision of the Court to rule without an oral part of the procedure, modify the application to take account of that new factor.
2. The modification of the application must be made by a separate document within the time-limit laid down in the third paragraph of Article 36 SCA within which the annulment of the decision of the EFTA Surveillance Authority justifying the modification of the application may be sought.
3. The statement of modification shall contain:
 - (a) the modified form of order sought;
 - (b) where appropriate, the modified pleas in law and arguments;
 - (c) where appropriate, the evidence produced and offered in connection with the modification of the form of order sought.
4. The statement of modification must be accompanied by the decision of the EFTA Surveillance Authority justifying the modification of the application. If that decision is not produced, the Registrar shall prescribe a reasonable time-limit within which the applicant shall produce it. If the applicant fails to produce the decision within the time-limit prescribed, the Court shall decide whether the non-compliance with that requirement renders the statement modifying the application inadmissible.
5. Without prejudice to the decision to be taken by the Court on the admissibility of the statement modifying the application, the President shall prescribe a time-limit within which the defendant may respond to the statement of modification.
6. The President shall, where appropriate, prescribe a time-limit within which any interveners may supplement their statements in intervention in the light of the statement modifying the application and the statement in response. Those statements shall be served simultaneously on the interveners for that purpose.

Article 105
Failure to produce the required documents
(old RoP Article 33(6); ECJ RoP Articles 119(4) and 122(3); GC RoP Article 78(6))

If the documents referred to in Articles 100 and 103 are not lodged, the Registrar shall prescribe a reasonable time-limit within which the party concerned is to produce them. If the party concerned fails to produce the required documents within the time-limit prescribed, the Court shall, after hearing the Judge-Rapporteur, decide whether the non-compliance with that procedural requirement renders the application or written pleading formally inadmissible.

Article 106
Service of the application
(old RoP Article 34; ECJ RoP Article 123; GC RoP Article 80)

The application shall be served on the defendant. In cases where Article 105 applies, service shall be effected as soon as the application has been put in order or the Court has declared it admissible notwithstanding the failure to observe the requirements set out in Articles 100 and 103.

Article 107
Defence
(old RoP Article 35; ECJ RoP Article 124; GC RoP Article 81)

1. Within two months after service on him of the application, the defendant shall lodge a defence, stating:
 - (a) the name and address of the defendant;
 - (b) the pleas in law and arguments relied on;
 - (c) the form of order sought by the defendant;
 - (d) where appropriate, any evidence produced or offered.
2. Article 102 shall apply to the defence.
3. The time-limit laid down in paragraph 1 may exceptionally be extended by the President at the duly reasoned request of the defendant.

Article 108
Reply and rejoinder
(old RoP Article 36; ECJ RoP Article 126; GC RoP Article 83)

1. The application initiating proceedings and the defence may be supplemented by a reply from the applicant and, if so, by a rejoinder from the defendant.
2. The President shall prescribe the time-limits within which these pleadings are to be produced. He may specify the matters to which the reply or the rejoinder should relate.

Chapter 3
PLEAS IN LAW AND EVIDENCE

Article 109
New pleas in law
(old RoP Article 37(2); ECJ RoP Article 127; GC RoP Article 84)

1. No new plea in law may be introduced in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the procedure.
2. Without prejudice to the decision to be taken on the admissibility of the plea in law, the President, on a proposal from the Judge-Rapporteur, may prescribe a time-limit within which the other party may respond to that plea.
3. The decision on the admissibility of the plea shall be reserved for the final judgment.

Article 110
Evidence offered or produced
(old RoP Article 37(1); ECJ RoP Article 128; GC RoP Article 85)

1. Evidence produced or offered shall be submitted in the first exchange of pleadings. In the reply or the rejoinder a party may offer or produce further evidence in support of his arguments. The party must give reasons for any delay in submitting such evidence.
2. The parties may, exceptionally, offer or produce further evidence after the close of the written procedure. They must give reasons for any delay in submitting such evidence. The President, on a proposal from the Judge-Rapporteur, may prescribe a time-limit within which the other party may comment on such evidence.

Chapter 4
INTERVENTION

Article 111
Object and effects of the intervention
(old RoP Article 89; ECJ RoP Article 129; GC RoP Article 142)

1. The intervention shall be limited to supporting, in whole or in part, the form of order sought by one of the parties. It shall not give rise to any right to request that a hearing be held.
2. The intervention shall be ancillary to the main proceedings. It shall become devoid of purpose if the case is removed from the register of the Court as a result of a party's discontinuance or withdrawal from the proceedings or of an agreement between the parties, or where the application is declared inadmissible.
3. The intervener must accept the case as he finds it at the time of his intervention.

Article 112
Application to intervene
(old RoP Article 89; ECJ RoP Article 130; GC RoP Article 143)

1. An application to intervene must be submitted within six weeks of the publication of the notice referred to in Article 16(5).
2. Consideration may be given to an application to intervene which is made after the expiry of the time-limit prescribed in paragraph 1 but before the decision to open the oral part of the procedure provided for in Article 71 is rendered. In that event, if the President allows the intervention, the intervener may submit his observations during the hearing, if it takes place.
3. The application to intervene shall contain:
 - (a) a description of the case;
 - (b) a description of the main parties;
 - (c) the name and address of the intervener;
 - (d) the form of order sought, in support of which the intervener is applying for leave to intervene;
 - (e) a statement of the circumstances establishing the right to intervene, where the application is submitted pursuant to the second paragraph of Article 36 of the Statute.

4. The intervener shall be represented in accordance with Article 17 of the Statute.
5. Articles 100, 102, 103 and 105 shall apply.

Article 113

Decision on applications to intervene

(old RoP Article 89(2); ECJ RoP Article 131; GC RoP Article 144)

1. The application to intervene shall be served on the main parties. The President shall give the parties an opportunity to submit observations before deciding on the application. The President shall decide whether these are to be written or oral.
2. The President shall decide on the application by order or shall refer the application to the Court.

Article 114

Submission of statements in intervention

(old RoP Article 89(3), (5) and (6); ECJ RoP Articles 131(2) and 132; GC RoP Articles 144(7) and 145)

1. If an intervention, for which application has been made within the period of six weeks prescribed in Article 112(1), is allowed, the intervener shall receive a copy of every pleading served on the parties, provided that those parties have not, within 10 days after the service referred to in Article 113(1) has been effected, put forward observations on the application to intervene or identified secret or confidential items or documents which, if communicated to the intervener, the parties claim would be prejudicial to them.
2. The intervener may submit a statement in intervention within one month after communication of the pleadings referred to in paragraph 1 of this Article. That time-limit may be extended by the President upon the duly reasoned request of the intervener.
3. The statement in intervention shall contain:
 - (a) the form of order sought by the intervener in support, in whole or in part, of the form of order sought by one of the parties;
 - (b) the pleas in law and arguments relied on by the intervener;
 - (c) where appropriate, any evidence offered or produced.
4. After the statement in intervention has been lodged, the President shall prescribe a time-limit within which the parties may reply to that statement.
5. Where the application to intervene is made after the expiry of the period of six weeks prescribed in Article 112(1), the intervener shall receive a copy of every pleading served on the parties as provided for in paragraph 1 or the Report for the Hearing and shall submit his observations during the oral part of the procedure.

Chapter 5
EXPEDITED PROCEDURE

Article 115

Expedited procedure

(old RoP Article 59a(1); ECJ RoP Article 133; GC RoP Article 151)

1. At the request of either party or on his own motion, the President may, having regard to the particular urgency and the circumstances of the case and after hearing the parties and the Judge-Rapporteur, decide to adjudicate the case pursuant to an expedited procedure.

2. The request for a case to be determined pursuant to an expedited procedure must be made by a separate document lodged at the same time as the application initiating proceedings or the defence, as the case may be. That request may state that certain pleas in law or arguments or certain passages of the application initiating the proceedings or the defence shall only be raised if the case is not decided under an expedited procedure, in particular by enclosing with the request an abbreviated version of the application initiating the proceedings and a list of the annexes which are to be taken into consideration only if the case is decided under an expedited procedure.

Article 116

Written procedure

(old RoP Article 59a(2) and (4); ECJ RoP Article 134; GC RoP Articles 151 and 154)

1. By way of derogation from Article 107(1), where a case is to be decided under an expedited procedure, the period prescribed for the lodging of the defence shall be one month following the service of the decision of the President allowing the expedited procedure.

2. Under the expedited procedure, the application initiating proceedings and the defence may be supplemented by a reply and a rejoinder only if the President considers this to be necessary.

3. Interested persons may lodge statements of case or written observations within a period prescribed by the President, which shall not be less than 15 days. The President may request that such statements of case or written observations be restricted to the essential points of law raised by the main parties.⁴

4. The decision of the President to adjudicate under an expedited procedure may prescribe conditions as to the volume and presentation of the pleadings of the parties, the subsequent conduct of the proceedings, or as to the pleas in law and arguments on which the Court will be called upon to decide.

5. Unless otherwise provided for in the decision of the President allowing the expedited procedure and without prejudice to the provisions in Article 54(2) to (6), the date on which a copy of the signed original of a pleading, including the schedule of items and documents referred to in Article 54(5), is received at the Registry by telefax, electronic or other technical means of communication available to the Court shall be deemed to be the date of lodging for the purposes of compliance with procedural time-limits, provided that the signed original of the pleading, accompanied by the annexes and copies referred to in Article 54(3), is lodged at the Registry no later than five days thereafter.

6. If one of the parties does not comply with any one of the conditions referred to in paragraph 4, the decision to adjudicate under an expedited procedure may be revoked. The proceedings shall then continue in accordance with the ordinary procedure.

⁴ This provision is subject to the approval of an amendment to the Statute.

Article 117
Intervention in the expedited procedure
(old RoP Article 59a(2); ECJ RoP Article 134(2); GC RoP Article 145)

1. Without prejudice to the provisions contained in Chapter 4 of this Title, an application to intervene must be submitted within three weeks of the publication of the notice referred to in Article 16(5) of these Rules. The intervener may submit a statement in intervention within a period prescribed by the President which shall not be less than 15 days.
2. After the statement in intervention has been lodged, the President shall give the parties an opportunity to reply to that statement during the oral hearing.

Article 118
Oral part of the procedure
(old RoP Article 59a(3); ECJ RoP Article 135; GC RoP Article 155)

1. Once the defence has been submitted, the President shall fix a date for the hearing, which shall be communicated forthwith to the parties. The President may postpone the date of the hearing where it is necessary to undertake measures of inquiry or where measures of organisation of procedure so require.
2. Without prejudice to Articles 109 and 110, a party may supplement his arguments and offer or produce further evidence during the oral part of the procedure. The party must, however, give reasons for any delay in submitting such further arguments or evidence.

Chapter 6
COSTS

Article 119
Decision as to costs
(old RoP Article 66(1); ECJ RoP Article 137; GC RoP Article 133)

A decision as to costs shall be given in the judgment or order which closes the proceedings.

Article 120
General rules as to allocation of costs
(old RoP Article 66(2) and (3); ECJ RoP Articles 138 and 139; GC RoP Articles 134 and 135)

1. The unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings.

Where there is more than one unsuccessful party, the Court shall decide how the costs are to be shared.

2. Where each party succeeds on some and fails on other pleas, or where the circumstances are exceptional, the Court may order that the costs shall be shared or that each party shall bear its own costs. However, if it appears justified in the circumstances of the case, the Court may order that one party, in addition to bearing its own costs, pay a proportion of the costs of the other party.
3. If equity so requires, the Court may decide that an unsuccessful party is to pay only a proportion of the costs of the other party in addition to bearing his own, or even that he is not to be ordered to pay any.
4. The Court may order a party, even if successful, to pay some or all of the costs, if this appears justified by the conduct of that party, including before the proceedings were brought, especially if he has made the opposite party incur costs which the Court holds to be unreasonable or vexatious.

Article 121
Costs of interveners
(old RoP Article 66(4); ECJ RoP Article 140; GC RoP Article 138)

1. Interested persons, which intervene or submit observations in the proceedings, shall bear their own costs.
2. The Court may order an intervener other than those mentioned in paragraph 1 to bear his own costs.

Article 122
Costs in the event of discontinuance or withdrawal
(old RoP Article 66(5); ECJ RoP Article 141; GC RoP Article 136)

1. A party who discontinues or withdraws from proceedings shall be ordered to pay the costs if they have been applied for in the other party's observations on the discontinuance. However, upon the request of the party who discontinues or withdraws from proceedings, the costs shall be borne by the other party if this appears justified by the conduct of that party.
2. Where the parties have come to an agreement on costs, the decision as to costs shall be in accordance with that agreement.
3. If costs are not claimed, the parties shall bear their own costs.

Article 123
Costs where a case does not proceed to judgment
(old RoP Article 66(6); ECJ RoP Article 142; GC RoP Article 137)

Where a case does not proceed to judgment, the costs shall be at the discretion of the Court.

Article 124
Costs of proceedings
(old RoP Articles 67 and 68; ECJ RoP Article 143; GC RoP Article 139)

1. Proceedings before the Court shall be free of charge, except that:
 - (a) where a party has caused the Court to incur avoidable costs, the Court may order that party to refund them;
 - (b) where copying or translation work is carried out at the request of a party, the costs shall, in so far as the Registrar considers them excessive, be paid for by that party on the Registry's scale of charges referred to in Article 17(1).
2. Costs necessarily incurred by a party in enforcing a judgment or an order of the Court shall be refunded by the opposite party on the scale in force, or other legal methods in use, in the State where the enforcement takes place.

Article 125
Recoverable costs
(old RoP Article 69; ECJ RoP Article 144; GC RoP Article 140)

Without prejudice to the preceding Article, the following shall be regarded as recoverable costs:

- (a) sums payable to witnesses and experts under Article 68;

- (b) expenses necessarily incurred by the parties for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration of agents, advisers or lawyers.

Article 126

Dispute concerning the costs to be recovered

(old RoP Article 70; ECJ RoP Article 145; GC RoP Article 170)

1. If there is a dispute concerning the costs to be recovered, the Court shall, on application by the party concerned and after hearing the opposite party, make an order.
2. The parties may, for the purposes of enforcement, apply for an authenticated copy of the order.

Article 127

Procedure for payment

(old RoP Article 71; ECJ RoP Article 146; GC RoP Article 141)

1. Sums due from the cashier of the Court shall be paid in the currency of the country where the Court has its seat. The currency of the Grand Duchy of Luxembourg is the euro.
2. Where costs to be recovered have been incurred in a currency other than the euro or where the steps in respect of which payment is due were taken in a country of which the euro is not the currency, or where the costs to be recovered have been incurred in different currencies, the party concerned may elect the currency in which they are to be recovered. In all such cases, conversions of currency shall be made at the European Central Bank's official rates of exchange on the day of payment. In exceptional circumstances, the Court may limit that right of election.

TITLE V

SPECIAL FORMS OF PROCEDURE

Chapter 1

ASSIGNMENT TO THE JUDGE-RAPPORTEUR

Article 128

Assignment to the Judge-Rapporteur

(new; ECJ RoP Article 153; GC RoP Article 27)

1. With the exception of applications referred to in Article 139, the requests and applications referred to in this Title and the request for rectification referred to in Article 88 shall be assigned to the Judge-Rapporteur who was responsible for the case to which the request or application relates.
2. If the Judge-Rapporteur is prevented from acting, the President shall assign the request or application concerned to another Judge.

Chapter 2

**SETTLEMENT, DISCONTINUANCE, CASES THAT DO NOT PROCEED TO JUDGMENT
AND PRELIMINARY ISSUES**

Article 129

Amicable settlement

(old RoP Article 73; ECJ RoP Article 147; GC RoP Article 124)

1. If, before the Court has rendered its decision, the parties reach a settlement of their dispute and inform the Court of the abandonment of their claims, the President shall order the case to be removed from the register and shall give a decision as to costs in accordance with Article 122, having regard to any proposals

made by the parties on the matter.

2. This provision shall not apply to proceedings under Articles 36 and 37 SCA.

Article 130

Discontinuance

(old RoP Article 74; ECJ RoP Article 148; GC RoP Article 125)

If the applicant informs the Court in writing or at the hearing that he wishes to discontinue the proceedings, the President shall order the case to be removed from the register and shall give a decision as to costs in accordance with Article 122.

Article 131

Cases that do not proceed to judgment

(old RoP Article 88; ECJ RoP Articles 149 and 150; GC RoP Articles 126 and 129)

1. Where it is clear that the Court has no jurisdiction to take cognisance of an action or where the action is manifestly inadmissible or manifestly lacking any foundation in law, the Court may, on a proposal from the Judge-Rapporteur, decide to rule by reasoned order without taking further steps in the proceedings.
2. The Court may at any time of its own motion, after hearing the parties, decide to rule by reasoned order on whether there exists any absolute bar to proceeding with a case or declare that the action has become devoid of purpose and that there is no longer any need to adjudicate on it.

Article 132

Actions that are manifestly well founded

(new; ECJ RoP Article 182; GC RoP Article 132)

Where the Court has already ruled on one or more questions of law identical to those raised by the pleas in law of the action and the Court finds that the facts have been established, it may, after the written part of the procedure has been closed, on a proposal from the Judge-Rapporteur and after hearing the parties, decide by reasoned order in which reference is made to the relevant case-law to declare the action manifestly well founded.

Article 133

Preliminary objections and issues

(old RoP Article 87; ECJ RoP Article 151; GC RoP Article 130)

1. A party applying to the Court for a decision on admissibility or other preliminary objection or issue not going to the substance of the case shall submit the application by a separate document.
2. The application must state the pleas of facts and law relied on and the form of order sought by the applicant. Any supporting items and documents must be annexed to it.
3. As soon as the application has been submitted, the President shall prescribe a time-limit within which the opposite party may submit in writing the arguments of fact and law relied on and the form of order which he seeks.
4. Unless the Court decides otherwise, the remainder of the proceedings on the application shall be oral.
5. The Court shall decide on the application as soon as possible or, where special circumstances so justify, reserve its decision until it rules on the substance of the case.

6. If the Court refuses the application or reserves its decision, the President shall prescribe new time-limits for the further steps in the proceedings.

Chapter 3 JUDGMENT BY DEFAULT

Article 134 *Judgment by default* (old RoP Article 90(1) to (3); ECJ RoP Article 152; GC RoP Article 123)

1. If a defendant on whom an application initiating proceedings has been duly served fails to respond to the application in the proper form and within the time-limit prescribed, the applicant may, within a time-limit prescribed by the President, apply to the Court for judgment by default.
2. A defendant in default shall not intervene in the default procedure and, with the exception of the decision which closes the proceedings, no procedural document shall be served on him.
3. The Court shall give judgment in favour of the applicant in the judgment by default, unless it is clear that the Court has no jurisdiction to hear and determine the action or that the action is manifestly inadmissible or manifestly lacking any foundation in law.
4. A judgment by default shall be enforceable. The Court may, however, grant a stay of execution until the Court has given its decision on any application under Article 135 to set aside the judgment, or it may make execution subject to the provision of security of an amount and nature to be fixed in the light of the circumstances. This security shall be released if no such application is made or if the application fails.

Article 135 *Application to set aside a judgment by default* (old RoP Article 90(4) to (6); ECJ RoP Article 156; GC RoP Article 166)

1. Application may be made to set aside a judgment delivered by default.
2. The application to set aside the judgment must be made within one month from the date of service of the judgment and must be submitted in the form prescribed by Articles 101 to 103.
3. After the application has been served, the President shall prescribe a time-limit within which the other party may submit his written observations.
4. The proceedings shall be conducted in accordance with Articles 57 to 87.
5. The Court shall decide by way of a judgment which may not be set aside.
6. The original of this judgment shall be annexed to the original of the judgment by default. A note of the judgment on the application to set aside shall be made in the margin of the original of the judgment by default.

Chapter 4 REQUESTS AND APPLICATIONS RELATING TO JUDGMENTS AND ORDERS

Article 136 *Failure to adjudicate* (old RoP Article 64; ECJ RoP Article 155; GC RoP Article 165)

1. If the Court has failed to adjudicate on a specific head of claim or on costs, any party wishing to rely

on that may, within a month after service of the decision, apply to the Court to supplement its decision.

2. The application shall be served on the opposite party and the President shall prescribe a time-limit within which that party may submit written observations.

3. After these observations have been submitted, the Court shall decide both on the admissibility and on the substance of the application.

Article 137

Third-party proceedings

(old RoP Article 91; ECJ RoP Article 157; GC RoP Article 167)

1. Articles 101 to 103 shall apply to an application initiating third-party proceedings made pursuant to Article 38 of the Statute. In addition, such an application shall:

- (a) specify the judgment or order contested;
- (b) state how the contested decision is prejudicial to the rights of the third party;
- (c) indicate the reasons for which the third party was unable to take part in the original case.

2. The application must be made against all the parties to the original case.

3. The application must be submitted within two months of publication of the decision in the EEA Section of and the EEA Supplement to the *Official Journal of the European Union*.

4. The Court may, on application by the third party, order a stay of execution of the contested decision. The provisions of Chapter 5 of this Title shall apply.

5. The application shall be served on the parties, who may submit written observations within a time-limit prescribed by the President.

6. After giving the parties an opportunity to submit their observations, the Court shall decide on the application.

7. The contested decision shall be varied on the points on which the submissions of the third party are upheld.

8. The original of the judgment in the third-party proceedings shall be annexed to the original of the contested decision. A note of the judgment in the third-party proceedings shall be made in the margin of the original of the contested decision.

Article 138

Interpretation of judgments and orders

(old RoP Article 95; ECJ RoP Article 158; GC RoP Article 168)

1. In accordance with Article 39 of the Statute, if the meaning or scope of a judgment or order is in doubt, the Court shall construe it on application by any party establishing an interest therein, or by the EFTA Surveillance Authority.

2. An application for interpretation must be made within two years after the date of delivery of the judgment or service of the order.

3. An application for interpretation shall be made in accordance with Articles 101 to 103. In addition it shall specify:

- (a) the decision in question;
 - (b) the passages of which interpretation is sought.
4. The application must be made against all the parties to the case in which the decision of which interpretation is sought was given.
5. The Court shall give its decision in the form of a judgment after having given the parties an opportunity to submit their observations.
6. The original of the interpreting judgment shall be annexed to the original of the decision interpreted. A note of the interpreting judgment shall be made in the margin of the original of the decision interpreted.

Article 139

Revision

(old RoP Articles 92 to 94; ECJ RoP Article 159; GC RoP Article 169)

1. In accordance with Article 40 of the Statute, an application for revision of a decision of the Court may be made only on discovery of a fact which is of such a nature as to be a decisive factor and which, when the judgment was delivered or the order served, was unknown to the Court and to the party claiming the revision.
2. Without prejudice to the time-limit of 10 years prescribed in the third paragraph of Article 40 of the Statute, an application for revision shall be made within three months of the date on which the facts on which the application is founded came to the applicant's knowledge.
3. Articles 101 to 103 shall apply to an application for revision. In addition, such an application shall:
- (a) specify the judgment or order contested;
 - (b) indicate the points on which the decision is contested;
 - (c) set out the facts on which the application is founded;
 - (d) indicate the nature of the evidence to show that there are facts justifying revision, and that the time-limits laid down in paragraph 2 have been observed.
4. The application for revision must be made against all parties to the case in which the contested decision was given.
5. Without prejudice to its decision on the substance, the Court shall give in the form of an order its decision on the admissibility of the application, having regard to the written observations of the parties.
6. If the Court declares the application admissible, it shall proceed to consider the substance of the application and shall give its decision in the form of a judgment in accordance with these Rules.
7. The original of the revising judgment shall be annexed to the original of the decision revised. A note of the revising judgment shall be made in the margin of the original of the decision revised.

Chapter 5

SUSPENSION OF OPERATION OR ENFORCEMENT AND OTHER INTERIM MEASURES

Article 140

Application for suspension or for interim measures

(old RoP Articles 80 and 81; ECJ RoP Article 160; GC RoP Articles 156 and 157)

1. An application to suspend the operation of any measure adopted by the EFTA Surveillance Authority, made pursuant to Article 40 SCA, shall be admissible only if the applicant has challenged that measure in an action before the Court.
2. An application for the adoption of one of the other interim measures referred to in Article 41 SCA shall be admissible only if it is made by a party to a case before the Court and relates to that case.
3. An application of a kind referred to in the preceding paragraphs shall state the subject-matter of the proceedings, the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measure applied for.
4. The application shall be made by a separate document and in accordance with the provisions of Articles 101 to 103.
5. The application shall be served on the opposite party, and the President shall prescribe a short time-limit within which that party may submit written or oral observations.
6. The President may adopt measures of organisation of procedure or order measures of inquiry.
7. The President may grant the application even before the observations of the opposite party have been submitted. This decision may be varied or cancelled even without any application being made by any party.

Article 141

Decision on the application

(old RoP Article 82; ECJ RoP Article 161; GC RoP Article 157)

1. The President shall either decide on the application himself or refer it to the Court.
2. If the President is prevented from acting, Article 10 shall apply.
3. Where the application is referred to it, the Court shall give a decision without undue delay.

Article 142

Order for suspension of operation or for interim measures

(old RoP Article 83; ECJ RoP Article 162; GC RoP Article 158)

1. The decision on the application shall take the form of a reasoned order. The order shall be served on the parties forthwith.
2. The execution of the order may be made conditional on the lodging by the applicant of security, of an amount and nature to be fixed in the light of the circumstances.
3. Unless the order fixes the date on which the interim measure is to lapse, the measure shall lapse when the judgment which closes the proceedings is delivered.
4. The order shall have only an interim effect, and shall be without prejudice to the decision of the Court on the substance of the case.

Article 143

Change in circumstances

(old RoP Article 84; ECJ RoP Article 163; GC RoP Article 159)

On application by a party, the order may at any time be varied or cancelled on account of a change in circumstances.

Article 144
New application
(old RoP Article 85; ECJ RoP Article 164; GC RoP Article 160)

Rejection of an application for an interim measure shall not bar the party who made it from making a further application on the basis of new facts.

Article 145
Suspension pursuant to Article 19 SCA
(old RoP Article 86; ECJ RoP n/a; GC RoP Article 161)

1. The provisions of this Chapter shall apply to applications to suspend the enforcement of a decision of the Court or of any measure adopted by the EFTA Surveillance Authority, submitted pursuant to Article 19 SCA.
2. The order granting the application shall fix, where appropriate, a date on which the interim measure is to lapse.

FINAL PROVISIONS

Article 146
Supplementary rules
(new; ECJ RoP Article 207; GC RoP n/a)

After consultation with the Governments concerned, the Court shall adopt supplementary rules concerning its practice in relation to:

- (a) letters rogatory;
- (b) applications for legal aid;
- (c) reports by the Court of defaulting witnesses or any case of perjury on the part of a witness or an expert delivered pursuant to Article 26 of the Statute.

Article 147
Implementing rules
(new; ECJ RoP Article 208; GC RoP Article 224)

The Court may issue practice directions or rules relating, in particular, to the preparations for and conduct of hearings before it and to the lodging of written pleadings or observations.

Article 148
Repeal
(new; ECJ RoP Article 209; GC RoP Article 226)

These Rules replace the Rules of Procedure of the EFTA Court adopted on 4 January and 1 February 1994, as last amended on 10 November 2010.

Article 149
Publication and entry into force
(old RoP Article 98; ECJ RoP Article 210; GC RoP Article 227)

1. These Rules, which are authentic in the English language, shall be published in the EEA Section of and the EEA Supplement to the *Official Journal of the European Union*.
2. These Rules shall be officially translated by the Court into German, Icelandic and Norwegian.
3. These Rules shall enter into force on 1 January 2019.

Annex I Decision of the Court of 12 December 2016 on the lodging and service of procedural documents by means of e-EFTACourt (2017/C 73/09)

DECISION OF THE COURT

on the lodging and service of procedural documents by means of e-EFTACourt

(2017/C 73/09)

THE COURT,

Having regard to the Rules of Procedure and, in particular, the second subparagraph of Article 32(5) thereof,⁵

Whereas:

[...] the Court may by decision determine the criteria for a procedural document sent to the Registry by electronic means to be deemed to be the original of that document. [...],

HAS DECIDED AS FOLLOWS:

Article 1

The information technology application known as ‘e-EFTACourt’, allows the lodging and service of procedural documents by electronic means under the conditions laid down by this Decision.

Article 2

Use of the application shall require a personal user identification and password.

Article 3

A procedural document lodged by means of e-EFTACourt shall be deemed to be the original of that document for the purposes of the first subparagraph of Article 32(1) of the Rules of Procedure⁶ where the representative’s user identification and password have been used to effect that lodgement. Such identification shall constitute the signature of the document concerned.

Article 4

A document lodged by means of e-EFTACourt must be accompanied by the Annexes referred to therein and a schedule listing such Annexes.

It shall not be necessary to lodge certified copies of a document lodged by means of e-EFTACourt or of any Annexes thereto.

Article 5

⁵ The second subparagraph of Article 32(5) of the current Rules of Procedure corresponds to Article 54(8) of the proposed Rules of Procedure.

⁶ The first subparagraph of Article 32(1) of the current Rules of Procedure corresponds to Article 54(2) of the proposed Rules of Procedure.

A procedural document shall be deemed to have been lodged for the purposes of Article 32(2) of the Rules of Procedure⁷ at the time of the representative's validation of lodgement of that document.

The relevant time shall be the time in the Grand Duchy of Luxembourg.

Article 6

Procedural documents, including judgments and orders, shall be served on the parties' representatives by means of e-EFTACourt where they have expressly accepted this method of service or, in the context of a case, where they have consented to this method of service by lodging a procedural document by means of e-EFTACourt.

Procedural documents shall also be served by means of e-EFTACourt on States which are parties to the Agreement on the European Economic Area, the EFTA Surveillance Authority and institutions, bodies, offices or agencies of the Union, insofar as they have accepted this method of service.

Article 7

The intended recipients of the documents served referred to in Article 6 shall be notified by email of any document served on them by means of e-EFTACourt.

A procedural document shall be served at the time when the intended recipient (representative or his assistant) requests access to that document. In the absence of any request for access, the document shall be deemed to have been served on the expiry of the seventh day following the day on which the notification email was sent.

Where a party is represented by more than one agent or lawyer, the time to be taken into account in the reckoning of time-limits shall be the time when the first request for access was made.

The relevant time shall be the time in the Grand Duchy of Luxembourg.

Article 8

The Registrar shall draw up the conditions of use of e-EFTACourt and ensure that they are observed. Any use of e-EFTACourt contrary to those conditions may result in the deactivation of the account concerned.

The Court shall take the necessary steps to protect e-EFTACourt from any abuse or malicious use.

Users shall be notified by email of any action taken pursuant to this Article that prevents them from using their account.

Article 9

This decision shall enter into force on the day following its publication in the EEA Section of and the EEA Supplement to the *Official Journal of the European Union*.

Luxembourg, 12 December 2016.

⁷ Article 32(2) of the current Rules of Procedure corresponds to Article 54(4) of the proposed Rules of Procedure.

Annex II List of national authorities referred to in Articles 51(5), 66(5) and 70(3):

ICELAND

The Ministry of Justice

LIECHTENSTEIN

The Ministry of Justice

NORWAY

The Royal Ministry of Justice and Public Security