



V  
Rules of Procedure

# RULES OF PROCEDURE<sup>1</sup>

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<sup>1</sup> Adopted by the EFTA Court on 4 January and 1 February 1994. Subsequently amended by the Decision of the EFTA Court to amend its Rules of Procedure of 22 August 1996 and Decision of the EFTA Court amending its Rules of Procedure of 20 September 2007, e.i.f. 1.1.2008.

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## THE EFTA COURT,

Having regard to 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,

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

ADOPTS THE FOLLOWING RULES OF PROCEDURE:

## INTERPRETATION

### *Article 1*

In these Rules:

- (a) 'Agreement' means the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, its Protocols and Annexes;
- (b) 'EFTA State' means a Member of the European Free Trade Association which is a Party to the Agreement and to the Agreement on the European Economic Area;
- (c) 'Statute' means Protocol 5 to the Agreement, on the Statute of the EFTA Court.

## TITLE I

### ORGANIZATION OF THE COURT

#### CHAPTER 1

#### *Judges*

### *Article 2*

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 3*

1. 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:

*“I swear that I will perform my duties impartially and conscientiously; I swear that I will preserve the secrecy of the deliberations of the EFTA Court.”*

2. 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 4*

When the Court is called upon 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.

#### *Article 5<sup>2</sup>*

Judges shall rank equally in precedence according to their seniority in office.

Where there is equal seniority in office, precedence shall be determined by age.

Retiring Judges who are reappointed shall retain their former precedence.

Judges chosen from the list provided for in Article 30, fourth paragraph, of the Agreement 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 of the court*

#### *Article 6<sup>3</sup>*

1. The Judges shall, in accordance with Article 30 of the Agreement, elect one of their number as President of the Court for a term of three years.

2. If the office of the President of the Court falls vacant before the normal date of expiry 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

<sup>2</sup> Amended by Decision of the EFTA Court of 22 August 1996.

<sup>3</sup> Amended by Decision of the EFTA Court of 22 August 1996.

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.

#### *Article 7*

The President shall direct the judicial business and the administration of the Court; he shall preside at hearings and deliberations.

#### *Article 8*

1. As soon as an application initiating proceedings has been lodged, the President shall designate a Judge to act as Rapporteur.
2. The Court shall lay down criteria by which, as a rule, cases are to be assigned to Judges.

#### *Article 9*

When the President of the Court is absent or prevented from attending or when the office of President is vacant, the functions of President shall be exercised by a Judge according to the order of precedence laid down in Article 5.

### CHAPTER 3

#### *Registry*

#### SECTION 1 - THE REGISTRAR AND ASSISTANT REGISTRARS

#### *Article 10<sup>4</sup>*

1. The Court shall appoint the Registrar.
2. An application shall be accompanied by full details of the candidate's age, nationality, university degrees, knowledge of any languages, present and past occupations and experience, if any, in judicial and international fields.
3. The appointment shall be made following the procedure laid down in Article 6(3).
4. The Registrar shall be appointed for a term of three years. He may be reappointed.
5. The Registrar shall take the oath in accordance with Article 3.

<sup>4</sup> Amended by Decision of the EFTA Court of 22 August 1996.

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.

#### *Article 11<sup>5</sup>*

The Court may, following the procedure laid down in respect of the Registrar, appoint one or more Assistant Registrars.

#### *Article 12<sup>6</sup>*

Where the Registrar is absent or prevented from attending or his post is vacant, the President shall designate an official or other servant to carry out temporarily the duties of Registrar.

#### *Article 13*

Instructions to the Registrar shall be adopted by the Court acting on a proposal from the President.

#### *Article 14<sup>7</sup>*

1. There shall be kept in the Registry, under the control of the Registrar, a register initialled by the President, in which all pleadings and supporting documents shall be entered in the order in which they are lodged.

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 keeping the register shall be prescribed by the Instructions to the Registrar referred to in Article 13.

5. Persons having an interest may consult the register at the Registry and may obtain copies or extracts on payment of a charge on a scale fixed by the Court.

<sup>5</sup> Amended by Decision of the EFTA Court of 22 August 1996.

<sup>6</sup> Amended by Decision of the EFTA Court of 22 August 1996.

<sup>7</sup> Amended by Decision of the EFTA Court of 22 August 1996.

The parties to a case may on payment of the appropriate charge also obtain copies of pleadings and authenticated copies of judgments, advisory opinions and orders.

6. Notice shall be given in the EEA Section of and the EEA Supplement to the Official Journal of the European Union of the date of registration of an application initiating proceedings, the names and addresses of the parties, the subject-matter of the proceedings, the form of order sought by the applicant and a summary of the pleas in law and of the main supporting arguments. Notice shall also be given in respect of a request for an advisory opinion.

#### *Article 15<sup>8</sup>*

1. The Registrar shall be responsible, under the authority of the President, for the acceptance, transmission and custody of documents and for effecting service as provided for by these Rules.

2. Where called for, the Registrar shall assist the Court, the President and the Judges in their official functions.

#### *Article 16*

The Registrar shall have custody of the seals. He shall be responsible for the records and be in charge of the publications of the Court.

#### *Article 17<sup>9</sup>*

The Court may, subject to Articles 4 and 23, call upon the Registrar to attend the sittings of the Court.

### SECTION 2 - OFFICIALS AND OTHER SERVANTS OF THE COURT

#### *Article 18*

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 shall take the following oath before the President, in the presence of the Registrar:

*“I swear that I will perform loyally, discreetly and conscientiously the duties assigned to me by the EFTA Court.”*

<sup>8</sup> Amended by Decision of the EFTA Court of 22 August 1996.

<sup>9</sup> Amended by Decision of the EFTA Court of 22 August 1996.

*Article 19<sup>10</sup>*

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

*Article 20<sup>11</sup>*

Subject to further decisions by the Court, the Registrar shall be responsible, under the authority of the President, for the administration of the Court, its financial management and its accounts.

## CHAPTER 4

*The working of the Court**Article 21*

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

*Article 22<sup>12</sup>*

1. Decisions of the Court shall be valid only when all its members are sitting in the deliberations. However, decisions of the Court on administrative matters may be adopted with two Judges present. In the latter case the President shall have a casting vote.
2. If after the Court has been convened it is found that the quorum has not been attained, the President shall adjourn the sitting until there is a quorum.

*Article 23*

1. The Court shall deliberate in closed session.
2. Only those Judges who were present at the oral proceedings may take part in the deliberations.
3. Every Judge taking part in the deliberations shall state his opinion and the reasons for it.

<sup>10</sup> Amended by Decision of the EFTA Court of 22 August 1996.

<sup>11</sup> Amended by Decision of the EFTA Court of 22 August 1996.

<sup>12</sup> Amended by Decision of the EFTA Court of 22 August 1996.

4. The conclusions reached by the majority of the Judges after final discussion shall determine the decision of the Court. Votes shall be cast in reverse order to the order of precedence laid down in Article 5.
5. Differences of view on the substance, wording or order of questions, or on the interpretation of the voting shall be settled by decision of the Court.
6. Where the deliberations of the Court concern questions of its own administration, the Registrar shall be present, unless the Court decides to the contrary.
7. Where the Court sits without the Registrar being present it shall, if necessary, instruct a Judge to draw up minutes. The minutes shall be signed by this Judge and by the President.

#### *Article 24<sup>13</sup>*

1. Subject to any special decision of the Court, its 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.

During the vacations, the functions of President shall be exercised at the place where the Court has its seat either by the President himself or by a Judge invited by the President to take his place.

2. In a case of urgency, the President may convene the Judges during the vacations.
3. The Court shall observe the official holidays of the place where it has its seat.
4. The Court may, in proper circumstances, grant leave of absence to any Judge.

## CHAPTER 5

### *Languages*

#### *Article 25<sup>14</sup>*

1. The language of the Court shall be English. This shall cover the whole procedure including deliberations, minutes and decisions of the Court.

<sup>13</sup> Amended by Decision of the EFTA Court of 22 August 1996.

<sup>14</sup> Amended by Decision of the EFTA Court of 22 August 1996.

2. English shall be used in the written and oral part of the procedure by the parties, the interveners and the EFTA States, the EFTA Surveillance Authority, the Community and the EC Commission, unless otherwise provided in these Rules.

3. Without prejudice to the provisions of Article 27, all supporting documents submitted to the Court shall be in English or be accompanied by a translation into English, unless the Court decides otherwise.

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.

4. The Court may, if deemed necessary, at the request of a party or intervener other than an EFTA State, the EFTA Surveillance Authority, the Community or the EC Commission, 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 Communities 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 two weeks in advance of the oral part of the procedure.

#### *Article 26<sup>15</sup>*

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

#### *Article 27<sup>16</sup>*

1. Where a request for an advisory opinion is referred to the Court in accordance with Article 34 of the Agreement, 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.

<sup>15</sup> Amended by Decision of the EFTA Court of 22 August 1996.

<sup>16</sup> Amended by Decision of the EFTA Court of 22 August 1996.

3. The Court shall arrange for translation of the report of the Judge-Rapporteur in order to make it available in English and 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 two weeks in advance of the oral part of the procedure.

5. The opinion of the Court shall be given in the language in which the request was made and in English. The opinion shall be authentic in these languages.

## CHAPTER 6

### *Rights and Obligations of Agents, Advisers and Lawyers*

#### *Article 28<sup>17</sup>*

1. Agents, advisers and lawyers appearing 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 enjoy the following further privileges and facilities:

- (a) 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 29<sup>18</sup>*

In order to qualify for the privileges, immunities and facilities specified in Article 28, persons entitled to them shall furnish proof of their status as follows:

<sup>17</sup> Amended by Decision of the EFTA Court of 22 August 1996.

<sup>18</sup> Amended by Decision of the EFTA Court of 22 August 1996.

- (a) agents shall produce an official document issued by the party for whom they act, and shall forward without delay a copy thereof to the Registrar;
- (b) advisers and lawyers shall produce a certificate signed by the Registrar. The validity of this certificate shall be limited to a specified period, which may be extended or curtailed according to the length of the proceedings.

#### *Article 30*

The privileges, immunities and facilities specified in Article 28 are granted exclusively in the interests of the proper conduct of proceedings.

The Court may waive the immunity where it considers that the proper conduct of proceedings will not be hindered thereby.

#### *Article 31<sup>19</sup>*

1. If the Court considers that the conduct of an adviser or lawyer towards the Court, 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 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.

On the same grounds, the Court may at any time, having heard the person concerned, exclude the person concerned from the proceedings by order. That order shall have immediate effect.

2. Where an 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 adviser or lawyer.

3. Decisions taken under this Article may be rescinded.

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<sup>19</sup> Amended by Decision of the EFTA Court of 20 September 2007.

## TITLE II PROCEDURE

### CHAPTER 1 *Written procedure*

#### *Article 32*

1. The original of every pleading must be signed by the party's agent or lawyer.

The original, accompanied by all annexes referred to therein, shall be lodged together with five copies for the Court and a copy for every other party to the proceedings. Copies shall be certified by the party lodging them.

2. All pleadings shall bear a date. In the reckoning of time-limits for taking steps in proceedings, only the date of lodgment at the Registry shall be taken into account.

3. To every pleading there shall be annexed a file containing the documents relied on in support of it, together with a schedule listing them.

4. Where in view of the length of a document only extracts from it are annexed to the pleading, the whole document or a full copy of it shall be lodged at the Registry.

5. <sup>20</sup>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 documents referred to in paragraph 3, is received at the Registry by telefax or other technical means of communication available to the Court shall be deemed to be the date of lodgment for the purposes of compliance with the time-limits for taking steps in proceedings, provided that the signed original of the pleading, accompanied by the annexes and copies referred to in the second subparagraph of paragraph 1 above, is lodged at the Registry no later than 10 days thereafter.

Without prejudice to the first subparagraph of paragraph 1 or to paragraphs 2 to 4, 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. That decision shall be published in the Official Journal of the European Union. <sup>21</sup>

<sup>20</sup> Former paragraph 5 deleted by Decision of the EFTA Court of 20 September 2007.

<sup>21</sup> Amended by Decision of the EFTA Court of 20 September 2007.

*Article 33<sup>22</sup>*

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 designation of the party or the parties against whom the application is made;
  - (c) the subject-matter of the proceedings and a summary of the pleas in law on which the application is based;
  - (d) the form of order sought by the applicant;
  - (e) where appropriate, the nature of any evidence offered in support.

2. For the purpose of the proceedings, the application shall state an address for service in the place where the Court has its seat and the name of the person who is authorized and has expressed willingness to accept service.

In addition to, or instead of, specifying an address for service as referred to in the first subparagraph, the application may state that the lawyer or agent agrees that service is to be effected on him by telefax or other technical means of communication.

If the application does not comply with the requirements set out in the first and second subparagraphs, 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 75, service shall then be deemed to be duly effected by the lodging of the registered letter at a post office of the place where the Court has its seat.

3. The lawyer acting for a party must lodge at the Registry a certificate that he is authorized to practice before a court of a Contracting Party to the Agreement on the European Economic Area.

4. The application shall be accompanied, where appropriate, by the documents specified in Article 19 of the Statute.

5. 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 authorized for the purpose.

<sup>22</sup> Amended by Decision of the EFTA Court of 22 August 1996 and by Decision of the EFTA Court of 20 September 2007.

6. If an application does not comply with the requirements set out in paragraphs 3 to 5 of this Article, the Registrar shall prescribe a reasonable period within which the applicant is to comply with them whether by putting the application itself in order or by producing any of the above-mentioned documents. If the applicant fails to put the application in order or to produce the required documents within the time prescribed, the Court shall decide whether the non-compliance with these conditions renders the application formally inadmissible.

#### *Article 34*

The application shall be served on the defendant. In a case where Article 33(6) 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 formal requirements set out in that Article.

#### *Article 35<sup>23</sup>*

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 arguments of fact and law relied on;
- (c) the form of order sought by the defendant;
- (d) the nature of any evidence offered by him.

The provisions of Article 33(2) to (6) shall apply to the defence.

2. The time-limit laid down in paragraph (1) of this Article may in exceptional circumstances be extended by the President on a reasoned application by the defendant.

#### *Article 36*

1. The application initiating the proceedings and the defence may be supplemented by a reply from the applicant and by a rejoinder from the defendant.

2. The President shall fix the time-limits within which these pleadings are to be lodged.

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<sup>23</sup> Amended by Decision of the EFTA Court of 20 September 2007.

### *Article 37*

1. In reply or rejoinder a party may offer further evidence. The party must, however, give reasons for the delay in offering it.
2. 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.

If in the course of the procedure one of the parties puts forward a new plea in law which is so based, the President may, even after the expiry of the normal procedural time-limits, acting on a report of the Judge-Rapporteur, allow the other party time to answer on that plea.

The decision on the admissibility of the plea shall be reserved for the final judgment.

### *Article 38*

At any stage of the proceedings the Court may prescribe any measure of organization of procedure or any measure of inquiry referred to in Articles 49 and 50 or order that a previous inquiry be repeated or expanded.

### *Article 39*

The Court may, at any time, after giving the parties an opportunity to express their views, order that two or more cases concerning the same subject-matter shall, on account of the connection between them, be joined for the purposes of the written or oral procedure or of the final judgment. The cases may subsequently be disjoined.

### *Article 40*

1. Without prejudice to the application of Article 38, after the rejoinder has been lodged the President shall fix a date on which the Judge-Rapporteur is to present his preliminary report to the Court. The report shall contain recommendations as to whether measures of organization of procedure or measures of inquiry should be undertaken.

The Court shall decide what action to take upon the recommendations of the Judge-Rapporteur.

The same procedure shall apply:

- (a) where no reply or no rejoinder has been lodged within the time-limit fixed in accordance with Article 36(2);
- (b) where the party concerned waives his right to lodge a reply or rejoinder.

2. Where the Court decides to open the oral procedure without undertaking measures of organization of procedure or ordering measures of inquiry, the President shall fix the opening date.

#### *Article 41*

1. Without prejudice to any measures of organization of procedure or measures of inquiry which may be prescribed at the stage of the oral procedure, where, during the written procedure, measures of organization of procedure or measures of inquiry have been instituted and completed, the President shall, subject to the provisions in paragraph 2 of this Article, fix the date for the opening of the oral procedure.

2. The Court may, acting on a report from the Judge-Rapporteur, with the express consent of the parties, decide to dispense with the oral procedure.

### CHAPTER 2

#### *Oral Procedure*

#### *Article 42*

1. Subject to the priority of decisions provided for in Article 82, the Court shall deal with the cases before it in the order in which the preparatory inquiries in them have been completed. 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.

2. The President may in special circumstances order that a case be given priority over others.

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.

#### *Article 43*

1. The proceedings shall be opened and directed by the President, who shall be responsible for the proper conduct of the hearing.

2. The oral proceedings in cases heard in camera shall not be made public.

#### *Article 44*

The President may in the course of the hearing put questions to the agents, advisers or lawyers of the parties.

The other Judges may do likewise.

#### *Article 45*

A party may address the Court only through his agent, adviser or lawyer.

#### *Article 46*

The President shall declare the oral procedure closed at the end of the hearing.

#### *Article 47*

The Court may order the reopening of the oral procedure.

#### *Article 48<sup>24</sup>*

1. The Registrar or a Judge designated by the President shall draw up minutes of every hearing.
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 the 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 or the Judge designated to draw up the minutes and shall constitute an official record.
4. The parties may inspect the minutes at the Registry and obtain copies at their own expense.

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<sup>24</sup> Amended by Decision of the EFTA Court of 22 August 1996.

## CHAPTER 3

### *Measures of Organization of Procedure and Measures of Inquiry*

#### SECTION 1 - MEASURES OF ORGANIZATION OF PROCEDURE

##### *Article 49*

1. The purpose of measures of organization of procedure shall be to ensure that cases are prepared for hearing, procedures carried out and disputes resolved under the best possible conditions. They shall be prescribed by the Court.
2. Measures of organization of procedure shall, in particular, have as their purpose:
  - (a) ensuring efficient conduct of the written and oral procedure and facilitating the taking of evidence;
  - (b) determining the points on which the parties must present further argument or which call for measures of inquiry;
  - (c) clarifying the forms of order sought by the parties, their pleas in law and arguments and the points at issue between them;
  - (d) facilitating the amicable settlement of disputes.
3. Measures of organization 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 for documents or any papers relating to the case to be produced;
  - (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 organization of procedure. In that case, the other parties shall be heard before those measures are prescribed.

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.

## SECTION 2 - MEASURES OF INQUIRY

### *Article 50*

1. 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.

2. The measures of inquiry which the Court has ordered may be conducted by the Court itself, or be assigned to the Judge-Rapporteur.

3. The Court shall prescribe the measures of inquiry that it considers appropriate by means of an order setting out the facts to be proved. Before the Court decides on the measures of inquiry referred to in paragraph (1)(c), (d) and (e) the parties shall be heard.

The order shall be served on the parties.

4. Evidence may be submitted in rebuttal and previous evidence may be amplified.

### *Article 51*

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

## SECTION 3 - THE SUMMONING AND EXAMINATION OF WITNESSES AND EXPERTS

### *Article 52<sup>25</sup>*

1. The Court may, either of its own motion or on application by a party, order that certain facts be proved by witnesses. The order of the Court shall set out the facts to be established.

The Court may summon a witness of its own motion or on application by a party.

An application by a party for the examination of a witness shall state precisely about what facts and for what reasons the witness should be examined.

<sup>25</sup> Amended by Decision of the EFTA Court of 22 August 1996.

2. The witness shall be summoned by an order of the Court containing the following information:

- (a) the surname, forenames, description 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.

The order shall be served on the parties and the witnesses.

3. The Court may make the summoning of a witness for whose examination a party has applied conditional upon the deposit with the cashier of the Court of a sum sufficient to cover the taxed costs thereof; the Court shall fix the amount of the payment.

The cashier shall advance the funds necessary in connection with the examination of any witness summoned by the Court of its own motion.

A witness who has been duly summoned shall obey the summons and attend for examination, unless he proffers a valid excuse to the Court.

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

5. Subject to the provisions of Article 54 the witness shall, before giving his evidence, take the following oath:

*'I swear 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.

6. 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 may, at the request of a party or of his own motion, put questions to him.

The other Judges may do likewise.

Subject to the control of the President, questions may be put to witnesses by the representatives of the parties.

7. The Registrar or a Judge designated by the President shall draw up minutes of every hearing of a witness, which shall contain, in addition to the information mentioned in Article 48(2), the name, forenames, description and permanent address of each witness, and in which the evidence of each witness is reproduced.

The minutes shall be signed by the President or by the Judge-Rapporteur responsible for conducting the examination of the witness, 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.

The minutes shall constitute an official record.

#### Article 53

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 make 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.

The Court may request the parties or one of them to lodge security for the taxed costs of the expert's report.

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 52.
4. The expert may give his opinion only on points which have been expressly referred to him.
5. After the expert has made his report, the Court may order that he be examined, the parties having been given notice to attend.

Subject to the control of the President, questions may be put to the expert by the representatives of the parties.

6. Subject to the provisions of Article 54, the expert shall, after making his report, take the following oath before the Court:

*'I swear that I have conscientiously and impartially carried out my task.'*

The Court may, after hearing the parties, exempt the expert from taking the oath.

#### Article 54

1. The President shall instruct any person who is required to take an oath before the Court as witness or expert, to tell the truth or to carry out his task conscientiously and impartially, as the case may be, and shall warn him of the criminal liability provided for in his national law in the event of any breach of this duty.

2. Witnesses and experts shall take the oath either in accordance with the first subparagraph of Article 52(5) and the first subparagraph of Article 53(6) or in the manner laid down by their national law.

3. Where their national law provides the opportunity to make, in judicial proceedings, a solemn affirmation equivalent to an oath as well as or instead of taking an oath, the witnesses and experts may make such an affirmation under the conditions and in the form prescribed in their national law.

Where their national law provides neither for taking an oath nor for making a solemn affirmation, the procedure described in the first paragraph of this Article shall be followed.

#### *Article 55*

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 I any defaulting witness or any violation of an oath by 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 56*

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 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 57*

1. Witnesses and experts shall be entitled to reimbursement of their travel and subsistence expenses. The cashier of the Court may make a payment to them towards these expenses in advance.

2. 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

their compensation or fees after they have carried out their respective duties or tasks.

#### *Article 58*

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 name, 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.

#### *Article 59<sup>26</sup>*

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

2. The minutes of a hearing of an expert shall contain, in addition to the information mentioned in Article 48(2), the name, forenames, descriptions and permanent address of the expert examined.

<sup>26</sup> Amended by Decision of the EFTA Court of 22 August 1996.

3. The minutes shall be signed by the President and by the Registrar or the Judge designated to draw up the minutes and shall constitute an official record.

4. The parties may inspect the minutes and any expert's report at the Registry and obtain copies at their own expense.

## CHAPTER 3a<sup>27</sup>

### *Expedited Procedures*

#### *Article 59a*

1. On application by the applicant or the defendant, the President may exceptionally decide, on the basis of a recommendation by the Judge-Rapporteur and after hearing the other party, that a case is to be determined pursuant to an expedited procedure derogating from the provisions of these Rules, where the particular urgency of the case requires the Court to give its ruling with the minimum of delay.

An application for a case to be decided under an expedited procedure shall be made by a separate document lodged at the same time as the application initiating the proceedings or the defence, as the case may be.

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

An intervener may lodge a statement in intervention only if the President considers this to be necessary.

3. Once the defence has been lodged or, if the decision to adjudicate under an expedited procedure is not made until after that pleading has been lodged, once that decision has been taken, the President shall fix a date for the hearing, which shall be communicated forthwith to the parties. He may postpone the date of the hearing where the organization of measures of inquiry or of other preparatory measures so requires.

Without prejudice to Article 37, the parties may supplement their arguments and offer further evidence in the course of the oral procedure. They must, however, give reasons for the delay in offering such further evidence.

4. Art. 20 of the Statute of the EFTA Court permitting the submission of written observations is applicable under expedited procedure.

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<sup>27</sup> Chapter added by Decision of the EFTA Court of 20 September 2007.

## CHAPTER 4

### *Judgments*

#### *Article 60*

The judgment shall contain:

- a statement that it is the judgment of the Court,
- the date of its delivery,
- the names of the President and of the Judges taking part in it,
- the name of the Registrar,
- the description of the parties,
- the names of the agents, advisers and lawyers of the parties,
- a statement of the forms of order sought by the parties,
- a summary of the facts,
- the grounds for the decision,
- the operative part of the judgment, including the decision as to costs.

#### *Article 61*

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; the parties shall be served with certified copies of the judgment.
3. The Registrar shall record on the original of the judgment the date on which it was delivered.

#### *Article 62*

The judgment shall be binding from the date of its delivery.

#### *Article 63*

1. Without prejudice to the provisions relating to the interpretation of judgments the Court may, of its own motion or on application by a party made within two weeks after the delivery of a judgment, rectify clerical mistakes, errors in calculation and obvious slips in it.

2. The parties, whom the Registrar shall duly notify, may lodge written observations within a period prescribed by the President.
3. The Court shall take its decision in closed session.
4. The original of the rectification order shall be annexed to the original of the rectified judgment. A note of this order shall be made in the margin of the original of the rectified judgment.

#### *Article 64*

If the Court should omit to give a decision on a specific head of claim or on costs, any party may within a month after service of the judgment apply to the Court to supplement its judgment.

The application shall be served on the opposite party and the President shall prescribe a period within which that party may lodge written observations.

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

#### *Article 65*

The Registrar shall arrange for the publication of reports of cases before the Court.

### CHAPTER 5

#### **Costs**

#### *Article 66*

1. A decision as to costs shall be given in the final judgment or in the order which closes the proceedings.
2. The unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings.

Where there are several unsuccessful parties the Court shall decide how the costs are to be shared.

3. Where each party succeeds on some and fails on other heads, or where the circumstances are exceptional, the Court may order that the costs be shared or that the parties bear their own costs.

The Court may order a party, even if successful, to pay costs which the Court considers that party to have unreasonably or vexatiously caused the opposite party to incur.

4. The EFTA States, the EFTA Surveillance Authority, the Community and the EC Commission which intervene in the proceedings shall bear their own costs.

The Court may order an intervener other than those mentioned in the preceding subparagraph to bear his own costs.

5. 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 pleadings. However, upon application by 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.

Where the parties have come to an agreement on costs, the decision as to costs shall be in accordance with that agreement.

If costs are not claimed, the parties shall bear their own costs.

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

#### *Article 67*

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 in the State where the enforcement takes place.

#### *Article 68*

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 cost shall, in so far as the Registrar considers it excessive, be paid for by that party on the scale of charges referred to in Article 14(5).

#### *Article 69*

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

- (a) sums payable to witnesses and experts under Article 57;

- (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 70*

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 71<sup>28</sup>*

1. Sums due from the cashier of the Court shall be paid in the currency of the country where the Court has its seat.

At the request of the person entitled to any sum, it shall be paid in the currency of the country where the expenses to be refunded were incurred or where the steps in respect of which payment is due were taken.

2. Other debtors shall make payment in the currency of their country of origin.
3. 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, conversions of currency shall be made at the European Central Bank's official rates of exchange on the day of payment.

## CHAPTER 6

### *Legal Aid*

#### *Article 72<sup>29</sup>*

1. A party who is wholly or in part unable to meet the costs of the proceedings may at any time apply for legal aid.

The application shall be accompanied by evidence of the applicant's need of assistance, and in particular by a document from the competent authority certifying his lack of means.

2. If the application is made prior to proceedings which the applicant wishes to commence, it shall briefly state the subject of such proceedings.

<sup>28</sup> Amended by Decision of the EFTA Court of 20 September 2007.

<sup>29</sup> Amended by Decision of the EFTA Court of 20 September 2007.

The application need not be made through a lawyer.

3. The President shall designate a Judge to act as Rapporteur. The Court shall, after considering the written observations of the opposite party, decide whether legal aid should be granted in full or in part, or whether it should be refused. The Court shall consider whether there is manifestly no cause of action.

Where the application for legal aid is refused in whole or in part, the order shall state the reasons for that refusal.

4. The Court, by any order by which it decides that a person is entitled to receive legal aid, shall order that a lawyer be appointed to act for him.

5. If the person does not indicate 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 III being the competent authority of the EFTA State concerned.

6. The Court, in the light of the suggestions made by that authority, shall of its own motion appoint a lawyer to act for the person concerned.

7. The Court may at any time, either of its own motion or on application, withdraw legal aid if the circumstances which led to its being granted alter during the proceedings.

8. Where legal aid is granted, the cashier of the Court shall advance the funds necessary to meet the expenses.

The Court shall adjudicate on the lawyer's disbursements and fees; the President may, on application by the lawyer, order that he receives an advance.

In its decision as to costs the Court may order the payment to the cashier of the Court of the whole or any part of amounts advanced as legal aid.

The Registrar shall take steps to obtain the recovery of these sums from the party ordered to pay them.

## CHAPTER 7

### *Discontinuance*

#### *Article 73*

If, before the Court has given its decision, the parties reach a settlement of their dispute and intimate to the Court 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 66(5), having regard to any proposals made by the parties on the matter.

This provision shall not apply to proceedings under Articles 36 and 37 of the Agreement.

#### *Article 74*

If the applicant informs the Court in writing 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 66(5).

### CHAPTER 8

#### *Service*

#### *Article 75<sup>30</sup>*

1. Where a document is to be served on an EFTA State, the EFTA Surveillance Authority, the Community or the EC Commission, service is effected on the day on which, at the seat of the Court, the Permanent Delegation of the State concerned, or the Permanent Delegation of the EC Commission or the Council of the European Union, or the EFTA Surveillance Authority has been notified by post or by telefax that the document is available at the Court.

2. Where these Rules require that a document be served on any other 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.

3. 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 32(1).

4. Where, in accordance with the second subparagraph of Article 33(2), the addressee has agreed that service is to be effected on him by telefax or other technical means of communication, any procedural document other than a judgment or order of the Court may be served by the transmission of a copy of the document by such means.

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

<sup>30</sup> Amended by Decision of the EFTA Court of 22 August 1996; paragraph 4 added by Decision of the EFTA Court of 20 September 2007.

addressee has failed to state 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 advised by telefax or other technical means of communication. Service shall then be deemed to have been effected on the addressee by registered post on the tenth day following the lodging of the registered letter at the post office of the place where 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 advised by telefax or other technical means of communication, that the document to be served has not reached him.

## CHAPTER 9

### *Time-Limits*

#### *Article 76*

1. Any period of time prescribed by the Agreement, the Statute or these Rules for the taking of any procedural step shall be reckoned as follows:
  - (a) where a period 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 period in question;
  - (b) a period expressed in weeks, months or in years shall end with the expiry of whichever day in the last week, month or year is the same day of the week, or falls on the same date, as the day during which the event or action from which the period is to be calculated occurred or took place. If, in a period expressed in months or in years, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last day of that month;
  - (c) where a period is expressed in months and days, it shall first be reckoned in whole months, then in days;
  - (d) periods shall include official holidays, Saturdays and Sundays;
  - (e) periods shall not be suspended during the judicial vacations.
2. If the period would otherwise end on a Saturday, Sunday or an official holiday, it shall be extended until the end of the first following working day.

A list of official holidays drawn up by the Court shall be published in the EEA Section of and the EEA Supplement to the Official Journal of the European Union.<sup>31</sup>

#### *Article 77*

The period of time allowed for commencing 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 15th day after publication thereof in the EEA Section of and the EEA Supplement to the Official Journal of the European Union.

#### *Article 78*

Any time-limit prescribed pursuant to these Rules may be extended by whomever prescribed it.

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

The President may delegate to the Registrar power of signature for the purpose of fixing time-limits which, pursuant to these Rules, it falls to him to prescribe or of extending such time-limits.

### CHAPTER 10

#### *Stay of Proceedings*

#### *Article 79<sup>32</sup>*

1. The proceedings may be stayed by decision of the President, after hearing the Judge-Rapporteur, and, save in the case of references for an advisory opinion as referred to in Article 96, the parties.

<sup>31</sup> According to the Decision on official holidays of the EFTA Court in Luxembourg of 22 August 1996, the following days are to be observed as official holidays during which the Court will be closed:

- New Year's Day
- Easter Monday
- 1 May
- Ascension Day
- Whit Monday
- 23 June (National Day of Luxembourg)
- 24 June, where 23 June is a Sunday
- 15 August (Assumption)
- 1 November (All Saint's Day)
- 25 December
- 26 December

<sup>32</sup> Amended by Decision of the EFTA Court of 22 August 1996.

The proceedings may be resumed by decision of the President, following the same procedure.

The decisions referred to in this paragraph shall be served on the parties.

2. The stay of proceedings shall take effect on the date indicated in the decision of stay or, in the absence of such indication, on the date of that decision.

While proceedings are stayed time shall cease to run for the purposes of prescribed time-limits for all parties.

3. Where the decision of stay does not fix the length of stay, it shall end on the date indicated in the decision of resumption or, in the absence of such indication, on the date of the decision of resumption.

From the date of resumption time shall begin to run afresh for the purposes of the time-limits.

## TITLE III SPECIAL FORMS OF PROCEDURE

### CHAPTER 1

#### *Suspension of Operation or Enforcement and Other Interim Measures*

##### *Article 80*

1. An application to suspend the operation of any measure adopted by the EFTA Surveillance Authority, made pursuant to Article 40 of the Agreement shall be admissible only if the applicant is challenging that measure in proceedings before the Court.

An application for the adoption of any other interim measure referred to in Article 41 of the Agreement shall be admissible only if it is made by a party to a case before the Court and relates to that case.

2. An application of a kind referred to in paragraph (1) of this Article 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 measures applied for.

3. The application shall be made by a separate document and in accordance with the provisions of Articles 32 and 33.

#### *Article 81*

1. The application shall be served on the opposite party, and the President shall prescribe a short period within which that party may submit written or oral observations.
2. The President may order a preparatory inquiry.

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 82*

The President shall either decide on the application himself or refer it to the Court.

If the President is absent or prevented from attending, Article 9 shall apply.

Where the application is referred to it, the Court shall postpone all other cases, and shall give a decision. Article 81 shall apply.

#### *Article 83*

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 enforcement 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 final judgment 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 84*

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

#### *Article 85*

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 86*

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 of the Agreement.

The order granting the application shall fix, where appropriate, a date on which the interim measure is to lapse.

## CHAPTER 2

### *Preliminary Issues*

### *Article 87*

1. A party applying to the Court for a decision on a preliminary objection or other preliminary plea not going to the substance of the case shall make the application by a separate document.

The application must state the pleas of fact and law relied on and the form of order sought by the applicant; any supporting documents must be annexed to it.

2. As soon as the application has been lodged, the President shall prescribe a period within which the opposite party may lodge a document containing a statement of the form of order sought by that party and its pleas in law.

3. Unless the Court decides otherwise, the remainder of the proceedings shall be oral.

4. The Court shall decide on the application or reserve its decision for the final judgment.

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

### *Article 88<sup>33</sup>*

1. Where it is clear that the Court has no jurisdiction to take cognizance of an action or where the action is manifestly inadmissible, the Court may, by reasoned order, and without taking further steps in the proceedings, give a decision on the action.

2. The Court may at any time of its own motion, after hearing the parties, decide whether there exists any absolute bar to proceeding with a case or declare that the action

<sup>33</sup> Amended by Decision of the EFTA Court of 20 September 2007.

has become devoid of purpose and that there is no need to adjudicate on it; it shall give its decision in accordance with Article 87(3) and (4) of these Rules.

## CHAPTER 3

### *Intervention*

#### *Article 89<sup>34</sup>*

1. An application to intervene must be made within six weeks of the publication of the notice referred to in Article 14(6) of these Rules. Consideration may be given to an application to intervene which is made after the expiry of that period but before the decision to open the oral procedure. In that event, if the President allows the intervention, the intervener may, on the basis of the Report for the Hearing communicated to him, submit his observations during the oral procedure, if that procedure takes place.

The application shall contain:

- (a) the description of the case;
- (b) the description of the parties;
- (c) the name and address of the intervener;
- (d) the intervener's address for service at the place where the Court has its seat;
- (e) the form of order sought, by one or more of the parties, in support of which the intervener is applying for leave to intervene;
- (f) 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.

The intervener shall be represented in accordance with Article 17 of the Statute.

Articles 32 and 33 shall apply.

2. The application shall be served on the parties.

The President shall give the parties an opportunity to submit their written or oral observations before deciding on the application.

The President shall decide on the application by order or shall refer the application to the Court.

<sup>34</sup> Amended by Decision of the EFTA Court of 22 August 1996; paragraph 1 amended by Decision of the EFTA Court of 20 September 2007.

3. If the President allows the intervention, the intervener shall receive a copy of every document served on the parties. The President may, however, on application by one of the parties, omit secret or confidential documents.
4. The intervener must accept the case as he finds it at the time of his intervention.
5. The President shall prescribe a period within which the intervener may submit a statement in intervention.

The statement in intervention shall contain:

- (a) a statement of the form of order sought by the intervener in support of or opposing, in whole or in part, 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, the nature of any evidence offered.
6. After the statement in intervention has been lodged, the President shall, where necessary, prescribe a time-limit within which the parties may reply to that statement.

## CHAPTER 4

### *Judgments by default and applications to set them aside*

#### *Article 90<sup>35</sup>*

1. If a defendant on whom an application initiating proceedings has been duly served fails to lodge a defence to the application in the proper form within the time prescribed, the applicant may apply for judgment by default.

The application shall be served on the defendant. The President may decide to open the oral procedure on the application.

2. Before giving judgment by default the Court shall consider whether the application initiating proceedings is admissible, whether the appropriate formalities have been complied with, and whether the application appears well founded. The Court may order a preparatory inquiry.

3. 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 paragraph 4 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.

<sup>35</sup> Amended by Decision of the EFTA Court of 20 September 2007.

4. Application may be made to set aside a judgment by default.

The application to set aside the judgment must be made within one month from the date of service of the judgment and must be lodged in the form prescribed by Articles 32 and 33.

5. After the application has been served, the President shall prescribe a period within which the other party may submit his written observations.

The proceedings shall be conducted in accordance with Articles 40 et seq.

6. The Court shall decide by way of a judgment which may not be set aside. 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 5

### *Exceptional review procedures*

#### SECTION 1 - THIRD-PARTY PROCEEDINGS

##### *Article 91*

1. Articles 32 and 33 shall apply to an application initiating third-party proceedings. In addition such an application shall:

- (a) specify the judgment contested;
- (b) state how that judgment 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.

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

Where the judgment has been published in the EEA Section of and the EEA Supplement to the Official Journal of the European Union, the application must be lodged within two months of the publication.

2. The Court may, on application by the third party, order a stay of execution of the judgment. The provisions of Title III, Chapter 1, shall apply.

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

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

## SECTION 2 - REVISION

### *Article 92*

An application for revision of a judgment shall be made within three months of the date on which the facts on which the application is based, came to the applicant's knowledge.

### *Article 93*

1. Articles 32 and 33 shall apply to an application for revision. In addition such an application shall:
  - (a) specify the judgment contested;
  - (b) indicate the points on which the judgment is contested;
  - (c) set out the facts on which the application is based;
  - (d) indicate the nature of the evidence to show that there are facts justifying revision of the judgment, and that the time-limit laid down in Article 92 has been observed.
2. The application must be made against all parties to the case in which the contested judgment was given.

### *Article 94*

1. Without prejudice to its decision on the substance, the Court in closed session, shall, having regard to the written observations of the parties, give in the form of a judgment its decision on the admissibility of the application.
2. If the Court finds 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.
3. The original of the revising judgment shall be annexed to the original of the judgment revised. A note of the revising judgment shall be made in the margin of the original of the judgment revised.

## CHAPTER 6

### *Interpretation of judgments*

#### *Article 95*

1. An application for interpretation of a judgment shall be made in accordance with Articles 32 and 33. In addition it shall specify:

- (a) the judgment in question;
- (b) the passages of which interpretation is sought.

The application must be made against all the parties to the case in which the judgment was given.

2. The Court shall give its decision in the form of a judgment after having given the parties an opportunity to submit their observations.

The original of the interpreting judgment shall be annexed to the original of the judgment interpreted. A note of the interpreting judgment shall be made in the margin of the original of the judgment interpreted.

## CHAPTER 7

### *Advisory opinions*

#### *Article 96*

1. An EFTA State which, in application of Article 34 of the Agreement, has limited in its internal legislation the right to request an advisory opinion to courts and tribunals against whose decisions there is no judicial remedy under national law, should without delay inform the Court of such legislation and subsequent amendments to it. The notification shall be accompanied by the text of the relevant legislation.

2. In cases governed by Article 34 of the Agreement the procedure shall be governed by the provisions of these Rules, subject to adaptations necessitated by the nature of the reference for an advisory opinion.

3. The request for an advisory opinion shall be accompanied by a summary of the case before the national court including a description of the facts of the case as well as a presentation of the provision in issue in relation to the national legal order, necessary to enable the Court to assess the question to which a reply is sought.

4. The Court may ask the national court for clarification which shall be put in the language in which the request for an advisory opinion was made.

### Article 97

1. The requests of national courts or tribunals referred to in Article 96 shall be communicated to the Governments of the EFTA States, the EFTA Surveillance Authority, the Community, the EC Commission and the parties to the dispute in the original version, accompanied by a translation into English of the request. The provisions on statements of case and written observations in Article 20 of the Statute shall apply also to the parties to the dispute.

2. As regards the representation and attendance of the parties to the main proceedings in the advisory opinion procedure the Court shall take account of the rules of procedure of the national court or tribunal which made the reference.

3. 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, after informing the court or tribunal which referred the question to it and hearing any observations submitted by the Governments of the EFTA States, the EFTA Surveillance Authority, the Community, the EC Commission and the parties to the dispute, give its decision by reasoned order in which reference is made to its previous judgment or opinion.

4. Without prejudice to paragraph 3 of this Article, the procedure before the Court in the case of a reference for an advisory opinion shall also include an oral part.

However, after the submission of the statements or observations, as provided for in Article 20 of the Statute and paragraph 1 of this Article, the Court, acting on a report from the Judge-Rapporteur, after informing those who are thus entitled to submit such statements or observations, may decide otherwise, provided that none of those has asked to present oral argument.

Before the oral part of the procedure, a report from the Judge-Rapporteur shall be communicated to the Governments of the EFTA States, the EFTA Surveillance Authority, the Community, the EC Commission and the parties to the dispute. The report shall be accompanied by a translation as provided for in Article 27(3).

5. It shall be for the national court or tribunal to decide as to the costs of the reference.

In special circumstances the Court may grant, by way of legal aid, assistance for the purpose of facilitating the representation or attendance of a party. The provisions of Article 72 shall apply *mutatis mutandis*.

#### *Article 97a*<sup>36</sup>

1. At the request of the national court, the President may exceptionally decide, on a proposal from the Judge-Rapporteur to apply an accelerated 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 exceptional urgency. In that event, the President may immediately fix the date for the hearing, which shall be notified to the parties in the main proceedings and to the other persons referred to in Article 20 of the Statute when the decision making the reference is served.
2. The parties and other interested persons referred to in the preceding paragraph 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 the parties and other interested persons to restrict the matters addressed in their statement of case or written observations to the essential points of law raised by the question referred.
3. The statements of case or written observations, if any, shall be notified to the parties and to the other persons referred to above prior to the hearing.

### **TITLE IV** **MISCELLANEOUS PROVISIONS**

#### *Article 98*<sup>37</sup>

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.

These Rules shall be officially translated by the Court into the German, Icelandic and Norwegian languages.

<sup>36</sup> Article added by Decision of the EFTA Court of 20 September 2007.

<sup>37</sup> Amended by Decision of the EFTA Court of 22 August 1996.

**ANNEX I<sup>38</sup>**

List of national authorities referred to in the first paragraph of Article 55

***ICELAND***

The Ministry of Justice and Ecclesiastical Affairs

***LIECHTENSTEIN***

The Ministry for Justice

***NORWAY***

The Royal Ministry of Justice and the Police

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<sup>38</sup> Amended by Decision of the EFTA Court of 22 August 1996.

## ANNEX II<sup>39</sup>

List of national authorities referred to in the first paragraph of Article 58(3)

### *ICELAND*

The Ministry of Justice and Ecclesiastical Affairs

### *LIECHTENSTEIN*

The Ministry for Justice

### *NORWAY*

The Royal Ministry of Justice and the Police

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<sup>39</sup> Amended by Decision of the EFTA Court of 22 August 1996.

**ANNEX III<sup>40</sup>**

## List of national authorities referred to in Article 72(5)

*ICELAND*

The Ministry of Justice and Ecclesiastical Affairs

*LIECHTENSTEIN*

The Ministry for Justice

*NORWAY*

The Royal Ministry of Justice and the Police

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<sup>40</sup> Amended by Decision of the EFTA Court of 22 August 1996.