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Relevant amendments regarding references for a preliminary ruling, appeal proceedings and other procedural matters before the Court of Justice and before the General Court of the European Union

I. Introduction, scope and objectives of the reform

On 1 September 2024, the latest reform of the Court of Justice of the European Union (“**CJEU**”) in relation to proceedings before the Court of Justice (“**CJ**”) and the General Court (“**GC**”) entered into force, which mainly concerns the preliminary ruling procedure, but also includes significant amendments to the admissibility of appeals and some minor general amendments, with the aim of increasing transparency and introducing certain adaptations in relation to the use of videoconferencing, the broadcasting of oral hearings and anonymity. This reform has been implemented by means of the following:

- i) Regulation (EU, Euratom) 2024/2019 of the European Parliament and of the Council of 11 April 2024 amending Protocol No 3 on the Statute of the Court of Justice of the European Union (“**Statute of the CJEU**”)¹.
- ii) The Amendments to the Rules of Procedure of the Court of Justice (“**RPCJ**”)².
- iii) The Amendments to the Rules of Procedure of the General Court (“**RPGC**”)³.
- iv) The Practice Rules for the implementation of the Rules of Procedure of the General Court (“**Practice Rules of the RPGC**”)⁴.
- v) The Practice directions to parties concerning cases brought before the Court (“**Practice Directions before the CJ**”)⁵.
- vi) The Decision of the General Court of 10 July 2024 on the lodging and service of procedural documents by means of e-Curia (“**e-Curia Decision**”)⁶.

II. The conferral of jurisdiction to the GC to issue preliminary rulings in certain areas

The legal basis for the reform is Article 256(3) of the Treaty on the Functioning of the European Union (“**TFEU**”)⁷ and its basic objective is to reduce the workload of the CJ⁸. In order for the GC to take on this task it was necessary to amend the Statute of the CJEU⁹, a new Title Six has been added to the RPGC¹⁰ and numerous

1 OJ L, 2024/2019, 12.8.2024.

2 OJ L, 2024/2094, 12.8.2024.

3 OJ L, 2024/2095, 12.8.2024.

4 OJ L, 2024/2097, 12.8.2024. The new Practice Rules of the RPGC replace the Practice Rules for the Implementation of the Rules of Procedure of the General Court of 20 May 2015, OJ L 152, 18.6.2015, p.1, consolidated version of 10.3.2023.

5 OJ L, 2024/2173, 30.8.2024. The new Practice Directions before the CJ replace the Practice Directions to Parties Concerning Cases Brought Before the Court, OJ L 421, 14.2.202, p. 1/14.

6 OJ L, 2024/2096, 12.8.2024. The new e-Curia Decision replaces the Decision of the General Court of 11 July 2018 on the lodging and service of procedural documents by means of e-Curia, OJ L 240, 25.9.2018, p. 72/73.

7 Article 256(3) of the TFEU: “3. The General Court shall have jurisdiction to hear and determine questions referred for a preliminary ruling under Article 267 in specific areas laid down by the Statute [...]”.

8 Recitals (1) to (3) and (7) of Regulation (EU, Euratom) 2024/2019 set out how the transfer of competence from the CJ to the GC in relation to preliminary rulings is aimed at reducing the workload of the CJ so that it can concentrate its resources on examining the most complex and significant preliminary rulings.

9 Articles 49a and 50b of the Statute of the CJEU in its 2024 consolidated version.

10 Articles 196 to 242 of the RPGC in their consolidated version of 2024, which regulate all matters relating to the handling of preliminary rulings by the CJ.

references have been incorporated in the Practice Rules of the RPGC¹¹. The GC will start dealing with preliminary rulings referred to the CJ by national judges as of 1 October 2024¹² in accordance with the following conditions:

a) Jurisdiction is conferred on the GC in relation to certain questions referred for a preliminary ruling.

The GC may hear and decide on questions referred for a preliminary ruling in the following areas¹³: (i) the common system of value added tax; (ii) excise duties; (iii) the Customs Code; (iv) the tariff classification of goods in the Combined Nomenclature; (v) compensation and assistance to passengers in the event of denied boarding or of delay or cancellation of transport services; and (vi) the system for greenhouse gas emission allowance trading.

In any case, even in these areas, the CJ will continue to have jurisdiction in cases where the question concerns other matters or where the question relates to the interpretation of primary law, public international law, general principles of European Union law or the Charter of Fundamental Rights of the European Union¹⁴.

The national court or tribunal will continue to refer its questions to the CJ, which will determine whether the CJ itself or the GC has jurisdiction, following a preliminary analysis of the requests for preliminary rulings¹⁵. This is a task for the President of the CJ, the Vice-President and the First Advocate General. If the questions referred for a preliminary ruling fall within the competence of the GC, they will be sent from the CJ to the GC. The GC must also send to the CJ any question referred directly to it for a preliminary ruling¹⁶. It is also foreseen that the GC could join cases with the same subject matter¹⁷.

b) An Intermediate Chamber is introduced in the GC¹⁸. Its purpose is to ensure the consistency of preliminary rulings given by the GC. It is a chamber composed of nine judges. Member States and Institutions which are parties to the proceedings may request such a formation¹⁹.

c) An Advocate General is introduced in the GC to deal with requests for a preliminary ruling. They will be elected by the judges of the GC after electing the President, the Vice-President and the Presidents of Chambers²⁰.

d) New rules are introduced concerning the organisation of the oral phase of the proceedings and the preparation and conduct of the oral hearing of preliminary rulings before the GC²¹, similar to the practice of the CJ.

e) It provides for the possibility of broadcasting the oral hearings and publishing the recordings on the CJEU's website²².

III. Other changes affecting the handling of preliminary rulings

a) Possible publication on the CJEU's website of the statements of case. The statements of case or written observations lodged on the questions referred for a preliminary ruling before the CJ and the GC will be published after delivery of the judgment or service of the order closing the proceedings. It is possible to object to such publication, without the need to state reasons, by informing the Registry of the CJ in writing no later than three months after the delivery of the judgment or service of the order closing the proceedings. In such cases, no publication will be made, with an observation indicating that there is an objection to publication, and the person concerned may withdraw this objection. If the objection to publication is

11 See paragraphs 37-39 (on the possibility to inspect the case file and obtain copies of the case file); 69-71 (data protection in pleadings and documents accessible to the public); 136-155 (on pleadings and annexes); 159 (maximum number of pages of written observations); 191 to 193 (structure and content of pleadings); 197 to 199 (organisation of hearings); 216 to 220 (on the preparation of oral proceedings); 266 to 270 (on legal aid); and 283 (on urgent preliminary ruling procedures).

12 Article 2 of Regulation (EU, Euratom) 2024/2019.

13 Article 50b of the Statute of the CJEU.

14 Article 50b, second paragraph of the Statute of the CJEU.

15 Article 93a of the RPCJ in their consolidated version of 2024.

16 Article 207 of the RPGC in their consolidated version of 2024.

17 Article 208 of the RPGC in their consolidated version of 2024.

18 Recital (21) of Regulation (EU, Euratom) 2024/2019.

19 Articles 15a, 23a and 28(8) of the RPGC in their consolidated version of 2024. Article 50, fourth paragraph of the Statute of the CJEU.

20 Articles 31a and 31b of the RPGC in their consolidated version of 2024.

21 Points 197 to 199; 216 to 220 and 221 to 234 of the Practice Rules of the RPGC.

22 Article 219 of the RPGC in their consolidated version of 2024 and points 250 to 253 of the Practice Rules of the RPGC.

communicated after the expiry of the three-month time limit, the observations will be removed from the CJ's website²³.

- b) **The European Parliament, the Council and the European Central Bank will be notified of all questions referred for a preliminary ruling.** The three institutions will be entitled to submit statements of case or written observations within two months of the notification²⁴.
- c) **The possible expedited treatment of requests for preliminary rulings referred by the GC to the CJ that are likely to affect the unity of European Union law.** Although the possibility of expedited preliminary ruling proceedings before the CJ and the GC is generally recognised²⁵, the possibility of expedited processing is provided for where the GC refers the case to the CJ because it may affect the unity or consistency of European Union law. If, at the time of such a referral, the written part of the proceedings has already been closed, the interested persons referred to in Article 23 of the Statute of the CJEU may submit statements of case or written observations within a period of not less than 15 days²⁶.

IV. The extension of the mechanism for pre-admission of appeals to be heard

The aim of the extension of this mechanism is “*maintaining the efficiency of appeal proceedings and allowing the Court of Justice to focus on the appeals that raise important legal questions [...]*”²⁷. In particular, it will be extended to:

- a) **Appeals against decisions of the GC concerning decisions of independent Boards of Appeal of bodies or agencies of the European Union.** The rule concerns: the European Union Agency for the Cooperation of Energy Regulators (ACER); the Single Resolution Board (SRB); the European Banking Authority (EBA); the European Securities and Markets Authority (ESMA); the European Insurance and Occupational Pensions Authority (EIOPA); and the European Union Agency for Railways (ERA)²⁸.
- b) **Appeals concerning the performance of contracts containing an arbitration clause.** Where the GC applies European Union law, appeals against decisions of the GC will be admissible if they raise issues significant to the unity, consistency and/or development of European Union law²⁹.

These amendments only apply to appeals brought **on or after 1 September 2024**³⁰.

V. Other practical changes in the handling of proceedings

1. Novelties concerning the oral hearing

- a) **The possibility of participating in hearings by videoconference.** This can now be authorised by the President upon request in a separate document stating the reasons justifying it, whether for health reasons, security or other serious grounds that prevent the participation in person in the hearing of the representatives of those referred to in Article 23 of the Statute of the CJEU, and even, in certain cases, the parties to the main proceedings in cases where, under national law, they are entitled to appear without being represented by a lawyer³¹.
- b) **The broadcasting and publication of recordings of hearings.** The RPCJ and the RPGC now provide for a twofold possibility³²: (i) live broadcasting of hearings in the case of the delivery of judgments or

²³ Article 96(3) of the RPCJ in their 2024 consolidated version, points 16 and 17 of the Practice Directions before the CJ; and Article 202(3) of the RPGC in their 2024 consolidated version. See recital (4) of Regulation (EU, Euratom) 2024/2019.

²⁴ Article 23 of the Statute of the CJEU.

²⁵ Articles 105 and 106 of the RPCJ and Articles 237 to 238 of the RPGC in their consolidated version of 2024.

²⁶ Article 114b of the RPCJ in their consolidated version of 2024.

²⁷ Recital (22) of Regulation (EU, Euratom) 2024/2019.

²⁸ Article 58a, first paragraph, of the Statute of the CJEU following the reform entering into force on 1 September 2024. See also recital (23) of Regulation (EU, Euratom) 2024/2019.

²⁹ Article 58a, second paragraph, point (b) of Article 58a of the Statute of the CJEU following the reform, which entered into force on 1 September 2024. See also recital (24) of Regulation (EU, Euratom) 2024/2019.

³⁰ Article 2(2) of Regulation (EU, Euratom) 2024/2019.

³¹ Article 78 of the RPCJ in their consolidated version of 2024, points 70 to 73 of the Practice Directions before the CJ, and Article 216 of the RPGC in their consolidated version of 2024.

³² Articles 80a of the RPCJ in their consolidated version of 2024 and Article 110a of the RPGC in their consolidated version of 2024.

Opinions; and delayed broadcasting in the case of the oral pleadings of the parties or the interested persons under the Statute of the CJEU. The parties or interested persons will be informed and may object to the broadcasting of the hearings, although the final decision will be taken by the President³³; and (ii) the publication of the recordings of the hearings for one month after their closing, unless one of the parties or interested persons under the Statute of the CJEU makes a justified request for their removal from the CJEU's website and the President agrees³⁴.

2. Anonymisation and omission of personal data

The rules of anonymity that existed before the reform in the RPCJ and the RPGC in relation to preliminary rulings are extended. Thus, the reform establishes: (i) the obligation for the CJ and the GC to respect the anonymisation or omission of data relating to the natural persons or entities concerned by the main proceedings, regardless of whether they are parties to the main proceedings or third parties; and (ii) the possibility for the CJ and the GC to anonymise or omit the personal data of the natural persons concerned by the proceedings, regardless of whether they are parties to the proceedings or third parties, at the request of the referring courts, acting on their own motion or at the request of a party³⁵.

These rules should be complemented by the new provisions of the Practice Directions before the CJ³⁶ and the Practice Rules of the RPGC³⁷, which go beyond the scope of preliminary rulings.

3. The new Practice Directions before the CJ and the Practice Rules of the RPGC

The novelties introduced in both documents include: (i) those related to the amendments to the Rules of Procedure; (ii) those resulting from the competence that the GC assumes regarding the preliminary ruling procedure; and (iii) those referring to issues that already existed in practice and that have been included in the new version of the Practice Directions before the CJ and the Practice Rules of the RPGC to provide more clarity in the handling of the proceedings.

3.1. Novelties regarding the Practice Directions before the CJ

- a) Provision is made for the **publication** of written pleadings or observations in preliminary rulings, reflecting the amendments made to the RPCJ³⁸.
- b) It explains **how to request to participate in oral hearings by videoconference**³⁹, including as grounds to request it health reasons, the individual's state of health, transport strikes or cancellation of a flight. The technical requirements to guarantee the security and reliability of the connection are also determined.
- c) **Other practical issues.** New references are made to:
 - The obligation for lawyers and agents representing a party to provide proof of such representation. In appeals, a new reference is included stating that two documents must be submitted: (i) the document certifying that the lawyer is authorised to practise before the judicial bodies of the European Union or of another State of the European Economic Area; and (ii) an official document or a recent authority to act issued by the appellant certifying that the said lawyer is authorised to represent the appellant before the CJ. Documents submitted to the GC in this regard will only be taken into account if they also entitle the appellant to be represented in any subsequent proceedings before the CJ⁴⁰.
 - Eligibility for legal aid⁴¹.

³³ Article 80a(1) to (4) of the RPCJ in their consolidated version of 2024.

³⁴ Article 80a(5) to (7) of the RPCJ in their consolidated version of 2024.

³⁵ Article 95 of the RPCJ in their consolidated version of 2024, points 9 to 12 of the Practice Directions before the CJ, Article 202 of the RPGC in their consolidated version of 2024, and points 69 and 70 of the Practice Rules of the RPGC.

³⁶ Points 9 to 12, 16, 39 and 40 of the Practice Directions before the CJ.

³⁷ Points 63 to 68 and 80 to 107 of the Practice Rules of the RPGC.

³⁸ Points 16 and 17 of the Practice Directions before the CJ and Article 96(3) of the RPCJ in their consolidated version of 2024.

³⁹ Points 70 to 73 of the Practice Directions before the CJ and Article 78 of the RPCJ in their consolidated version of 2024.

⁴⁰ Points 4 and 28 of the Practice Directions before the CJ.

⁴¹ Point 6 last sentence of the Practice Directions before the CJ.

- The possibility to put forward observations on the application to participate in direct actions and appeals⁴².
- The filing of procedural documents and the possibility of extending the time limits laid down in the RPCJ⁴³: (i) it is established that only pleadings expressly provided for in the procedural rules will be placed in the case file and all others will be returned⁴⁴; and (ii) for the calculation of time limits, only the time of submission of the original at the Registry of the CJ will be taken into account, although it is possible to request an extension, which must be duly reasoned and submitted before the expiry of the time limit for lodging the document in question⁴⁵.

3.2. Novelties in the Practice Rules of the RPGC

- a) All aspects related to the **assumption of jurisdiction by the GC regarding preliminary rulings are included**. In particular: (i) the provisions concerning the lodging of procedural documents and annexes in preliminary ruling cases⁴⁶; (ii) the maximum length of written observations, which is identical to the limit for those submitted in proceedings before the CJ⁴⁷; (iii) the structure and content of written observations in preliminary ruling proceedings⁴⁸; and (iv) the organisation of the oral part of the proceedings in preliminary ruling cases⁴⁹.
- b) The possibility to **participate in oral hearings by videoconference**, in the same way as for the CJ⁵⁰.
- c) The introduction of a number of **provisions concerning the Registry of the GC and other technical issues**: (i) the functioning of the Registry of the GC and the entries to be made therein⁵¹; (ii) the determination of the case number⁵²; (iii) the maintenance of the case file (including references to the procedural documents which may be attached to the case file)⁵³ and the possibility to inspect them and to obtain copies of the case file (distinguishing between direct actions and preliminary ruling cases⁵⁴; (iv) the originals of judgments and orders and their signature⁵⁵; (v) witnesses and experts, their appointment and summons⁵⁶; (vi) the Registry's scale of charges and the possibility to recover sums⁵⁷; and (vii) the publication, dissemination and broadcasting of communications from the GC⁵⁸.
- d) **Other provisions**: (i) the extension of time limits ending on a Saturday, Sunday or other official holiday until the end of the next working day⁵⁹; (ii) the new provisions on data protection, anonymisation of proceedings and confidential processing⁶⁰; and (iii) the rules on legal aid⁶¹.

42 Point 42 of the Practice Directions before the CJ.

43 Points 55 to 57 of the Practice Directions before the CJ.

44 Point 55 of the Practice Directions before the CJ.

45 Points 56 and 57 of the Practice Directions before the CJ.

46 Points 136 to 154 of the Practice Rules of the RPGC.

47 Point 159 of the Practice Rules of the RPGC. This 20-page limit applies to preliminary rulings before the CJ.

48 Points 191 to 193 of the Practice Rules of the RPGC.

49 Points 197 to 199, 216 to 220, and 221 to 234 of the Practice Rules of the RPGC.

50 Points 235 to 243 of the Practice Rules of the RPGC.

51 Points 9 to 13 of the Practice Rules of the RPGC.

52 Points 14 to 20 of the Practice Rules of the RPGC.

53 Points 21 to 28 of the Practice Rules of the RPGC.

54 Points 29 to 39 of the Practice Rules of the RPGC.

55 Points 40 to 44 of the Practice Rules of the RPGC.

56 Points 45 to 47 of the Practice Rules of the RPGC.

57 Points 48 to 50 of the Practice Rules of the RPGC.

58 Points 51 to 55 of the Practice Rules of the RPGC.

59 Points 58 of the Practice Rules of the RPGC.

60 Points 63 to 71 and 80 to 107 of the Practice Rules of the RPGC.

61 Points 256 to 270 of the Practice Rules of the RPGC.

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