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CCBE comments on the draft Practice Rules of the General Court

The Council of Bars and Law Societies of Europe (CCBE) represents the bars and law societies of 46 countries, and through them more than 1 million European lawyers.

The CCBE would like to thank the Registrar of the Court of Justice for providing us with the opportunity to be consulted on the revision of the Practice Rules, following the amendment of the Statute of the Court of Justice and the Rules of Procedure. The CCBE has followed with great interest this legislative development, the main aim of which is to transfer jurisdiction for preliminary rulings to the General Court in specific areas.

The CCBE has prepared the following comments in the hope that they will be of assistance towards the finalisation of the Practice Rules (hereafter "rules" or PR). These comments have been prepared in order to adhere to the short deadline for comments, and should further observations arise outside of the deadline, the CCBE would also appreciate the possibility to communicate any additional comments. We are also happy to respond to any questions or to elaborate or provide clarification on any aspect of our comments .

Our comments are structured according to the chapters and relevant sections of the PR (in numerical order), where **we make our general observations, followed by suggestions for amendments (highlighted in red) to specific provisions/points. In a few instances, we also raise questions for clarification.**

CCBE comments on the draft Practice Rules of the General Court:

II. THE REGISTRY

- **Section "D.2. Inspection and obtaining copies of the case file / 2) Direct actions" (page 11)**

Regarding **point 30**, we are questioning why the reference to consultation of the administrative file produced before the court has been removed? This may notably concern the consultation of a file of a public officer produced at the request of the General Court or a file produced by the EUIPO. If such files can no longer be consulted at the Registry this may raise concerns in terms of the rights of the defence.

Therefore, the CCBE suggests that the sentence "*including the administrative files produced before the General Court*" should be retained.

> Amendment Proposal **on point 30:** 30. The representatives of the main parties may inspect the case file at the Registry**, *including the administrative files produced before the General Court*"**.

- **Section "H. Publications, dissemination and broadcasting on the internet" (page 13)**

Regarding **point 54**, the CCBE has noted the new provision in the Rules of Procedure relating to the retransmission of hearings. It appears appropriate to suggest that attention will need to be paid to the consistency of decision-making practices and the criteria used to justify overruling the objection put

forward by a party's representative. In addition, the CCBE has suggested for a number of years to explore the possibility that an audio file of the hearing – as conducted in the languages used in the hearing – be made available on the curia site for a period of time following the hearing . The new system of retransmission of hearings may open the way to further thinking on making such an audio file available or recording by persons viewing the hearing, and/or a system relating to access to sound recordings on the registry's premises.

III. GENERAL PROVISIONS ON PROCEDURES FOR DEALING WITH CASES

- **Section "A. Service"**

The CCBE notes that the previous point 62, under Section A. Service, is now deleted. This results in the addressee no longer being informed that service will be effected by post. If this is the case, the CCBE would like to ask whether the addressee will be informed?

- **Section "B. Time limits" (page 14)**

Regarding **point 60**, the CCBE takes note of the new rule allowing the possibility to request an extension of the time limit to submit the modification of the application, subject to the time limits laid down in Article 86(2) and (3).

Observations: The CCBE appreciates this rule and supports it. In addition, it may be beneficial to provide clarity regarding what is meant by "*immediately after this service*".

- **Section "C. Protection of data in publicly accessible documents" (page 14-15)**

The CCBE takes note of the new rules regarding the protection of data in publicly accessible documents and the distinction being made between direct actions and preliminary rulings **(in points 62-70):**

- **In Direct Actions**: Redaction includes personal data of natural persons, names of legal persons, and trade secrets.
- **In Preliminary Rulings**: Only natural persons' personal data are redacted (ex-officio by the Court)

Observations: The CCBE would like to suggest to include a request for redacting legal persons' names or trade secrets in preliminary rulings upon request of the concerned party.

Amendment Proposal **on point 70:** We suggest to replace "personal data relating to one or more natural persons" with " data relating to one or more natural or legal persons":

> "70. In any event, where a party to a preliminary ruling case before the General Court does not wish for his identity or for ~~personal~~ data relating to one or more natural ***or legal*** persons concerned by the main proceedings, whether they are parties to those proceedings or third parties, to be disclosed in a preliminary ruling case_brought before the General Court – or, conversely, where that party wishes for his identity and those data to be disclosed in that case – he may apply to the General Court for a decision as to whether or not to redact the data, in whole or in part, from the case in question or to reverse the redaction already made. (...)"

- **Section “G. Confidential treatment in direct actions” (pages 17 to 21)**

The CCBE notes that the new rules (**points 88-95**) provide a more detailed and prescriptive regime regarding the confidentiality treatment in direct actions.

Observations: The CCBE understands that the Court wishes to have more reasoning and justifications from the main parties to the proceedings as to the confidentiality of certain information vis-à-vis interveners. However, the CCBE has considerable concerns that this new regime – if interpreted too strictly - would lead to the rejection of confidentiality claims that could be justified. The CCBE accepts that confidentiality claims require a reasoning as an assessment needs to be made on a case by case basis.

Regarding **point 84**, this appears to be a significant change which consists of requiring the production of a non-confidential version of the pleadings only after admission to intervene has been granted (rather than requiring this when an application for intervention has been made). The advantage is that it avoids unnecessary preparation of the non-confidential version of the pleadings if the intervention is ultimately not admitted.

Whilst the CCBE understands the proposed change, the proposed change does not dispense with the filing of the application for confidential treatment and requires a deadline to be set after the admission of the intervention for the filing of the non-confidential version of the pleadings. The intervener will therefore not receive all the pleadings as soon as the right to intervene has been granted. It appears that this would inevitably result in a lengthening of the proceedings and a distinction between interveners in a case: interveners for whom no request for confidentiality has been made and interveners in respect of whom confidentiality has been requested (this also raises the question of whether the time limit for the statement in intervention be set for the former and "reserved" for the latter, or will the time limit be reserved for all interveners equally?)

- **Section “G.4. Confidential treatment under Article 103 of the Rules of Procedure” (pages 20-21)**

This Section concerns confidentiality between main parties following a measure of inquiry by the court to provide information or material relating to the case (Article 91(b) of Rules of procedure).

With regard to **point 102**, in accordance with Article 103 of the Rules of Procedure, detailed rules are provided to enable the Court to assess the relevance of the information or material to the outcome of the case and to verify the confidential nature of that information or material. There are three scenarios:

a. If not relevant, information removed from the file and parties informed (ex post).
b. .If relevant but not confidential, information served to the other main party.
c. If relevant and confidential, the court has two options (partial communication or preserve confidentiality).

Observations: Having regard to scenario “a,” it appears that the court is given considerable discretion. The CCBE is of the view that the party, having provided the information, should be heard before a decision is taken to remove the information .

IV. PROCEDURAL DOCUMENTS AND THE ANNEXES THERETO IN DIRECT ACTIONS

- **Section "A.1. Procedural documents lodged by the parties" (pages 23-24)**

With regard to this Section**,** the CCBE notes a stringent change with regard to the use of footnote (**point 110**) and technical terms specific to a national legal system (**point 111**).

Observations: **Point 110** now stipulates that footnotes can only contain references to documents. The CCBE observes that it is quite common and useful for both parties and the court if translations of certain quotes, brief additional comments or other, can be put in a footnote. This is particularly so having regard to the increasingly stringent page limits. It would mean that relevant information – other than just a reference - to support an argument can still be provided.

With regard to **point 111**, it may be impractical and possibly problematic to prescribe that terms specific to a national legal system may not be used. There are many (no doubt hundreds) of examples of legal terms specific to national legal systems that need to be assessed in the context of EU law questions and assessments. To provide just one example, is the Dutch legal concept of "Gedogen" (tolerating a legal non-compliance) an administrative practice that could constitute a violation of free movement rules or a violation of an EU Directive.

Amendment Proposal on **point 111:** The CCBE suggests to delete "*without the use of technical terms specific to a national legal system*":

> 111. In the interests of the proper conduct of the procedure and in the interests of the parties, procedural documents must, for the purposes of translation, be drafted in clear, concise language, ~~without the use of technical terms specific to a national legal system~~. Repetition must be avoided and short sentences should, as far as possible, be used in preference to long and complex sentences that include parenthetical and subordinate clauses.

- **Section "B. Lodging of procedural documents and annexes via e-Curia" (page 28)**

Under this Section, the CCBE would appreciate having clarification in connection with **point 120**. We observe that the previous point 79 of the Rules has been deleted, which provided that the use of a password and the lawyer identification when using e-curia was considered the valid signature and the authenticity of the document filed.

Observations: It would be helpful if the Court could clarify whether this mechanism would still apply (and if not why this is so)? The CCBE draws attention to the fact that a signature image in a scan has ,in the CCBE's understanding, no legal value under Union law and questions whether there is a risk of a lack of alignment with secondary Union law (Regulation No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC).

V. PROCEDURAL DOCUMENTS AND THE ANNEXES THERETO IN PRELIMINARY RULING CASES

- **Section "A.1. Procedural documents lodged by the interested persons referred to in Article 23 of the Statute" (pages 28-29)**

Under this Section, in relation to **points 138 and 140,** we would like to refer to our comments above in relation to points 110 and 111.

VI. THE WRITTEN PART OF THE PROCEDURE (pages 32-33)

We regret that some former provisions permitting submissions that exceed the maximum page limit have been deleted. The CCBE notes that **point 155** is now drafted as follows : "*Authorisation to exceed those maximum lengths will be given only in cases involving particularly complex legal or factual issues.*"

We would like to mention a relevant practical point concerning the limits of the pleadings for lawyers (by reference to the rules as put under *Section "A.3. Regularisation of excessively long pleadings*", **points 158-159**). The previous rules – which have now been deleted - set a benchmark (over 40%) to consider the length of the pleadings, which would have required regularisation.

We would like to ask the Court not to completely delete this (40%) threshold, as it provided a point of reference for lawyers, and also increased transparency. It should also be borne in mind that lawyers appearing before the Court for the first time will not be familiar with the rules on length of pleadings and regularisation, and that such a benchmark provided a more appropriate reference point.

VII. THE ORAL PART OF THE PROCEDURE

For this Chapter, we would like to propose the following amendments:

- **Section "B.3. Preliminary ruling cases" (page 36)**

Amendment Proposal: Under Section B.3, we suggest to add a point with the wording corresponding to the one of point 207:

> ***"The General Court will make every effort to ensure that the parties' and the interested persons' representatives receive a summary report for the hearing three weeks before the hearing. The purpose of the summary report for the hearing is to enable the parties to prepare for the hearing."***

- **Section "B.1. Common provisions" (page 38)**

Amendment Proposal on **point 198:** we suggest **to add the word "exceptional" after the word "circumstances".**

> "198. The parties or the interested persons referred to in Article 23 of the Statute shall be given notice to attend the hearing by the Registry at least one month before it takes place, provided always that, where the ***exceptional*** circumstances so require, a shorter period of

notice may apply. Where the General Court decides to organise a joint hearing of two or more cases pursuant to Article 106a or Article 214 of the Rules of Procedure, the notice to attend the hearing shall specify the cases that will be dealt with at that hearing."

Reasons: Such exception should be applied narrowly.

Amendment Proposal on **point 199:** we suggest **to add the word "if applicable" .**

> "199. In accordance with Article 107(2) and Article 215 of the Rules of Procedure, a request for adjournment of a hearing shall be granted only in exceptional circumstances. Such a request may be lodged only by a main party or, in preliminary ruling cases, by an interested person referred to in Article 23 of the Statute, and must state adequate reasons, ***if applicable*** - be accompanied by appropriate supporting documents, and be submitted to the General Court as soon as possible after notice to attend has been given."

Reasons : We believe that a lawyer should not always be required to support the statement of reasons for adjournment of a hearing with documents, which could be of personal character (e.g. if medical surgery or obduction is planned).Therefore we suggest adding "if applicable".

- **Section "C. Conduct of the hearing"(page 41)**

Amendment Proposal on **point 223:** we suggest **to replace "otherwise" by the words "a longer time-limit" and to include the sentence "for oral response in advance of the hearing"**

> "223. The time taken in presenting oral submissions may vary, depending on the nature or the particular complexity of the case, whether or not new facts have arisen, the number and procedural status of the participants in the hearing and whether there are any measures of organisation of procedure. Each main party or each interested person referred to in Article 23 of the Statute will be allowed 15 minutes and each intervener will be allowed 10 minutes to present oral submissions (in direct actions, at a hearing in joined cases or at a joint hearing, each main party will be allowed 15 minutes for each case and each intervener will be allowed 10 minutes for each case), unless the Registry has indicated ~~otherwise~~ a ***longer time-limit.*** These limitations shall apply only to the oral submissions themselves and not to the time required to answer questions put at the hearing *or for oral response in advance of the hearing,* or for final replies."

Reasons: Such exception should be applied narrowly.

- **Section "D.1. Request for the use of videoconferencing" (page 43)**

Observations: Regarding point 230, the CCBE notes that a party to the main proceedings authorised to bring proceedings without the assistance of a lawyer may submit a request for the use of videoconferencing, but it appears uncertain whether it is possible for that party to comply with the legitimately required technical requirements.

We also suggest an addition in the example provided, as follows:

Amendment Proposal on **point 230:**

> "230. If the representative of a party or of an interested person referred to in Article 23 of the Statute, or a party to the main proceedings who is permitted to bring or defend court proceedings without being represented by a lawyer is prevented from participating in person

in a hearing which he has been given notice to attend, whether for health reasons (for example, an impediment of an individual medical nature or resulting from travel restrictions linked to an epidemic), or on security or other serious grounds (for example, a strike in the air transport sector, ***a natural disaster or extreme weather conditions***), the representative or the party concerned must lodge, by separate document, a reasoned request to participate in the hearing by videoconference".

- **Section "G. Broadcasting of hearings" (page 45)**

Amendment Proposal on **point 244: it is suggested to include the following additional sentence to inform the representatives of parties:**

"244. Hearings of the General Court may be broadcast, in accordance with the conditions laid down in Articles 110a and 219 of the Rules of Procedure. ***The parties' and the interested persons' representatives shall be informed without delay that the General Court plans to broadcast a hearing.***"

VIII. LEGAL AID

- **Section "A.1. Direct actions" (pages 47-48)**

Observations: Regarding **point 254,** the CCBE questions what the legal basis is for the procedural rule allowing an application for legal aid not to be registered if it is not based on new evidence. A further question concerns who makes this decision and whether this decision constitutes an act that can be challenged on appeal (which should probably be the case)? An appeal requires the assistance of a lawyer; and in this respect, one wonders how an appeal could be lodged with the assistance of a lawyer if the benefit of legal aid has been refused?

Regarding **point 256**, we are puzzled by the following sentence, and we would appreciate some clarification from the Court: ***"The remaining period within which the application initiating proceedings may be lodged may thus be very short."*** It is our understanding that a solution should be found so as not to place the newly appointed lawyer in a difficult time frame.

IX. URGENT PROCEDURES

- **Section "A.1. Direct actions / 1) Request for an expedited procedure" (page 49)**

Observations: Regarding **point 264**, the CCBE notes that there may be a significant concern regarding the equality of arms and due process if an application filed is 50 pages (or more) and the request for an expedited procedure is made by the defendant, who is then required to comply with a 25-page limit.

General comments

With the abolition of the registry fee, the General Court has embraced the principle of free transmission of extracts from registers; copies of a document or extract from a file; or copies of a judgment or order;). The CCBE would, in addition, suggest to improve access to the case law on the Curia site, in particular as regards new cases, communications to the Official Journal, access to certain types of orders, for example interim orders made under Article 157, (2) of the Rules of Procedure, access to decisions bringing proceedings to an end, which are not always accessible and other information concerning, in particular, judicial statistics, including the breakdown of data on appeals lodged, appeals declared inadmissible and appeals admitted by the Court of Justice. This desired improvement to the Curia site is without prejudice to the CCBE's previous request to introduce an integrated case management system allowing such access, and the CCBE would be happy to discuss this further with the court.

The recast rules introduce two or more new cases of regularisation. In this regard, we question whether this is consistent with the aim of the latest amendments to the procedural rules, which came into force on 1st April 2023, which aimed to reduce the instances and need for regularisation.

Final remarks

With regard to the other Chapters of the draft PR, the CCBE has no further comments.

We hope our comments will be of assistance and we thank you once again for the opportunity to provide our views.