

Treaty establishing the EEC - Protocol on the Statute of the Court of Justice of the European Economic Community (17 April 1957)


Caption: The Treaty establishing the European Economic Community (EEC) was signed in Rome on 25 March 1957 by the representatives of the Federal Republic of Germany, Belgium, France, Italy, Luxembourg and the Netherlands. The Treaty includes a protocol, signed on 17 April 1957, which lays down the statute of judges and advocates-general and the organisation and procedures of the Court of Justice of the EEC.

Source: Treaty establishing the European Economic Community and connected documents. Luxembourg: Publishing Services of the European Communities, [s.d.]. 378 p. "Protocol on the statute of the Court of Justice of the European Economic Community", p. 333-349.

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Last updated: 05/11/2015



Treaty establishing the EEC - Protocol on the statute of the Court of Justice of the European Economic Community

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THE HIGH CONTRACTING PARTIES TO THE TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY,

DESIROUS of fixing the Statute of the Court laid down in Article 188 of this Treaty,

HAVE DESIGNATED as their Plenipotentiaries for this purpose:

HIS MAJESTY THE KING OF THE BELGIANS:

Baron J. CH. SNOY et d'OPPUERS, Secretary-General of the Ministry of Economic Affairs, Head of the Belgian delegation to the Intergovernmental Conference;

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY:

Professor Dr. Carl Friedrich OPHÜLS, Ambassador of the Federal Republic of Germany, Head of the German delegation to the Intergovernmental Conference;

THE PRESIDENT OF THE FRENCH REPUBLIC:

Mr. Robert MARJOLIN, Professor of Faculties of Law, Deputy Head of the French delegation to the Intergovernmental Conference;

THE PRESIDENT OF THE ITALIAN REPUBLIC:

Mr. V. BADINI CONFALONIERI, Under-Secretary of State in the Ministry of Foreign Affairs, Head of the Italian delegation to the Intergovernmental Conference;

HER ROYAL HIGHNESS THE GRAND DUCHESS OF LUXEMBOURG:

Mr. Lambert SCHAUS, Ambassador of the Grand Duchy of Luxembourg, Head of the Luxembourg delegation to the Intergovernmental Conference;

HER MAJESTY THE QUEEN OF THE NETHERLANDS:

Mr. J. LINTHORST HOMAN, Head of the Netherlands delegation to the Intergovernmental Conference;

WHO, having exchanged their full powers, found in good and due form,

HAVE AGREED upon the following provisions annexed to the Treaty establishing the European Economic Community.

Article 1

The Court established by Article 4 of this Treaty shall be constituted and shall perform its duties in accordance with the provisions of this Treaty and of this Statute.

TITLE ONE - Status of the judges and the advocates-general

Article 2

Before entering upon his duties each judge shall in open court take an oath to perform his duties impartially

and conscientiously and to preserve the secrecy of the Court's deliberations.

Article 3

The judges shall be immune from legal process. They shall continue to benefit from such immunity after their functions have ceased for all acts performed by them in their official capacity, including their words spoken or written.

The Court, in plenary session, may suspend this immunity.

Only an agency competent to judge the members of the highest national judiciary in each Member State shall have jurisdiction in criminal proceedings against judges whose immunity has been suspended.

Article 4

The judges may not hold any political or administrative office.

They may not engage in any paid or unpaid professional activities, except by special exemption granted by the Council.

When entering upon their duties, they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations resulting therefrom, in particular the duty of exercising honesty and discretion as regards the acceptance, after their term of office, of certain functions or advantages.

In case of doubt a decision shall be made by the Court.

Article 5

Apart from retirements in regular rotation and the case of death the duties of a judge shall be terminated in individual cases by resignation.

Where a judge resigns, his letter of resignation shall be addressed to the President of the Court for transmission to the President of the Council. This notification shall constitute vacation of office.

Except for instances in which Article 6 applies, a judge shall continue to hold office until his successor enters upon his duties.

Article 6

The judges may be deprived of office or of their right to a pension or alternative advantages only if, in the unanimous opinion of the judges and advocates-general of the Court, they no longer fulfil the required conditions or meet the obligations resulting from their office. The judge concerned shall not take part in these deliberations.

The registrar of the Court shall communicate the Court's decision to the President of the Assembly and to the President of the Commission and shall notify it to the President of the Council.

In the case of decision removing a judge from his office, such notification shall constitute vacation of office.

Article 7

A judge appointed to replace a member whose term of office has not expired shall be appointed for the remainder of that member's term of office.

Article 8

The provisions of Articles 2 to 7 inclusive shall apply to the advocates-general.

TITLE TWO - Organisation

Article 9

The registrar shall take an oath before the Court to perform his duties impartially and conscientiously and to preserve the secrecy, of the Court's deliberations.

Article 10

The Court shall arrange for the registrar to be replaced if he is unable to carry out his duties.

Article 11

The Court shall have officials and other employees to ensure its functioning. They shall be responsible to the registrar under the authority of the President.

Article 12

The Council, acting by means of a unanimous vote on a proposal of the Court, may provide for the appointment of assistant rapporteurs and lay down their statute of service. The assistant rapporteurs may be required under conditions to be fixed by the rules of procedure to participate in the examination of cases pending before the Court and to collaborate with the reporting judge.

The assistant rapporteurs shall be chosen from among persons who are of indisputable independence and who possess the necessary legal qualifications; they shall be appointed by the Council. They shall take an oath before the Court to perform their duties impartially and conscientiously and to preserve the secrecy of the Court's deliberations.

Article 13

The judges, advocates-general and the registrar shall reside at the seat of the Court.

Article 14

The Court shall sit permanently. The length of judicial recesses shall be fixed by the Court with due regard for its judicial obligations.

Article 15

The Court may sit validly only with an uneven number of members. The deliberations of the Court meeting in plenary session shall be valid if five members are present. The deliberations of the chambers are valid only if they are conducted by three judges; in the event of one of the judges of a chamber being unable to carry out his duties, a judge of another chamber may be asked to sit in accordance with conditions which shall be laid down by the rules of procedure.

Article 16

The judges and advocates-general may not participate in the settlement of any case in which they have previously participated as a representative, counsel or advocate of one of the parties, or on which they have been called upon to decide as a member of a tribunal, of a commission of inquiry or in any other capacity.

If, for some special reason, any judge or advocate-general considers that he should not take part in the judgment or examination of a particular case, he shall so inform the President. If the President considers that any judge or advocate-general should not, for some special reason, sit or submit conclusions in a particular case, he shall give notice thereof to the person concerned.

The Court shall decide in case of any difficulties arising from the application of this Article.

A party may not invoke either the nationality of a judge or the absence from the bench or from one chamber of a judge of his own nationality, in order to ask for a change in the composition of the Court or of one of its chambers.

TITLE THREE - Procedure

Article 17

The States and the institutions of the Community shall be represented before the Court by a representative appointed for each case; the representative may be assisted by counsel or by an advocate who is a member of the Bar of one of the Member States.

Other parties shall be represented by an advocate member of the Bar of one of the Member States.

The representatives, counsel and advocates appearing before the Court shall have the rights and guarantees necessary for the independent performance of their duties, under conditions to be laid down by the rules of procedure.

The Court shall have, with respect to the counsel and advocates who appear before it, the powers normally accorded to courts and tribunals, under conditions to be laid down by the same rules.

Professors being nationals of the Member States whose municipal law accords to them the right to plead shall have the same rights before the Court as are accorded by this Article to advocates.

Article 18

The procedure before the Court entails two stages: one written and the other oral.

The written procedure shall include communication to the parties as well as to the institutions of the Community whose decisions are in dispute, of the petitions, memoranda, defence and observations and answers, if any, as well as of all documentary evidence and supporting papers or of certified copies thereof.

Such communications shall be made by the registrar in the sequence and within the time-limits fixed by the rules of procedure.

The oral procedure shall include the reading of the report presented by a reporting judge, the hearing by the Court of representatives, counsel and advocates and of the conclusions of the advocate-general as well as the hearing, if necessary, of witnesses and experts.

Article 19

Matters shall be referred to the Court by a petition addressed to the registrar. The petition shall contain the name and the domicile of the petitioner and the capacity of the signatory, the name of the party against whom the petition is lodged, the subject-matter of the dispute, the arguments and a short summary of the grounds on which the petition is based.

The petition shall be accompanied, where appropriate, by the act whose annulment is sought or, in the case mentioned in Article 175 of this Treaty, by documentary evidence of the date of issue of the invitation referred to in that Article. If these documents are not annexed to the petition, the registrar shall ask the party concerned to produce them within a reasonable period; in that case the rights of the party shall not lapse even if such documents are produced after the expiry of the time-limit set for the appeal.

Article 20

In cases provided for under Article 177 of this Treaty, the decision of the domestic court or tribunal which suspends its proceedings and makes a reference to the Court shall be notified to the Court by the domestic court or tribunal concerned. Such decision shall then be notified by the registrar to the parties in the case, to the Member States and to the Commission, and also to the Council if the act whose validity or interpretation is in dispute originates from the Council.

The parties, the Member States, the Commission and, where appropriate, the Council are entitled to submit to the Court, within a period of two months after the latter notification, memoranda or written comments.

Article 21

The Court may request the parties to produce all documents and to supply all information which the Court considers desirable. In case of refusal, the Court shall take judicial notice thereof.

The Court may also request Member States and institutions not being parties to the case to supply all information which the Court considers necessary for the proceedings.

Article 22

The Court may at any time charge any person, body, office, commission or organ of its own choice with the

duty of making an expert study.

Article 23

Witnesses may be heard under the conditions which shall be determined by the rules of procedure.

Article 24

The Court shall have, with respect to defaulting witnesses, the powers generally accorded to courts and tribunals and may impose pecuniary sanctions under conditions to be laid down by the rules of procedure.

Article 25

Witnesses and experts may be heard under oath in the form laid down by the rules of procedure or in the manner fixed by the municipal law of the witness or expert.

Article 26

The Court may order that a witness or expert be heard by the judicial authority of his domicile.

This order shall be sent for execution to the competent judicial authority under conditions laid down by the rules of procedure. The documents resulting from the execution of this rogatory commission shall be sent to the Court under the same conditions.

The Court shall be responsible for the expenses incurred, subject to the right to charge these expenses, where appropriate, to the parties concerned.

Article 27

Each Member State shall regard any violation of an oath by witnesses and experts as if the same offence had been committed before a domestic court or tribunal dealing with a case in civil law. When the Court reports such a violation the Member State concerned shall prosecute the offender before the competent domestic court or tribunal.

Article 28

Hearings shall be public unless the Court, ex officio or at the request of the parties, shall, for substantial reasons, decide otherwise.

Article 29

During the hearings the Court may examine the experts, the witnesses and the parties themselves. The latter may only plead through their representative.

Article 30

Minutes shall be kept of each bearing, signed by the President and the registrar.

Article 31

The list of cases shall be fixed by the President.

Article 32

The Court's deliberations shall be and shall remain secret.

Article 33

Judgments shall be supported by reasons. They shall state the names of the judges who have deliberated.

Article 34

Judgments shall be signed by the President and the registrar. They shall be read in open court.

Article 35

Costs shall be determined by the Court.

Article 36

The President of the Court may, in accordance with a summary procedure which derogates, as far as necessary, from certain provisions of this Statute and under conditions which shall be laid down in the rules of procedure, rule either upon submissions for the granting of suspension of execution, as provided for in Article 185 of this Treaty, or for the application of interim orders pursuant to Article 186, or for the suspension of forced execution in accordance with Article 192, last paragraph.

In the event of the President being prevented from carrying out his duties, he shall be replaced by another judge under conditions laid down by the rules of procedure.

The ruling of the President or of his alternate shall be provisional and shall in no way prejudice the decision of the Court on the substance.

Article 37

The Member States and the institutions of the Community may intervene in cases before the Court.

The same right is given to any other person establishing an interest in the result of any case referred to the Court except in cases between Member States, between institutions of the Community or between Member States and institutions of the Community.

The submission of third parties intervening in a case shall be limited to the support of the arguments of either party.

Article 38

Where the defendant, after having been duly notified, fails to file written conclusions, a judgment may be

made on his case in default. This judgment may be appealed against within a period of one month after the date of notification. Such appeal shall not stay the execution of the judgment by default unless the Court decides otherwise.

Article 39

The Member States, the institutions of the Community and any other natural or legal persons may, in cases and under conditions to be determined by the rules of procedure, institute third party proceedings to contest judgments which have been given without their having been heard, where such judgments are prejudicial to their rights.

Article 40

In case of difficulty as to the meaning or scope of a judgment, it shall be to the Court to interpret such judgment upon the request of any party or any institution of the Community establishing an interest therein.

Article 41

The Court may be asked to review a judgment only on grounds of the discovery of a fact capable of exerting a decisive influence and which was unknown to the Court and to the party requesting such review prior to the pronouncement of such judgment.

The procedure for review shall commence by a judgment of the Court explicitly finding that a new fact exists, recognising therein the characteristics giving rise to review and holding the request for review to be admissible for that reason.

No request for review may be introduced after the expiry of a period of ten years after the date of the judgment.

Article 42

Periods of grace on grounds of distance shall be determined by the rules of procedure.

There shall be no lapse of rights through the expiry of time-limits if the party concerned proves the existence of an Act of God or force majeure.

Article 43

Proceedings against the Community in matters arising from non-contractual responsibility shall be statute-barred after a period of five years from the occurrence of the circumstance giving rise thereto. This limitation is superseded by a petition to the Court or by a previous request which the injured party may direct to the relevant institution of the Community. In this last case, the petition must be filed within the period of two months provided for in Article 173; the provisions of Article 175, paragraph 2, shall apply, where appropriate.

Article 44

The rules of procedure of the Court provided for under Article 188 of this Treaty shall contain, apart from

the provisions contemplated by this Statute, any other provisions necessary for its application and, where necessary, for its completion.

Article 45

The Council, acting by means of a unanimous vote, may make such further amendments to the provisions of this Statute as may be required by reason of measures taken by the Council under the terms of Article 165, last paragraph of this Treaty.

Article 46

Immediately after the taking of the oath, the President of the Council shall proceed to choose by lot the judges and the advocates-general whose term of office is to expire at the end of the first period of three years in accordance with Article 167, second and third paragraphs, of this Treaty.

IN FAITH WHEREOF, the undersigned Plenipotentiaries have placed their signatures at the end of the present Protocol.

Done at Brussels, on the seventeenth day of April in the year one thousand nine hundred and fifty-seven.

J. CH. SNOY et d'OPPUERS.
C. F. OPHÜLS.
Robert MARJOLIN.
Vittorio BADINI.
Lambert SCHAUS.
J. LINTHORST HOMAN.