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THE EUROPEAN UNION**

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COVER NOTE

from: Mr Vassilios SKOURIS, President of the Court of Justice of the European Communities
on: 10 July 2007
to: Mr Luis Amado, President of the Council of the European Union

Subject: Treatment of questions referred for a preliminary ruling concerning the area of freedom, security and justice
- Amendments to the Rules of Procedure of the Court of Justice
= Draft Council Decision

Mr President,

I refer to the sixth paragraph of Article 223 of the EC Treaty and the sixth paragraph of Article 139 of the EAEC Treaty and am writing to submit the amendments to the Rules of Procedure of the Court of Justice enclosed with this letter for approval by the Council.

The proposed amendments relate to the introduction of an urgent preliminary ruling procedure for certain references for a preliminary ruling in the area of freedom, security and justice. The proposal is issued in response to a letter sent to me by the President of the Council of the European Union on 20 April 2007, following discussions regarding the introduction of such a procedure which took place within the Council on the basis of two discussion papers drawn up by the Court of Justice.

The proposed amendments are accompanied by explanatory notes, to which reference should be made.

The amendments are attached in all the official languages of the Union.

For the sake of good order, I should indicate that I am sending to you at the same time, by separate letter, a draft Council Decision amending the Protocol on the Statute of the Court of Justice, since an amendment to the Statute is required in order to allow the introduction of the proposed urgent preliminary ruling procedure.

Yours faithfully,

Vassilios SKOURIS

DRAFT
AMENDMENTS TO THE RULES OF PROCEDURE
OF THE COURT OF JUSTICE

By letter of 25 September 2006, the Court of Justice sent the Council a discussion paper regarding the introduction of a procedure allowing the Court to give a ruling rapidly on references for a preliminary ruling relating to the area of freedom, security and justice. That paper was followed, at the Council's request, by a supplementary discussion paper, which was sent to the Council by letter of 21 December 2006 and provided further detail as regards the practical options outlined in the first paper.

In those papers, it was noted that, in its current form, the accelerated procedure laid down under Article 104a of the Rules of Procedure of the Court is not suited for dealing adequately with a high number of references for a preliminary ruling in areas such as visas, asylum and immigration, or judicial cooperation in civil and criminal matters. The procedure laid down under that provision in fact comprises the same stages as the normal procedure for a preliminary ruling and acceleration is achieved primarily by giving absolute priority to the case in question at all stages. Acceleration is thus achieved to the detriment of all other pending cases.

In order to deal with a significant number of references for a preliminary ruling in a particular area, two approaches appear possible. Under the first, participation in the preliminary ruling procedure would be limited to the parties to the dispute before the national court or tribunal, the Member State from which the reference is made, the Commission and, where relevant, the other Community institutions which had adopted the measure whose validity is challenged or whose interpretation is requested. To compensate, however, there would be an opportunity for the other persons normally entitled to participate in the preliminary ruling procedure to request that the decision adopted by the Court be reconsidered.

Under the second approach, however, all those referred to in Article 23 of the Statute would be

entitled to participate in the preliminary ruling procedure, but the proceedings would be subject to stricter practical rules concerning, in particular, the translation of the reference for a preliminary ruling, the length of any written observations and the time-limit for lodging them, and limiting the procedure to the written or to the oral stage, and there would be no opportunity for reconsidering the decision adopted by the Court.

Those discussion papers and the options outlined in them were the subject of discussions within the Council. By letter of 20 April 2007, the Council informed the Court that it could accept an urgent preliminary ruling procedure, in the areas covered by Title VI of the EU Treaty and Title IV of Part Three of the EC Treaty, based on the second option envisaged by the Court. It invited the Court to submit formal proposals as soon as possible with a view to such a procedure being introduced.

It is clear from that letter that the Council supports the Court's aim of accelerating proceedings, but would prefer that the urgent preliminary ruling procedure be implemented in such a way as to take account both of the fact that urgent procedures call for a swift decision and of the need for the Member States to have a real opportunity to participate in the proceedings.

Bearing in mind those wishes and the concerns expressed during discussions, the Court has drawn up these proposals, which allow for all the Member States to participate in a manner comparable to what currently applies in normal proceedings for a preliminary ruling, in particular as regards the availability of translations, but which, for most Member States, limits the procedure to the oral part. Save in exceptional cases, there is also a written part, but, for maximum speed, that part is limited to the parties and persons conversant with the language of the case, that is to say, the parties to the main proceedings, the Member State from which the reference is made and the institution or institutions affected by the reference.

As had been stated in the discussion papers referred to above, it is proposed to assign references for a preliminary ruling in the area concerned to one of the Chambers of five Judges of the Court, to be designated for that purpose. The decision as to whether to deal with a reference under the urgent preliminary ruling procedure will be taken by that Chamber, which could then, if appropriate, rule on the question referred in a formation of three Judges or, else, where justified by the importance or

the complexity of the case, refer the case to the Court for it to be assigned to a larger formation.

The procedure proposed can be summarised as follows.

As soon as a reference for a preliminary ruling touching on an area covered by Title VI of the EU Treaty or Title IV of Part Three of the EC Treaty is received and a request for an urgent procedure is made by the national court or tribunal – or, exceptionally, of its own motion – the Court will notify the reference to the parties to the main proceedings, the Member State from which the reference is made, the Commission and, where the validity or interpretation of one of their measures is at issue, the European Parliament and the Council. The parties, State and institution(s) in question would thus be directly informed of the possibility that the reference may be dealt with under the urgent preliminary ruling procedure and would, at that stage, be in a position to prepare any written observations and/or to hold any discussions necessary in order to prepare those observations.

Within the Court, the reference for a preliminary ruling will be sent to the translation services, for a translation of the reference into the working language of the Court to be prepared without delay. That translation will allow the designated Chamber to determine very quickly whether the urgent preliminary ruling procedure should be applied. If the Chamber decides that it should not, the case will then be dealt with under the ordinary procedure for preliminary rulings.

If the Chamber decides to deal with the reference under the urgent procedure, the decision will be communicated immediately to the national court or tribunal, to the parties to the main proceedings, to the Member State from which the reference is made and to the institutions referred to above, who will be informed at the same time of the time-limit for submitting any written observations. Where appropriate, the designated Chamber could also indicate the points of law to which those observations should relate and specify a maximum length. The other parties referred to in Article 23 of the Statute will also be informed that the urgent procedure is to apply.

On the expiry of the period laid down for the submission of written observations, the Court will serve the reference for a preliminary ruling on all the parties and the other persons referred to in Article 23 of the Statute, together with translations which will by then be available into all the official languages of the Union, accompanied by the written observations submitted by the parties referred to in the preceding paragraph in the language of the case and by their translation into the

working language of the Court, as is the case for all references for a preliminary ruling. That service will be accompanied by notice to all the parties and other persons referred to in Article 23 of the Statute of a hearing which will offer all those entitled to participate in the proceedings the opportunity, if they so desire, to state their views on the question(s) raised by the national court or tribunal and/or to respond to the observations lodged in the course of the written procedure.

The Chamber will give a ruling shortly after the hearing, after the Advocate General has been heard.

The Court considers that these procedures, which, as mentioned above, combine a limited written procedure with an oral procedure, will ensure that the Member States are given a real opportunity to participate in the proceedings, while still ensuring a speedy ruling. The right to be heard will also be maintained for all parties having an interest.

Lastly, the procedures proposed provide for the use of electronic means of communication.

THE COURT,

Having regard to the Treaty establishing the European Community, and in particular the sixth paragraph of Article 223 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular the sixth paragraph of Article 139 thereof,

Whereas:

1. References for a preliminary ruling which may be submitted to the Court of Justice in the areas covered by Title VI of the Treaty on European Union or Title IV of Part Three of the Treaty establishing the European Community, which seek to maintain and develop an area of freedom, security and justice, require, in certain cases, a rapid response from the Court by reason of the urgency with which the case has to be dealt with before the national court or tribunal;
2. The normal preliminary ruling procedure, as set out in Article 23 of the Statute of the Court of Justice and in the Rules of Procedure, does not allow the Court to rule on the questions submitted to it with the rapidity required in the types of case referred to above. The accelerated procedure provided for in Article 104a of the Rules of Procedure for references for a preliminary ruling comprises the same stages as the normal procedure for preliminary rulings and can be applied only in exceptional cases, since acceleration is achieved primarily by giving priority to the reference for a preliminary ruling in question over all other pending cases at all stages of the proceedings;
3. It is possible to deal rapidly with a significant number of references for a preliminary ruling only by introducing an urgent preliminary ruling procedure which limits and simplifies the stages of the preliminary ruling procedure.

With the Council's approval given on,

HAS ADOPTED THE FOLLOWING AMENDMENTS TO ITS RULES OF PROCEDURE:

Article 1

The Rules of Procedure of the Court of Justice of the European Communities of 19 June 1991 (OJ L 176, 4.7.1991, p. 7, with corrigendum in OJ L 383, 29.12.1992, p. 117), as amended on 21 February 1995 (OJ L 44, 28.2.1995, p. 61), 11 March 1997 (OJ L 103, 19.4.1997, p. 1, with corrigendum in OJ L 351, 23.12.1997, p. 72), 16 May 2000 (OJ L 122, 24.5.2000, p. 43), 28 November 2000 (OJ L 322, 19.12.2000, p. 1), 3 April 2001 (OJ L 119, 27.4.2001, p. 1), 17 September 2002 (OJ L 272, 10.10.2002, p. 24, with corrigendum in OJ L 281, 19.10.2002, p. 24), 8 April 2003 (OJ L 147, 14.6.2003, p. 17), 19 April 2004 (OJ L 132, 29.4.2004, p. 2), 20 April 2004 (OJ L 127, 29.4.2004, p. 107), 12 July 2005 (OJ L 203, 4.8.2005, p. 19), 18 October 2005 (OJ L 288, 29.10.2005, p. 51) and 18 December 2006 (OJ L 386, 29.12.2006, p. 44) are hereby amended as follows:

1. Article 9 shall be amended as follows:

(a) Paragraph 1 shall be replaced by the following:

"1. The Court shall set up Chambers of five and three Judges in accordance with Article 16 of the Statute and shall decide which Judges shall be attached to them.

The Court shall designate the Chamber or Chambers of five Judges which, for a period of one year, shall be responsible for cases of the kind referred to in Article 104b.

The composition of the Chambers and the designation of the Chamber or Chambers responsible for cases of the kind referred to in Article 104b shall be published in the *Official Journal of the European Union*."

[New text of Article 9(1): "The Court shall set up Chambers of five and three Judges in accordance with Article 16 of the Statute and shall decide which Judges shall be attached to them.

The Court shall designate the Chamber or Chambers of five Judges which, for a period of one year, shall be responsible for cases of the kind referred to in Article 104b.

The composition of the Chambers and the designation of the Chamber or Chambers responsible for cases of the kind referred to in Article 104b shall be published in the *Official Journal of the European Union*."]]

The proper functioning of the urgent preliminary ruling procedure requires that the Court be in a position to take a decision swiftly, both on the actual implementation of such a procedure and on the substance of the issues submitted to it by national courts or tribunals. While

manageable when a very small number of cases are involved, the speed which this new form of procedure for preliminary rulings requires could, however, soon give rise to considerable difficulties for the Court if recourse to that procedure were to become widespread in the field in question. Not only does it require that Members of the Court be present on a more or less permanent basis in order to ensure that the Court may meet at any time with the requisite quorum to take the necessary decisions, which are of an inherently urgent nature, but it is also liable to have a negative impact on the way in which other cases before the Court are dealt with.

For those reasons, it is proposed to assign responsibility for all cases potentially within the scope of this new procedure to one of the Chambers of five Judges of the Court. That Chamber would not, strictly speaking, be a Chamber specialised in the areas covered by Title VI of the EU Treaty and Title IV of Part Three of the EC Treaty, but would be the Chamber responsible for a given period, for screening and processing all cases capable of giving rise to the urgent preliminary ruling procedure.

However, because of the essential urgency of the cases they would require to deal with, the Judges in that Chamber would be subject to a more demanding tempo of work and a more stringent obligation to be present, so that a system of rotation is essential. The Chamber responsible for dealing with cases of the kind referred to in Article 104b would be designated by the Court for a period of one year.

If the number of cases dealt with under the new procedure were too great, further Chambers of five Judges could be designated by the Court to deal with such cases.

(b) The following two subparagraphs shall be added to paragraph 2:

"For cases of the kind referred to in Article 104b, the Judge-Rapporteur shall be selected from among the Judges of the Chamber designated in accordance with paragraph 1 of this Article, on a proposal from the President of that Chamber. If the Chamber decides that the case is not to be dealt with under the urgent procedure, the President of the Court may reassign the case to a Judge-Rapporteur attached to another Chamber.

The President of the Court shall take the necessary steps if a Judge-Rapporteur is absent or prevented from acting."

[New text of Article 9(2): "As soon as an application initiating proceedings has been lodged, the President shall designate a Judge to act as Rapporteur.

For cases of the kind referred to in Article 104b, the Judge-Rapporteur shall be selected from among the Judges of the Chamber designated in accordance with paragraph 1 of this Article, on a proposal from the President of that Chamber. If the Chamber decides that the case is not to be dealt with under the urgent procedure, the President of the Court may reassign the case to a Judge-Rapporteur attached to another Chamber.

The President of the Court shall take the necessary steps if a Judge-Rapporteur is absent or prevented from acting."]

It is proposed to amend the second paragraph of Article 9 in order to add a provision that, for the cases in question, the Judge-Rapporteur must be selected from among the Judges of the designated Chamber. In order to take full account of the possibly heavy burden and demanding tempo of the work involved in dealing with such cases, it is proposed to adopt an approach similar to the system in operation in the Court of First Instance and to provide that the Judge-Rapporteur is to be designated by the President of the Court of Justice, acting on a

proposal from the President of the Chamber concerned.

It is proposed to state expressly that, when the Chamber decides not to apply the urgent procedure to a reference for a preliminary ruling in one of the areas referred to in Article 104b, the President may reassign the case to a Judge-Rapporteur from another Chamber. Such reassignments may be necessary because of the workload imposed and time demands on the Judges attached to the designated Chamber, and the workload imposed on the Chamber itself.

Lastly, it appears appropriate to provide, in a third subparagraph, that the President may take the necessary steps where a Judge-Rapporteur is absent or prevented from acting, in the same way as the First Advocate General may take steps where an Advocate General is absent or prevented from acting (Article 10(2) of the Rules). That provision will allow the President of the Court to reassign a preliminary reference subject to an urgent procedure to another Judge of the designated Chamber if the Judge-Rapporteur is absent or prevented from acting.

2. The following shall be added after Article 104a:

"Article 104b

1. A reference for a preliminary ruling which raises one or more questions in the areas covered by Title VI of the Union Treaty or Title IV of Part Three of the EC Treaty may, at the request of the national court or tribunal or, exceptionally, of the Court's own motion, be dealt with under an urgent procedure which derogates from the provisions of these Rules.

The national court or tribunal shall set out, in its request, the matters of fact and law which establish the urgency and justify the application of that exceptional procedure and shall, in so far as possible, indicate the answer it proposes to the questions referred.

If the national court or tribunal has not submitted a request for the urgent procedure to be applied, the President of the Court may, if the application of that procedure appears, *prima facie*, to be required, ask the Chamber referred to below to consider whether it is necessary to deal with the reference under that procedure.

The decision to deal with a reference for a preliminary ruling under the urgent procedure shall be taken by the designated Chamber, acting on a report of the Judge-Rapporteur and after hearing the Advocate General. The composition of that Chamber shall be determined in accordance with Article 11c on the day on which the case is assigned to the Judge-Rapporteur if the application of the urgent procedure is requested by the national court or tribunal, or, if the application of that procedure is considered at the request of the President of the Court, on the day on which that request is made.

As indicated in the Introduction, the material scope of the urgent procedure would be limited to questions raised in the areas covered by Title VI of the Union Treaty and Title IV of

Part Three of the EC Treaty. Save in exceptional cases, that procedure is not, as a rule, to be initiated of the Court's own motion, but requires an express request from the national court or tribunal. The request must set out the reasons which, in the view of that court or tribunal, justify the application of that exceptional procedure. To that end, it should set out clearly and precisely the legal and factual background to the case, and should also describe the particular legal and/or factual matters which establish the need for an urgent ruling, such as, for example, the existence in national or Community law of mandatory time-limits for giving a ruling or the serious consequences which could result, for the person concerned, from any delay in ruling on the questions referred. In order to facilitate the decision of the designated Chamber as to whether it is necessary to initiate the urgent procedure, and also, if that procedure is implemented, in order to encourage the submission of (written or oral) observations that are as relevant as possible, the national court or tribunal may also, if the law of its Member State so permits, propose the answer which it might itself consider giving to the questions referred.

Provision is, however, made for allowing the Chamber to apply the urgent procedure of its own motion where the national court or tribunal has failed to submit a request to that effect even though such a procedure is necessary. For practical reasons, it is proposed to give the President of the Court the power to request the Chamber to consider whether that procedure should be applied of the Court's own motion.

2. A reference for a preliminary ruling of the kind referred to in the preceding paragraph shall, where the national court or tribunal has requested the application of the urgent procedure or where the President has requested the designated Chamber to consider whether it is necessary to deal with the reference under that procedure, be notified forthwith by the Registrar to the parties to the action before the national court or tribunal, to the Member State from which the reference is made and to the institutions referred to in the first paragraph of Article 23 of the Statute, in accordance with that provision.

The decision as to whether or not to deal with the reference for a preliminary ruling under the urgent procedure shall be notified forthwith to the national court or tribunal and to the parties, Member State and institutions referred to in the preceding paragraph. The decision to deal with the reference under the urgent procedure shall prescribe the period within which those parties or entities may lodge statements of case or written observations. The decision may specify the matters of law to which such statements of case or written observations must relate and may specify the maximum length of those documents.

The decision to deal with the reference for a preliminary ruling under the urgent procedure shall also be notified to the persons referred to in Article 23 of the Statute other than those referred to in the preceding paragraph.

Where the reference is not to be dealt with under the urgent procedure, the proceedings shall continue in accordance with the provisions of Article 23 of the Statute and the applicable provisions of these Rules.

Where the national court or tribunal requests the application of the urgent procedure, the reference for a preliminary ruling is to be notified forthwith to the parties to the main proceedings, the Member State from which the reference is made and the Commission and also, where the validity or interpretation of one of their measures is at issue, to the European Parliament and the Council. The attention of those parties, that State and those institutions will thus be directly drawn to the fact that the case may be dealt with under an urgent

procedure. Where the national court or tribunal has not submitted a request for the application of the urgent procedure, but the President of the Court takes the view that such a procedure is required and requests the designated Chamber to consider whether it should be applied of the Court's own motion, that notification is to take place when the President's request is made.

If, subsequently, the designated Chamber decides not to apply the urgent procedure, the parties, State and institutions in question will, it is true, have an advantage over the other persons referred to in Article 23 of the Statute, who will receive the text of the reference for a preliminary ruling, in their language, only at a later date. That difference in treatment is, however, unavoidable if an urgent procedure is to be feasible.

If, on the other hand, the Chamber decides to deal with the reference under the urgent procedure, giving advance notice of the reference to the parties to the main proceedings, the State from which the reference is made and the institutions referred to in the first paragraph of Article 23 of the Statute would have the advantage of allowing those concerned to familiarise themselves with the reference and to hold any discussions necessary in order to draft rapidly any written observations they may wish to make.

The time-limit for the submission of any written observations would be prescribed by the Chamber, having regard to the degree of urgency and complexity of the case. In the interests of efficiency and speed, the Chamber may also specify a maximum length for written observations and invite the parties referred to above to concentrate on certain specific points.

Provision is also made for the other persons referred to in Article 23 of the Statute to be informed of the decision to deal with a reference for a preliminary ruling under the urgent procedure. At that stage, the reference will be available only in the language of the case and, if so desired, in a translation into the working language of the Court.

Lastly, for reasons of clarity, it is indicated that where a reference concerning the matters referred to in the first paragraph of the article is not to be dealt with under an urgent procedure the normal procedure will apply.

3. A reference for a preliminary ruling which is to be dealt with under an urgent procedure, together with the statements of case or written observations which have been lodged, shall be served on the persons referred to in Article 23 of the Statute other than the parties and the entities referred to in the first subparagraph of the preceding paragraph of this Article. The reference for a preliminary ruling shall be accompanied by a translation, where appropriate in summary form, in accordance with Article 104(1).

The statements of case or written observations which have been lodged shall also be served on the parties and the other persons referred to in the first subparagraph of Article 104b(2).

The date of the hearing shall be notified to the parties and those other persons at the same time as the documents referred to in the preceding paragraphs are served.

The purpose of notifying the reference immediately to the parties to the main proceedings, to the Member State from which the reference is made and to the institutions referred to in the first paragraph of Article 23 of the Statute is to enable the first steps to be taken immediately in the language of the case. As soon as the translation of the reference for a preliminary ruling was available in all the official languages, the reference would be notified to the other persons referred to in Article 23 of the Statute, in the language of the case and in their own language, in the usual manner, and it would in addition be accompanied by any written observations submitted to the Court, together with their translation into the working language of the Court. Those persons would thus have available to them a solid written basis for deciding whether they should attend the hearing. The date of that hearing would be communicated to all the parties and the other persons referred to in Article 23 of the Statute at the same time and would be fixed by the designated Chamber having regard to the degree of complexity and urgency of the case.

4. The Chamber may, in cases of extreme urgency, decide to omit the written part of the procedure referred to in the second subparagraph of paragraph 2 of this Article.

As indicated in the Introduction, the proposed procedure strives to reconcile the need for speed with the need for the Member States to have a real opportunity to participate, by providing for a first written stage, limited to certain participants, and a second oral stage, in which all participants may play a role.

In some circumstances, however, it is conceivable that such a procedure would still not be sufficiently rapid. The particular circumstances of the case or its legal background could require the Court to give a ruling within a shorter timescale than that achievable under the urgent procedure. It is therefore proposed that the designated Chamber could, in exceptional cases, omit the written stage of the procedure and simply hold a hearing. This would eliminate all the constraints associated with the submission of written observations and the need for them to be translated into the working language of the Court.

5. The designated Chamber shall rule after hearing the Advocate General.

It may decide to sit in a formation of three Judges. In that event, it shall be composed of the President of the designated Chamber, the Judge-Rapporteur and the first Judge or, as the case may be, the first two Judges designated from the list referred to in Article 11c(2) on the date on which the composition of the designated Chamber is determined in accordance with the fourth subparagraph of paragraph 1 of this Article.

It may also decide to refer the case back to the Court in order for it to be assigned to a formation composed of a greater number of Judges. The urgent procedure shall continue before the new formation, where necessary after the reopening of the oral procedure.

In the same way as is currently provided for in relation to the accelerated procedure, the designated Chamber would give a ruling shortly after the hearing and after having heard the Advocate General. The judgment would then be translated into all languages in the usual way, but as a matter of priority into the language of the case, in order for that translation to be quickly available for delivery of the judgment.

In order to reduce the workload of the designated Chamber, it is proposed to allow it to decide to sit in a reduced formation of three Judges. This may prove especially useful in straightforward or repetitive cases. In that event, the Chamber would be composed of the President of the designated Chamber, the Judge-Rapporteur and the first Judge designated, on the date on which the composition of the Chamber provided for under the fourth subparagraph of Article 104b(1) is determined, from the list of Judges drawn up in accordance with Article 11c(2) or, where the President of the designated Chamber is the Judge-Rapporteur, the first two Judges designated from that list.

Although cases dealt with under the urgent procedure would generally be the responsibility of

a Chamber periodically designated for that purpose the possibility cannot, however, be excluded that the importance or the complexity of the case might be such that a Member State, a Community institution or the Chamber itself considered that it should be dealt with by a larger formation. It is therefore provided that the designated Chamber may refer the case back to the Court in order for it to be assigned to a larger formation for judgment. For reasons of clarity, it is stated that the urgent procedure is to continue before the new formation and that, if the decision to refer the case back to the Court in order for it to be reassigned is taken after the hearing in the case, the oral procedure should be reopened.

6. The procedural documents referred to in this Article shall be deemed to have been lodged on the transmission to the Registry, by telefax or other technical means of communication available to the Court, of a copy of the signed original and the documents relied on in support of it, together with the schedule referred to in Article 37(4). The original of the document and the annexes referred to above shall be sent to the Registry.

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

Since Article 37(6) of the Rules of Procedure provides that the lodging of an original of a pleading is necessary in order to effect service where that document has previously been transmitted to the Registry by fax or other technical means of communication, the provision proposed in the first subparagraph is essential in order to ensure the rapid treatment of cases dealt with under the urgent procedure and, by the same token, to allow the necessary documents to be served without waiting for the originals to be lodged.

The second subparagraph is necessary in order to enable service to be effected by fax or other technical means of communication where the addressee has not (yet) agreed, pursuant to the second subparagraph of Article 38(2), that service may be effected in that way.

Article 2

These amendments to the Rules of Procedure, which are authentic in the languages referred to in Article 29(1) of these Rules, shall be published in the *Official Journal of the European Union* and shall enter into force on the first day of the second month following their publication.
