This document is meant purely as a documentation tool and the institutions do not assume any liability for its contents

►**B**

COUNCIL DECISION

of 2 November 2004

establishing the European Union Civil Service Tribunal

(2004/752/EC, Euratom)

(OJ L 333, 9.11.2004, p. 7)

Corrected by:

►**C1** Corrigendum, OJ L 103, 20.4.2007, p. 54 (2004/752/EC)

▼B

COUNCIL DECISION

of 2 November 2004

establishing the European Union Civil Service Tribunal

(2004/752/EC, Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 225a and 245 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Articles 140b and 160 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Court of Justice,

Whereas:

(1) Article 225a of the EC Treaty and Article 140b of the Euratom Treaty empower the Council to create judicial panels to hear and determine at first instance certain classes of action or proceeding brought in specific areas, to lay down the rules on the organisation of the panel and the extent of the jurisdiction conferred upon it.

(2) The establishment of a specific judicial panel to exercise jurisdiction at first instance in European civil service disputes, currently within the jurisdiction of the Court of First Instance of the European Communities, would improve the operation of the Community courts system. It answers the call made in Declaration No 16 relating to Article 225a of the EC Treaty [1], adopted when the Treaty of Nice was signed on 26 February 2001.

(3) A judicial panel should accordingly be attached to the Court of First Instance, that shall for institutional and organisational purposes be an integral part of the Court of Justice institution, an institution with members enjoying a similar status to members of the Court of First Instance.

(4) The new judicial panel should be given a name that distinguishes it in its trial formations from the trial formations of the Court of First Instance.

(5) To make the court system generally easy to understand, the provisions relating to the judicial panel's jurisdiction, composition, organisation and procedure should be laid down in an Annex to the Statute of the Court of Justice.

(6) The number of judges of the judicial panel should match its caseload. To facilitate decision-making by the Council in the appointment of judges, provision should be made for the Council to establish an independent Advisory Committee to verify that applications received meet the relevant conditions.

(7) The judicial panel should try cases by a procedure matching the specific features of the disputes that are to be referred to it, examining the possibilities for amicable settlement of disputes at all stages of the procedure.

[1] OJ C 80, 10.3.2001, p. 80.

▼B

(8) In accordance with the third paragraph of Article 225a of the EC Treaty and the third paragraph of Article 140b of the Euratom Treaty, appeals may be lodged at the Court of First Instance against decisions of the judicial panel on points of law only in the same conditions as those governing appeals lodged at the Court of Justice against decisions of the Court of First Instance. The relevant provisions of the Statute of the Court of Justice are reproduced in the Annex to the Statute relating to the judicial panel, to avoid cross-references that would make the general set of provisions difficult to read.

(9) Provision should be made in this Decision for transitional arrangements so that the judicial panel can exercise its functions as soon as it is established,

HAS DECIDED AS FOLLOWS:

Article 1

A judicial panel shall be attached to the Court of First Instance of the European Communities to hear disputes involving the European Union civil service and shall be known as the 'European Union Civil Service Tribunal'. The European Union Civil Service Tribunal shall have its headquarters at the Court of First Instance.

Article 2

The Protocol on the Statute of the Court of Justice shall be amended as follows:

1. the following Title shall be inserted:

'TITLE IVa

JUDICIAL PANELS

Article 62a

The provisions relating to the jurisdiction, composition, organisation and procedure of the judicial panels established under Articles 225a of the EC Treaty and 140b of the EAEC Treaty are set out in an Annex to this Statute.';

2. Annex I, as set out in the Annex to this Decision, shall be added.

Article 3

1. The first President of the European Union Civil Service Tribunal shall be appointed for three years in the same manner as its judges, unless the Council decides that the procedure laid down in Article 4(1) of Annex I to the Statute of the Court of Justice, as set out in the Annex to this Decision, shall be applied.

2. Immediately after all the judges of the European Union Civil Service Tribunal have taken oath, the President of the Council shall choose by lot three judges of the Tribunal whose duties are to end, by way of derogation from the first sentence of the second paragraph of Article 2 of Annex I to the Statute of the Court, upon expiry of the first three years of their term of office.

3. Cases referred to in Article 1 of Annex I to the Statute of the Court of Justice of which the Court of First Instance is seised on the date on which that Article enters into force but in which the written

▼B

procedure provided for in Article 52 of the Rules of Procedure of the Court of First Instance has not yet been completed shall be referred to the European Union Civil Service Tribunal.

4. Until the entry into force of its rules of procedure, the European Union Civil Service Tribunal shall apply *mutatis mutandis* the Rules of Procedure of the Court of First Instance, except for the provisions concerning a single judge.

Article 4

This Decision shall enter into force on the day following its publication in the *Official Journal of the European Union*, with the exception of Article 1 of Annex I to the Statute of the Court of Justice, as set out in the Annex to this Decision.

Article 1 of Annex I to the Statute of the Court of Justice shall enter into force on the day of the publication in the *Official Journal of the European Union* of the Decision of the President of the Court of Justice recording that the European Union Civil Service Tribunal has been constituted in accordance with law.

▼B

ANNEX

'ANNEX I

THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Article 1

The European Union Civil Service Tribunal (hereafter the Civil Service Tribunal) shall exercise at first instance jurisdiction in disputes between the Communities and their servants referred to in Article 236 of the EC Treaty and Article 152 of the EAEC Treaty, including disputes between all bodies or agencies and their servants in respect of which jurisdiction is conferred on the Court of Justice.

Article 2

The Civil Service Tribunal shall consist of seven judges. Should the Court of Justice so request, the Council, acting by a qualified majority, may increase the number of judges.

The judges shall be appointed for a period of six years. Retiring judges may be reappointed.

Any vacancy shall be filled by the appointment of a new judge for a period of six years.

Article 3

1. The judges shall be appointed by the Council, acting in accordance with the fourth paragraph of Article 225a of the EC Treaty and the fourth paragraph of Article 140b of the EAEC Treaty, after consulting the committee provided for by this Article. When appointing judges, the Council shall ensure a balanced composition of the Tribunal on as broad a geographical basis as possible from among nationals of the Member States and with respect to the national legal systems represented.

2. Any person who is a Union citizen and fulfils the conditions laid down in the fourth paragraph of Article 225a of the EC Treaty and the fourth paragraph of Article 140b of the EAEC Treaty may submit an application. The Council, acting by a qualified majority on a recommendation from the Court, shall determine the conditions and the arrangements governing the submission and processing of such applications.

3. A committee shall be set up comprising seven persons chosen from among former members of the Court of Justice and the Court of First Instance and lawyers of recognised competence. The committee's membership and operating rules shall be determined by the Council, acting by a qualified majority on a recommendation by the President of the Court of Justice.

4. The committee shall give an opinion on candidates' suitability to perform the duties of judge at the Civil Service Tribunal. The committee shall append to its opinion a list of candidates having the most suitable high-level experience. Such list shall contain the names of at least twice as many candidates as there are judges to be appointed by the Council.

Article 4

1. The judges shall elect the President of the Civil Service Tribunal from among their number for a term of three years. He may be re-elected.

2. The Civil Service Tribunal shall sit in chambers of three judges. It may, in certain cases determined by its rules of procedure, sit in full court or in a chamber of five judges or of a single judge.

3. The President of the Civil Service Tribunal shall preside over the full court and the chamber of five judges. The Presidents of the chambers of three judges shall be designated as provided in paragraph 1. If the President of the Civil Service Tribunal is assigned to a chamber of three judges, he shall preside over that chamber.

▼B

4. The jurisdiction of and quorum for the full court as well as the composition of the chambers and the assignment of cases to them shall be governed by the rules of procedure.

Article 5

Articles 2 to 6, 14, 15, the first, second and fifth paragraphs of Article 17, and Article 18 of the Statute of the Court of Justice shall apply to the Civil Service Tribunal and its members.

The oath referred to in Article 2 of the Statute shall be taken before the Court of Justice, and the decisions referred to in Articles 3, 4 and 6 thereof shall be adopted by the Court of Justice after consulting the Civil Service Tribunal.

Article 6

1. The Civil Service Tribunal shall be supported by the departments of the Court of Justice and of the Court of First Instance. The President of the Court of Justice or, in appropriate cases, the President of the Court of First Instance, shall determine by common accord with the President of the Civil Service Tribunal the conditions under which officials and other servants attached to the Court of Justice or the Court of First Instance shall render their services to the Civil Service Tribunal to enable it to function. Certain officials or other servants shall be responsible to the Registrar of the Civil Service Tribunal under the authority of the President of that Tribunal.

2. The Civil Service Tribunal shall appoint its Registrar and lay down the rules governing his service. The fourth paragraph of Article 3 and Articles 10, 11 and 14 of the Statute of the Court of Justice shall apply to the Registrar of the Tribunal.

Article 7

1. The procedure before the Civil Service Tribunal shall be governed by Title III of the Statute of the Court of Justice, with the exception of Articles 22 and 23. Such further and more detailed provisions as may be necessary shall be laid down in the rules of procedure.

2. The provisions concerning the Court of First Instance's language arrangements shall apply to the Civil Service Tribunal.

3. The written stage of the procedure shall comprise the presentation of the application and of the statement of defence, unless the Civil Service Tribunal decides that a second exchange of written pleadings is necessary. Where there is such second exchange, the Civil Service Tribunal may, with the agreement of the parties, decide to proceed to judgment without an oral procedure.

4. At all stages of the procedure, including the time when the application is filed, the Civil Service Tribunal may examine the possibilities of an amicable settlement of the dispute and may try to facilitate such settlement.

▼C1

5. The Civil Service Tribunal shall rule on the costs of a case. Subject to the specific provisions of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings.

▼B

Article 8

1. Where an application or other procedural document addressed to the Civil Service Tribunal is lodged by mistake with the Registrar of the Court of Justice or Court of First Instance, it shall be transmitted immediately by that Registrar to the Registrar of the Civil Service Tribunal. Likewise, where an application or other procedural document addressed to the Court of Justice or to the Court of First Instance is lodged by mistake with the Registrar of the Civil Service Tribunal, it shall be transmitted immediately by that Registrar to the Registrar of the Court of Justice or Court of First Instance.

▼B

2. Where the Civil Service Tribunal finds that it does not have jurisdiction to hear and determine an action in respect of which the Court of Justice or the Court of First Instance has jurisdiction, it shall refer that action to the Court of Justice or to the Court of First Instance. Likewise, where the Court of Justice or the Court of First Instance finds that an action falls within the jurisdiction of the Civil Service Tribunal, the Court seised shall refer that action to the Civil Service Tribunal, whereupon that Tribunal may not decline jurisdiction.

3. Where the Civil Service Tribunal and the Court of First Instance are seised of cases in which the same issue of interpretation is raised or the validity of the same act is called in question, the Civil Service Tribunal, after hearing the parties, may stay the proceedings until the judgment of the Court of First Instance has been delivered.

Where the Civil Service Tribunal and the Court of First Instance are seised of cases in which the same relief is sought, the Civil Service Tribunal shall decline jurisdiction so that the Court of First Instance may act on those cases.

Article 9

An appeal may be brought before the Court of First Instance, within two months of notification of the decision appealed against, against final decisions of the Civil Service Tribunal and decisions of that Tribunal disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of jurisdiction or inadmissibility.

Such an appeal may be brought by any party which has been unsuccessful, in whole or in part, in its submissions. However, interveners other than the Member States and the institutions of the Communities may bring such an appeal only where the decision of the Civil Service Tribunal directly affects them.

Article 10

1. Any person whose application to intervene has been dismissed by the Civil Service Tribunal may appeal to the Court of First Instance within two weeks of notification of the decision dismissing the application.

2. The parties to the proceedings may appeal to the Court of First Instance against any decision of the Civil Service Tribunal made pursuant to Article 242 or Article 243 or the fourth paragraph of Article 256 of the EC Treaty or Article 157 or Article 158 or the third paragraph of Article 164 of the EAEC Treaty within two months of its notification.

3. The President of the Court of First Instance may, by way of summary procedure, which may, insofar as necessary, differ from some of the rules contained in this Annex and which shall be laid down in the rules of procedure of the Court of First Instance, adjudicate upon appeals brought in accordance with paragraphs 1 and 2.

Article 11

1. An appeal to the Court of First Instance shall be limited to points of law. It shall lie on the grounds of lack of jurisdiction of the Civil Service Tribunal, a breach of procedure before it which adversely affects the interests of the appellant as well as the infringement of Community law by the Tribunal.

2. No appeal shall lie regarding only the amount of the costs or the party ordered to pay them.

Article 12

1. Without prejudice to Articles 242 and 243 of the EC Treaty or Articles 157 and 158 of the EAEC Treaty, an appeal before the Court of First Instance shall not have suspensory effect.

2. Where an appeal is brought against a decision of the Civil Service Tribunal, the procedure before the Court of First Instance shall consist of a written part and an oral part. In accordance with conditions laid down in the rules of procedure, the Court of First Instance, having heard the parties, may dispense with the oral procedure.

▼B

Article 13

1. If the appeal is well founded, the Court of First Instance shall quash the decision of the Civil Service Tribunal and itself give judgment in the matter. It shall refer the case back to the Civil Service Tribunal for judgment where the state of the proceedings does not permit a decision by the Court.

2. Where a case is referred back to the Civil Service Tribunal, the Tribunal shall be bound by the decision of the Court of First Instance on points of law.'