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*Plenary sitting*

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**A8-0439/2018**

6.12.2018

**\*\*\*I**  
**REPORT**

on the draft regulation of the European Parliament and of the Council on  
amending Protocol No 3 on the Statute of the Court of Justice of the European  
Union  
(02360/2018 – C8-0132/2018 – 2018/0900(COD))

Committee on Legal Affairs

Rapporteur: Tiemo Wölken

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▯ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the draft regulation of the European Parliament and of the Council amending Protocol No 3 on the Statute of the Court of Justice of the European Union (02360/2018 – C8-0132/2018 – 2018/0900(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the request from the Court of Justice submitted to Parliament and the Council, in its revised version (02360/2018),
  - having regard to Article 256(1) and the second paragraph of Article 281 of the Treaty on the Functioning of the European Union, and Article 106a(1) Treaty establishing the European Atomic Energy Community, pursuant to which the draft act was submitted to Parliament (C8-0132/2018),
  - having regard to Article 294(3) and (15) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Commission (COM(2018)0534),
  - having regard to Rules 48 and 59 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Constitutional Affairs (A8-0439/2018),
1. Adopts its position at first reading hereinafter set out;
  2. Instructs its President to forward its position to the Council, the Commission, the Court of Justice and the national parliaments.

### **Amendment 1**

#### **Draft regulation Recital 4**

*Draft by the Court of Justice*

(4) It is, moreover, clear from the review undertaken by the Court of Justice and the General Court that many appeals are brought in cases which have already been considered twice, initially by an independent administrative authority, then by the General Court, **and that many** of those appeals are dismissed by the Court of Justice because they are patently

*Amendment*

(4) It is, moreover, clear from the review undertaken by the Court of Justice and the General Court that many appeals are brought in cases which have already been considered twice, initially by an independent administrative authority, **such as the European Union Intellectual Property Office, the Community Plant Variety Office, the European Chemicals**

unfounded, or on the ground that they are manifestly inadmissible. In order to enable the Court of Justice to concentrate on the cases that require its full attention, it is necessary, in the interests of the proper administration of justice, to introduce, for appeals relating to such cases, a mechanism whereby the Court determines whether an appeal should be allowed to proceed. It would accordingly fall to the party challenging a decision of the General Court in those cases first to convince the Court of Justice of the significance of the questions raised by its appeal with respect to the unity, consistency or development of Union law.

*Agency, the European Aviation Safety Agency*, then by the General Court. ***Many of those appeals relating to cases in which an independent administrative authority has already been seized prior to the action before the General Court*** are dismissed by the Court of Justice because they are patently unfounded, or on the ground that they are manifestly inadmissible. In order to enable the Court of Justice to concentrate on the cases that require its full attention, it is necessary, in the interests of the proper administration of justice, to introduce, for appeals relating to such cases, a mechanism whereby the Court determines whether an appeal should be allowed to proceed. It would accordingly fall to the party challenging a decision of the General Court in those cases first to convince the Court of Justice of the significance of the questions raised by its appeal with respect to the unity, consistency or development of Union law.

## Amendment 2

### Draft regulation Recital 5

#### *Draft by the Court of Justice*

(5) In the light of the constant increase in the number of cases brought before the Court of Justice, and in accordance with the letter from the President of the Court of Justice of the European Union of 13 July 2018, it is necessary, at this stage, to prioritise the establishment of the procedure mentioned above whereby the Court of Justice decides whether an appeal should be allowed to proceed. The component of the request made by the Court of Justice on 26 March 2018 that relates to the partial transfer to the General Court of infringement proceedings should be examined at a later stage, after the report on the functioning of the General Court provided for in Article 3(1) of

#### *Amendment*

(5) In the light of the constant increase in the number of cases brought before the Court of Justice, and in accordance with the letter from the President of the Court of Justice of the European Union of 13 July 2018, it is necessary, at this stage, to prioritise the establishment of the procedure mentioned above whereby the Court of Justice decides whether an appeal should be allowed to proceed. The component of the request made by the Court of Justice on 26 March 2018 that relates to the partial transfer to the General Court of infringement proceedings should be examined at a later stage, after the report on the functioning of the General Court, ***in particular, on the efficiency of***

Regulation 2015/2422 of the European Parliament and of the Council of 16 December 2015 has been drawn up, in December 2020.

*the General Court, the effectiveness of and need for an increase in the number of judges to 56, provided for in Article 3(1) of Regulation 2015/2422 of the European Parliament and of the Council of 16 December 2015 has been drawn up, in December 2020, where the achievement of gender balance within the General Court should also be assessed. In order to achieve that objective, partial replacements in that Court should be organised in such a way that the governments of Member States gradually begin to nominate two Judges for the same partial replacement with the aim therefore of choosing one woman and one man, provided that the conditions and procedures laid down by the Treaties are respected.*

### **Amendment 3**

#### **Draft Regulation**

##### **Article 1 – paragraph 1 – point -1 a (new)**

Protocol No 3 on the Statute of the Court of Justice of the European Union

Article 8

#### *Present text*

Article 8

The provisions of Articles 2 to 7 shall apply to the Advocates-General.

#### *Amendment*

*(-1 a) Article 8 is replaced by the following:*

'Article 8

The provisions of Articles 2 to 7 shall apply to the Advocates General *mutatis mutandis*.'

### **Amendment 4**

#### **Proposal for a regulation**

##### **Article 1 – paragraph 1 – point 2**

Protocol No 3 on the Statute of the Court of Justice of the European Union

Article 58a – paragraph 1

#### *Draft by the Court of Justice*

*An appeal brought against a decision of*

#### *Amendment*

*Where the seising of an independent*

*the General Court concerning a decision of a board of appeal of the European Union Intellectual Property Office, the Community Plant Variety Office, the European Chemicals Agency or the European Aviation Safety Agency shall not proceed unless the Court of Justice first decides that it should be allowed to do so.*

*administrative body whose members are not bound by any instructions when taking their decisions is a prerequisite of an action being brought before the General Court, an appeal brought against the decision of the General Court shall not proceed unless the Court of Justice first decides that it should be allowed to do so.*

## **Amendment 5**

### **Draft regulation**

#### **Article 1 – paragraph 1 – point 2**

Protocol No 3 on the Statute of the Court of Justice of the European Union

Article 58a – paragraph 3

#### *Draft by the Court of Justice*

The decision as to whether the appeal should be allowed to proceed shall be reasoned and published.

#### *Amendment*

The decision as to whether the appeal should be allowed to proceed ***or not proceed*** shall be ***sufficiently*** reasoned and published.



## EXPLANATORY STATEMENT

The proper functioning of the Court of Justice is essential for the legal protection of EU citizens. The scope offered by the reform of the structure of the European courts adopted in December 2015 must be exploited to the full and responsibilities must be allocated between the General Court and the Court of Justice in such a way that EU citizens can secure legal protection quickly and effectively. The proposal made by the Court of Justice involving amendments to Protocol No 3 on the Statute of the Court of Justice of the European Union is fundamentally consistent with these objectives.

The terminological adjustments in keeping with the Lisbon reform make sense.

The transfer to the Court of Justice of responsibility for dealing with actions for annulment linked to the failure properly to comply with a judgment delivered by the Court of Justice under Article 260(2) or (3) TFEU is welcome.

The introduction, for certain categories of appeals, of a procedure whereby the Court of Justice will first determine whether certain appeals can be allowed to proceed is welcome in principle. However, the independent administrative authorities should not be listed individually. Instead, a comprehensive, abstract approach should be taken so that this provision does not quickly become outdated. The text should also make clear that decisions not to allow an appeal to proceed, and the reasons underpinning such decisions, must also be published.

As regards the issue of the possible transfer to the General Court of responsibility for adjudicating at first instance on certain categories of infringement proceedings, the decision to await the adoption in December 2020 of the report on the working methods of the General Court seems appropriate. That report will follow on from the completion of the third stage of the reform of the structure of the European courts (September 2019); it will focus on the efficiency of the General Court and the value of increasing the number of judges to 56, if indeed such an increase is necessary at all. In that connection, consideration should be given to establishing a gender balance within the General Court. As regards the transfer of responsibility in the area of infringement proceedings, due account should be taken of the fact that such proceedings are the Commission's most powerful weapon against Member States which fail to comply with EU law. They are thus essential for the effective implementation of EU law. Steps must be taken to ensure that the transfer of responsibility to the General Court does not result in proceedings taking longer. There is also the issue of the appropriateness of the transfer, given that infringement proceedings make up only a relatively small proportion of cases pending. In particular, it is not clear whether such a step is the best way of bringing about structural change.

## **OPINION OF THE COMMITTEE ON CONSTITUTIONAL AFFAIRS**

for the Committee on Legal Affairs

on the draft regulation of the European Parliament and of the Council amending Protocol No 3 on the Statute of the Court of Justice of the European Union (02360/2018 – C8-0132/2018 - 2018/0900(COD))

Rapporteur for opinion: Morten Messerschmidt

### **SHORT JUSTIFICATION**

Your rapporteur agrees with the main objectives of the proposal, notably with conferring on the Court of Justice exclusive jurisdiction to adjudicate on actions for annulment linked to the failure to properly comply with a judgment delivered by that Court under Article 260(2) or (3) TFEU. However, your rapporteur considers that the proposal could be complemented with the possibility for the judges to publish separate opinions, including dissenting ones, and proposes amendments to the relevant articles of the Statute of the Court. The practice of separate opinions is common to most of the Member States and it is generally allowed in international courts, such as the International Court of Justice and the European Court of Human Rights. The possibility of separate opinions would improve the quality of the Court's rulings, especially when the reasoning of the Court might be difficult to follow precisely because the bench had to incorporate partly diverging views in order to find a compromise among judges. Individual opinions could prompt the majority to deal explicitly with the views of the minority and to contest the validity of their legal arguments, while keeping the views of the dissenters separate, thus ensuring a more explicit, coherent, understandable and, ultimately, authoritative and convincing judgment. Separate opinions might anticipate subsequent developments in the Court's case law. They could also improve judicial dialogue with national courts, which would be confronted with better reasoned judgments, in which all different legal opinions – and especially those of the referring court – are explicitly and fully taken into account. The expression of individual opinions would by no means be mandatory and the judges would remain free to decide whether to publish a separate opinion or not. Clearly, a preference for transparency over secrecy can only contribute to the process of democratisation of the European Union.

### **AMENDMENTS**

The Committee on Constitutional Affairs calls on the Committee on Legal Affairs, as the committee responsible, to take into account the following amendments:

## Amendment 1

### Draft Regulation

#### Article 1 – paragraph 1 – point -1 (new)

Protocol No 3 on the Statute of the Court of Justice of the European Union

Article 2

#### *Present text*

Article 2

Before taking up his duties each Judge shall, before the Court of Justice sitting in open court, take an oath to perform his duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

#### *Amendment*

***(-1) Article 2 is replaced by the following:***

'Article 2

Before taking up his duties each Judge shall, before the Court of Justice sitting in open court, take an oath to perform his duties impartially and conscientiously and, ***without prejudice to the second paragraph of Article 36***, to preserve the secrecy of the deliberations of the Court. '

## Amendment 2

### Draft Regulation

#### Article 1 – paragraph 1 – point -1 a (new)

Protocol No 3 on the Statute of the Court of Justice of the European Union

Article 8

#### *Present text*

Article 8

The provisions of Articles 2 to 7 shall apply to the Advocates-General.

#### *Amendment*

***(-1 a) Article 8 is replaced by the following:***

'Article 8

The provisions of Articles 2 to 7 shall apply to the Advocates General ***mutatis mutandis***.'

## Amendment 3

### Draft Regulation

#### Article 1 – paragraph 1 – point -1 b (new)

Protocol No 3 on the Statute of the Court of Justice of the European Union

Article 35

*Present text*

Article 35

*The* deliberations of the Court of Justice shall be and shall remain secret.

*Amendment*

***(-1 b) Article 35 is replaced by the following:***

Article 35

***Without prejudice to the second paragraph of Article 36, the*** deliberations of the Court of Justice shall be and shall remain secret.

**Amendment 4**

**Draft Regulation  
Article 2 a (new)**

*Draft by the Court of Justice*

*Amendment*

***Article 2 a***

***Articles 2, 8, 35, 36 and 47 of the Statute, as amended by this Regulation, shall be applicable to cases of which the Court of Justice or the General Court is seized after the date when this Regulation enters into force.***

## PROCEDURE – COMMITTEE ASKED FOR OPINION

<b>Title</b>	Proposed amendments to Protocol No 3 on the Statute of the Court of Justice of the European Union						
<b>References</b>	02360/2018 – C8-0132/2018 – 2018/0900(COD)						
<b>Committee responsible</b> Date announced in plenary	JURI 16.4.2018						
<b>Opinion by</b> Date announced in plenary	AFCO 16.4.2018						
<b>Rapporteur</b> Date appointed	Morten Messerschmidt 20.6.2018						
<b>Discussed in committee</b>	21.11.2018						
<b>Date adopted</b>	27.11.2018						
<b>Result of final vote</b>	<table> <tr> <td>+:                   </td><td>22</td></tr> <tr> <td>–:                   </td><td>2</td></tr> <tr> <td>0:                   </td><td>0</td></tr> </table>	+:	22	–:	2	0:	0
+:	22						
–:	2						
0:	0						
<b>Members present for the final vote</b>	Gerolf Annemans, Elmar Brok, Fabio Massimo Castaldo, Pascal Durand, Esteban González Pons, Danuta Maria Hübner, Diane James, Ramón Jáuregui Atondo, Alain Lamassoure, Jo Leinen, Morten Messerschmidt, Maite Pagazaurtundúa Ruiz, Markus Pieper, Paulo Rangel, Helmut Scholz, György Schöpflin, Barbara Spinelli, Claudia Țapardel, Josep-Maria Terricabras						
<b>Substitutes present for the final vote</b>	Sylvia-Yvonne Kaufmann, Jasenko Selimovic, Rainer Wieland						
<b>Substitutes under Rule 200(2) present for the final vote</b>	Wajid Khan, Constanze Krehl						

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

<b>22</b>	<b>+</b>
ALDE	Maite Pagazaurtundúa Ruiz, Jasenko Selimovic
ECR	Morten Messerschmidt
ENF	Gerolf Annemans
GUE/NGL	Helmut Scholz, Barbara Spinelli
PPE	Elmar Brok, Esteban González Pons, Danuta Maria Hübner, Alain Lamassoure, Markus Pieper, Paulo Rangel, György Schöpflin, Rainer Wieland
S&D	Ramón Jáuregui Atondo, Sylvia Yvonne Kaufmann, Wajid Khan, Constanze Krehl, Jo Leinen, Claudia Tapardel
VERTS/ALE	Pascal Durand, Josep Maria Terricabras

<b>2</b>	<b>-</b>
EFDD	Fabio Massimo Castaldo
NI	Diane James

<b>0</b>	<b>0</b>

Key to symbols:

+ : in favour

- : against

0 : abstention

## PROCEDURE – COMMITTEE RESPONSIBLE

<b>Title</b>	Proposed amendments to Protocol No 3 on the Statute of the Court of Justice of the European Union		
<b>References</b>	02360/2018 – C8-0132/2018 – 2018/0900(COD)		
<b>Committee responsible</b> Date announced in plenary	JURI 16.4.2018		
<b>Committees asked for opinions</b> Date announced in plenary	AFCO 16.4.2018		
<b>Rapporteurs</b> Date appointed	Timo Wölken 15.5.2018		
<b>Discussed in committee</b>	21.6.2018	22.10.2018	20.11.2018
<b>Date adopted</b>	6.12.2018		
<b>Result of final vote</b>	+: 20 -: 1 0: 1		
<b>Members present for the final vote</b>	Joëlle Bergeron, Jean-Marie Cavada, Mady Delvaux, Rosa Estaràs Ferragut, Mary Honeyball, Julia Reda, Evelyn Regner, Pavel Svoboda, József Szájer, Axel Voss		
<b>Substitutes present for the final vote</b>	Geoffroy Didier, Pascal Durand, Angel Dzhambazki, Ana Miranda, Jens Rohde, Virginie Rozière, Timo Wölken		
<b>Substitutes under Rule 200(2) present for the final vote</b>	Lucy Anderson, Georges Bach, Kostadinka Kuneva, Jeroen Lenaers, Philippe Loiseau		
<b>Date tabled</b>	7.12.2018		

## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

20	+
ALDE	Jean-Marie Cavada, Jens Rohde
EFDD	Joëlle Bergeron
ENF	Philippe Loiseau
PPE	Georges Bach, Geoffroy Didier, Rosa Estaràs Ferragut, Jeroen Lenaers, Pavel Svoboda, József Szájer, Axel Voss
S&D	Lucy Anderson, Mady Delvaux, Mary Honeyball, Evelyn Regner, Virginie Rozière, Tiemo Wölken
VERTS/ALE	Pascal Durand, Ana Miranda, Julia Reda

1	-
GUE/NGL	Kostadinka Kuneva

1	0
ECR	Angel Dzhambazki

Key to symbols:

+ : in favour

- : against

0 : abstention