



2018/0900(COD)

29.11.2018

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

PA_Legam

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

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 to preserve the secrecy of the deliberations of the Court.

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

Title	Proposed amendments to Protocol No 3 on the Statute of the Court of Justice of the European Union
References	02360/2018 – C8-0132/2018 – 2018/0900(COD)
Committee responsible Date announced in plenary	JURI 16.4.2018
Opinion by Date announced in plenary	AFCO 16.4.2018
Rapporteur Date appointed	Morten Messerschmidt 20.6.2018
Discussed in committee	21.11.2018
Date adopted	27.11.2018
Result of final vote	+: 22 –: 2 0: 0
Members present for the final vote	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
Substitutes present for the final vote	Sylvia-Yvonne Kaufmann, Jasenko Selimovic, Rainer Wieland
Substitutes under Rule 200(2) present for the final vote	Wajid Khan, Constanze Krehl

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

22	+
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

2	-
EFDD	Fabio Massimo Castaldo
NI	Diane James

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention