



2022/0906(COD)

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DRAFT REPORT

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
(07307/2022 – C9-0405/2022 – 2022/0906(COD))

Committee on Legal Affairs

Rapporteur: Ilana Cicurel

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 (07307/2022 – C9-0405/2022 – 2022/0906(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 (07307/2022),
 - having regard to Article 256(3) and the second paragraph of Article 281 of the Treaty on the Functioning of the European Union, and Article 106a(1) of the Treaty establishing the European Atomic Energy Community, pursuant to which the draft act was submitted to Parliament (C9-0405/2022),
 - 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(2023)0135),
 - having regard to Rules 50 and 59 of its Rules of Procedure,
 - having regard to the opinion of the Committee on Constitutional Affairs,
 - having regard to the report of the Committee on Legal Affairs (A9-0000/2023),
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 1

Draft by the Court of Justice

Amendment

(1) At the invitation of the European Parliament and the Council of 16 December 2015¹², on 14 December 2017 the Court of Justice submitted to the European Parliament, the Council and the Commission a report on possible changes

(Does not affect the English version.)

to the distribution of jurisdiction to receive preliminary rulings under Article 267 of the Treaty on the Functioning of the European Union. While, in that report, the Court of Justice took the view that there was no need, at that time, to propose changes as regards the manner of dealing with requests for preliminary rulings under Article 267, it nevertheless pointed out, in that same report, that a subsequent transfer of jurisdiction to the General Court to give preliminary rulings in certain specific areas could not be ruled out if the number and complexity of requests for a preliminary ruling submitted to the Court of Justice were to be such that the proper administration of justice required it. Furthermore, such a transfer is in line with the intentions of the authors of the Treaty of Nice, who sought to strengthen the efficiency of the judicial system of the Union by providing for the possibility of the General Court being involved in dealing with those requests.

¹² See Article 3(2) of Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council of 16 December 2015 amending Protocol No 3 on the Statute of the Court of Justice of the European Union (OJ L 341, 24.12.2015, p. 14).

Or. fr

Amendment 2

Draft regulation Recital 2 a (new)

Draft by the Court of Justice

Amendment

(2a) The transfer to the General Court of part of the jurisdiction to give preliminary rulings should thus enable the Court of Justice to devote more time

and resources to examining the most complex and sensitive requests for a preliminary ruling and, in that framework, to enhance the dialogue with European courts. This could include, in particular, greater use of the mechanism provided for in Article 101 of its Rules of Procedure, which allows the Court to request clarification from a referring court within a time limit prescribed by the Court, in addition to the statements of case or written observations submitted by interested parties, referred to in Article 23 of the Statute of the Court of Justice of the European Union ('the Statute').

Or. fr

Amendment 3

Draft regulation Recital 3

Draft by the Court of Justice

(3) The General Court is currently in a position to be able to deal with the increase in workload that will follow from that transfer of jurisdiction, *as a result of the doubling of the number of its Judges and the measures taken in the context of the reform of the judicial framework of the Union resulting from Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council*¹³. *Nevertheless, since the workload of the General Court is closely related to developments in the Union's activity, care should be taken to ensure that the General Court remains capable of fully exercising its powers of review in respect of the institutions, bodies, offices and agencies of the Union, if necessary by means of increasing the number of its staff.*

Amendment

(3) *Following the reform of the Union's judicial framework as a result of Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council*^{1a}, the General Court is currently in a position to be able to deal with the increase in workload that will follow from that transfer of jurisdiction *to give preliminary rulings.*

¹³ *Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council of 16 December 2015 amending Protocol No 3 on the Statute of the Court of Justice of the European Union (OJ L 341, 24.12.2015, p. 14).*

^{1a} *Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council of 16 December 2015 amending Protocol No 3 on the Statute of the Court of Justice of the European Union (OJ L 341, 24.12.2015, p. 14).*

Or. fr

Amendment 4

Draft regulation Recital 8

Draft by the Court of Justice

(8) Having regard to the substantive criterion applicable to the distribution between the Court *of Justice* and the General Court of jurisdiction to give preliminary rulings, it is *necessary*, for reasons of legal certainty and expedition, for the referring courts not themselves to decide the question as to which *of the Courts of the Union* has jurisdiction to hear and determine a request for a preliminary ruling. Every request for a preliminary ruling *must* therefore be submitted to *a single court, namely* the Court *of Justice*, which *will* determine, in accordance with detailed rules *to be* set out in its Rules of Procedure, whether the request falls exclusively within one or several specific defined areas laid down in the Statute *of the Court of Justice of the European Union* and, accordingly, whether that request must be *dealt with by* the General Court. *The Court of Justice will continue to have jurisdiction to adjudicate on requests for a preliminary ruling that, notwithstanding that they may be connected to those specific areas, also concern other areas, since the first subparagraph of Article 256(3) of the Treaty on the Functioning of the European Union does not provide any possibility of transferring to the General*

Amendment

(8) Having regard to the substantive criterion applicable to the distribution between the Court and the General Court of jurisdiction to give preliminary rulings, it is *important*, for reasons of legal certainty and expedition, for the referring courts not themselves to decide the question as to which *Court* has jurisdiction to hear and determine a request for a preliminary ruling. Every request for a preliminary ruling *should* therefore be submitted to the Court, which *should* determine, in accordance with detailed rules set out in its Rules of Procedure, whether the request falls exclusively within one or several specific defined areas laid down in the Statute and, accordingly, whether that request must be *transmitted to* the General Court.

Court jurisdiction to give preliminary rulings in areas other than the specific areas.

Or. fr

Amendment 5

**Draft regulation
Recital 8 a (new)**

Draft by the Court of Justice

Amendment

(8a) The Court should continue to have jurisdiction to adjudicate on requests for a preliminary ruling that, notwithstanding that they may be connected to those specific areas, also concern other areas, since the first subparagraph of Article 256(3) of the Treaty on the Functioning of the European Union does not provide any possibility of transferring to the General Court jurisdiction to give preliminary rulings in areas other than the specific areas.

Or. fr

Amendment 6

**Draft regulation
Recital 8 b (new)**

Draft by the Court of Justice

Amendment

(8b) In order to ensure compliance with the principle of legality, the provisions of the Statute should clearly state that the Court will retain jurisdiction pursuant to the first subparagraph of Article 256(3) of the Treaty on the Functioning of the European Union where the request for a preliminary ruling raises independent questions of interpretation of primary law, public international law, general

principles of law or the Charter of Fundamental Rights of the European Union, having regard to their horizontal nature, despite the legal framework of the case in the main proceedings falling within one or more of the specific areas referred to in Article 50b(1) of the Statute.

Or. fr

Amendment 7

Draft regulation Recital 8 c (new)

Draft by the Court of Justice

Amendment

(8c) To ensure legal predictability and clarity in the implementation of the mechanism whereby the Court verifies the jurisdiction to give a preliminary ruling, the Court should publish and regularly update a list of examples illustrating the application of Article 50b of the Statute.

Or. fr

Amendment 8

Draft regulation Recital 8 d (new)

Draft by the Court of Justice

Amendment

(8d) According to the second paragraph of Article 54 of the Statute, where the General Court finds that it does not have jurisdiction to hear and determine an action, it must refer that action to the Court. The same obligation should apply if the General Court, while examining a request for a preliminary ruling submitted to it, finds that the request does not meet the criteria laid down in Article 50b(1) of the Statute.

Amendment 9

Draft regulation Recital 8 e (new)

Draft by the Court of Justice

Amendment

(8e) Furthermore, the General Court may, pursuant to the second subparagraph of Article 256(3) of the Treaty on the Functioning of the European Union, refer to the Court a case that falls within its jurisdiction but requires a decision of principle likely to affect the unity or consistency of Union law.

Or. fr

Amendment 10

Draft regulation Recital 9

Draft by the Court of Justice

Amendment

(9) In order to provide the national courts and the interested persons referred to in Article 23 of the Statute with the same guarantees as those provided by the Court ***of Justice***, the General Court ***is to*** adopt procedural rules equivalent to those applied by the Court ***of Justice*** when dealing with requests for a preliminary ruling, in particular as regards the designation of an Advocate General.

(9) In order to provide the national courts and the interested persons referred to in Article 23 of the Statute with the same guarantees as those provided by the Court, the General Court ***should*** adopt procedural rules equivalent to those applied by the Court when dealing with requests for a preliminary ruling, in particular as regards the designation of an Advocate General.

Or. fr

Amendment 11

Draft regulation Recital 11

Draft by the Court of Justice

(11) In addition, in order to maintain in particular the consistency of preliminary rulings given by the General Court, and in the interests of the proper administration of justice, provision should be made for a formation of the court of an intermediate size between the chambers of five Judges and the Grand Chamber.

Amendment

(11) In addition, in order to maintain in particular the consistency of preliminary rulings given by the General Court, and in the interests of the proper administration of justice, provision should be made for a formation of the court of an intermediate size between the chambers of five Judges and the Grand Chamber. ***In light of the implications of the increased responsibilities of the General Court, which will give final judgment in the requests for a preliminary ruling transmitted to it pursuant to this Regulation, a Member State or an EU institution should be able to request the convening of this intermediate court.***

Or. fr

Amendment 12

Draft regulation Recital 14 a (new)

Draft by the Court of Justice

Amendment

(14a) This Regulation entails a significant change to the Union's judicial framework and its implementation should be closely monitored. To that end, the Court should submit to the European Parliament, the Council and the Commission, in a timely manner, a report on the transfer to the General Court of jurisdiction for preliminary rulings in specific areas and on the extension of the initial admission mechanism for appeals. The report should contain an initial assessment of the implementation of this reform. The Court should, in particular,

provide information that allows for an assessment of the extent to which the stated objectives were achieved, having regard to the speed with which cases were dealt with and the efficiency of the examination of the most complex or sensitive appeals and requests for a preliminary ruling.

Or. fr

Amendment 13

Draft regulation Recital 14 b (new)

Draft by the Court of Justice

Amendment

(14b) Protocol No 3 on the Statute of the Court of Justice of the European Union should therefore be amended accordingly.

Or. fr

Amendment 14

Draft regulation Article 1 – paragraph 1

Protocol No 3 on the Statute of the Court of Justice of the European Union
Article 50 – paragraph 3 a (new)

Draft by the Court of Justice

Amendment

The General Court, seised pursuant to Article 267 of the Treaty on the Functioning of the European Union, shall sit in an intermediate chamber if a Member State or an institution of the Union that is a party to the proceedings so requests.

Or. fr

Amendment 15

Draft regulation

Article 2 – paragraph 1

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

Article 50 b – paragraph 1 – indent 3

Draft by the Court of Justice

Amendment

– the Customs Code ***and the tariff classification of goods under the Combined Nomenclature;***

– the Customs Code;

Or. fr

Amendment 16

Draft regulation

Article 2 – paragraph 1

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

Article 50 b – paragraph 1 – indent 3 a (new)

Draft by the Court of Justice

Amendment

– ***the tariff classification of goods under the Combined Nomenclature;***

Or. fr

Amendment 17

Draft regulation

Article 2 – paragraph 1

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

Article 50 b – paragraph 1 – indent 2 a (new)

Draft by the Court of Justice

Amendment

A request for a preliminary ruling does not come exclusively within one or several of the specific areas to which paragraph 1 refers if it raises separate questions relating to interpretation of primary law, public international law, general principles of law or the Charter of

Amendment 18

Draft regulation

Article 2 a (new)

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

Article 54 – paragraph 2

Present text

Where the General Court finds that it does not have jurisdiction to hear and determine an action in respect of which the Court of Justice has jurisdiction, it shall refer that action to the Court of Justice. Likewise, where the Court of Justice finds that an action falls within the jurisdiction of the General Court, it shall refer that action to the General Court, whereupon that Court may not decline jurisdiction.

Amendment

Article 2a

The second paragraph of Article 54 is replaced by the following:

‘Where the General Court finds that it does not have jurisdiction to hear and determine an action *or a request for a preliminary ruling* in respect of which the Court of Justice has jurisdiction, it shall refer that action to the Court of Justice. Likewise, where the Court of Justice finds that an action *or a request for a preliminary ruling* falls within the jurisdiction of the General Court, it shall refer that action to the General Court, whereupon that Court may not decline jurisdiction.’

Amendment 19

Draft regulation

Article 4 a (new)

Draft by the Court of Justice

Amendment

Article 4a

1. No later than... [one year after the entry into force of this amending Regulation], the Court shall publish and regularly update a document containing

examples of the application of the procedure laid down in Article 50b(2) of the Statute.

2. No later than... [three years after the entry into force of this amending Regulation], the Court shall present a report to the European Parliament, the Council and the Commission on the implementation of this reform.

In this report, the Court shall set out:

(a) the number of requests for preliminary rulings examined by the General Court and the specific areas referred to in paragraph 1 of Article 50b(1) to which they related, and, where appropriate, the number of cases referred by the General Court to the Court of Justice and the review procedures carried out;

(b) the number and nature of the requests for a preliminary ruling that were not transmitted to the General Court despite the fact that the legal framework of the case in the main proceedings came within one or several of the specific matters referred to in paragraph 1 of Article 50b(1);

(c) the number and nature of the cases that were subject to the initial admission mechanism for appeals;

(d) information allowing for an assessment of the extent to which the objectives laid down in this Regulation were achieved, having regard to the speed with which cases were dealt with and the efficiency of the examination of the most complex or sensitive appeals and requests for a preliminary ruling, notably through increased exchanges with referring courts.

This report shall be accompanied, where appropriate, by a request for a legislative act.

Or. fr

EXPLANATORY STATEMENT

1. The rapporteur agrees with the overall objective of this reform: improving the quality of justice for European citizens, by ensuring that cases brought before the Union's courts are dealt with expeditiously and that sufficient resources can be allocated to examination of the most complex and sensitive cases.

Above all, the reform seeks to change the distribution of cases between the Court of Justice and the General Court by giving the latter jurisdiction to hear and determine requests for a preliminary ruling relating to one or more of the specific areas identified by the legislature. The rapporteur supports this change for a number of reasons.

- It ensures proper administration of justice. There is an upward trend in the number of requests for a preliminary ruling, and they are becoming increasingly complex and sensitive. Examination of these cases therefore requires greater mobilisation of the Court's resources, resulting in an increase in the average length of time needed to deal with cases. At the same time, the doubling of the number of judges of the General Court, decided upon during the 2015 reform, places the General Court in a good position to be given additional jurisdiction, bearing in mind that the principle of transferring jurisdiction to the General Court to give preliminary rulings in specific areas has been enshrined in Article 256 TFEU since the adoption of the Treaty of Nice. The clear definition of the areas identified by the Court satisfies that principle and will allow cases to be transferred in a controlled manner.

- It must also lead to an improvement in the quality of the rulings handed down by the Court on the most sensitive and complex requests for a preliminary ruling, by allowing the Court to allocate more time and resources to them. In this regard, the rapporteur believes that it is essential for the reform to be used as a lever for enhanced dialogue between the Court and the referring courts. She therefore calls on the Court to make greater use of the corresponding tools in its Rules of Procedure.

The second objective of the draft reform is to broaden the scope of the initial admission mechanism for appeals before the Court so that it can devote more resources to examination of the most legally complex appeals. The rapporteur is wholly supportive of this, too.

2. The rapporteur is in favour of the principle of the reform but believes that Parliament should focus on further clarifying certain aspects of the Court's proposal.

- She feels that the proposed one-stop-shop mechanism is appropriate, but would like the respective jurisdictions of the Court and the General Court to be clearly defined by the co-legislators in order to comply with the principle of legality. In this regard, the rapporteur would like the Statute itself, rather than the recitals to this amending Regulation, to state clearly that the Court will continue to have jurisdiction to adjudicate on any issue that raises independent questions of interpretation of primary law, public international law, general principles of law or the Charter of Fundamental Rights of the European Union, despite the legal framework of the case in the main proceedings falling within one or several of the specific areas. In order to ensure that the jurisdictions thus defined by the legislator are respected, she proposes that Article 54 of the Statute be updated. Finally, she proposes that examples of the application of the criteria laid down in Article 50b of the Statute be published

and regularly updated.

- The procedural guarantees concerning the General Court could be further clarified and strengthened. Following the reform, the General Court will give final judgment in the requests for a preliminary ruling transmitted to it. In light of the implications of these increased responsibilities, the rapporteur proposes allowing a Member State or EU institution that is party to the proceedings to request the convening of the intermediate chamber of the General Court created in the Statute by this reform.

This reform is an important development in the Union's judicial framework: the rapporteur calls for close monitoring of its implementation.

With this in mind, she proposes that the Court draw up a report within three years providing an initial assessment of the implementation of this reform. The report will, in particular, make it possible to assess the extent to which the stated objectives were achieved, in particular as regards increasing the resources allocated to the most complex and sensitive cases and enhancing the dialogue with national courts.

Article 1 of the Regulation

Amendment to Article 50 of the Statute: new paragraph 4

Under Article 16 of the Statute, a Member State or an institution of the Union that is party to proceedings may request the convening of the Grand Chamber of the Court of Justice.

As the Court points out, however, the procedure used for requests for a preliminary ruling before the General Court must provide the same guarantees as those offered by the Court.

According to the Court, it should not be necessary to convene the Grand Chamber of the General Court in order to rule on questions transmitted to the General Court for a preliminary ruling.

Instead, it provides for the creation in the General Court of chambers of an intermediate size to deal with cases that merit the attention of more than five judges.

It thus proposes including in the Statute a provision enabling any Member State or institution of the Union that is party to proceedings to request the convening of this intermediate chamber.

This additional guarantee is consistent with the implications of the increased responsibilities of the General Court, as the reform will mean that it will automatically give final judgment in the requests for a preliminary ruling transmitted to it.

Article 2 of the Regulation

Amendment to paragraph 2 of new Article 50b of the Statute

Under Article 256(3) TFEU, the General Court has jurisdiction to hear and determine questions referred for a preliminary ruling in specific areas identified by the legislature. This

interpretation of secondary legislation may be made in the light of higher sources of law, which the General Court will therefore also be required to interpret.

However, requests for a preliminary ruling may also raise independent questions of interpretation of higher sources of law, in other words, questions that are not intended to act as a guide for the interpretation of secondary legislation needed to resolve the dispute in the main proceedings.

These questions are horizontal by nature and, therefore, they must not, pursuant to Article 256(3) TFEU, fall under the jurisdiction of the General Court.

It is proposed that this crucial aspect of the proposal be clarified in the body of Article 50b.

Article 2a of the Regulation

Amendment to the second paragraph of Article 54 of the Statute

Article 54 of the Statute currently requires the General Court to refer to the Court of Justice any action brought before it that does not fall within its jurisdiction.

It should be clarified that the General Court would be subject to the same requirement if a request for a preliminary ruling transmitted to it did not fall within its jurisdiction, and vice versa. This would apply, in particular, to the scenario whereby the General Court realises, when examining a case, that the request for a preliminary ruling raises separate questions relating to interpretation of primary law, public international law, general principles of law or the Charter of Fundamental Rights of the European Union.

It therefore seeks to ensure proper respect for the distribution of jurisdiction laid down by the co-legislators in Article 50b of the Statute.