

Statute of the Court of Justice: amendment of Protocol No 3

2018/0900(COD) - 26/03/2018 - Legislative proposal

PURPOSE: to amend Protocol 3 on the Statute of the Court of Justice of the European Union.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: this **revised draft Regulation** of the European Parliament and of the Council takes account of the Commission's opinion on the draft amendments to Protocol No 3 on the Statute of the Court of Justice of the European Union, presented by the Court of Justice on 26 March 2018.

This request by the **Court of Justice** seeks to amend Protocol No 3 on the Statute of the Court of Justice of the European Union follows on from its report of 14 December 2017 to the European Parliament and the Council on the possibility of **certain changes to the distribution of jurisdiction between the Court of Justice and the General Court** with regard to preliminary rulings.

In its report, the Court of Justice considered that there was no need, at this stage, to propose amending Protocol No 3 on the Statute of the Court of Justice of the European Union with a view to transferring to the General Court part of the jurisdiction it exercises in preliminary rulings.

The Court of Justice and General Court brought to light the fact that, when adjudicating on an action for annulment brought by a Member State against an act of the Commission relating to a failure properly to comply with a judgment delivered by the Court of Justice under Article 260(2) or (3) of the Treaty on the Functioning of the European Union, the General Court may encounter serious difficulties where the Commission and the Member State concerned disagree on the adequacy of the measures adopted by that State to comply with the judgment of the Court of Justice.

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 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 to introduce, for appeals relating to such cases, a mechanism whereby the Court determines whether an appeal should be allowed to proceed.

In the light of the constant increase in the number of cases brought before the Court of Justice, 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 [Regulation 2015/2422](#) of the European Parliament and of the Council.

CONTENT: in accordance with the second paragraph of Article 281 of the Treaty on the Functioning of the European Union (TFEU) and paragraph 1 of Article 106a of the Treaty establishing the European Atomic Energy Community, the **draft amendments to Protocol 3** submitted by the Court of Justice to the European Parliament and the Council concern:

- **a transfer to the Court of jurisdiction to adjudicate in actions for annulment** lodged by Member States against Commission decisions **relating to a failure properly to comply with a judgment delivered by the Court under Article 260(2) and (3) TFEU**. All litigation linked to a failure of a Member State to fulfil its obligations to which a financial penalty should be reserved exclusively to the Court of Justice, including challenges that may be made following a Member State being ordered to pay a lump sum or a penalty payment;
- **establishing an initial admission mechanism for certain appeals before the Court of Justice only if they meet certain criteria**: for example, an appeal brought against a decision of 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. An appeal shall be allowed to proceed, in accordance with the detailed rules set out in the Rules of Procedure, where it raises, wholly or in part, an **issue that is significant** with respect to the unity, consistency or development of Union law. The decision as to whether the appeal should be allowed to proceed shall be reasoned and published.

The proposed amendments are also intended to ensure the **terminological consistency** of certain provisions of the Staff Regulations with the Treaties.