

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

2018/0900(COD) - 11/07/2018 - Document attached to the procedure

The European Commission delivered an **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.

The Commission shares the concern of the Court of Justice to strike the best possible balance in the division of powers between the Court and the General Court. However, **the Commission is not convinced of the appropriateness, at this stage, of making structural changes to the division of powers between the Court and the General Court.**

The Commission therefore takes the view that it would be better to await the report on the operation of the General Court to be submitted by the Court of Justice by the end of 2020 before making any further changes to the division of powers between the Court and the General Court which really will have the effect of relieving the Court.

The Commission delivered the following opinion:

Action for failure to fulfil obligations: the Commission **does not support** the Court's request to transfer to the General Court jurisdiction to adjudicate, at first instance, in actions under Article 108(2) TFEU and in actions for failure to fulfil obligations under Articles 258 and 259 TFEU.

The Commission wonders whether the amendments proposed by the Court of Justice are likely to achieve the desired objective, namely to relieve the Court of Justice.

The Commission has examined the **impact the proposed transfer** would have had if it had been applicable in the three years preceding the request of the Court of Justice, i.e. between 1 April 2015 and 31 March 2018. It concluded that as such, the Court of Justice would have been relieved of 78 cases in that period, i.e. 26 per year. Given the number of new cases lodged on average in 2015, 2016 and 2017 (i.e. 715 cases), this decrease would have accounted for barely 3.6 % of the Court's total annual judicial workload.

Secondly, the Commission is of the opinion that the proposed amendments raise **important structural concerns**. It observes that in actions for failure to fulfil obligations, the protagonists are two Member States or an institution of the Union and a Member State. Actions for failure to fulfil obligations are more comparable to direct actions, which would continue to be reserved to the Court of Justice pursuant to Article 51 of the Statute in its revised form.

Next, as with proceedings for a preliminary ruling, a Union court before which an action for failure to fulfil obligations has been brought must be able to hand down a ruling within a short period of time with the force of *res judicata* on the matters referred to it. The introduction of a two-tier system of jurisdiction for actions for failure to fulfil obligations would extend the judicial phase of the action and threaten to turn it into a long-term legal dispute with a negative political impact on compliance with Union law. In a significant number of cases, the duration of appeal proceedings would be added to the duration of the dispute at first instance.

The Commission doubts that the proposed criteria proposed by the Court of Justice are such as to avoid major difficulties of interpretation.

The Commission is of the opinion that the transfer proposed by the Court of Justice of some actions for failure to fulfil obligations would have a **negligible impact on the workload of the Court** but would significantly extend the judicial phase of actions for failure to fulfil obligations.

Actions for annulment: the Commission is in **favour** of the request to 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.

The Commission endorses the objectives which this proposal to amend the Statute seeks to achieve. This amendment would make it possible to prevent actions for annulment being brought against acts of the Commission for the recovery of penalty payments or lump sums from the Member State concerned other than with the judicial body which imposed the penalty payment or lump sum.

Procedure for initial admission of appeals: the Commission **endorses** the objectives which this proposal to amend the Statute seeks to achieve. This proposed amendment concerns appeals brought against judgments and orders of the General Court concerning decisions which have already been examined by an independent administrative authority and have thus already been subjected to a two-tier review of legality, as is the case, in particular, for decisions on trademarks taken by the European Union Intellectual Property Office (EUIPO).

With regard to these decisions, it is proposed to restrict the admission of appeals to cases where a decision of the General Court might adversely affect the unity, consistency or development of Union law.

However, the Commission stresses the need to avoid divergence in case-law via the appeal admission mechanism. It also considers that, in the interests of legal certainty, what is meant by the notion of 'independent administrative body' should be clarified.

The Commission is of the opinion that it should be made clear that the grounds must be given not only for decisions to reject admission of appeals but also for decisions to accept admission of appeals. Lastly, these decisions should be made public.

Terminology: the Commission welcomes the proposed amendments aimed at ensuring greater terminological consistency of the Statute with the Treaties.