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

2022/0906(COD) - 05/12/2022 - Legislative proposal

PURPOSE: request by the Court of Justice, under Article 281, second paragraph, of the Treaty on the Functioning of the European Union, to amend Protocol No 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: at the invitation of the European Parliament and the Council of 16 December 2015, the Court of Justice submitted to the European Parliament, the Council and the Commission, on 14 December 2017, a report on possible changes 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. 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.

Five years later, however, the situation is very different. On the one hand, **the number of requests for a preliminary ruling brought before the Court of Justice has followed an upward trend** and has resulted, for several years, in the gradual increase in the length of proceedings owing to the difficulty for the Court of Justice to deal, as expeditiously as before, with requests that are not only more numerous but also increasingly complex or sensitive. On the other hand, the reform of the judicial framework of the European Union has now been fully carried out.

Against this background, the present request to amend Protocol No 3 on the Statute of the Court of Justice of the European Union has a twofold objective:

(1) lay down the specific areas in which the General Court is to have jurisdiction, pursuant to Article 256 (3) of the Treaty on the Functioning of the European Union, to hear and determine questions referred for a preliminary ruling by the courts of Member States under Article 267 of that Treaty;

(2) include within the scope of the mechanism for the determination of whether an appeal is allowed to proceed, which entered into force on 1 May 2019, appeals brought against decisions of the General Court handed down in respect of decisions of boards of appeals of offices, bodies or agencies of the Union which already existed on the abovementioned date but which are not yet referred to in the first paragraph of Article 58a of the Statute, and to extend that mechanism to the disputes referred to in Article 272 of the Treaty on the Functioning of the European Union, relating to arbitration clauses contained in a contract concluded by or on behalf of the Union, whether that contract be governed by public or private law.

CONTENT: made on the basis of the second paragraph of Article 281 of the Treaty on the Functioning of the European Union, the present request for amendment of Protocol No 3 on the Statute of the Court of Justice of the European Union contains two parts:

I. The transfer, to the General Court, of jurisdiction to hear and determine questions referred for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union in specific areas laid down by the Statute

After carrying out an in-depth analysis of the relevant statistics relating to the cases closed by the Court of Justice between 1 January 2017 and 30 September 2022, the Court of Justice has identified **specific areas** that correspond to the abovementioned parameters: (i) the common system of value added tax, (ii) excise duties, (iii) the Customs Code and the tariff classification of goods under the Combined Nomenclature, (iv) compensation and assistance to passengers, and (v) the scheme for greenhouse gas emission allowance trading.

The transfer, to the General Court, of the Court of Justice's jurisdiction to give preliminary rulings made in the abovementioned areas should lead to a significant reduction in the workload of the Court of Justice, since such requests represent, on average, roughly 20% of all requests for a preliminary ruling brought before the Court of Justice each year.

The Court's request specifies **how the Court of Justice and the General Court distribute jurisdiction** for preliminary rulings and how the General Court is to deal with requests for preliminary rulings.

Thus, any reference under Article 267 of the Treaty on the Functioning of the European Union should be submitted to the Court of Justice. After verifying, in accordance with the rules of procedure, that the reference for a preliminary ruling relates exclusively to one or more of the above-mentioned matters, the Court of Justice would transmit the reference to the General Court.

It is further provided that references for preliminary rulings submitted to the General Court will be assigned, in accordance with the rules laid down in its Rules of Procedure, to chambers designated for that purpose. In such cases, an Advocate General will be appointed in accordance with the rules of procedure.

II. Extension of the mechanism for the prior admission of appeals to the Court

In order to preserve the efficiency of the appeal procedure and to enable the Court of Justice to concentrate on appeals raising important questions of law, the mechanism for the prior admission of appeals should be extended, while ensuring that the requirements of effective judicial protection are respected.

To this end, it is planned to :

- **extend that mechanism** to appeals whose subject matter is a decision of the General Court concerning the decision of an independent board of appeal of an office, body or agency of the Union which, on 1 May 2019, had such an independent board of appeal but to which Article 58a of the Statute of the Court of Justice of the European Union does not yet refer. Such appeals concern cases which have already been considered twice, initially by an independent board of appeal, then by the General Court, with the result that the right to effective judicial protection is fully guaranteed;

- extend the abovementioned mechanism to **disputes relating to the performance of contracts containing an arbitration clause**, within the meaning of Article 272 of the Treaty on the Functioning of the European Union.