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

2022/0906(COD) - 10/03/2023 - Document attached to the procedure

The Commission delivered an **opinion** on the draft amendment to Protocol No 3 on the Statute of the Court of Justice of the European Union, presented by the Court of Justice on 30 November 2022.

Context

As a reminder, on 30 November 2022, the Court of Justice of the European Union submitted a request to the European Parliament and the Council under the second paragraph of Article 281 of the Treaty on the Functioning of the European Union (TFEU) to amend Protocol No 3 on the Statute of the Court of Justice of the European Union (the Statute).

The **main part** of that request is to make use of the possibility provided for in the first subparagraph of Article 256(3) of the Treaty on the Functioning of the European Union to transfer to the General Court jurisdiction to hear and determine questions referred for a preliminary ruling under Article 267 of that Treaty in specific areas laid down by the Statute.

The **second part** is a proposal to extend the mechanism for the determination of whether an appeal is allowed to proceed provided for under Article 58a of the Statute, which would be consolidated and replaced. These two parts are accompanied by a proposal for a specific amendment to Article 50 of the Statute as regards the composition of the chambers of the General Court.

Favourable opinion from the Commission

The Commission gives a favourable opinion on the draft amendment to Protocol No 3 on the Statute of the Court of Justice of the European Union, presented by the Court of Justice on 30 November 2022.

The Commission judges that it is essential that the Court of Justice is able to fulfil its role as the supreme judicial body of the Union. In order to do so, it must be able to focus more on cases which raise issues of fundamental importance to the Union legal order, by devoting all necessary resources to the handling of those cases and, where this proves necessary, by deepening dialogue with national courts, including courts of last instance, to ensure the unity of the Union legal order.

In view of the constant increase in the number of requests for a preliminary ruling, which must be dealt with expeditiously in order to enable national courts to guarantee individuals respect for the right to an effective remedy, the Commission agrees with the Court of Justice that, despite the difficulties inherent in such an operation, **it has become necessary for the Court of Justice and the General Court to share jurisdiction over requests for a preliminary ruling**.

Comments

The Commission does, however, have some comments on the main aspect of the request made by the Court of Justice, namely the transfer to the General Court of jurisdiction to hear and determine the questions referred for a preliminary ruling under Article 267 TFEU in specific areas.

a) Choice and definition of specific areas

The Court of Justice has identified the following specific areas: the common system of value added tax; excise duties; the Customs Code and the tariff classification of goods in the Combined Nomenclature; compensation and assistance to passengers; the system for greenhouse gas emission allowance trading.

The Commission welcomes the choice of specific areas identified. As regards the definition of those specific areas, it may be useful to clarify further the areas in which jurisdiction over preliminary rulings is transferred to the General Court, while retaining the flexibility necessary to ensure that those areas are defined so as to ensure their allocation in such a way that takes into account developments in the acquis.

b) The condition that a request for a preliminary ruling falls 'exclusively within one or several of the specific areas'

The Court of Justice proposes that the General Court acquire jurisdiction to hear and determine requests for a preliminary ruling which fall 'exclusively within one or several of the specific areas', so that a request for a preliminary ruling involving issues relating both to those specific areas and to other areas would remain with the Court of Justice.

The Commission agrees with this approach in principle. However, it considers that it would be preferable to clarify, preferably in the recitals to the draft Regulation, what is meant by 'exclusively within one or several of the specific areas' in the situation that regularly arises, in which a request for a preliminary ruling includes issues both of interpretation or validity of provisions of a Union act falling within one or several of the specific areas, and of issues of interpretation of primary law provisions, general principles of law or the Charter.

According to the Commission, a request for a preliminary ruling which raises questions which do not relate as such to the interpretation of an act falling within one of those specific areas but, for example, to provisions of primary law, general principles of law or the Charter should remain within the jurisdiction of the Court of Justice even if the legal context of the main proceedings falls within one of those specific areas.

Lastly, it would also be preferable to specify the arrangements for allocating requests for a preliminary ruling which, in addition to issues falling within one or more of the specific areas, explicitly or implicitly raise issues of the jurisdiction of the Court of Justice or admissibility.

The Commission sees no compelling reasons against the transfer of such requests to the General Court.

c) The detailed rules and procedure applicable to the handling of requests for a preliminary ruling by the General Court

The Court of Justice proposes that the General Court hear the preliminary ruling cases transferred to it in chambers designated for that purpose, in accordance with the detailed rules set out in the Rules of Procedure of the General Court.

The Commission supports the greater specialisation of the Chambers of the General Court. Furthermore, the Commission considers that the General Court should include in its Rules of Procedure, and effectively apply in practice, all the detailed rules of procedure enabling requests for a preliminary ruling to be dealt with expeditiously, including, in particular, the possibility of deciding a case without a hearing or without the Advocate General's Opinion, or by reasoned order.

On the designation of Advocates-General, the Commission has no objections as such to the provision proposed by the Court of Justice in the draft amendment to the Statute.

As regards the second part of the reform and the specific amendment to Article 50 of the Statute, the Commission has **no particular remarks to make** and is able to give a favourable opinion on this subject.