


Basic information	
2018/0900(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Statute of the Court of Justice: amendment of Protocol No 3 Subject 8.40.04 Court of Justice, Court of First Instance	


Key players				
European Parliament	Committee responsible		Rapporteur	Appointed
	JURI Legal Affairs		WÖLKEN Tiemo (S&D)	15/05/2018
			Shadow rapporteur RADEV Emil (PPE) DZHAMBAZKI Angel (ECR) MARINHO E PINTO António (ALDE) CHRYSOGONOS Kostas (GUE/NGL)	
	Committee for opinion		Rapporteur for opinion	Appointed
	AFCO Constitutional Affairs	MESSERSCHMIDT Morten (ECR)	20/06/2018	
Council of the European Union	Council configuration		Meetings	Date
	General Affairs		3685	2019-04-09
European Commission	Commission DG		Commissioner	
	Legal Service		TIMMERMANS Frans	

Key events			
Date	Event	Reference	Summary
26/03/2018	Legislative proposal published	02360/2018	Summary

16/04/2018	Committee referral announced in Parliament, 1st reading		
06/12/2018	Vote in committee, 1st reading		
06/12/2018	Committee decision to open interinstitutional negotiations with report adopted in committee		
07/12/2018	Committee report tabled for plenary, 1st reading	A8-0439/2018	Summary
10/12/2018	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)		
12/12/2018	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71)		
23/01/2019	Approval in committee of the text agreed at 1st reading interinstitutional negotiations		
13/03/2019	Decision by Parliament, 1st reading	T8-0179/2019	Summary
13/03/2019	Results of vote in Parliament		
09/04/2019	Act adopted by Council after Parliament's 1st reading		
17/04/2019	Final act signed		
17/04/2019	End of procedure in Parliament		
25/04/2019	Final act published in Official Journal		

Technical information	
Procedure reference	2018/0900(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Legal basis	Euratom Treaty A 106a-pa Treaty on the Functioning of the European Union TFEU 281-p2
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	JURI/8/12714

Documentation gateway				
European Parliament				
Document type	Committee	Reference	Date	Summary
Committee draft report		PE628.708	18/10/2018	
Amendments tabled in committee		PE630.426	08/11/2018	
Committee opinion	AFCO	PE627.917	29/11/2018	
Committee report tabled for plenary, 1st reading/single reading		A8-0439/2018	07/12/2018	Summary
Text adopted by Parliament, 1st reading/single reading		T8-0179/2019	13/03/2019	Summary

Council of the EU				
Document type	Reference	Date	Summary	
Draft final act	00001/2019/LEX	17/04/2019		
European Commission				
Document type	Reference	Date	Summary	
Document attached to the procedure	COM(2018)0534 	11/07/2018	Summary	
Other Commission document (C)	C(2018)7500	23/10/2018		
Other institutions and bodies				
Institution/body	Document type	Reference	Date	Summary
CJEC	Legislative proposal	02360/2018	26/03/2018	Summary

Additional information		
Source	Document	Date
European Commission	EUR-Lex	

Final act
Regulation 2019/0629 OJ L 111 25.04.2019, p. 0001 Summary

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

2018/0900(COD) - 25/04/2019 - Final act

PURPOSE: to improve the functioning of the EU Court of Justice by introducing more effective rules for the handling of appeals before the Court of Justice.

LEGISLATIVE ACT: Regulation (EU, Euratom) 2019/629 of the European Parliament and of the Council amending Protocol No 3 on the Statute of the Court of Justice of the European Union.

CONTENT: this Regulation amending the Statute of the Court of Justice of the European Union aims to improve the functioning of the Court of Justice, which has seen a steady increase in the number of cases brought before it, in order to allow the Court to focus on those cases which require its full attention.

The amendments made by the amending regulations to Protocol No. 3 provide for:

(1) 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;

(2) the establishment of an initial admission mechanism of appeals against decisions of certain EU agencies and offices, intended to enable the Court to rule on certain categories of appeals only if they meet certain criteria.

It is clear from the review undertaken by the Court of Justice and the General Court that many appeals are brought in cases which have already been considered twice, initially by an independent board of appeal, 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.

Under the new rules, an appeal brought against a decision of the General Court concerning a decision of an independent board of appeal of one of the following offices and agencies of the Union shall not proceed unless the Court of Justice first decides that it should be allowed to do so:

- the European Union Intellectual Property Office;
- the Community Plant Variety Office;
- the European Chemicals Agency;
- the European Union Aviation Safety Agency.

An appeal shall be allowed to proceed, wholly or in part, in accordance with the detailed rules set out in the Rules of Procedure, where it raises an issue that is significant with respect to the unity, consistency or development of Union law.

The procedure shall also apply to appeals brought against decisions of the General Court concerning a decision of an independent board of appeal, set up after 1 May 2019 within any other office or agency of the Union, which has to be seised before an action can be brought before the General Court.

ENTRY INTO FORCE: 25.4.2019.

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

2018/0900(COD) - 07/12/2018 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Legal Affairs adopted the report by Tiemo WÖLKEN (S&D, DE) on the draft regulation of the European Parliament and of the Council on amending Protocol No 3 on the Statute of the Court of Justice of the European Union.

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;
- establishing an initial admission mechanism for certain appeals before the Court of Justice only if they meet certain criteria:

The committee recommended that the European Parliament to adopt its position at first reading under the ordinary legislative procedure subject to the following amendments:

Transfer of responsibility for infringement proceedings: Members would like to clarify that the element of the request made by the Court of Justice on 26 March 2018 concerning the partial transfer of infringement proceedings to the General Court should be examined at a later stage, after the report on the functioning of the Tribunal, in particular on the efficiency of the General Court, its effectiveness and the need to increase the number of judges to 56, has been prepared in December 2020.

The achievement of **gender balance** within the General Court should also be assessed. To achieve this objective, Members suggested organising partial replacements within this Court in such a way that Member State governments gradually begin to nominate two judges for the same partial replacement, with the aim of choosing a woman and a man, in accordance with the conditions and procedures laid down in the Treaties.

Mechanism for the prior admission of appeals: Members supported the introduction, for certain categories of actions, of a procedure whereby the Court of Justice will first determine whether certain actions can be authorised. However, they considered that independent administrative authorities should not be listed individually.

The amended text provides that where the referral to an independent administrative body whose members are not bound by any instructions when taking their decisions is a prerequisite of an action being brought before the General Court, an **appeal** brought against the decision of the General Court shall not proceed unless the Court of Justice first decides that it should be allowed to do so.

Decisions not to allow an appeal to proceed, and the reasons underpinning such decisions, must also be published.

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.

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.

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

2018/0900(COD) - 13/03/2019 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 585 votes to 39, with 55 abstentions, a legislative resolution on the draft regulation of the European Parliament and of the Council amending Protocol 3 on the Statute of the Court of Justice of the European Union.

The European Parliament adopted its position at first reading in accordance with the ordinary legislative procedure.

The amendments made by the amending regulations to Protocol No. 3 provide for:

(1) 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;

(2) establishing an initial admission mechanism for certain appeals before the Court of Justice only if they meet certain criteria: the examination of appeals against decisions of the Court of First Instance relating to a decision of a Board of Appeal independent of the European Union Office for Intellectual Property, the Community Plant Variety Office, the European Chemicals Agency or the European Aviation Safety Agency would be subject to its prior admission by the Court of Justice.

The prior admission procedure referred to in the first paragraph shall also apply to appeals brought against decisions of the General Court concerning a decision of an independent board of appeal, set up after the date of entry into force of this amending Regulation within any other office or agency of the Union, which has to be seised before an action can be brought before the General Court.

The appeal shall be allowed to proceed when it raises an issue of importance with respect to the unity, consistency or development of Union law. The decision as to whether the appeal should be allowed to proceed or not shall be reasoned, and it shall be published.