



06/07/2023

**AMENDMENTS: 13**

**Ilana Cicurel**

Proposed amendments to Protocol No 3 on the Statute of the Court of Justice of the European Union

**Draft Regulation** 07307/2022 - C9-0405/2022 – 2022/0906(COD)

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**Amendments justification with more than 500 chars : 7**

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**Amendment 1**  
**Patrick Breyer, René Repasi**  
**Draft Regulation**  
**Recital 2 a (new)**

*Draft by the Court of Justice*

*Amendment*

**(2 a) The transfer to the General Court of a part of the competence to examine requests for preliminary ruling should enable the Court of Justice to allocate more time and resources to the examination of more complex and sensitive requests for preliminary ruling. In this context, and as the Court of Justice is increasingly required to rule on matters of a constitutional nature and related to human rights and the Charter of Fundamental rights, transparency and openness of the judicial process should be strengthened. To this regard, the Statute should be modified to ensure that all documents deposited with the Registrar by the parties or by any third party in connection with an application shall be accessible to the public in accordance with arrangements and exceptions set out in the Statute and the Rules of Procedure. This is in line with the principle of open decision-making. Transparency increases accountability and builds trust in the European Union and in European law.**

Or. en

*Justification*

*Political priority of our Group, attached to transparency. The wording is based on the European Convention of Human Rights (Article 40 - Public hearings and access to documents) and ECtHR Rules of Court (Rule 33 – Public character of documents). For precedents of CJEU stating that the right to access to documents extends to written submissions of a Member States that the Commission had in its possession under Regulation 1049/2001, please see Judgment of the Court (Grand Chamber) of 18 July 2017, European Commission v Patrick Breyer, confirming the Judgment of the General Court (Second Chamber) of 27 February 2015, Patrick Breyer v European Commission. See also the opinion of the Legal Service in relation to Petition 163/2010 by P.B (German) that concludes that an amendment to the Statute of the Court of Justice could allow access to case files, provided that certain provisions of primary law would have to be*

observed, such as Article 16 TFEU and Article 8 of the Charter of Fundamental Rights which (protection of personal data, Article 7 of the Charter (right to private and family right and communications) and Article 339 TFEU (professional secrecy).

**Amendment 2**  
**Patrick Breyer**  
**Draft Regulation**  
**Recital 2 b (new)**

*Draft by the Court of Justice*

*Amendment*

***(2 b) The non-application of Court of Justice rulings by some national courts for ‘ultra vires’ reasons represents a fundamental challenge to the unity of the Union. A dialogue between the Court of Justice and national courts could allow for developing solutions and avoiding clashes. To this end, a new voluntary conciliation mechanism should be created where tensions between EU law and national constitutional law are foreseen, notably in ultra vires cases.***

Or. en

*Justification*

*This mechanism should be entirely voluntary, it would in no way be binding - the idea is to foster dialogue between national and EU level especially in suspected cases of ultra vires, in order to avoid open conflict that increasingly leads to the questioning of the primacy and thus threatens the unity of EU law. We have seen clear examples in the last years, such as the case before the German constitutional court, but also much more worrying examples in Poland and Romania for instance. Past clashes have taken place in the absence of such dialogue. In some cases, a dialogue may allow for finding consensual and amicable solutions to looming conflicts.*

**Amendment 8**  
**Patrick Breyer, René Repasi**  
**Draft Regulation**  
**Article -1 (new)**

*Draft by the Court of Justice*

*Amendment*

***Article -1***

***The following Article is inserted into Protocol No 3 on the Statute of the Court of Justice of the European Union (‘the***

**Statute’):**

**‘Article 20a**

**All documents deposited with the Registrar by the parties or by any third party in connection with an application shall be accessible to the public in accordance with arrangements set out in the Rules of Procedure unless the President, for the reasons set out in the following paragraph, decides otherwise, either of his or her own motion or at the request of a party or any other person concerned.**

**Public access to a document or to any part of it may be restricted in order to observe rights guaranteed by primary law and the Charter of Fundamental Rights, such as the protection of personal data, the right to private and family right and communications and the protection of professional secrecy. Any request for confidentiality must include reasons and specify whether it is requested that all or part of the documents be inaccessible to the public.’**

Or. en

#### *Justification*

*Political priority of our Group, attached to transparency. The wording is based on the European Convention of Human Rights (Article 40 - Public hearings and access to documents) and ECtHR Rules of Court (Rule 33 – Public character of documents). For precedents of CJEU stating that the right to access to documents extends to written submissions of a Member States that the Commission had in its possession under Regulation 1049/2001, please see Judgment of the Court (Grand Chamber) of 18 July 2017, European Commission v Patrick Breyer, confirming the Judgment of the General Court (Second Chamber) of 27 February 2015, Patrick Breyer v European Commission. See also the opinion of the Legal Service in relation to Petition 163/2010 by P.B (German) that concludes that an amendment to the Statute of the Court of Justice could allow access to case files, provided that certain provisions of primary law would have to be observed, such as Article 16 TFEU and Article 8 of the Charter of Fundamental Rights which (protection of personal data, Article 7 of the Charter (right to private and family right and communications) and Article 339 TFEU (professional secrecy).*

**Amendment 9  
Patrick Breyer**

**Draft Regulation**  
**Article -1 a (new)**

*Draft by the Court of Justice*

*Amendment*

**Article -1 a**

***The following Article is inserted in the Statute:***

***‘Article 23b***

***If in a case governed by the third paragraph of Article 267 of the Treaty on the Functioning of the European Union the referring court or tribunal questions whether the Union acted within its competences (ultra vires) and whether, in consequence, its action is legally binding, the Court of Justice may invite the referring court or tribunal to participate on a voluntary basis in an oral dialogue with a view to resolving the potential conflict.’***

Or. en

*Justification*

*This mechanism should be entirely voluntary, it would in no way be binding - the idea is to foster dialogue between national and EU level especially in suspected cases of ultravires, in order to avoid open conflict that increasingly leads to the questioning of the primacy and thus threatens the unity of EU law. We have seen clear examples in the last years, such as the case before the German constitutional court, but also much more worrying examples in Poland and Romania for instance. Past clashes have taken place in the absence of such dialogue. In some cases, a dialogue may allow for finding consensual and amicable solutions to looming conflicts.*

***(14 a) With a view to strengthen the preliminary rulings transferred to the General Court, the preliminary reference procedure should be opened for objective third party interventions (amicus curiae briefs) that assist the Court in interpreting and applying the law. Such third party interventions are objective so that they do not need to support the form of the order sought by one of the parties. In order to prevent abuses and limit the workload for the General Court, objective amicus curiae briefs should only need to be submitted by legal persons that are non-profit and representative in the European Union. Representativeness should require to be active in at least four Member States. Such legal persons should need to show that the objectives that these persons pursue according to their statute is connected to the matter of the case, in which they intend submit amicus curiae briefs. Such mechanism would also lead to a greater consideration of views from the civil society. Opening the preliminary reference procedure for amicus curiae briefs at the General Court would also require an equal opening of the preliminary reference procedure at the Court of Justice. The Court should adopt detailed guidelines on the acceptance, transmission, and custody of amicus curiae briefs.***

Or. en

# EUROPEAN PARLIAMENT

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Committee on Legal Affairs

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**Ilana Cicurel**

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**Draft Regulation** 07307/2022 – C9-0405/2022 – 2022/0906(COD)

**Amendment 1**

**René Repasi**

on behalf of

**Patrick Breyer**

on behalf of

**Draft Regulation**

**Article 3 b (new)**

Protocol No 3 on the Statute of the Court of Justice of the European Union

Article 40 – paragraph 5

*Draft by the Court of Justice*

*Amendment*

**Article 3 b** *The following paragraph is added to Article 40 of the Statute:*

***‘In derogation from the second and fourth paragraph, any legal person that is non-profit and representative, as further specified in the detailed rules set out in the Rules of Procedure of the Court and the General Court, may submit their opinion to the Court of Justice or the General Court in cases related to matters that are connected with objectives pursued by the legal person as set out in its statute.’***

Or. en