

REGULATION (EU, Euratom) 2022/... of THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL

of ...

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 256(3) and the second paragraph of Article 281 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a(1) thereof,

Having regard to the request of the Court of Justice of 30 November 2022,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Commission of ...,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) At the invitation of the European Parliament and the Council of 16 December 2015,¹ on 14 December 2017 the Court of Justice submitted to the European Parliament, the Council and the Commission 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 if the number and complexity of requests for a preliminary ruling submitted to the Court of Justice were to be such that the proper administration of justice required it. 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.

(2) The statistics of the Court of Justice highlight the fact that both the number of pending preliminary ruling cases and the average duration to deal with those cases are increasing.

¹ See Article 3(2) of Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council of 16 December 2015 amending Protocol No 3 on the Statute of the Court of Justice of the European Union (OJ L 341, 24.12.2015, p. 14).

As preliminary rulings must be dealt with expeditiously in order to enable national courts to guarantee ~~individuals respect for the right to an effective remedy~~, the current situation is not sustainable. That situation is attributable not only to the high number of requests for a preliminary ruling of which the Court of Justice is seised each year, but also to the great complexity and particularly sensitive nature of a growing number of questions put to that court. In order to allow the Court of Justice to continue to fulfil its mission, ***including in safeguarding and strengthening the unity and consistency of Union law, and to guarantee the quality of the decisions of the Court of Justice***, it is necessary, in the interests of the proper administration of justice, 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 (*TFEU*) and to transfer to the General Court jurisdiction to hear and determine questions referred for a preliminary ruling under Article 267 *TFEU*, in specific areas laid down by the Statute.

[CA 1]

(2a) The transfer to the General Court of part of the jurisdiction to give preliminary rulings should thus enable the Court of Justice to devote more time and resources to examining the most complex and sensitive requests for a preliminary ruling and, in that framework, to enhance the dialogue with European courts. This should include, in particular, greater use of the mechanism provided for in Article 101 of its Rules of Procedure, which allows the Court to request clarification from a referring court within a time limit prescribed by the Court, in addition to the statements of case or written observations submitted by interested parties, referred to in Article 23 of the Statute of the Court of Justice of the European Union ('the Statute').

[AM 2]

(2b) 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 upon their request. 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. In preliminary ruling proceedings in particular, giving access to case-file will enable other national judges to better assess the necessity of referring additional references and thus reduce the overall workload on the Court of Justice. Such access should be granted in accordance with arrangements and exceptions set out in the Statute, in order to preserve serenity of judicial debates and ensure protection of public interest and fundamental rights, such as Article 16 TFEU and Article 8 of the Charter which provide for the protection of personal data, Article 7 of the Charter which protects the right to private and family life and communications and Article 339 TFEU which requires the institutions to respect professional secrecy.

(3) *Following the reform of the Union's judicial framework as a result of Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council^{1a}, the General Court is currently in a position to be able to deal with the increase in workload that will follow from that transfer of jurisdiction to give preliminary rulings. ~~as a result of the doubling of the number of its Judges and the measures taken in the context of the reform of the judicial framework of the Union resulting from Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council.~~² Nevertheless, since the workload of the General Court is closely related to developments in the Union's activity, care should be taken to ensure that the General Court remains capable of fully exercising its powers of review in respect of the institutions, bodies, offices and agencies of the Union, if necessary by means of increasing the number of its staff.*
[AM 3]

(4) For reasons of legal certainty, the areas in which jurisdiction to give preliminary rulings is conferred on the General Court must be clearly defined and sufficiently separable from other areas. Furthermore, those areas must have given rise to a substantial body of case-law of the Court of Justice which is capable of guiding the General Court in the exercise of its jurisdiction to give preliminary rulings.

(5) The specific areas must moreover be determined taking into account the need to relieve the Court of Justice from having to examine a sufficiently high number of preliminary ruling cases so as to have a real impact on its workload.

(6) The common system of value added tax, excise duties, the Customs Code and the tariff classification of goods under the Combined Nomenclature meet all of the abovementioned criteria to be regarded as specific areas within the meaning of the first subparagraph of Article 256(3) of the Treaty on the Functioning of the European Union.

(7) The same is true of compensation and assistance to passengers and the scheme for greenhouse gas emission allowance trading. In addition to the fact that those two areas also meet the abovementioned criteria, the General Court is perfectly equipped to adjudicate on requests for a preliminary ruling in those areas, since their factual and technical context determines, to a large extent, the useful interpretation of the relevant provisions of Union law.

(8) Having regard to the substantive criterion applicable to the distribution between the Court of Justice and the General Court of jurisdiction to give preliminary rulings, it is *necessary important*, for reasons of legal certainty and expedition, for the referring courts not themselves to decide the question as to which ~~of the Courts of the Union~~ Court has

^{1a} Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council of 16 December 2015 amending Protocol No 3 on the Statute of the Court of Justice of the European Union (OJ L 341, 24.12.2015, p. 14).

² Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council of 16 December 2015 amending Protocol No 3 on the Statute of the Court of Justice of the European Union (OJ L 341, 24.12.2015, p. 14).

jurisdiction to hear and determine a request for a preliminary ruling. Every request for a preliminary ruling *must should* therefore be submitted to ~~a single the court, namely~~ the Court of Justice, which *will should* determine, in accordance with detailed rules to be set out in its Rules of Procedure, whether the request falls exclusively within one or several specific defined areas laid down in the Statute of the Court of Justice of the European Union and, accordingly, whether that request must be ~~dealt with by transmitted to~~ the General Court. ~~The Court of Justice will continue to have jurisdiction to adjudicate on requests for a preliminary ruling that, notwithstanding that they may be connected to those specific areas, also concern other areas, since the first subparagraph of Article 256(3) of the Treaty on the Functioning of the European Union does not provide any possibility of transferring to the General Court jurisdiction to give preliminary rulings in areas other than the specific areas.~~

[CA 2]

(8a) The Court of Justice should continue to have jurisdiction to adjudicate on requests for a preliminary ruling that, notwithstanding that they may be connected to those specific areas, also concern other areas, since the first subparagraph of Article 256(3) of the Treaty on the Functioning of the European Union does not provide any possibility of transferring to the General Court jurisdiction to give preliminary rulings in areas other than the specific areas.

[AM 5]

(8b) The right to a lawful judge is a fundamental right of EU citizens guaranteed by Article 47(2) of the Charter of Fundamental Rights. To ensure respect for this right, the provisions of the Statute should clearly state that the Court of Justice will retain jurisdiction pursuant to the first subparagraph of Article 256(3) of the Treaty on the Functioning of the European Union where the request for a preliminary ruling raises independent questions of interpretation of primary law, public international law, general principles of law or the Charter of Fundamental Rights of the European Union, having regard to their horizontal nature, despite the legal framework of the case in the main proceedings falling within one or more of the specific areas referred to in Article 50b(1) of the Statute. [CA 2]

(8ba) Following a preliminary analysis, and after hearing the Vice-President of the Court of Justice and the First Advocate General, the President of the Court of Justice will inform the Registry whether the request shall be transmitted to the General Court or shall be referred to the general meeting of all Judges and Advocate Generals for further analysis.

[CA 2]

(8c) In the interest of greater transparency of judicial proceedings, the General Court or the Court of Justice should briefly motivate, in its ruling on a preliminary reference, why it is competent to hear and determine a question referred for a preliminary ruling, in particular in cases where the preliminary reference raises questions relating to the interpretation of Union primary law, public international law, general principles of Union law or the Charter of Fundamental Rights of the Union in the case of the General

Court or where the references concerns one of the specific areas referred to in Article 50b(1) in the case of the Court of Justice. To ensure legal predictability and clarity in the implementation of the mechanism whereby the Court verifies the jurisdiction to give a preliminary ruling. In addition, the Court should publish and regularly update a list of examples illustrating the application of Article 50b of the Statute.

[CA 3]

(8ca) The General Court will have jurisdiction to hear and determine on 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, since the conditions relating to the issues must from now on be applied by both courts.

[CA 2]

(8d) According to the second paragraph of Article 54 of the Statute, where the General Court finds that it does not have jurisdiction to hear and determine an action, it must refer that action to the Court. The same obligation should apply if the General Court, while examining a request for a preliminary ruling submitted to it, finds that the request does not meet the criteria laid down in Article 50b(1) of the Statute.

[AM 8]

(8e) Furthermore, the General Court may, pursuant to the second subparagraph of Article 256(3) of the Treaty on the Functioning of the European Union, refer to the Court a case that falls within its jurisdiction but requires a decision of principle likely to affect the unity or consistency of Union law.

[AM 9]

(9) In order to provide the national courts and the interested persons referred to in Article 23 of the Statute with the same guarantees as those provided by the Court of Justice, the General Court is to *should* adopt procedural rules equivalent to those applied by the Court of Justice when dealing with requests for a preliminary ruling, in particular as regards the designation of an Advocate General. *The Advocate General should be elected from among the Judges that do not belong to a chamber that is designated to deal with preliminary references for a period of at least three years with a possibility of being re-elected.*

[CA 4]

(10) Having regard to the specific features of preliminary ruling proceedings as compared with direct actions over which the General Court has jurisdiction, it is appropriate to allocate requests for a preliminary ruling to chambers of the General Court designated for that purpose.

(11) In addition, in order to maintain in particular the consistency of preliminary rulings given by the General Court, and in the interests of the proper administration of justice, provision should be made for a formation of the court of an intermediate size between the chambers of five Judges and the Grand Chamber. *Given the increased responsibilities of*

the General Court, which will give final judgment in the requests for a preliminary ruling transmitted to it pursuant to this Regulation, a Member State or an EU institution should be able to request the convening of this intermediate chamber.

[AM 11]

(12) The statistics of the Court of Justice also highlight a high number of appeals brought against the decisions of the General Court. With a view to maintaining the efficiency of appeal proceedings and allowing the Court of Justice to focus on the appeals that raise important legal questions, it is appropriate to extend the mechanism for the determination of whether an appeal is allowed to proceed, whilst ensuring that the requirements inherent in effective judicial protection are met.

(13) With this in mind, it is necessary, first, 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.

(14) Second, it is necessary to 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. Those disputes require the General Court merely to apply to the substance of the dispute the national law to which the arbitration clause refers and thus do not raise, in principle, issues that are significant with respect to the unity, consistency or development of Union law.

(14-a) As the institution that, according to the second paragraph of Article 10 TEU, directly represents the citizens at Union level European Parliament should be included in the list of parties that may submit statements or written observations to the Court of Justice irrespective of whether an act it has adopted is at stake under article 23 of the Statute.

(14a) This Regulation entails a significant change to the Union's judicial framework and its implementation should be closely monitored. To that end, the Court should submit to the European Parliament, the Council and the Commission, in a timely manner, a report on the transfer to the General Court of jurisdiction for preliminary rulings in specific areas and on the extension of the initial admission mechanism for appeals. The Court should, in particular, provide information that allows for an assessment of the extent to which the stated objectives were achieved, having regard to the speed with which cases were dealt with and the efficiency of the examination of the most complex or sensitive appeals and requests for a preliminary ruling.

[AM 12]

(14aa) The implementation of this reform, and reflections on how to further improve the judicial system of the EU-Union, in particular preliminary ruling, should be ~~evaluated~~ discussed by the European Parliament together with the ~~European~~ Court of Justice with the assistance of experts in the form of a structured dialogue at least once a year. Issues such as gender equality, sustainability and digitalisation in the Court of Justice could also be addressed during this dialogue.

[CA 7]

(14aaa) When exercising the right legislative initiatives, the Commission carries out broad consultations so as to enable citizens' and stakeholders' participation and enhance democratic legitimacy. The same should apply to the Court exercising this right. A public consultation of two months will thus be held by the Court of Justice prior the adoption of draft regulations amending Protocol No 3 on the Statute of the Court of Justice of the European Union.

(14b) Protocol No 3 on the Statute of the Court of Justice of the European Union should therefore be amended accordingly –

HAVE ADOPTED THIS REGULATION:

Article -1a

The following Article is inserted in the Statute:

'Article 20a

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the Court upon their request, in accordance with arrangements set out in the Rules of Procedure.

The President shall refuse access to a document, either of his or her own motion or at the request of a party or any other person concerned, where disclosure would undermine the protection of public interest, the privacy and the integrity of the individual.

In the absence of an overriding public interest in disclosure, the President shall also refuse access to a document where disclosure would undermine the protection of commercial interests or the Court's decision-making process.'

Article -1

In Article 23, paragraphs 1 and 2 are replaced by the following:

'In the cases governed by Article 267 of the Treaty on the Functioning of the European

Union, the decision of the court or tribunal of a Member State which suspends its proceedings and refers a case to the Court of Justice shall be notified to the Court by the court or tribunal concerned. The decision shall then be notified by the Registrar of the Court to the parties, to the Member States, to the European Parliament, to the Commission and to the institution, body, office or agency of the Union which adopted the act the validity or interpretation of which is in dispute.

Within two months of this notification, the parties, the Member States, the Commission, the European Parliament and, where appropriate, the institution, body, office or agency which adopted the act the validity or interpretation of which is in dispute, shall be entitled to submit statements of case or written observations to the Court.'

[CA 5]

Article -1a

The following Article is inserted in the Statute:

'Article 49a

1. The General Court shall be assisted by one or more Advocate Generals in dealing with requests for a preliminary ruling transmitted to it in accordance with Article 50b.

2. The Judges of the General Court shall elect, in accordance with the detailed rules set out in its Rules of Procedure, from among their number the Judges called upon to perform the duties of an Advocate General in dealing with requests for a preliminary ruling. An Advocate General shall only be elected from among the Judges who do not belong to a Chamber that is designated to deal with requests for a preliminary ruling transmitted to the General Court.

3. The Judges called upon to perform the duties referred to in paragraph 2 shall be elected for a term of three years. They may be re-elected once.'

[CA 4]

Article 1

Article 50 of Protocol No 3 on the Statute of the Court of Justice of the European Union ('the Statute') is replaced by the following:

'The General Court shall sit in chambers of three or five Judges. The Judges shall elect the Presidents of the chambers from among their number. The Presidents of the chambers of five Judges shall be elected for three years. They may be re-elected once.

The General Court may also sit in a Grand Chamber, in a chamber of an intermediate size between the chambers of five Judges and the Grand Chamber, or be constituted by a single Judge.

The Rules of Procedure shall govern the composition of the chambers and the circumstances in which and conditions under which the General Court shall sit in its different formations.

The General Court, seised pursuant to Article 267 of the Treaty on the Functioning of the European Union, shall sit in an intermediate chamber if a Member State or an institution of the Union that is a party to the proceedings so requests.[AM 12]

Article 2

The following Article is inserted in the Statute:

‘Article 50b

1. The General Court shall have jurisdiction to hear and determine requests for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union that come exclusively within one or several of the following specific areas:

- the common system of value added tax;
- excise duties;
- the Customs Code ~~and the tariff classification of goods under the Combined Nomenclature~~;
[AM 15]
- *the tariff classification of goods under the Combined Nomenclature*;
[AM 16]
- compensation and assistance to passengers;
- the scheme for greenhouse gas emission allowance trading.

1a. Notwithstanding paragraph 1, the Court of Justice shall retain jurisdiction to hear and determine the requests for preliminary ruling that raise independent questions relating to the interpretation of primary law, public international law, general principles of law or the Charter of Fundamental Rights of the European Union.

[CA 2]

2. Every request for a preliminary ruling made under Article 267 of the Treaty on the Functioning of the European Union shall be submitted to the Court of Justice. After verifying, in accordance with the detailed rules set out in its Rules of Procedure, that the request for a preliminary ruling comes exclusively within one or within several of the areas to which paragraph 1 refers, the Court of Justice shall transmit that request to the General Court *within one month after the notification of the request*.

[CA 2]

3. The requests for a preliminary ruling transmitted to the General Court shall be assigned, in accordance with the detailed rules set out in its Rules of Procedure, to chambers designated for that purpose. In those cases, an Advocate General shall be designated, in accordance with *Article 49a*.

Article 2a

The second paragraph of Article 54 is replaced by the following:

‘Where the General Court finds that it does not have jurisdiction to hear and determine an action or a request for a preliminary ruling in respect of which the Court of Justice has jurisdiction, it shall refer that action to the Court of Justice. Likewise, where the Court of Justice finds that an action or a request for a preliminary ruling falls within the jurisdiction of the General Court, it shall refer that action to the General Court, whereupon that Court may not decline jurisdiction.’

[AM 18]

Article 3

Article 58a of the Statute is replaced by the following:

‘1. 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, bodies and agencies of the Union shall not proceed unless the Court of Justice first decides that it should be allowed to do so:

- (a) the European Union Intellectual Property Office;
- (b) the Community Plant Variety Office;
- (c) the European Chemicals Agency;
- (d) the European Union Aviation Safety Agency;
- (e) the European Union Agency for the Cooperation of Energy Regulators;
- (f) the Single Resolution Board;
- (g) the European Banking Authority;
- (h) the European Securities and Markets Authority;
- (i) the European Insurance and Occupational Pensions Authority;
- (j) the European Union Agency for Railways.

2. The procedure referred to in paragraph 1 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, body or agency of the Union, which must be seised before an action can be brought before the General Court;

– decisions of the General Court relating to the performance of a contract containing an arbitration clause, within the meaning of Article 272 of the Treaty on the Functioning of the European Union.

3. 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.

4. The decision as to whether the appeal should be allowed to proceed or not shall be reasoned, and it shall be published.’

Article 3a

The following article is inserted in the Statute:

‘Article 63a

Any amendment of the provisions of this Statute at the request of the Court of Justice shall be subject to a public consultation of two months prior to the adoption of the request of the Court of Justice.’

Article 4

1. Requests for a preliminary ruling made under Article 267 of the Treaty on the Functioning of the European Union and pending before the Court of Justice on the first day of the month following the date of entry into force of this Regulation shall be dealt with by the Court of Justice.

2. Appeals against decisions of the General Court concerning a decision of a board of appeal of one of the offices, bodies or agencies of the Union referred to in Article 58a(1)(e) to (j), and the appeals referred to in the second indent of Article 58a(2), of which the Court of Justice is seised on the date of entry into force of this Regulation, are not covered by the mechanism by which it is determined whether an appeal is allowed to proceed.

Article 4a

1. No later than ... [one year after the entry into force of this amending Regulation], the Court of Justice shall publish and regularly update a list of examples of the application of Article 50b of the Statute.

[CA 3]

2. No later than... [three years after the entry into force of this amending Regulation], the Court shall present a report to the European Parliament, the Council and the Commission on the implementation of this reform.

In this report, the Court shall set out:

(-a) the number of requests for preliminary ruling received under Article 267 TFEU;
[CA 3]

(-aa) the number of requests for a preliminary ruling in each of the specific areas indicated in Article 50b(1) of the Statute;
[CA 3]

(a) the number of requests for preliminary rulings examined by the General Court and the specific areas referred to in Article 50b(1) to which they related, and, where appropriate, the number of cases referred by the General Court to the Court of Justice and the number of decisions of the General Court that were subject to the review procedure ~~carried out~~ laid down in article 62 of the Statute;
[CA 3]

(b) the number and nature of the requests for a preliminary ruling that were not transmitted to the General Court despite the fact that the legal framework of the case in the main proceedings came within one or several of the specific matters referred to in Article 50b(1);

(ba) The average length of dealing with requests for preliminary rulings under Article 50b of the Statute at both the General Court and the Court of Justice, of the verification procedure laid down in article 50b(2) of the Statute, and of the review procedure laid down in Article 62 of the Statute;
[CA 3]

(c) the number and nature of the cases that were subject to the initial admission mechanism for appeals;

(d) information allowing for an assessment of the extent to which the objectives laid down in this Regulation were achieved, having regard to the speed with which cases were dealt with and the efficiency of the examination of the most complex or sensitive appeals and requests for a preliminary ruling, in particular through increased exchanges with referring courts under article 101 of its Rules of Procedure;

This report shall be accompanied, where appropriate, by a request for a legislative act to amend the Statute, in particular with a view to amending the list of specific areas laid down in Article 50b, paragraph 1, of the Statute.

Article 5

This Regulation shall enter into force on the first day of the month following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.