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European Union

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11887/18

LIMITE

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COUR 34
INST 317

NOTE

From:	Presidency
To:	Working Party on the Court of Justice
Subject:	Amendment of Protocol No 3 on the Statute of the Court of Justice of the European Union - revised draft

By working document WK 9322/2018 of 27 July 2018, the Presidency circulated the English and French language versions of a revised draft of the above-mentioned proposal, prepared in close consultation with the Court of Justice and reflecting the outcome of the discussions in the Working Party on the Court of Justice so far.

The revised draft has now been translated into all languages. Delegations will thus find in the annex this revised draft in their respective language versions, without any change in substance compared to the French and English language versions which were circulated on 27 July 2018.

As set out in WK 9332/2018, delegations are kindly reminded to send their observations, if any, by 14 September 2018. In the absence of observations, the Presidency will assume that delegations agree with the revised draft.

For information, delegations will find in an addendum to the present document (11887/18 ADD 1) the financial statement relating to the original proposal of the Court of Justice of 26 March 2018 (document 7586/18).

Encl.:

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LIMITE

EN

REGULATION (EU, Euratom) 2018/... 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(1) 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 26 March 2018,

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

Having regard to the opinion of the European Commission of 11 July 2018,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Further to the invitation sent to it by the European Parliament and the Council on 16 December 2015 in the context of adoption of the reform of the structure of the courts of the European Union, the Court of Justice undertook, together with the General Court, an overall review of the jurisdiction exercised by them and considered whether, given that reform, certain changes should be made to the distribution of jurisdiction between the Court of Justice and the General Court or to the manner in which appeals are dealt with by the Court of Justice.
- (2) As is stated in the report that it submitted to the European Parliament, the Council and the Commission on 14 December 2017, the Court of Justice considers that there is no need, at this stage, to propose changes with respect to the manner of dealing with questions that are referred to it for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union. References for a preliminary ruling constitute the keystone of the judicial system of the European Union and are dealt with expeditiously, and consequently a transfer to the General Court of jurisdiction to hear and determine questions referred for a preliminary ruling, in specific areas laid down by the Statute, is at present not necessary.

- (3) The review undertaken by the Court of Justice and General Court nonetheless 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. On those grounds, it appears necessary to reserve all litigation linked to a failure of a Member State to fulfil its obligations to which a financial penalty is attached 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.
- (4) It is, moreover, 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 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, in the interests of the proper administration of justice, to introduce, for appeals relating to such cases, a mechanism whereby the Court determines whether an appeal should be allowed to proceed. It would accordingly fall to the party challenging a decision of the General Court in those cases first to convince the Court of Justice of the significance of the questions raised by its appeal with respect to the unity, consistency or development of Union law.
- (5) In the light of the constant increase in the number of cases brought before the Court of Justice, and in accordance with the letter from the President of the Court of Justice of the European Union of 13 July 2018, 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 Article 3(1) of Regulation 2015/2422 of the European Parliament and of the Council of 16 December 2015 has been drawn up, in December 2020.
- (6) Consequently, it is necessary to amend Protocol No 3 on the Statute of the Court of Justice of the European Union whilst ensuring, at the same time, that the terminology of the provisions of that Protocol and that of the corresponding provisions of the Treaty on the Functioning of the European Union are fully aligned, and to establish appropriate transitional provisions with respect to the outcome of cases that are pending on the date when this Regulation enters into force,

HAVE ADOPTED THIS REGULATION:

Article 1

Protocol No 3 on the Statute of the Court of Justice of the European Union shall be amended as follows:

(1) Article 51 shall be replaced by the following text:

'Article 51

By way of derogation from the rule laid down in Article 256(1) of the Treaty on the Functioning of the European Union, jurisdiction shall be reserved to the Court of Justice:

(a) in actions referred to in Articles 263 and 265 of the Treaty on the Functioning of the European Union that are brought by a Member State against:

(i) a legislative act, **an act of the European Parliament, the European Council or the Council, or against a failure to act by one or more of those institutions,** except for:

- decisions taken by the Council under the third subparagraph of Article 108(2) of the Treaty on the Functioning of the European Union;
- acts of the Council adopted pursuant to a Council regulation concerning measures to protect trade within the meaning of Article 207 of the Treaty on the Functioning of the European Union;
- acts of the Council by which the Council exercises implementing powers in accordance with Article 291(2) of the Treaty on the Functioning of the European Union.

(ii) an act of or failure to act by the Commission under Article 331(1) of the Treaty on the Functioning of the European Union;

(b) in actions referred to in Articles 263 and 265 of the Treaty on the Functioning of the European Union that are brought by an institution of the Union against a legislative act, **an act of the European Parliament, the European Council, the Council, the Commission or the European Central Bank, or against a failure to act by one or more of those institutions;**

(c) in actions referred to in Article 263 of the Treaty on the Functioning of the European Union that are 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 under the second subparagraph of Article 260(2) or the second subparagraph of Article 260(3) of the Treaty on the Functioning of the European Union.’

(2) The following article shall be inserted:

‘Article 58a

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.’

Article 2

Cases which fall within the jurisdiction of the Court of Justice under this Regulation, of which the General Court is seised on the date when this Regulation enters into force but in respect of which the written part of the procedure has yet to be closed as at that date, shall be assigned to the Court of Justice.

Article 3

The procedure referred to in Article 58a of the Statute shall not be applicable to appeals of which the Court of Justice is seised on the date when this Regulation enters into force.

Article 4

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.

Done at Strasbourg, ...

For the European Parliament

For the Council

The President

The President