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NOTE

From: General Secretariat of the Council
To: Delegations
Subject: Amendment to Protocol No 3 on the Statute of the Court of Justice of the European Union

Delegations will find attached a letter dated 30 November 2022 from Mr. Koen Lenaerts, President of the Court of Justice of the European Union, to Mr. Mikuláš Bek, President of the General Affairs Council, transmitting a request to amend Protocol No 3 on the Statute of the Court of Justice of the European Union, as well as the text of the proposed amendments and its annexes.



COURT OF JUSTICE
OF
THE EUROPEAN UNION

President

Luxembourg, 30 November 2022

Mr Mikuláš Bek
President of the General Affairs
Council
Council of the European Union
175, rue de la Loi
B-1048 Bruxelles

Dear Mr President,

With reference to the second paragraph of Article 281 of the Treaty on the Functioning of the European Union and Article 106a(1) of the Treaty establishing the European Atomic Energy Community, I have the honour of transmitting herewith, to you, as well as to the President of the European Parliament, the present request to amend Protocol No 3 on the Statute of the Court of Justice of the European Union.

This request is made against a background of sustained high levels of judicial activity marked by both the volume and complexity of cases brought before the Court of Justice. The request aims, first, to lay down the specific areas in which the General Court is to have jurisdiction, pursuant to Article 256(3) of the Treaty on the Functioning of the European Union, to hear and determine questions referred for a preliminary ruling under Article 267 of that Treaty and, second, to extend the material scope of the mechanism for the determination of whether an appeal is allowed to proceed, which entered into force on 1 May 2019.

The amendments to the Statute that follow from the present request, annexed to this letter in all official languages of the European Union, are explained in detail in the statement of reasons to which I respectfully refer you.

I remain at your disposal should you require any further clarifications and invite you to accept, Mr President, the assurance of my highest consideration.

Yours faithfully,
Koen Lenaerts

Request submitted by the Court of Justice pursuant to the second paragraph of Article 281 of the Treaty on the Functioning of the European Union, with a view to amending Protocol No 3 on the Statute of the Court of Justice of the European Union

Introduction

Made on the basis of the second paragraph of Article 281 of the Treaty on the Functioning of the European Union, the present request for amendment of Protocol No 3 on the Statute of the Court of Justice of the European Union ('the Statute') pursues a twofold objective.

It seeks, first, to lay down the specific areas in which the General Court is to have jurisdiction, pursuant to Article 256(3) of the Treaty on the Functioning of the European Union, to hear and determine questions referred for a preliminary ruling by the courts of Member States under Article 267 of that Treaty.

It seeks, second, to include within the scope of the mechanism for the determination of whether an appeal is allowed to proceed, which entered into force on 1 May 2019, appeals brought against decisions of the General Court handed down in respect of decisions of boards of appeals of offices, bodies or agencies of the Union which already existed on the abovementioned date but which are not yet referred to in the first paragraph of Article 58a of the Statute, and to extend that mechanism to the disputes referred to in Article 272 of the Treaty on the Functioning of the European Union, relating to arbitration clauses contained in a contract concluded by or on behalf of the Union, whether that contract be governed by public or private law.

Those two proposals are made against the background of constant increase in the workload of the Court of Justice and seek to allow that court to continue to fulfil its mission conferred on it by the authors of the Treaty, consisting in ensuring, in a timely manner, 'that in the interpretation and application of the Treaties the law is observed'.¹

I. The transfer, to the General Court, of jurisdiction to hear and determine questions referred for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union in specific areas laid down by the Statute

¹ See Article 19(1) of the Treaty on European Union.

While requests for a preliminary ruling made by the courts of Member States of the Union have, to date, always been dealt with by the Court of Justice, the possibility of entrusting the General Court of the European Union with dealing with some of those requests has nevertheless formally existed for over 20 years. At the Intergovernmental Conference which led to the signing of the Treaty of Nice on 26 February 2001, Article 225 of the Treaty establishing the European Community was amended with a view to conferring on the General Court jurisdiction which until then it did not have, namely to ‘hear and determine actions or proceedings referred for a preliminary ruling under Article 234, in specific areas laid down by the Statute’.²

Inserted into the Treaty against the background, at that time already, of a significant increase in the workload of the two courts associated with the start of the third phase of the Economic and Monetary Union and the recent entry into force of the Treaty of Amsterdam, the possibility of a partial transfer to the General Court of the Court of Justice’s jurisdiction to give preliminary rulings was regarded, by the Court of Justice itself, as one of the possible routes to take to avoid the overloading of the courts, in addition to measures such as the transfer to the General Court of new categories of direct actions, the creation of judicial review chambers or the filtering of appeals.³

Notwithstanding the existence of that provision, no change was made, at that time, to the distribution of jurisdiction between the Court of Justice and the General Court as regards questions referred for a preliminary ruling. In the years which followed the entry into force of the Treaty of Nice on 1 February 2003, priority was given to the establishment of the European Union Civil Service Tribunal and to the transfer to the General Court of all actions for annulment and actions for failure to act which, until then, had been allocated to the Court of Justice, with the exception of some categories of interinstitutional actions or actions brought by Member States against acts of the legislature of the Union. References for preliminary rulings remained within the exclusive jurisdiction of the Court of Justice, which, in addition, went on to adopt a number of significant amendments to its Rules of Procedure and a number of measures of internal organisation which had a considerable effect on both the number of cases closed by the Court of Justice and on the average length of time for dealing with cases, which was one of the major concerns that had given rise to the abovementioned reflections on the future of the judicial system of the European Union.

The question of a partial transfer of jurisdiction to give preliminary rulings from the Court of Justice to the General Court was placed on the agenda once again in the context

² That article corresponds in essence to the current Article 256 of the Treaty on the Functioning of the European Union, whereas Article 234 to which it refers corresponds, subject to terminology changes, to the current Article 267 of the Treaty on the Functioning of the European Union.

³ See, in that regard, the document reflecting on the ‘future of the judicial system of the European Union’, sent to the Council in May 1999 (Doc. 8208/99 of the Council of 11 May 1999), and the contribution submitted by the Court of Justice and the General Court, a year later, in the context of the Intergovernmental Conference.

of the reform of the judicial framework of the Union, adopted in 2015,⁴ but again failed, at that time, to lead to the Statute actually being amended with a view to laying down the specific areas in which the General Court could exercise jurisdiction to give preliminary rulings. At the invitation of the legislature of the Union to submit, by 26 December 2017, a report on possible changes to the distribution of jurisdiction for preliminary rulings, in particular in the light of the doubling of the number of Judges of the General Court in the context of the abovementioned reform, the Court of Justice took the view, in that report, submitted to the European Parliament, the Council and the Commission on 14 December 2017, that there was no need, *at that time*, to make changes to that distribution.⁵

The Court of Justice referred, in that regard, to the challenges inherent in that undertaking but also, and above all, to the fact that the requests for a preliminary ruling brought before the Court of Justice were dealt with expeditiously – the average length of time for dealing with such requests was then 15 months; meanwhile, the reform of the judicial framework of the Union was still underway. Several Judges of the General Court had yet to be appointed and measures linked, *inter alia*, to the internal organisation of the General Court following from the reform had yet to be adopted.

Five years later, however, the situation is very different.

First, the number of requests for a preliminary ruling brought before the Court of Justice has followed an upward trend and has resulted, for several years, in the gradual increase in the length of proceedings owing to the difficulty for the Court of Justice to deal, as expeditiously as before, with requests that are not only more numerous but also increasingly complex or sensitive.⁶

Second, the reform of the judicial framework of the European Union has now been fully carried out. Since July 2022, the General Court has had 2 Judges per Member State, namely a total of 54 Judges; it has, in recent years, carefully considered its internal organisation and working methods which has led, in particular, to a partial specialisation of that Court's chambers, more proactive case management and increased referral of important or complex cases to extended formations, composed of 5 Judges. Those

⁴ See 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).

⁵ Report submitted under Article 3(2) of Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council of 16 December 2015 (emphasis added). That report, which is available in all official languages of the Union, can be consulted at the following website of the institution: https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-01/en_2018-01-12_08-43-52_183.pdf.

⁶ While the Court of Justice was seised, in 2016, of 470 requests for a preliminary ruling, that number increased, three years later, to 641 requests, and to 567 requests in 2021. During that same period, the average length for dealing with preliminary ruling cases increased, for its part, from 15 months in 2016 to 15.5 months in 2019 and 16.7 months in 2021. By 30 September 2022, the number of requests for a preliminary ruling brought since the start of the year increased to 420, whereas the average length for dealing with preliminary ruling cases was 17.3 months. For a more detailed overview of cases brought before the Court of Justice during the period from 1 January 2017 to 30 September 2022 and the proportion, in that regard, of requests for a preliminary ruling, see the table in Annex I to the present request.

developments place the General Court in a good position to be able to hear and determine not only a larger number of cases,⁷ but also new cases which do not come solely within the jurisdiction that it has enjoyed until now.

In those circumstances, the Court of Justice takes the view that 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 and to lay down, in the Statute, the specific areas in which the General Court is to be called upon to hear and determine questions referred for a preliminary ruling under Article 267 of that Treaty (1). This is the subject matter of the first part of the present legislative request, which also specifies, in the interests of increased legal certainty, the court responsible for ensuring compliance with the distribution of jurisdiction between the Court of Justice and the General Court in preliminary ruling matters (2) and the procedural guarantees required in order to ensure that requests for a preliminary ruling transferred to the General Court are dealt with in the best possible manner (3).

(1) The specific areas in which the General Court is called upon to hear and determine the requests for a preliminary ruling

As is apparent from the wording of the first subparagraph of Article 256(3) of the Treaty on the Functioning of the European Union, the jurisdiction of the General Court to hear and determine questions for a preliminary ruling under Article 267 is not a general jurisdiction, extending to all areas covered by Union law. Its jurisdiction to give preliminary rulings is to be exercised in specific areas, which presupposes, by definition, that the requests for a preliminary ruling made by the courts of Member States are focused on those areas and do not raise questions regarding the interpretation or validity of Union law of a horizontal nature.

More specifically, four parameters or guiding principles have guided the Court of Justice in its consideration as regards the laying down of the specific areas in which the General Court could be called upon to take up the Court of Justice's jurisdiction to give preliminary rulings.

The first of those parameters relates to the need for the areas dealt with by the General Court to be clearly identifiable upon reading the request for a preliminary ruling and sufficiently separable from other areas governed by Union law in order not to give rise to doubts as to the precise scope of the questions put by the national courts and, consequently, the jurisdiction of the General Court to deal with them.

The second and third parameters relate, respectively, to the identification of areas which raise few issues of principle and for which there is a substantial body of case-law of the

⁷ This statement, which is also based on the number of cases that have been brought before the General Court since the adoption of Regulation 2015/2422, does not take account of any potential increase in its workload linked to the development of the legislative and regulatory activity of the Union, in particular in the digital sphere.

Court of Justice, capable of guiding the General Court in the exercise of its new jurisdiction and of preventing the potential risk of inconsistencies or divergences in the case-law.

Lastly, the Court of Justice has focused on identifying areas giving rise to a number of references for a preliminary ruling that is sufficiently high for the transfer of requests for a preliminary ruling to the General Court in the areas concerned to have a real impact on its workload. A transfer of only a few cases – even if they relate to specific areas – would not lead to the desired reduction in the workload of the Court of Justice.

On that basis – and after carrying out an in-depth analysis of the relevant statistics relating to the cases closed by the Court of Justice between 1 January 2017 and 30 September 2022⁸ – the Court of Justice has identified six areas that correspond to the abovementioned parameters: the common system of value added tax, excise duties, the Customs Code and the tariff classification of goods under the Combined Nomenclature, compensation and assistance to passengers, and the scheme for greenhouse gas emission allowance trading.

Those areas, which are listed in the paragraph 1 of the new Article 50b whose insertion in the Statute is proposed,⁹ are clearly defined and sufficiently separable from other areas covered by Union law, are governed by a limited number of acts of secondary legislation and, as is apparent from the abovementioned statistics, rarely give rise to judgments of principle since, out of a total of more than 630 cases, only 3 were dealt with by the Grand Chamber of the Court of Justice during the period in question. Those areas have, furthermore, given rise to abundant case-law on the part of the Court of Justice, which should considerably limit the risks of divergences in the case-law.

While the transfer, to the General Court, of the Court of Justice's jurisdiction to give preliminary rulings made in the abovementioned areas should lead to a significant reduction in the workload of the Court of Justice, since such requests represent, on average, roughly 20% of all requests for a preliminary ruling brought before the Court of Justice each year, it is still necessary to set out the arrangements for the distribution of jurisdiction between the Court of Justice and the General Court and the arrangements for dealing with requests for a preliminary ruling by the General Court. This is the purpose of Article 50b(2) and (3).

(2) A single court responsible for receiving the requests for a preliminary ruling and for ensuring compliance with the distribution of jurisdiction between the Court of Justice and the General Court in preliminary ruling matters

In so far as the distribution of jurisdiction between the Court of Justice and the General Court in preliminary ruling matters is governed by a substantive criterion and requests for preliminary ruling may be mixed in nature and contain questions relating to several areas, it is important for the referring courts not themselves to decide the question whether their

⁸ Those statistics are set out in Annexes 2 and 3 to the present request.

⁹ See Article 2 of the proposed regulation.

request for a preliminary ruling comes within the jurisdiction of the Court of Justice or within that of the General Court. For reasons of legal certainty and expedition, Article 50b(2) of the Statute therefore provides that, as is the case at present, every request for a preliminary ruling made under Article 267 of the Treaty on the Functioning of the European Union must be submitted to the Court of Justice and that it is that court that will transmit the request to the General Court after verifying, in accordance with the detailed rules set out in its Rules of Procedure, that that request comes exclusively within one or within several of the specific areas to which Article 50b(1) of the Statute refers.

It is important to state, in that regard, that the verification carried out by the Court of Justice in that context does not consist of an assessment of whether it is appropriate to refer the case before the General Court or to leave it with the Court of Justice, in the light of the interest of the questions referred for a preliminary ruling. That verification seeks exclusively to ensure compliance with the principle of conferral of jurisdiction, as Article 256(3) of the Treaty on the Functioning of the European Union does not confer on the General Court any jurisdiction to rule on questions referred for a preliminary ruling that do not come within one or within several of the specific areas laid down by the Statute. A request for a preliminary ruling which covers, simultaneously, the areas listed in Article 50b(1) of the Statute and areas not within the scope of that article will therefore be dealt with by the Court of Justice, whereas a request relating exclusively to one or several of the areas referred to in that article will automatically be transferred to the General Court, irrespective of the issues at the heart of the case or the importance of the questions referred.

As a matter of course, the transfer of a request for a preliminary ruling to the General Court is without prejudice to the option that that court has of referring the case to the Court of Justice if it considers that the case ‘requires a decision of principle likely to affect the unity or consistency of Union law’ or to the possibility, for the Court of Justice itself, to review the decision of the General Court ‘where there is a serious risk of the unity or consistency of Union law being affected’.¹⁰ That review should, however, be exceptional. As the lodging of a request for a preliminary ruling with the Court of Justice entails the staying of the proceedings pending before the referring court while awaiting the reply of the Court of Justice or the General Court to the questions put by that referring court, the General Court dealing with the request should, in principle, be final.

In that context, in order to promote a uniform approach to the manner in which requests for a preliminary ruling are dealt with by the Court of Justice and the General Court, those two courts have taken the view, in the preparation of the present legislative request, that the national courts, the parties to the dispute in the main proceedings and the other interested persons referred to in Article 23 of the Statute should be provided with several procedural guarantees.

(3) Procedural guarantees essential for ensuring that the Court of Justice and the General Court deal with requests for a preliminary ruling in the same manner

¹⁰ See, in that regard, the wording of the second and third subparagraphs of Article 256(3) of the Treaty on the Functioning of the European Union.

Three procedural guarantees have thus been inserted into the Statute.

First, the first sentence of Article 50b(3) of the Statute provides that the General Court is to assign requests for a preliminary ruling to chambers designated for that purpose. That designation of chambers – which is familiar to the General Court, that court having previously successfully implemented it in respect of staff cases and intellectual property cases – should facilitate the General Court’s handling of this new type of dispute, while also promoting enhanced consistency in the treatment of requests for a preliminary ruling made in the specific areas concerned, since they will all be dealt with by the same chamber(s) of the General Court.

Enshrined in the second sentence of Article 50b(3) of the Statute, the second guarantee in respect of ensuring that requests for a preliminary ruling are dealt with in the same manner by the Court of Justice and the General Court follows from the designation, by the General Court, of an Advocate General in each preliminary ruling case to be dealt with. In the same way as at the Court of Justice, that designation will not mean that Opinions will systematically be delivered in such cases since, pursuant to the fifth paragraph of Article 20 of the Statute – which applies to the General Court by virtue of the first paragraph of Article 53 of that Statute – a case may be adjudicated upon without an Opinion by the Advocate General where it raises no new points of law, but will contribute to the strength of the analysis carried out by that court, given that each case will benefit, here as well, from twofold consideration, as the examination of the case file by the Advocate General designated might usefully supplement, qualify or enrich the analysis carried out by the Judge-Rapporteur in his or her preliminary report.

Lastly, in so far as some requests for a preliminary ruling, but also other cases, might merit the attention of more than 5 Judges, the present legislative request provides for an amendment to Article 50 of the Statute in order to provide the General Court with the possibility of sitting in a formation of an intermediate size between the chambers of 5 Judges and the Grand Chamber composed of 15 Judges. It should not be necessary to convene the Grand Chamber of the General Court in order to rule on questions transmitted to the General Court for a preliminary ruling since, first, cases requiring a decision of principle such as those that usually come within the jurisdiction of the Grand Chamber should be referred to the Court of Justice pursuant to the second subparagraph of Article 256(3) TFEU, and, second, on account of the number of Judges in the Grand Chamber, Judges who are not in the chambers designated for that purpose could be led to rule in preliminary ruling cases, which would be such as to undermine the guarantee referred to in the first sentence of Article 50b(3) of the Statute. The third paragraph of Article 50 provides in that regard that the Rules of Procedure of the General Court are to govern the composition of the chambers and the circumstances in which and conditions under which the General Court is to sit in its different formations.

Taken together, all of the measures set out above should enable the General Court to manage this new jurisdiction in the best possible manner, while also promoting the

uniform interpretation and application of Union law, irrespective of which court is called upon to rule on the request for a preliminary ruling.

II. The extension, at the Court of Justice, of the mechanism for the determination of whether an appeal is allowed to proceed

While the first part of the present request to amend the Statute is relatively innovative, the second part is, by contrast, more limited in scope. It seeks merely to include within the scope of the mechanism for the determination of whether an appeal is allowed to proceed appeals brought against judgments or orders of the General Court concerning decisions of independent boards of appeal of offices, bodies or agencies of the Union that already existed when the abovementioned mechanism entered into force, on 1 May 2019, but which were not referred to in Article 58a of the Statute, and also to extend the mechanism for that determination to appeals brought against decisions of the General Court handed down pursuant to arbitration clauses.

When the mechanism for the determination of whether an appeal is allowed to proceed was established, in 2019, it was made applicable to appeals brought against decisions of the General Court concerning decisions of the independent boards of appeal of four offices and agencies of the Union referred to expressly in the first paragraph of Article 58a of the Statute,¹¹ and 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 are required to have been seised before an action can be brought before the General Court. On 1 May 2019, there already existed other offices, bodies or agencies of the Union that also have an independent board of appeal but that are not listed among the offices and agencies of the Union cited in the first paragraph of Article 58a of the Statute. Examples include the European Union Agency for Railways, the European Banking Authority, the European Securities and Markets Authority and the European Union Agency for the Cooperation of Energy Regulators.

Since there is no particular reason justifying their non-inclusion in the abovementioned list, it is therefore proposed, in the interest of enhanced consistency, to amend Article 58a of the Statute so as to add those offices, bodies or agencies which existed on 1 May 2019 to the list of four offices and agencies already referred to in that article and to make provision, here as well, for the examination of appeals brought against decisions of the General Court concerning a decision of (one of) their board(s) of appeal being subject to the Court of Justice determining whether those appeals are to be allowed to proceed. In accordance with Article 58a(3), an appeal will not be allowed to proceed, wholly or in part, unless it raises an issue that is significant with respect to the unity, consistency or development of Union law.

In the same vein, the Court of Justice proposes, furthermore, to extend the scope of the mechanism for the determination of whether an appeal is allowed to proceed to appeals

¹¹ The European Union Intellectual Property Office, the Community Plant Variety Office, the European Chemicals Agency and the European Union Aviation Safety Agency, respectively.

brought against decisions of the General Court relating to the performance of a contract concluded by or on behalf of the Union and containing an arbitration clause, within the meaning of Article 272 of the Treaty on the Functioning of the European Union.

Unlike the cases referred to in Article 58a(1), the cases brought before the General Court under an arbitration clause contained in a contract governed by public or private law concluded by or on behalf of the Union have not benefited from prior examination by an independent board of appeal before being referred for examination by the General Court, but they do not require from the General Court anything beyond the application to the substance of the dispute of the national law to which the arbitration clause refers, and not the application of Union law. In so far as appeals brought in that area are therefore not in principle capable of raising issues that are significant with respect to the unity, consistency or development of Union law, the Court of Justice envisages making them subject to the same mechanism as the one applicable to appeals brought against decisions of the General Court concerning the decisions of the abovementioned boards of appeal.

List of annexes:

- (1) Cases brought before the Court of Justice between 1 January 2017 and 30 September 2022 – Breakdown by type of case
- (2) Cases closed by the Court of Justice between 1 January 2017 and 30 September 2022 – Breakdown by type of case
- (3) Preliminary ruling cases closed by the Court of Justice between 1 January 2017 and 30 September 2022 in the specific areas referred to by the legislative request

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 2015,¹² 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.

¹² 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).

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, 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 and 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.

(3) 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, 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.¹³ 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.

(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.

¹³ 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).

(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, 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 has jurisdiction to hear and determine a request for a preliminary ruling. Every request for a preliminary ruling must therefore be submitted to a single court, namely the Court of Justice, which will 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 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.

(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 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.

(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.

(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.

HAVE ADOPTED THIS REGULATION:

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.'

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;
- compensation and assistance to passengers;
- the scheme for greenhouse gas emission allowance trading.

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.

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 the detailed rules set out in the Rules of Procedure.’

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 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 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.

Annex 1

Cases brought before the Court of Justice between 1 January 2017 and 30 September 2022

Breakdown by type of case

	2017	%	2018	%	2019	%	2020	%	2021	%	2022 ⁽¹⁾	%
References for a preliminary ruling	533	72.1%	568	66.9%	641	66.4%	557	75.6%	567	67.7%	420	66.7%
Direct actions	46	6.2%	63	7.4%	41	4.2%	38	5.2%	29	3.5%	28	4.4%
Appeals ⁽²⁾	147	19.9%	199	23.4%	266	27.5%	131	17.8%	232	27.7%	174	27.6%
Requests for an opinion	1	0.1%		0.0%	1	0.1%	1	0.1%		0.0%		0.0%
Special forms of procedure ⁽³⁾	12	1.6%	19	2.2%	17	1.8%	10	1.4%	10	1.2%	8	1.3%
Total	739		849		966		737		838		630	

⁽¹⁾ Cases brought between 1 January 2022 and 30 September 2022.

⁽²⁾ This row includes appeals brought under Article 56 of the Protocol on the Statute of the Court of Justice and also appeals against interim measures and appeals on intervention as referred to in Article 57 of that Protocol.

⁽³⁾ The following are considered to be 'special forms of procedure': legal aid, taxation of costs, rectification, failure to adjudicate, proceedings to have a judgment by default set aside, third-party proceedings, interpretation, revision, examination of a proposal of the First Advocate General to review a decision of the General Court, attachment proceedings and cases concerning immunity.

Annex 2

Cases closed by the Court of Justice between 1 January 2017 and 30 September 2022

Breakdown by type of case ⁽¹⁾

	2017	%	2018	%	2019	%	2020	%	2021	%	2022 ⁽²⁾	%
References for a preliminary ruling	447	63.9%	520	68.4%	601	69.5%	534	67.4%	547	70.9%	382	68.0%
Direct actions	37	5.3%	60	7.9%	42	4.9%	37	4.7%	30	3.9%	32	5.7%
Appeals ⁽³⁾	198	28.3%	165	21.7%	210	24.3%	204	25.8%	183	23.7%	142	25.3%
Requests for an opinion	3	0.4%		0.0%	1	0.1%		0.0%	1	0.1%	1	0.2%
Special forms of procedure ⁽⁴⁾	14	2.0%	15	2.0%	11	1.3%	17	2.1%	11	1.4%	5	0.9%
Total	699		760		865		792		772		562	

⁽¹⁾ The figures referred to (gross figures) show the total number of cases without account being taken of joinders of cases on the ground of similarity (one case number = one case).

⁽²⁾ Cases closed between 1 January 2022 and 30 September 2022.

⁽³⁾ This row includes appeals brought under Article 56 of the Protocol on the Statute of the Court of Justice and also appeals against interim measures and appeals on intervention as referred to in Article 57 of that Protocol.

⁽⁴⁾ The following are considered to be 'special forms of procedure': legal aid, taxation of costs, rectification, failure to adjudicate, proceedings to have a judgment by default set aside, third-party proceedings, interpretation, revision, examination of a proposal of the First Advocate General to review a decision of the General Court, attachment proceedings and cases concerning immunity.

Annex 3

Preliminary ruling cases closed by the Court of Justice between 1 January 2017 and 30 September 2022 in the specific areas referred to by the legislative request

Table 1: Number of cases concerned *

	2017	2018	2019	2020	2021	2022	Total
Value added tax	53	47	53	50	51	32	286
Excise duties	5	3	4	3	5	5	25
Customs Code	11	0	7	4	6	2	30
Tariff classification	5	6	6	7	7	1	32
Compensation and assistance to passengers	24	64	28	39	63	19	237
Greenhouse gas emission allowance trading	3	5	3	3	6	1	21
	101	125	101	106	138	60	631

* Where some cases cover several specific areas, they have naturally only been accounted for once and are classified in the column concerning the principal area to which to relate.

Table 2: Percentage of the cases closed in the specific areas in relation to the total number of preliminary ruling cases closed during the year in question

	2017	2018	2019	2020	2021	2022	Total
Number of cases in the specific areas referred to by the legislative request	101	125	101	106	138	60	631
Total number of preliminary ruling cases closed	447	520	601	534	547	382	3 031
	22.60%	24.04%	16.81%	19.85%	25.23%	15.71%	20.82%

Table 3: Procedural treatment of those cases during the period in question

	Total number of cases	Formation *			Opinions
		Grand Chamber	Chamber of 5 Judges	Chamber of 3 Judges	
Value added tax	286	2	113	139	113
Excise duties	25	0	12	8	8
Customs Code	30	0	17	11	14
Tariff classification	32	0	0	29	2
Compensation and assistance to passengers	237	1	43	20	16
Greenhouse gas emission allowance trading	21	0	11	7	10
	631	3	196	214	163

* The discrepancy between the total number of cases coming within an area and the sum of the cases closed by the different formations can be explained, in essence, by the withdrawal of some cases, which are disposed of by an order, adopted by the President, removing the case from the register.