Regulation (EU, Euratom) 2019/629 of the European Parliament and of the Council of 17 April 2019 amending Protocol No 3 on the Statute of the Court of Justice of the European Union

REGULATION (EU, Euratom) 2019/629 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 17 April 2019

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,

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

Having regard to the opinions of the European Commission[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) In accordance with Article 3(2) of Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council[(3)], the Court of Justice undertook, together with the General Court, an overall review of the jurisdiction exercised by them and considered whether, given the reform of the structure of the courts of the Union that took place pursuant to that Regulation, 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, to the Council and to 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 (TFEU). References for a preliminary ruling constitute the keystone of the judicial system of the 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 of the Court of Justice of the European Union, is at present not necessary.

(3) The review undertaken by the Court of Justice and the 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 to comply

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU, Euratom) 2019/629 of the European Parliament and of the Council. (See end of Document for details)*

with a judgment delivered by the Court of Justice under Article 260(2) or (3) TFEU, the General Court can encounter serious difficulties where the Commission and the Member State concerned disagree on the adequacy of the measures adopted by that Member State to comply with the judgment of the Court of Justice. On those grounds, it appears necessary to reserve exclusively to the Court of Justice litigation concerning a lump sum or a penalty payment imposed on a Member State pursuant to Article 260(2) or (3) TFEU.

(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 board of appeal, then by the General Court, and that many of those appeals are dismissed by the Court of Justice because they are patently unfounded or on the ground that they are manifestly inadmissible. 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 procedure whereby the Court of Justice allows an appeal to proceed, wholly or in part, only where it raises an issue that is significant 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 (EU, Euratom) 2015/2422 has been drawn up, in December 2020. It is recalled that this report should focus in particular on the efficiency of the General Court and the necessity and effectiveness of the increase of the number of judges to 56, taking into account also the objective of ensuring gender balance within the General Court as mentioned in the preamble to Regulation (EU, Euratom) 2015/2422.

(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 TFEU 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 is amended as follows:

(1) Article 51 is replaced by the following:

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 which are brought by a Member State against:

(i) a legislative act, an act of the European Parliament, of the European Council or of 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 a 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 which are brought by an institution of the Union against a legislative act, an act of the European Parliament, of the European Council, of the Council, of the Commission or of 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 which are brought by a Member State against an act of the Commission relating to a failure 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 is inserted:

Article 58a

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

(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.

The procedure referred to in the first paragraph shall also apply to appeals brought against decisions of the General Court concerning a decision of an independent board