

Council of the European Union  
General Secretariat  
Working Party on the Court of  
Justice

Brussels, 5 May, 2023

**Subject: CCBE comments on the draft amendment to Protocol No 3 on the Statute of the Court of Justice of the European Union, presented by the Court of Justice on 30 November 2022**

Dear delegates of the Working Party on the Court of Justice,

The Council of Bars and Law Societies of Europe (CCBE) represents the bars and law societies of 46 countries, and through them, more than 1 million European lawyers. The CCBE responds regularly on behalf of its members on policy issues which affect European citizens and lawyers.

The CCBE has considered the legislative request presented by the Court of Justice on 30 November 2022 with regard to the draft amendment to Protocol No 3 on the Statute of the Court of Justice of the European Union, and the Commission Opinion of 14 March 2023.

In general, the CCBE welcomes the current proposed reform, which aims to allow the Court of Justice to continue to fulfil its mission in a timely manner, against the background of the constant increase in its workload.

The CCBE would like to make the following comments on various aspects of the proposed reform:

**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**

- Proposed areas which are subject to transfer

The CCBE has no specific observations on the proposed areas which are subject to transfer and takes note of the view of the Commission Opinion and its proposed amendments in this regard.

Previously, the CCBE has expressed its positive views for allowing such a transfer of preliminary rulings to the General Court, specifically in certain areas (competition/state aid cases). The CCBE, therefore, welcomes the principle of such a transfer and would welcome if further areas for transfer may be considered in the future.

Moreover, the CCBE agrees with the Commission Opinion that the fact that a request for a preliminary ruling requires an interpretation of whether the rules relating to specific areas are consistent with primary or international law, or even where the request includes an issue relating to a specific legal act, the substantive content of which is equivalent to general principles of law or the Charter, should not preclude transfer to the General Court.

Finally, regarding the referral of the case by the General Court to the Court of Justice, the CCBE supports the views regarding broader criteria for the assessment, so that a question of principle is not left to the discretion of the General Court and to allow the involvement of the parties to the case before the referring court in this mechanism.

- Handling of the request for preliminary rulings

Regarding the handling of the request for preliminary rulings, in its legislative request, the Court of Justice proposes that references for preliminary rulings submitted to the General Court will be assigned, in accordance with the rules laid down in its Rules of Procedure, to chambers designated for that purpose. It also specifies that *“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.”*

In general, the CCBE supports the view for greater specialisation of chambers within the General Court.

In addition, the CCBE would like to receive more clarification on the detailed aspects of the handling of the request for preliminary rulings, given the fact (and as stressed by the Commission), that this reform requires for the General Court the mastery of the detailed rules of the preliminary ruling procedure, which differs significantly from the procedures for which the General Court has been responsible until now. In this regard, it would be advisable to analyse as soon as possible the draft provisions amending the Rules of Procedure of the General Court.

- Review mechanism

Regarding the review mechanism, the CCBE would like to stress the practical effect for the referring court, since there will be a waiting period of one month between the judgment of the General Court and the follow-up by a referring court, due to the need to await possible action by the First Advocate General to initiate the review mechanism.

In addition to what has been indicated, the CCBE believes that further clarification and details regarding the application of the review mechanism procedure would be useful.

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

The current proposed reform intends to extend this mechanism. If the CCBE recognises the legitimate reasons behind the extension, as stressed by the Court in its legislative request, the CCBE has, in the past, expressed its concern about the restrictive application of the filtering mechanism. Therefore, in view of the proposed extension, the CCBE wishes to underline that the larger use of the mechanism for the determination of whether an appeal is allowed to proceed cannot result in the total elimination of the appeals in all the areas concerned.

The CCBE hopes that the above comments are of assistance and remains available to discuss them in further details.

Yours sincerely,

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Panagiotis Perakis  
President