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Jurisdiction to hear and determine questions referred for a preliminary ruling is conferred on the General Court of the European Union in six specific areas

The implementation of this transfer from the Court of Justice to the General Court of part of the jurisdiction to give preliminary rulings is part of the extension of the reform of the judicial framework of the European Union and will affect questions referred for a preliminary ruling from 1 October 2024

A significant amendment to the Statute of the Court of Justice of the European Union, published today in the *Official Journal of the European Union*¹, will enter into force on 1 September. This amendment provides, inter alia, for a transfer, applicable from 1 October 2024, from the Court of Justice to the General Court of part of the jurisdiction to give preliminary rulings. The transfer concerns six specific areas: the common system of VAT; excise duties; the Customs Code; the tariff classification of goods; compensation and assistance to passengers in the event of denied boarding or of delay or cancellation of transport services; and the system for greenhouse gas emission allowance trading. The amendment to the Statute also provides for an extension, from 1 September 2024, of the mechanism for the determination of whether an appeal is allowed to proceed.

The aim of this reform is to reduce the workload of the Court of Justice in the sphere of preliminary rulings and to allow it to continue to fulfil, within a reasonable period, its mission of ensuring that in the application and interpretation of the Treaties the law is observed. In 2001, the authors of the Treaty of Nice had provided for the possibility of the General Court being involved in dealing with certain requests for a preliminary ruling, but the Statute has not been adapted for that purpose in the meantime. However, over the past five years, a significant structural increase in disputes has been observed.² This development has been accompanied by an increase in the complexity and sensitivity of cases concerning, in particular, matters of a constitutional nature or related to fundamental rights. The reform will allow the Court of Justice to focus on its mission of safeguarding and strengthening the unity and consistency of Union law. For its part, the General Court is in a position to absorb that additional workload and will deal with the questions referred for a preliminary ruling which are transmitted to it in such a way as to provide national courts and tribunals and interested persons with the same guarantees as are provided by the Court of Justice.

The reform essentially consists of three parts, the broad outlines of which are set out below.

Transfer to the General Court of part of the jurisdiction to give preliminary rulings

The first part of the reform relates to **the transfer from the Court of Justice to the General Court**, to which two judges are appointed per Member State, **of jurisdiction to give preliminary rulings**. For reasons of legal certainty, the transfer **concerns only six areas**, which are clearly defined and sufficiently separable from other areas and which have given rise to a substantial body of case-law of the Court of Justice. Jurisdiction will thus be conferred on the General Court to rule on requests for a preliminary ruling that come exclusively within one or several of the following six specific areas:

1. the common system of value added tax;
2. excise duties;
3. the Customs Code;

4. the tariff classification of goods under the Combined Nomenclature;
5. compensation and assistance to passengers in the event of denied boarding or of delay or cancellation of transport services;
6. the system for greenhouse gas emission allowance trading.

These areas rarely give rise to questions of principle likely to affect the unity or consistency of Union law. They already benefit from an extensive body of case-law of the Court of Justice, which should enable the General Court to draw on judgments delivered previously. These areas account for approximately 20% of the references for a preliminary ruling brought before the Court of Justice, which represents a sufficiently high number of cases to bring about a real reduction in its workload. The Court of Justice will thus be in a position to focus to a greater extent on its roles as the supreme and constitutional court of the European Union.

The Court of Justice will retain jurisdiction to adjudicate on requests for a preliminary ruling that, although connected to the specific areas mentioned above, also concern other areas. It will also retain jurisdiction in respect of requests for a preliminary ruling which, even where they fall within one or more of the specific areas, raise independent questions of interpretation of: (1) primary law, including the Charter of Fundamental Rights of the European Union; (2) public international law; or (3) general principles of Union law. In addition, the General Court will also be able to refer to the Court of Justice a case that falls within the General Court's jurisdiction but requires a decision of principle likely to affect the unity or consistency of Union law.

For reasons of legal certainty and expedition, **every request for a preliminary ruling must be submitted to the Court of Justice** so that that court may determine, in accordance with the detailed rules set out in its Rules of Procedure, whether the request falls exclusively within one or several specific defined areas and, accordingly, whether that request is to be transmitted to the General Court. In the interest of legal certainty and transparency, the Court of Justice or the General Court will briefly provide reasons, in its ruling on a preliminary reference, as to why it is competent to hear and determine the question referred for a preliminary ruling.

Changes applicable to all preliminary ruling cases

A second part of the reform comprises two changes provided for by the Regulation amending the Statute, which will apply to all requests for a preliminary ruling regardless of the area concerned and whether they may be transferred to the General Court.

In the first place, as is already the case for all Member States and for the Commission, all requests for a preliminary ruling will from now on be notified to the European Parliament, the Council and the European Central Bank, so that they can assess whether they have a particular interest in the issues raised and decide whether they therefore wish to exercise their right to submit statements of case or written observations.

In the second place, to strengthen the **transparency and openness** of the preliminary ruling procedure and to enable a better understanding of the decisions of the Court of Justice and the General Court, it is provided that, in all preliminary ruling cases, the statements of case or written observations submitted by an interested person referred to in Article 23 of the Statute **will be published on the website of the Court of Justice** within a reasonable time **after the closing of the case**, unless that person raises objections to the publication of that person's own written submissions.

Extension of the mechanism for the determination of whether an appeal is allowed to proceed

The third part of the reform is intended to maintain the efficacy of appeal proceedings against decisions of the General Court, in view of the high number of appeals lodged with the Court of Justice. In order to allow the Court of Justice to focus on the appeals that raise important legal questions, **the mechanism for the determination of whether an appeal is allowed to proceed³ is extended to other decisions of the General Court.**

The mechanism for the determination by the Court of Justice of whether an appeal is allowed to proceed concerns appeals in cases which have already been considered twice, initially by an independent board of appeal of a body, office or agency of the Union, then by the General Court. The mechanism currently concerns the decisions of four boards of appeal which are subsequently challenged before the General Court, as referred to in Article 58a of the Statute (see points (1) to (4) below). The amendment to the Statute entering into force on 1 September will see six new independent boards of appeal added to the four current boards of appeal, bringing their total number to ten.

The relevant boards of appeal are those of:

1. the European Union Intellectual Property Office (EUIPO) (Alicante, Spain);
2. the Community Plant Variety Office (CPVO) (Angers, France);
3. the European Chemicals Agency (ECHA) (Helsinki, Finland);
4. the European Union Aviation Safety Agency (EASA) (Cologne, Germany), to which the following boards of appeal will be added:
5. the European Union Agency for the Cooperation of Energy Regulators (ACER) (Ljubljana, Slovenia);
6. the Single Resolution Board (SRB) (Brussels, Belgium);
7. the European Banking Authority (EBA) (Paris, France);
8. the European Securities and Markets Authority (ESMA) (Paris, France);
9. the European Insurance and Occupational Pensions Authority (EIOPA) (Frankfurt am Main, Germany);
10. the European Union Agency for Railways (ERA) (Valenciennes, France).

In addition, the mechanism for the determination of whether an appeal is allowed to proceed will 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 body, office or agency of the Union, which has to be seised before an action can be brought before the General Court.

Lastly, the mechanism is also extended to disputes relating to the performance of contracts containing an arbitration clause. Such disputes most frequently merely require the General Court to apply to the substance of the dispute the national law to which the arbitration clause refers.

The extensions of the mechanism for the determination of whether an appeal is allowed to proceed will apply from 1 September 2024.

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¹ [Regulation \(EU, Euratom\) 2024/2019](#) of the European Parliament and of the Council of 11 April 2024 amending Protocol No 3 on the Statute of the Court of Justice of the European Union.

² See [Press Release No 59/24](#).

³ Regarding the establishment in 2019 of the mechanism for the determination of whether an appeal is allowed to proceed, see [Press Release No 53/19](#).