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### **COMMUNICATION**

#### **INFORMATION**

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Subject:	Amendments to Protocol No 3 on the Statute of the Court of Justice of the European Union - Transmission to Member States' Parliaments
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In accordance with the last subparagraph of Article 2 of Protocol (No 1) on the role of national Parliaments in the European Union and with the third paragraph of Article 4 of Protocol (No 2) on the application of the principles of subsidiarity and proportionality, the Council hereby transmits to national Parliaments a letter from the President of the Court of Justice of the European Union, forwarding to the President of the Council of the European Union a request for the amendment of Protocol No 3 on the Statute of the Court of Justice of the European Union. The document is available in all official languages of the European Union on the Council public register, doc. [7586/18](#). Any reasoned opinion should be sent within eight weeks from the date of transmission of this document (Article 6 of Protocol No 2).

For the Secretary-General  
Jim CLOOS  
Deputy Director-General,  
General and Institutional Policy

Luxembourg, 26 March 2018

Mr Boyko Borissov  
President of the Council of the European Union  
Rue de la Loi 175  
B – 1048 Brussels

Sir,

*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 am pleased to send to you, and to the President of the European Parliament, this request for the amendment of Protocol No 3 on the Statute of the Court of Justice of the European Union.*

*Further to the report which I sent to you on 14 December 2017, on the subject of possible changes in the distribution of areas of jurisdiction between the Court of Justice and the General Court with respect to questions referred for a preliminary ruling, this request has three principal components, consisting in (i) the transfer to the General Court of the jurisdiction in principle to adjudicate, at first instance, on infringement proceedings based on Article 108(2) and Articles 258 and 259 TFEU ; (ii) the conferral on the Court of Justice of responsibility to deal with actions for annulment linked to the failure properly to comply with a judgment delivered by the Court under Article 260 TFEU and (iii) the introduction, for certain categories of appeals, of a procedure whereby the Court of Justice will first determine whether certain appeals are allowed to proceed. In addition, the request contains a proposal to harmonise terminology.*

*The objective of this request is to take advantage of all the possibilities offered by the reform of the structure of the courts of the European Union and is, therefore, of particular importance for litigants, who expect from the Court of Justice and from the General Court judicial protection of the highest quality.*

*The amendments to the Statute involved in this request, which is sent to you in all the official languages of the European Union, are the subject of a detailed explanation in the statement of reasons, to which I direct your attention.*

*I will be happy to provide any further information that you may wish.*

*Yours faithfully*

*Koen Lenaerts*

## Proposed amendments to Protocol No 3 on the Statute of the Court of Justice of the European Union

As is stated in the report submitted to the European Parliament, the Council and the Commission on 14 December 2017,<sup>1</sup> the Court of Justice considers that there is at this stage no need to propose to amend Protocol No 3 on the Statute of the Court of Justice of the European Union with a view to transferring to the General Court part of the Court's jurisdiction with respect to preliminary rulings. The reasons for that position are set out in the report and arise, in particular, from the central place occupied by references for a preliminary ruling in the legal order of the European Union and the need to provide national courts with a swift and definitive answer to questions on the interpretation or validity of EU law that are raised before those courts, and also from the disadvantages that might ensue from a partial transfer of jurisdiction with respect to preliminary rulings to the General Court at a time when not only are requests for a preliminary ruling brought before the Court being dealt with expeditiously, but also when the impact of the reform of the structure of the EU Courts has yet to be fully ascertained.

In the conclusion to that report, the Court stated, however, that the possibility of a future transfer of jurisdiction with respect to preliminary rulings could not be wholly ruled out in certain specific areas. Furthermore, the background leading to the reform of the structure of the EU Courts has led to a broader reflection on the distribution of jurisdiction between the Court of Justice and the General Court and on how appeals are to be dealt with by the Court of Justice.

The outcome of that reflection is the present proposal to amend Protocol No 3, concerning, first, a transfer to the General Court of jurisdiction to adjudicate at first instance on certain categories of infringement proceedings, namely, subject to certain clearly circumscribed exceptions, actions based on Articles 108(2), 258 and 259 of the Treaty on the Functioning of the European Union ('TFEU') (I); second, a transfer to the Court of Justice of jurisdiction to adjudicate on actions for annulment linked to a failure properly to comply with a judgment delivered by the Court pursuant to Article 260(2) or (3) TFEU (II); third, the introduction of a procedure whereby the Court determines whether an appeal should be allowed to proceed, intended to enable the Court to adjudicate on certain categories of appeals only if they meet certain criteria (III), and, last, an alignment of the terminology of the provisions in the Protocol with that of the provisions of the TFEU, as in force following the Treaty of Lisbon (IV).

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<sup>1</sup> Report submitted under 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 (*OJEU* L 341 of 24 December 2015, p. 14).

## **I. Transfer to the General Court of jurisdiction to adjudicate at first instance on the majority of infringement proceedings based on Articles 108(2), 258 and 259 TFEU**

The first part of this proposal concerns actions for failure to fulfil obligations (‘infringement proceedings’). With the agreement of the General Court, the Court of Justice proposes, pursuant to the last sentence of the first subparagraph of Article 256(1) TFEU, to transfer to the General Court jurisdiction to adjudicate at first instance on the majority of those actions, namely actions based on Articles 108(2), 258 and 259 TFEU. The Court of Justice should however retain jurisdiction with respect to actions that have a constitutional aspect or that must be dealt with urgently, together with actions based wholly or partly on Article 260 TFEU, involving the possible imposition of a lump sum or a penalty payment on the defendant.

Currently, all infringement proceedings fall within the exclusive jurisdiction of the Court of Justice, regardless of their legal basis.

Whilst that situation could be readily explained when the Court of First Instance was created in 1988, and indeed when the Treaty of Nice was signed 10 years later, it appears to be of much less relevance in 2018, when the General Court is adjudicating at first instance on all actions brought by natural or legal persons, and on actions (for annulment or for failure to act) brought by the Member States of the European Union against acts adopted by the Commission and certain acts of the Council. In many respects, the handling of infringement proceedings by the Court of Justice significantly resembles that of direct actions for which the General Court is at present responsible.

Where the Court of Justice adjudicates on an action brought on the basis of Articles 108(2), 258 or 259 TFEU, it is required to carry out a detailed analysis of the often complicated facts and circumstances that have given rise to the dispute and, before deciding whether there is or is not an infringement, it must examine each of the submissions made by the applicant (in most cases, the Commission). Dealing with those actions also requires a thorough analysis of the precise scope of the national legislation or practice at issue.

The General Court accordingly appears particularly well placed to hear and determine actions of that kind, which, experience shows, most often require decisions to be made on many issues of fact. However, some of the actions brought on the basis of Article 258 or Article 259 TFEU may nonetheless have constitutional aspects, with the result that it may be preferable to reserve their examination to the Court of Justice. Such actions might, in particular, be actions seeking a declaration that a Member State has failed to fulfil its obligations under the Treaty on European Union – including a failure to fulfil obligations stemming from the Charter of Fundamental Rights of the European Union – or actions brought in the area of Title V of Part III of the TFEU establishing the area of freedom, security and justice. Cases brought before the Court in the latter area – either directly, by means of actions for annulment or infringement proceedings, or by means of a request for a preliminary ruling – often raise questions of interpretation or validity that are particularly sensitive and urgent, that are difficult to reconcile with there being a right of appeal in those areas.

Moreover, it is not inconceivable that, even in actions that are devolved to the General Court, the case may be such as to warrant proceeding immediately to final judgment when it calls for a decision involving matters of principle or when exceptional circumstances linked to, *inter alia*, the urgency of the case, justify it. In the same way as the rule laid down in Article 256(3) TFEU, should the General Court be granted jurisdiction with respect to the preliminary ruling procedure, this proposal makes provision for the General Court to have the option of referring a case to the Court of Justice for a ruling. That reference could be made by the General Court of its own motion or at the request of one of the parties. In the interests of the proper administration of justice – and in order not to delay dealing with the case – such a request would, however, have to be made when the application is lodged (when the request is made by the applicant) or when the defence is lodged (when the request is made by the defendant).

Last, measures are proposed to maintain the effectiveness of infringement proceedings. Since the primary objective of such proceedings is to bring to an end infringements of EU law that are the result of a failure to transpose the rules of EU law into national law or an incorrect application of those rules, the transfer to the General Court of jurisdiction to adjudicate at first instance on such proceedings cannot have the consequence that situations of non-compliance with EU law are prolonged by reason of the possibility, provided for in the second subparagraph of Article 256(1) TFEU, of bringing an appeal against the decisions of the General Court in that area.

For that reason, it is proposed to amend Article 61 of the Statute in order to provide that, should an appeal be brought against a decision of the General Court in infringement proceedings, the Court of Justice will give a final ruling on the dispute, in law and in fact, if it considers that the appeal is well founded and that it is necessary to set aside the decision of the General Court. That measure – which will complement the possibilities already offered by the Statute and the Court’s Rules of Procedure with a view to dealing expeditiously with cases submitted to it (see, for example, Articles 133 to 136 of the Rules of Procedure, applicable to the appeal procedure by virtue of Article 190(1) of those rules, and Articles 53(3) and 181 of those rules) – will mean that it will be possible in the future to bring an appeal against decisions of the General Court in infringement proceedings, while ensuring that the procedure before the Court of Justice and, with it, the final decision on the alleged infringement of EU law by the Member State concerned will be dealt with expeditiously.

In the same vein, actions brought on the basis of Article 260(2) TFEU or on the basis of both Articles 258 and 260(3) TFEU are to be excluded from the scope of this proposal and will therefore remain, at this stage, within the exclusive jurisdiction of the Court of Justice. The reason for that exclusion is the desire to avoid causing the length of those procedures to be unduly prolonged and the sensitivity of actions brought under those articles, which provide that the Court may require the infringing Member State to pay a lump sum or penalty payment.

As regards, moreover, actions based on Articles 258 and 260(3) TFEU, it will be noted that, whilst several actions have been brought before the Court on that twofold basis, the Court has not yet given a ruling on the area of application or scope of Article 260(3) TFEU, since all actions brought on the basis of that provision have been withdrawn by the Commission before the Court gave a ruling.

## **II. Transfer to the Court of Justice of jurisdiction to adjudicate on actions for annulment linked to a failure properly to comply with a judgment delivered by the Court under Article 260(2) or (3) TFEU**

Under Article 260 TFEU, the Court hearing infringement proceedings may not only find that a Member State has failed to fulfil its obligations under the Treaties, but may also require the infringing State to pay a lump sum or penalty payment. That may particularly be the case where an action is brought against a Member State on a second occasion for failing properly to comply with an initial judgment finding a failure to fulfil obligations (the second subparagraph of Article 260(2) TFEU).

The Commission, acting within its powers to assess the measures adopted by the Member State to comply with the judgment of the Court of Justice and with a view to recovering sums due by way of penalties, may adopt acts that may be challenged by actions for annulment before the General Court, under its general jurisdiction to hear and determine that type of action at first instance, provided for in Article 256(1) TFEU.

As jurisdiction is currently allocated, the fact that the Court of Justice alone may hear infringement proceedings may lead, in some situations, to considerable uncertainty as to the precise extent of the jurisdiction of the General Court and to serious difficulties where the Commission and the Member State concerned disagree, in particular on the adequacy of the measures adopted by that State to comply with the judgment of the Court. The assessment by the Commission – then by the General Court – of the measures adopted by a Member State to comply with a judgment of the Court ordering that State to pay a penalty payment and the recovery of sums payable by that State as a result of penalties imposed must necessarily take account of how the infringement was defined by the Court in its judgment. As the General Court has itself held, to accept the contrary would have the consequence that, when a Member State has challenged an assessment by the Commission that goes beyond the actual terms of the operative part of the judgment of the Court of Justice, the General Court would be required to give a ruling on the compliance of a practice or of national legislation with EU law and, consequently, intrude on the exclusive jurisdiction of the Court on that matter (see, in particular, paragraph 90 of judgment of 29 March 2011, *Portugal v Commission* (T-33/09, EU:T:2011:127), upheld by the Court on appeal in judgment of 15 January 2014, *Commission v Portugal* (C-292/11 P, EU:2014:3)).

That risk is no less in the proposed system of transfer, to the General Court, of some categories of infringement proceedings. It is true that the General Court will more readily be able to assess the lawfulness of the Commission's enforcement measures with reference to an infringement that it has itself defined. However, in addition to the fact that some infringement proceedings will be reserved to the Court of Justice, it should not be forgotten that an appeal may always be brought both against the initial judgment of the General Court finding a failure to fulfil obligations and against the judgment annulling a subsequent act of the Commission. The resulting legal uncertainty would be on top of supplementary periods of time being added to infringement proceedings, the duration of which cannot be considered, when the difficulties of enforcement are so great, as other than excessive.

For that reason, it is proposed to reserve all litigation linked to State failures to fulfil obligations to which a financial penalty is attached exclusively to the Court of Justice, whether in respect of the initial finding of the actual existence of a failure to fulfil obligations stemming from EU law – in an action based on both Article 258 TFEU and Article 260(3) TFEU – or in respect of challenges that may be made following an order to pay a lump sum or a penalty payment.

### **III. Procedure whereby the Court of Justice determines whether certain appeals should be allowed to proceed**

The third part of this proposal concerns appeals and consists in the introduction, for certain categories of appeals, of a procedure whereby the Court of Justice determines whether certain appeals should be allowed to proceed: the only appeals that will be considered by the Court of Justice will be those which raise, wholly or in part, a significant issue with respect to the development of EU law or in which the unity or consistency of EU law is at stake.

It is proposed to establish such a procedure solely in situations where the dispute has already been considered by an independent administrative authority, that is, cases where an administrative appeal has taken place before the case is brought before the General Court. That applies to, inter alia, decisions adopted in relation to trade marks by the European Union Intellectual Property Office (EUIPO), where there are Boards of Appeal, but also to the decisions of various EU agencies that possess administrative appeal bodies, such as the Community Plant Variety Office (CPVO) or the European Chemicals Agency (ECHA).

In all such situations, the legality of the contested decisions will already have been reviewed twice before they are brought before the Court of Justice. For that reason a significant number of appeals in those areas are dismissed as being manifestly inadmissible or manifestly unfounded, even though it was necessary to examine them in detail and to commit significant resources to them.<sup>2</sup>

In order to enable the Court of Justice to concentrate on the cases that actually require its attention and to make optimal use of its resources, it is proposed to insert in the Statute an Article 58a on whether an appeal should be allowed to proceed.

In accordance with the second subparagraph of Article 256(1) TFEU, it will remain possible to contest the decisions of the General Court in those areas before the Court of Justice on appeal, limited to questions of law, but it will be necessary for the party challenging the decision of the General Court to establish, by means of a document annexed to the appeal, its interest in the light of the importance of the issue that it raises with respect to the unity, consistency or development of EU law.

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<sup>2</sup> As shown by the statistics, of 194 appeals closed by the Court in 2017, 57 appeals were closed in that way by an order on the basis of Article 181 of the Rules of Procedure, in other words, 29.4% of the total number of appeals closed. That proportion was even higher in 2016 since the cases closed by order on the basis of Article 181 of the Rules of Procedure numbered 88, that is, almost 50% of all appeals closed by the Court in that year (182 appeals). The appeals brought in the area of intellectual property and closed by order constituted respectively 51 (in 2016) and 22 (in 2017) cases.



The assessment of whether or not such conditions<sup>3</sup> are met would fall to a Chamber of the Court. The decision would therefore be collegiate, and reasons would be stated. The decision would be taken very early, having regard solely to the decision under appeal of the General Court and the document, annexed to the appeal, submitted by the appellant. Either the appeal would be allowed to proceed, in whole or in part, and the procedure would follow its normal course, or the appeal would not be allowed to proceed and the case would not be examined.

In the former situation, the appellant would be informed by the Court that its appeal will be allowed to proceed, and the appeal would then be notified to the other parties to the case in question before the General Court and the procedure would follow its normal course, under the usual rules of procedure.

In the second situation, the appellant would be informed of the reason why its appeal will not be allowed to proceed, and the appeal would not be notified to the other parties to the case in question before the General Court, whose decision would become final on the expiry of the period for bringing an appeal.

This mechanism – the precise details of which have to be defined in the Rules of Procedure of the Court, and which is without prejudice to the possibility that the Court may deal with the case by way of order if it emerges that the appeal can be dismissed or upheld at the outset under Articles 181 or 182 of the Rules of Procedure – should enable the Court to make the best use of its resources, without undermining the right of parties to an effective remedy, guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union.

#### **IV. Alignment of terminology**

During the examination of the provisions governing the respective areas of jurisdiction of the Court of Justice and the General Court, it was also noticed that the terminology used in Article 51 of the Statute to describe the acts or failures to act that may be challengeable corresponds to the terminology of the Treaty in the version prior to the amendments made by the Treaty of Lisbon.

The result is a risk of uncertainty as to the exact distribution of jurisdiction which that provision lays down.

Accordingly, it appears necessary to realign the relevant provisions of the Treaty and Article 51 of the Statute and to that end to reproduce, in point (a), indent (i), and point (b) of that provision, the terminology used in Articles 263 and 265 TFEU.

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<sup>3</sup> Similar to those for review laid down in the second subparagraph of Article 256(2) TFEU, which can also be implemented only following consideration of the case by two bodies in succession (a specialised tribunal, then by the General Court).

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 ...,

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) 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.
- (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 the Court of Justice, when adjudicating on actions brought under Article 108(2) of the Treaty on the Functioning of the European Union or under Articles 258 or 259 of that Treaty, is often seised of disputes that essentially raise questions of fact, comparable to the disputes that the General Court at present hears and determines when it adjudicates on actions brought before it under Article 256(1) of the Treaty on the Functioning of the European Union. To better clarify the distribution of jurisdiction between the Court and the General Court and to enable those two courts to concentrate on their essential tasks, it is therefore appropriate to assign to the General Court jurisdiction to adjudicate, at first instance, on infringement proceedings based on Articles 108(2), 258 and 259 of the Treaty on the Functioning of the European Union.
- (4) Since, however, some actions based on Article 258 or 259 of that Treaty may have a constitutional aspect or may be either urgent or particularly sensitive, it is necessary to reserve to the Court of Justice actions based on those articles where they seek a declaration of failure to fulfil obligations stemming from the Treaty on European Union, Title V of Part Three of the Treaty on the Functioning of the European Union or from an act adopted on the basis of that title. It is necessary, in addition, to provide that the General Court may refer a case of which it is seised to the Court of Justice for the latter to give a ruling, where the General Court considers that that case calls for a decision of principle or where exceptional circumstances so justify.
- (5) In the light of the sensitivity of actions based on Article 260(2) or (3) of Treaty on the Functioning of the European Union – which may lead to the imposition of penalty payments or lump sum payments – and in order not to cause the length of proceedings to be unduly prolonged due to the possibility of bringing an appeal against the decisions of the General Court, actions based on that article should, at this stage, fall exclusively within the jurisdiction the Court of Justice. In so far, however, as actions 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 under Article 260 of that Treaty fall within the jurisdiction of the General Court and, as is apparent from the case-law, 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, 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.
- (6) In order to maintain the effectiveness of infringement proceedings, it must also be provided that, in the event that an appeal is brought against a decision delivered by the General Court in those proceedings, the Court of Justice may give a final ruling on the dispute, in law and in fact, if it considers that the appeal is well founded and that it is necessary to set aside that decision.

- (7) Last, it is 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 therefore proposed, in the interests of the proper administration of justice, to introduce, for appeals relating to cases in which an independent administrative authority has already been seised prior to the action before the General Court, 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 such 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 EU law.
- (8) 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 with the following text:

*'Article 51*

1. 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) legislative acts, acts of the Council other than recommendations or opinions, acts of the European Parliament or of the European Council intended to produce legal effects vis-à-vis third parties, or against failures to act of the European Parliament, the European Council or the Council, 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 of 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 Council, the Commission or the European Central Bank, other than a recommendation or an opinion, an act of the European Parliament or the European Council intended to produce legal effects vis-à-vis third parties, or against a failure to act of the European Parliament, the European Council, the Council, the Commission or the European Central Bank.

(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 General Court shall have jurisdiction to hear and determine, at first instance, actions based on the second subparagraph of Article 108(2), Article 258 or Article 259 of the Treaty on the Functioning of the European Union, except for, as regards actions based on one of the latter two provisions, actions seeking a declaration that a Member State has failed to fulfil its obligations under the Treaty on European Union, Title V of Part Three of the Treaty on the Functioning of the European Union or an act adopted on the basis of that title.

Where the case calls for a decision of principle or where exceptional circumstances so justify, the General Court may, on its own motion or at the request of a party, refer the case to the Court for a ruling by the latter.

The request referred to in the preceding subparagraph shall be submitted, as appropriate, in the application initiating proceedings or within the two months following service of the application on the defendant.'

(2) The following article shall be inserted:

*'Article 58a*

Where the seising of an independent administrative body is a prerequisite of an action being brought before the General Court, an appeal brought against the decision of the General Court 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 EU law.

Where the appeal is not allowed to proceed, the reasons for the decision not to allow it to proceed shall be stated.'

(3) Article 61 shall be replaced with the following text:

*'Article 61*

If the appeal is well founded, the Court of Justice shall quash the decision of the General Court. It may itself then give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment.

Where a case is referred back to the General Court, that Court shall be bound by the decision of the Court of Justice on points of law.

When an appeal brought by a Member State or an institution of the Union which did not intervene in the proceedings before the General Court is well founded, the Court may, if it considers this necessary, state which of the effects of the decision of the General Court which has been quashed shall be considered as definitive in respect of the parties to the dispute.

By way of derogation from the first paragraph, the Court shall examine all the relevant elements of fact and law and shall give a final ruling on the dispute where it declares an appeal brought against a decision of the General Court delivered under Article 51(2) of this Statute to be well founded.’

#### *Article 2*

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

#### *Article 3*

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.

#### *Article 4*

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 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.

Done at Strasbourg, ...

*By the European Parliament*

*By the Council*

*The President*

*The President*