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From:	Court of Justice of the European Union
date of receipt:	13 July 2018
To:	Delegations
Subject:	Draft Amendments to Protocol No 3 on the Statute of the Court of Justice of the European Union - Letter of the President of the Court of Justice

Delegations will find attached a letter of the President of the Court of Justice of the European Union addressed to the President of the Council of the European Union relating to the above-mentioned subject.

Encl. : Letter of the President of the Court of Justice of the European Union of 13 July 2018.



COURT OF JUSTICE
OF
THE EUROPEAN UNION

The President

Luxembourg, 13 July 2018

*Mr Gernot Blümel
President of the Council of the European Union
Rue de la loi, 175
B – 1048 Brussels*

Sir,

On 26 March 2018, I sent to the Presidents of the European Parliament and of the Council of the European Union a request based on 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, concerning the amendment of Protocol No 3 on the Statute of the Court of Justice of the European Union.

As I indicated in my letter, the purpose of that request is to take advantage of all the possibilities offered by the reform of the structure of the courts of the European Union, adopted in December 2015, the request having four components: (i) transfer to the General Court of the jurisdiction to adjudicate, at first instance, on certain categories of infringement proceedings; (ii) conferral on the Court of Justice of the 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; (iii) the introduction of a procedure whereby the Court of Justice decides whether certain categories of appeals should be allowed to proceed, and (iv) an alignment of the terminology.

While the discussions on that request are making good progress and no particular difficulties have emerged with respect to components (ii) to (iv) of the request, it appears that that cannot be said, however, of the transfer, to the General Court, of the jurisdiction to adjudicate, at first instance, on certain categories of infringement proceedings. A number of questions have been raised as to the precise scope of the transfer to be made to the General Court and as to the possible effect of such a transfer on the overall duration of proceedings and on the workload of the Court of Justice, while some interveners have suggested deferring, until the completion of the third phase of the reform of the court structure, in September 2019, and the adoption of the report on the functioning of the General Court, in December 2020, any proposal, if necessary, to alter the distribution of jurisdiction between the Court of Justice and the General Court.

While the Court remains convinced that the request which it has submitted to the European Union legislature constitutes a balanced request which takes account both of the respective capacities of the Court of Justice and of the General Court and of the imperative requirements of effective judicial protection, the Court nonetheless recognises the reservations expressed with respect to the first component of that request – which are reflected, notably, in the opinion of the European Commission of 11 July 2018 – and the wishes of a number of parties to wait until the benefits of the reform of the structure of the courts of the European Union have been fully realised.

In those circumstances, the Court invites the European Union legislature to postpone to a later stage the examination of the component of the request concerning the transfer to the General Court of the jurisdiction to adjudicate, at first instance, on certain categories of infringement proceedings – which component might be the subject of further amendments proposed by the Court – and to prioritise dealing with the other three components of that request.

Since the latter components apparently raise no particular difficulties, if they could be adopted quickly, the Court would very much appreciate it. In particular, in the light of, inter alia, the constant increase in the number of cases brought before the Court, the introduction of a procedure – similar to that familiar to a number of Member States – whereby the Court of Justice decides whether certain categories of appeals should be allowed to proceed is essential to enable the Court to fulfil, in optimal conditions, the role assigned to it by the Treaties, namely to deal with the cases brought before it with the expedition required and with due regard to the rights of the parties to proceedings.

While thanking you in advance, I am happy to provide any further information that may be required.

Yours faithfully

Koen Lenaerts