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COMMISSION OPINION

on the draft amendments to Protocol No 3 on the Statute of the Court of Justice of the European Union, presented by the Court of Justice on 26 March 2018

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Having regard to the Treaty on the Functioning of the European Union, and in particular the second paragraph of Article 281 thereof,

1. On 26 March 2018, the Court of Justice of the European Union submitted a request under the second paragraph of Article 281 of the Treaty on the Functioning of the European Union ('TFEU') to the European Parliament and the Council to amend its Statute. First, the Court of Justice proposes to transfer to the General Court jurisdiction to adjudicate at first instance in actions under Article 108(2) TFEU and in actions for failure to fulfil obligations under Articles 258 and 259 TFEU, subject to certain categories of these actions being reserved to the Court. Second, the Court of Justice proposes to transfer to the Court of Justice jurisdiction to adjudicate in actions for annulment lodged by Member States against Commission decisions linked to a failure properly to comply with a judgment delivered by the Court under Article 260(2) and (3) TFEU. Third, the Court of Justice proposes establishing an initial admission mechanism for certain appeals before the Court of Justice. Lastly, the Court of Justice proposes a number of amendments designed to ensure greater terminological consistency between its Statute and the Treaties.

I. General considerations

2. As the Court of Justice explains in its request and the accompanying explanatory memorandum, this request follows on from the changes made to the judicial architecture of the Union in 2015 and 2016 by increasing the number of judges of the General Court between the end of 2015 and 1 September 2019¹ and by transferring powers to the General Court to rule on disputes between the Union and its servants under Article 270 TFEU². In this context, the Union legislator asked the Court of Justice to submit two reports to it, each accompanied, as appropriate, by requests for amendments to the relevant provisions of the Statute: a first report, by the end of 2017, on possible changes in the division of powers between the Court of Justice and the General Court for preliminary rulings under Article 267 TFEU, and a second report, by the end of 2020, on the operation of the General Court and, in particular, on the efficiency of the General Court, the effectiveness of and need for an increase in the number of judges to 56, resource efficiency and the further establishment of specialised chambers and/or other structural changes³.

¹ 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 (OJ L 341, 24.12.2015, p. 14).

² Regulation (EU, Euratom) 2016/1192 of the European Parliament and of the Council of 6 July 2016 on the transfer to the General Court of jurisdiction at first instance in disputes between the European Union and its servants (OJ L 200, 26.7.2016, p. 137).

³ Article 3 of Regulation (EU, Euratom) No 2015/2422.

3. On 14 December 2017 the Court of Justice presented the first of these two reports⁴. In the report the Court of Justice considers that there is no need, at this time, to propose a transfer to the General Court of part of the Court's jurisdiction with respect to preliminary rulings, taking into account, on the one hand, the central place occupied by references for a preliminary ruling in the legal order of the European Union and, on the other, the need for the General Court to reorganise itself and adjust its working methods following the decision to increase the number of General Court judges. *In limine* in the report the Court of Justice states that further changes could be made to the division of powers between the Court and the General Court, in particular as regards the processing of direct actions and, as far as the Court of Justice is concerned, as regards the processing of appeals. These changes form the subject of this request.
4. The Commission shares the concern of the Court of Justice to strike the best possible balance in the division of powers between the Court and the General Court.
5. However, without prejudice to the observations made below on various aspects of the Court's request, the Commission is not convinced of the appropriateness, at this stage, of making structural changes to the division of powers between the Court and the General Court.
6. Indeed, the Commission shares the view of the Court of Justice, expressed in the explanatory memorandum accompanying the request, that '*the impact of the reform of the structure of the EU courts has yet to be fully ascertained*'. That finding, made in relation to the possibility of transferring some of the powers associated with preliminary rulings to the General Court, is equally valid for the proposal of the Court of Justice to transfer certain powers in respect of actions for failure to fulfil obligations.
7. On the one hand, actions for failure to fulfil obligations are a key instrument for monitoring the application of Union law. Any change concerning the way these actions are processed is therefore an extremely delicate undertaking; this is also the case for references for a preliminary ruling. On the other hand, the process of increasing the number of judges of the General Court will not be completed until September 2019, so integrating the newly appointed judges and their staff into the General Court's organisational structure will remain a major challenge for the institution. While welcoming the statistical trend, which suggests a reduction in the length of proceedings before the General Court, we feel it would be premature to draw firm conclusions and transfer an additional workload to the General Court. It is precisely for those reasons that the Union legislator invited the Court of Justice to submit a report on the operation of the General Court by the end of 2020.
8. In addition, as the Commission will explain in greater detail below, the transfer of certain powers relating to an action for failure to fulfil obligations, as proposed by the Court of Justice, is not such as to achieve the objective of relieving the Court, but, on the contrary, raises serious structural questions, as would be the case for a partial transfer of jurisdiction in preliminary rulings.
9. The Commission therefore takes the view that it would be better to await the report on the operation of the General Court to be submitted by the Court of Justice by the

⁴ Report submitted pursuant to 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.

end of 2020 before making any further changes to the division of powers between the Court and the General Court which really will have the effect of relieving the Court. However, the Commission shares the view of the Court of Justice that it is now possible to limit the admission of appeals in the specific cases proposed by the Court of Justice in so far as this change has no structural impact and is therefore unlikely to pre-empt subsequent decisions.

II. On the request to transfer to the General Court jurisdiction in principle at first instance in actions under Article 108(2) TFEU and in actions for failure to fulfil obligations under Articles 258 and 259 TFEU

10. This request is based on three proposed amendments to the Statute. It is also linked to the request to transfer to the Court jurisdiction to adjudicate in actions for annulment lodged by Member States against Commission decisions relating to a failure properly to comply with a judgment delivered by the Court under Article 260(2) and (3) TFEU (see section III).

11. First, by inserting Article 51(2) into the Statute, the Court of Justice proposes to transfer to the General Court jurisdiction to adjudicate, at first instance, in actions under Article 108(2) TFEU and in actions for failure to fulfil obligations under Articles 258 and 259 TFEU, subject to certain categories of these actions being reserved to the Court⁵. The first subparagraph of Article 51(2) of the Statute, as proposed by the Court of Justice, would provide as follows:

‘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.’

12. Second, the Court of Justice proposes to establish a mechanism whereby the General Court, either of its own motion or at the request of a party, can refer a specific case to the Court, and to add for that purpose the second and third subparagraphs of Article 51(2) of the Statute, worded as follows:

‘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.’

13. Third, the Court of Justice proposes a derogation regime for the handling of appeals lodged with it against decisions of the General Court on actions for failure to fulfil obligations. To that end, the Court of Justice proposes adding a fourth paragraph to Article 61 of the Statute reading as follows:

⁵ From a purely editorial perspective, the Commission wonders whether, in order to achieve the objective pursued by the Court of Justice, this list should not also include actions brought by the Commission specifying a lump sum or penalty payment as provided for in Article 260(3) TFEU, since these actions constitute a special case amongst actions based on Article 258 TFEU.

'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.'

14. Firstly, the Commission raises the question of whether the amendments proposed by the Court of Justice are likely to achieve the desired objective, namely to relieve the Court of Justice.
15. The Commission has examined the impact the proposed transfer would have had if it had been applicable in the three years preceding the request of the Court of Justice, i.e. between 1 April 2015 and 31 March 2018. During that period, 84 cases were lodged by the Commission pursuant to Article 258 TFEU, one case was lodged by a Member State pursuant to Article 259 TFEU and two cases were lodged by the Commission pursuant to Article 108(2) TFEU. Of these 87 cases, according to the criteria proposed by the Court of Justice, seven would have remained within the jurisdiction of the Court by virtue of being based on a violation of the Treaty on European Union ('TEU') or Title V of Part Three TFEU. As such, the Court of Justice would have been relieved of 78 cases in that period, i.e. 26 per year. Given the number of new cases lodged on average in 2015, 2016 and 2017 (i.e. 715 cases), this decrease would have accounted for barely 3.6 % of the Court's total annual judicial workload. This number should be reduced further in view, firstly, of appeals lodged with the Court of Justice against decisions of the General Court and, secondly, the potential for certain cases to be referred to the Court of Justice on the grounds that they entail decisions of principle, or where this is justified by exceptional circumstances.
16. It follows that the transfer as proposed by the Court of Justice would have only a negligible impact on the Court's workload. On the other hand, this would lead to a not insignificant increase in the number of cases dealt with by the Union courts as a whole.
17. Secondly, the Commission is of the opinion that the proposed amendments raise important structural concerns.
18. First, in contrast to other direct actions, in which - in most cases - the protagonists are natural or legal persons and institutions of the Union, in actions for failure to fulfil obligations, the protagonists are two Member States or an institution of the Union and a Member State. As the second paragraph of Article 40 of the Statute illustrates, actions between Member States and cases between an institution of the Union and a Member State are distinct from other actions. As such, actions for failure to fulfil obligations are more comparable to direct actions, which would continue to be reserved to the Court of Justice pursuant to Article 51 of the Statute in its revised form. Lastly, the objective of actions for failure to fulfil obligations is to ensure that a Member State complies with the obligations arising from Union law and not, as is the case with other direct actions, to obtain a judgment annulling an act or establishing a failure to act.
19. Next, as with proceedings for a preliminary ruling, a Union court before which an action for failure to fulfil obligations has been brought must be able to hand down a ruling within a short period of time with the force of *res judicata* on the matters referred to it. The introduction of a two-tier system of jurisdiction for actions for failure to fulfil obligations would extend the judicial phase of the action and threaten

to turn it into a long-term legal dispute with a negative political impact on compliance with Union law.

20. Pending the data which the Court of Justice will have to submit by the end of 2020 on the operation of the General Court and any measures that could be taken as a result, the Commission assumes that actions for failure to fulfil an obligation would not be dealt with more quickly at first instance by the General Court than they currently are by the Court.
21. In a significant number of cases, the duration of appeal proceedings would be added to the duration of the dispute at first instance. In principle, only actions for failure to fulfil obligations which it has not been possible to resolve in administrative proceedings are brought before the Union court. In such cases, the parties might tend to exhaust all available legal remedies and the duration of the appeal proceedings could often be equivalent to that of the first-instance proceedings.
22. The Commission notes that the Court of Justice has proposed to introduce a derogation regime for processing appeals against judgments of the General Court in the context of actions for failure to fulfil obligations. This regime would prevent a case being referred back to the General Court if the Court of Justice upheld the appeal but found that the state of the proceedings did not permit it to give judgment. However, this poses significant practical difficulties (for example, would the points of fact which the General Court had not assessed at first instance have to be examined in the pleadings in the event that the Court upheld the appeal; in such cases, would proceedings have to be re-opened?). It is therefore not possible either to determine whether this measure could make a real contribution to reducing the length of proceedings.
23. Extending the length of proceedings is likely not only to prolong legal uncertainty for the authorities, economic operators and the general public, but also to entrench a dispute and, potentially, non-compliance with Union law, which has already been the subject of administrative proceedings without a satisfactory solution being found. Extending the judicial phase would delay the moment when the Member State which, beyond all doubt, has failed to fulfil its obligations must take the necessary steps to bring that infringement to an end. An extension would therefore entrench situations of inequality of Member States before the Treaties, contrary to the fundamental principle laid down in Article 4(2) TEU.
24. The Commission also notes that the Court of Justice does not propose to give suspensive effect to the lodging of an appeal, which would effectively deprive the proceedings before the General Court of much of their useful effect, while also substantially extending the length of proceedings as a whole. Even if the lodging of an appeal does not have suspensive effect, the introduction of a two-tier system of jurisdiction is likely to undermine actions for failure to fulfil obligations as an instrument which ensures the uniform application of Union law in the interests of all Member States, economic operators and the general public. It could have the effect of delaying not only the moment at which failure to fulfil obligations is definitively established but also the point in time at which, at the request of the Commission, the Court recognises in accordance with Article 260(2) TFEU that a Member State has not taken the necessary measures to comply with the judgment of the Court.
25. Third, the Commission doubts that the criteria put forward by the Court of Justice to determine the cases that would remain under the exclusive jurisdiction of the Court are such as to achieve the desired objective, namely to transfer to the General Court

only those cases which, by virtue of the complaints and arguments invoked, are similar to those which the General Court deals with on a routine basis and to reserve to the Court of Justice those cases which may, as indicated by the Court of Justice in the explanatory memorandum accompanying the request, ‘*have constitutional aspects*’⁶.

26. The Commission is well aware that distinguishing between different types of action for failure to fulfil obligations is a complex exercise. To that extent, actions for failure to fulfil obligations are no different to references for a preliminary ruling. The Court of Justice highlighted these difficulties in its report of 14 December 2017.
27. In so far as the Court of Justice proposes that actions seeking a declaration that a Member State has failed to fulfil its obligations under the Treaty on European Union be reserved to the Court, the Commission would point out that, under case-law, it regularly - albeit on an ancillary basis - alleges an infringement of the provisions of that Treaty, in particular of the obligation of sincere cooperation (Article 4(3) TEU). However, reliance on such a complaint has no impact on whether an action has a ‘constitutional’ aspect or not⁷.
28. Moreover, while it is true that actions brought under Title V of Part Three of the TFEU establishing the area of freedom, security and justice⁸ regularly raise questions of interpretation or validity that are particularly sensitive and urgent, that is not the case for all actions brought on that basis⁹. On the other hand, a large number of actions brought under other areas of the TFEU regularly raise very sensitive and new issues, which sometimes have a ‘constitutional aspect’ or are particularly urgent, so that a two-tier system of jurisdiction risks considerably undermining the Commission’s efforts to ensure compliance with the law in the Union¹⁰.
29. The Court of Justice proposes that the General Court may, of its own motion or at the request of one of the parties, refer a specific case to the Court of Justice where it calls for a decision of principle or where exceptional circumstances so justify, The Commission doubts that the proposed criteria are such as to avoid major difficulties of interpretation. The Commission considers that, in any event, this choice should be based on objective factors, in particular where the parties take opposing positions on whether a case should be referred.

⁶ Within that context, the Commission understands the rules proposed by the Court of Justice as meaning that any actions which invoke complaints in one of the listed categories will be reserved to the Court even if they also - or even mainly - invoke other complaints.

⁷ The Commission notes that in the draft Regulation annexed to its request, the Court does not propose adding actions for failure to fulfil obligations which invoke an infringement of the Charter of Fundamental Rights of the European Union to the list of actions which may not be transferred to the General Court. However, in the explanatory memorandum accompanying the request, those actions are mentioned among those which often raise particularly sensitive and urgent questions. This issue should in any case be clarified.

⁸ With a view to consistency, instruments in the field of police and judicial cooperation in criminal matters adopted before the entry into force of the Lisbon Treaty should also be taken into consideration.

⁹ See for example Case C-130/17 seeking a declaration that Bulgaria had failed to fulfil its obligations to establish a single point of contact for the exchange of electronic certificates for access to biometric data in identity documents pursuant to Commission Decision C(2009)7476 of 5 October 2009.

¹⁰ See for example Case C-441/17 seeking a declaration that Poland had failed to fulfil its obligations under Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora by approving an appendix to the forest management plan for the Białowieża Forest District.

30. In conclusion, the Commission is of the opinion that the transfer proposed by the Court of Justice of some actions for failure to fulfil obligations would have a negligible impact on the workload of the Court but would significantly extend the judicial phase of actions for failure to fulfil obligations, which could undermine these actions as an instrument which ensures the uniform application of Union law in the interests of all Member States, economic operators and the general public. In addition, this transfer would give rise to problems of consistency in case allocation between the Court of Justice and the General Court.

III. On the transfer to the Court of jurisdiction to adjudicate in actions for annulment lodged by Member States against Commission decisions relating to a failure properly to comply with a judgment delivered by the Court under Article 260(2) and (3) TFEU.

31. The Court of Justice proposes to add a point (c) to Article 51(1) of the Statute whereby actions for annulment brought by Member States against Commission decisions relating to a failure properly to comply with a judgment delivered by the Court under Article 260(2) and (3) TFEU would be reserved to the Court.

32. The Commission endorses the objectives which this proposal to amend the Statute seeks to achieve. This amendment would make it possible to prevent actions for annulment being brought against acts of the Commission for the recovery of penalty payments or lump sums from the Member State concerned other than with the judicial body which imposed the penalty payment or lump sum¹¹.

IV. On the initial admission of certain appeals by the Court of Justice

33. The Court of Justice proposes incorporating a new Article 58a worded as follows into the Statute:

'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.'

34. The Commission endorses the objectives which this proposal to amend the Statute seeks to achieve. This concerns appeals brought against judgments and orders of the General Court concerning decisions which have already been examined by an independent administrative authority and have thus already been subjected to a two-tier review of legality, as is the case, in particular, for decisions on trade marks taken by the European Union Intellectual Property Office (EUIPO)¹². With regard to these decisions, it is proposed to restrict the admission of appeals to cases where a decision of the General Court might adversely affect the unity, consistency or development of Union law.

¹¹ See Judgment of the General Court of 29 March 2011, *Portugal v Commission*, T-33/09, ECLI:EU:T:2011:127, paragraphs 66 and 67.

¹² Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ L 154, 16.6.2017, p.1).

35. As the Court of Justice notes in the explanatory memorandum accompanying the request, given that appeals against EUIPO decisions represent a large proportion of appeals lodged each year, this amendment would significantly reduce the workload of the Court.
36. However, the Commission would make the following points.
37. First, as regards trade marks, the cases brought before the Union courts are, on the one hand, direct actions against EUIPO decisions on which, in principle, the General Court rules in last instance, and, on the other, references for a preliminary ruling for which the Court of Justice is and remains exclusively competent. It is therefore essential to avoid divergence in case-law via the appeal admission mechanism.
38. In contrast to the review procedure laid down in Articles 256(2) and (3) TFEU and Article 62 of the Statute,¹³ the Court of Justice proposes that all the rules governing this exceptional procedure be laid down in the Rules of Procedure. The Commission has no objection in principle as this would enable the rules to be adapted more easily on the basis of acquired experience. However, the Commission considers that an in-depth evaluation of these rules should take place before the relevant section of the Statute is amended, taking account, in particular, of the experience acquired in the course of the review procedure as currently laid down in Articles 256(2) and (3) TFEU and Article 62 of the Statute and of the specific needs of the policy area chiefly concerned, i.e. trade mark law. The Commission takes note of the preliminary indications provided in the explanatory memorandum accompanying the Court's request and proposes that a discussion be held as soon as possible and without awaiting the adoption of the amendments to the Statute on the basis of the draft amendments to the Rules of Procedure.
39. Next, the Commission takes the view that, in the interests of legal certainty, what is meant by the notion of 'independent administrative body' should be clarified. Several options appear possible.
40. A first option, which would provide all the requisite legal certainty, would entail incorporating an exhaustive list of these bodies into Article 58a of the Statute: first of all, the boards of appeal of the EUIPO, but also the boards of appeal of other bodies mentioned by the Court of Justice in the explanatory memorandum to the request [the Community Plant Variety Office (CPVO)¹⁴, the European Chemicals Agency (ECHA)¹⁵] or other bodies in the same situation [such as the European Aviation

¹³ The Commission also notes the difference in wording between Article 256(2) TFEU ('Decisions given by the General Court') and the proposed text of Article 58a of the Statute ('the decision of the General Court'). Whereas in the first case all decisions, including any interim or procedural decisions (within the limit of the general rules on appeals), could form the subject of a request for review, the second case could be understood as meaning that the initial admission procedure would apply solely to the decision of the General Court closing proceedings.

¹⁴ Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ L 227, 1.9.1994, p. 1).

¹⁵ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

Safety Agency (EASA)¹⁶]. This option would, of course, entail the need to amend the Statute in the event of a new body being created with the power to adopt acts which could be subject to the provisions of Article 58a of the Statute. Since the entry into force of the Lisbon Treaty, the Statute can be amended using the ordinary legislative procedure, which will normally be the same as that required to adopt the act creating the body in question.

41. Another option would be to clarify this notion in the Regulation amending the Statute. Accordingly, the clause ‘whose members are not bound by any instructions when taking their decisions’ could be added after the words ‘Where the seising of an independent administrative body ...’. This option could give rise to questions of interpretation where the terms used in the instruments creating new bodies are different to those used for the existing bodies. In this way, however, the legislator would at least make it clear that it is functional independence that is decisive and sufficient in this context. The proposed wording corresponds to the terms used in the instruments which created the bodies referred to in point 40¹⁷. It would also appear appropriate to mention these bodies in the recitals to the Regulation amending the Statute.
42. In the Commission’s view, it should be made clear that the grounds must be given not only for decisions to reject admission of appeals but also for decisions to accept admission of appeals. Lastly, these decisions should be made public.

V. On certain amendments designed to ensure terminological consistency of certain provisions of the Statute with the Treaties

43. The Court of Justice proposes to amend Article 51 of the Statute to ensure consistency of terminology with Articles 263 and 265 TFEU.
44. The Commission welcomes the proposed amendments¹⁸.
45. However, the Commission questions the addition of the words ‘other than recommendations or opinions’ and ‘intended to produce legal effects vis-à-vis third parties’ to Article 51(1)(a)(i) of the Statute, as amended. The Commission understands the desired objective, i.e. to take over the wording of the first paragraph of Article 263 TFEU. However, it is concerned that the addition of those words, in the context of Article 51 of the Statute, could give rise to an erroneous *a contrario* interpretation whereby acts other than the ones specified would fall within the jurisdiction of the General Court.

VI. Conclusions

46. In the light of the above, the Commission hereby delivers this opinion:

¹⁶ Regulation (EC) No 216/2008 of 20 February 2008 of the European Parliament and of the Council on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC (OJ L 79, 19.3.2008, p. 1).

¹⁷ See Article 166(7) of Regulation (EU) 2017/1001, Article 47(3) of Regulation (EC) No 2100/94, Article 90(2) of Regulation (EC) No 1907/2006 and Article 42(2) of Regulation (EC) No 216/2008.

¹⁸ In this context, the Commission notes that, following various reforms of the applicable law, there is currently no legal basis enabling the Council to adopt delegated or implementing acts relating to trade defence measures within the meaning of Article 207 TFEU. The Commission therefore notes that, subject to transitional arrangements ensuring that cases pending can be heard by the General Court on the basis of these provisions (where appropriate after referral), the second indent of Article 51(1)(a)(i) of the Statute could be deleted.

- (a) the Commission considers that it would be appropriate to await the report on the operation of the General Court to be submitted by the Court of Justice by the end of 2020 before making structural changes to the division of powers between the Court and the General Court;
- (b) the Commission is not in favour of transferring to the General Court jurisdiction to adjudicate, at first instance, in actions under Article 108(2) TFEU and in actions for failure to fulfil obligations under Articles 258 and 259 TFEU;
- (c) the Commission is in favour of transferring to the Court jurisdiction to adjudicate in actions for annulment lodged by Member States against Commission decisions relating to a failure properly to comply with a judgment delivered by the Court under Article 260(2) and (3) TFEU;
- (d) the Commission is in favour, subject to the considerations set out in this opinion, of the introduction by the Court of an initial admission procedure for certain appeals;
- (e) the Commission is in favour, subject to the considerations expressed in this opinion, of the proposed amendments designed to ensure greater consistency of the terminology of the Statute with the Treaties.