

THE GLOBAL TRADE LAW JOURNAL

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Making EU Courts More Efficient for International Trade-Related Decisions

Vassilis Akritidis and Oleksii Yuzko*

In this article, the authors discuss changes made by the European Council to the Statute of the Court of Justice of the European Union in an attempt to improve the Courts of Justice's efficiency for international trade-related matters.

The European Council has adopted changes to the Statute of the Court of Justice of the European Union in an attempt to improve its efficiency.

The Court of Justice of the European Union (CJEU), which is made up of two distinct courts—the Court of Justice and the General Court—has seen an increase in the cases brought before it in recent years. According to the official CJEU statistics,¹ the number of new cases increased by 10 percent between 2019 and 2023, with a noteworthy 22 percent increase since 2022. For the first time in its history, the two EU courts received more than 2,000 applications in one year, which, however, includes about 400 identical cases. At the same time, the number of completed cases over the past four years has decreased from 1,739 in 2019 to 1,687 in 2023. The backlog of pending cases has remained stable at approximately 2,500 cases per year.

The changes adopted by the European Council attempt to address this increased workload by transferring jurisdiction of certain subject matters related to international trade from the Court of Justice to the General Court. This is intended to allow the Court of Justice to focus more on questions of interpretation of law as opposed to assessing complex sets of facts in trade matters.

Transfer of Jurisdiction in Preliminary Ruling Requests

The most important change is intended to speed up the administration of justice, maintain the high quality of the EU courts'

decisions and allow the Court of Justice to concentrate on the more legally complex and sensitive cases. It permits a limited transfer of jurisdiction to the General Court for preliminary references, including those preliminary references that relate to international trade.

The preliminary reference procedure allows national member state courts to refer to the CJEU questions regarding the interpretation of EU law, and regarding the validity and interpretation of acts carried out by the various EU institutions and bodies. Only the CJEU has the power to interpret EU law, and therefore the preliminary reference procedure is an indispensable mechanism for national courts. The CJEU does not decide the cases itself, but instead responds to specific questions regarding the interpretation of EU law that are raised by the national courts.

Until now, all such rulings have been given by the Court of Justice. However, according to the Treaty on the Functioning of the European Union the General Court may give preliminary rulings in areas that have been specified in the Statute of the CJEU.

The recent amendments to this Statute provide, for the first time, for a transfer of jurisdiction to the General Court in the following areas:

- Common system of value added tax;
- Excise duties;
- Customs Code;
- Tariff classification of goods under the Combined Nomenclature;
- System for greenhouse gas emission allowance trading; and
- Compensation and assistance to passengers in the event of denied boarding or of delay or cancellation of transport services.

If the scope of a preliminary reference goes beyond these specific areas, a case cannot be transferred to the General Court, but must be examined by the Court of Justice.

Procedural Amendments

From a procedural point of view, the Court of Justice retains the power to examine preliminary references from national courts and decide whether the matter should be referred to the General Court or not. This filtering mechanism is intended to ensure a proper

determination of jurisdiction between the two courts and thus a more effective allocation of cases. However, the amendments do not provide for a clear time limit for the transfer of cases, which should not exceed what is strictly necessary. The rules on time limits are still to be detailed in the Rules of Procedure, but in practice they will vary according to the complexity of the request. If a request is submitted to the General Court and the General Court finds that it does not have jurisdiction, it will refer the request to the Court of Justice. If the Court of Justice refers a request to the General Court, the General Court cannot decline jurisdiction.

In addition, the amendments provide for more flexibility in the composition of the General Court's Chambers. Until now, General Court cases have been heard by Chambers of five or three judges or, in some cases, by a single judge. The General Court can also sit as a Grand Chamber (15 judges) if this is justified by the legal complexity or importance of the case. The recent procedural amendments allow for a Chamber of intermediate size, composed of more than five but fewer than 15 judges, which means that it will not always be necessary to convene the Grand Chamber of 15 judges in complex cases where a Chamber of five is deemed not sufficient. The Rules of Procedure will specify the conditions under which the General Court may sit as an intermediate-sized Chamber.

In order to facilitate the implementation of the new amendments, the CJEU will regularly publish examples illustrating the application of this new jurisdictional transfer, and this should help national courts to correctly determine the court to which they should address their preliminary ruling request.

Finally, the CJEU must present a report on the application of the new procedure within four years of the amendments' entry into force, focusing on a quantitative and qualitative analysis of the preliminary reference procedure in the new specific areas.

In Summary

- The European Union has taken a step toward improving the efficiency of its judicial review by providing the CJEU with more flexibility to hear preliminary rulings from EU member states.
- Six areas have been designated where preliminary rulings may be made by the General Court instead of the Court

of Justice. Five of these areas are trade-related and cover value-added taxes, excise duties, the Union Customs Code, tariff classification, and greenhouse gas emission allowance trading.

- The changes are intended to allow for a more expeditious examination of cases while maintaining a high standard of judicial review.

Conclusion

These changes are important from the perspective of national litigation, as they should facilitate a more expeditious consideration of preliminary ruling requests in the above-mentioned six areas, five of which involve trade issues. Thanks to its reform in 2016, the General Court should be able to handle the new cases (the number of its judges has increased from 40 in 2015 to 54 since September 2019, with two judges from each member state). In addition, the General Court is expected to provide high quality of judgments, as these areas largely concern complex technical proceedings of an economic nature, and the General Court is accustomed to dealing with specialized court annulment actions in the fields of competition and trade remedies/customs.

Conversely, the Court of Justice is more attuned to analyzing higher-level legal issues in an appeal, rather than providing a factual and technical analysis. These different strengths would tend to support the handling of international trade preliminary references in the General Court, which will furthermore reduce the judicial workload of the Court of Justice allowing it to focus on fundamental issues of Union law without jeopardizing the judicial balance between the EU and national courts.

In order for the changes to be effective in practice, the Rules of Procedure of the EU Courts will need to be amended. The draft texts have been submitted to the EU legislature for consideration, and it is expected that the changes to the transfer of jurisdiction and the revised Rules of Procedure will enter into force at the same time.

It remains to be seen whether the new landscape for international trade preliminary references will in fact enable justice to be rendered more quickly and thereby respond to what is in general the most important incentive or deterrent for parties who request national courts to make a preliminary reference to the CJEU.

Notes

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1. <https://curia.europa.eu/jcms/upload/docs/application/pdf/2024-03/cp240059en.pdf>.