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EUROPEAN LITIGATION: TOWARDS A TRANSFER OF SOME QUESTIONS REFERRED FOR A PRELIMINARY RULING TO THE GENERAL COURT OF THE EUROPEAN UNION

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On March 10th past, the European Commission issued an opinion favorable to the request made to it by the Court of Justice concerning the amendment of its Statute so as to enable the transfer of some questions referred for a preliminary ruling to the General Court of the European Union (the “General Court”).

While this possibility is provided for in Article 256(3) of the Treaty on the Functioning of the European Union (the “TFUE”), jurisdiction to hear and determine these types of questions has never been shared with the General Court. A first opportunity to do so arose in 2015 during the reform of the judicial framework of the European Union initiated by Regulation 2015/2422 dated December 16th, 2015. However, at the time, the Court of Justice considered that it was not necessary to make any changes to the allocation of jurisdiction over requests for a preliminary ruling.

Eight years later, however, the situation is quite different and the Court of Justice considers that the time has come to transfer some requests for a preliminary ruling to the General Court. The Court of Justice advances two reasons for this: first, the increase in the number of requests for a preliminary ruling coming before the Court of Justice and the corresponding increase in the duration of proceedings and, second, the ability of the General Court, which now has two judges per Member State, to hear and determine new cases.

On November 30th, 2022, the Court of Justice presented to the European Parliament and Council an amendment to its Statute setting out the specific areas in which the General Court would have jurisdiction over requests for a preliminary ruling. The Court of Justice wants to transfer to the General Court requests for a preliminary ruling in the following five areas only: the common system of value added tax; excise duties; the Customs Code and the tariff classification of goods in the Combined Nomenclature; compensation and assistance to passengers; and the system for greenhouse gas emission allowance trading. At present, these areas represent 20% of requests for a preliminary ruling.

In view of the sound administration of justice, requests for a preliminary ruling will still need to be made to the Court of Justice, which will decide on their transfer, as appropriate, to the General Court. The transfer of some requests for a preliminary ruling to the General Court will not preclude the possibility for the latter to refer a case back to the Court of Justice where it considers that the case “requires a decision of principle likely to affect the unity or consistency of Union law”.
