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European Union

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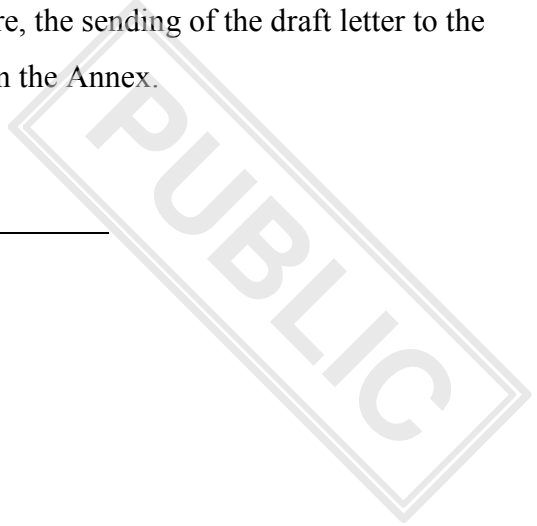
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'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
Subject:	Amendment to Protocol No 3 on the Statute of the Court of Justice of the European Union - Approval of a letter to the Court of Justice of the European Union

1. At the quadrilogue meeting on 7 December 2023, the Parliament and Council negotiators reached a provisional agreement on a draft text, as set out in 16848/23 of 15 December 2023.
2. That draft text includes, *inter alia*, new provisions concerning the publication of statements of case or written observations submitted by the parties to the proceedings before the national court, as well as by the Member States and the institutions, bodies, offices or agencies of the European Union referred to in Article 23 of the Statute of the Court of Justice, in proceedings relating to requests for a preliminary ruling in the cases referred to in Article 267 TFEU.
3. In response to the reservations expressed by some delegations in that regard, and in order to facilitate Coreper's confirmation of the political agreement on the draft text on the reform of the Statute of the Court of Justice, it is suggested that the Court of Justice be asked for assurances and clarifications on the application of those provisions.

4. The Permanent Representatives Committee is therefore invited to approve, in accordance with Article 19(7)(k) of the Council's Rules of Procedure, the sending of the draft letter to the Court of Justice of the European Union as set out in the Annex.



Draft letter

Mr Koen Lenaerts
President of the Court of Justice of the European Union
Rue du Fort Niedergrünwald
L-2925 Luxembourg

Subject: Amendment to Protocol No 3 on the Statute of the Court of Justice of the European Union

- **Rules concerning the publication of statements of case and written observations submitted in proceedings relating to requests for a preliminary ruling**

Sir,

The Council takes note of the provisional agreement reached by the Parliament and Council negotiators at the quadrilogue meeting on 7 December 2023, as set out in 16848/23 of 15 December 2023.

That draft text includes, *inter alia*, new provisions concerning the publication of statements of case or written observations submitted by the parties to the proceedings before the national court, as well as by the Member States and the institutions, bodies, offices or agencies of the European Union referred to in Article 23 of the Statute of the Court of Justice, in proceedings relating to requests for a preliminary ruling in the cases referred to in Article 267 TFEU.

According to a new paragraph to be added after the fourth paragraph of Article 23 of the Statute of the Court of Justice, statements of case or written observations submitted by an interested person pursuant to that Article are to be published on the Court's website within reasonable time after the closing of the case, unless that person raises objections to the publication of its own written submissions. Recital 2b of the draft Regulation amending the Statute of the Court of Justice states that such publication is without prejudice to Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, and that the fact that an interested person has raised objections to the publication of its written submissions will be mentioned on the Court's website.

In the absence of any indication to the contrary in the text, it therefore appears that the raising of objections by an interested person to the publication of its written submissions does not have to be reasoned and will not be the subject of a decision of the Court of Justice or the Court of First Instance which may be open to appeal. Insofar as the raising of objections does not in itself constitute a contestable act which could in particular be the subject of an action for annulment under Article 263 TFEU, its merits cannot be subject to judicial review. That said, decisions of the institutions, bodies, offices or agencies of the European Union to refuse access to written submissions in preliminary ruling proceedings held by them following a request made on the basis of Regulation (EC) No 1049/2001 constitute contestable acts which may be the subject of an action for annulment under Article 263 TFEU.

In order to ensure the highest degree of legal clarity with regard to those new provisions, which will entail a significant change in the regulatory framework for statements of case and written observations in proceedings relating to requests for a preliminary ruling, the Council would like to obtain assurances from the Court of Justice on the points raised in the previous paragraph: first, the fact that the raising of objections by an interested person to the publication of its written submissions does not have to be reasoned; and secondly, that such raising of objections will not constitute a contestable act and that its merits will not be subject to judicial review.

The Council considers that it would be useful to see those assurances set out explicitly in the draft Rules of Procedure of the Court of Justice and of the General Court, which will be submitted to the Council for approval in accordance with Articles 253 and 254 TFEU following the adoption of the amendment to the Statute of the Court of Justice.

Without prejudice to any further amendments to the draft, such assurances will undoubtedly facilitate Coreper's confirmation of its political agreement on the draft text on the reform of the Statute of the Court, which is in the interest of the proper functioning of the judicial system and of the citizens of the Union.

On the other hand, the Council considers that the expression "within a reasonable time after the closing of the case" in the fifth paragraph of Article 23 of the Statute allows a certain degree of flexibility as to the period of time for the publication of written submissions of the parties, in particular taking into account the main case. Furthermore, the interested persons mentioned in Article 23 will be in a position to oppose to the publication of their written submissions on the ground that they consider that this publication would be inappropriate with regard to the main case, without however being obliged to disclose this reason.

Yours sincerely,

Signature
