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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Draft REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Protocol No 3 on the Statute of the Court of Justice of the European Union **(first reading)** - Adoption of the legislative act = Statement

Statement by Austria, Cyprus, France, Greece, Italy and Malta

We have long supported the reform of the Statute submitted by the Court of Justice, the main aim of which was to enable certain preliminary questions to be transferred to the General Court and to extend the filtering mechanism to new cases. Although We have expressed doubts about the late proposals introduced by the European Parliament, We stand ready not to object the final compromise text reached as a result of the negotiations conducted by the Presidency in the quadrilogue meetings.

However, We would like to draw attention to the amendment regarding transparency introduced in the final compromise text. This amendment consists in the addition of a final paragraph to Art. 23 of the Statute, which provides that judicial documents in preliminary proceedings shall be published ex officio after the closing of the case, unless an interested party objects to the publication of its own written submissions. This innovation was agreed upon, without COREPER mandate, at the request of the European Parliament and was not directly related to the purpose of the Court's proposal.

1. This provision raises concerns and presents risks that must be mitigated.

Firstly, We would like to draw attention to the fact that the provision of free access on the Internet to the acts of the parties to a judicial proceeding has no basis in the Treaties and is a significant departure from the legal traditions of several Member States, in which the legal regime of judicial proceedings has evolved over the centuries as a procedural rite which must be characterized by the confidentiality of the acts of the parties, even if in some cases it takes place in open court. As is well known, this reflects the fundamental need to allow the parties to confront each other and to communicate with the judge in complete freedom and serenity, as well as the need to protect the parties themselves and their business information and secrets.

From this point of view, We believe that the standard of transparency envisaged for preliminary rulings is not in itself replicable for the national judicial systems of the Member States. Since the publication on the internet of judicial acts by the parties is not in itself required by the principles of good administration of justice or the Rule of law, it cannot be considered as an EU standard of transparency to be applied internally by EU Member States.

Moreover, recalling that EU law represents an important model for other legal systems with regard to the protection of personal data (also due to the case law of the ECJ on fundamental rights and on the interpretation of the GDPR), We consider that the Court should adhere to the highest level of protection of sensitive data and information when deciding which parts of the texts should be hidden and which should be made public.

Eventually, We would point out that the preliminary reference procedure is only an incidental stage of judicial proceedings initiated in the national legal order of a Member State and continued before a national judge after the preliminary ruling of the ECJ.

2. In this context, We deem it necessary that some clarifications of the compromise are given and explicitly reflected.

We take notice of the letter of the President of the Court of justice concerning some clarifications regarding transparency. We note that, following the interpretation given by the president of the Court of justice, the final compromise on transparency must be understood as not requiring that the decision to object to the acts to be reasoned and that no appeal can be exercised against this decision. We also note the commitment of the President of the Court to explicitly provide for these two guarantees in the proposed amendment to the rules of procedure of the Court and the General Court which he will soon submit to the Council for approval.

Despite these important guarantees, We wish to point out two particular points.

Firstly, as regard the timing of the disclosure, We want to make sure that the Court, after hearing the parties and their lawyers, must adapt to the needs of the case and of the procedure before the national court. As a consequence, written submissions shall not automatically be published on the Internet, with open access; a case-by-case approach is preferable, taking into account the main proceeding - i.e. the national proceeding - in progress. Additionally, it is necessary for the Court to take account of any guidance given by that national judge on the possibility of not disclosing certain data relating to the case.

Secondly, as regards the right to object, We observe that this provision must be drafted in such a way as to ensure its 'effet utile', and that this necessarily implies that, in the event of an objection by one party, all the texts of the acts of the other parties which contain information or references to the content of the texts of the party objecting must be redacted. Otherwise, the objection of the party concerned risks being rendered ineffective and the very essence of the right to object would be seriously jeopardised.