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#### 'I/A' ITEM NOTE

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Commission's intervention on behalf of the Union before US Courts as <i>amicus curiae</i> regarding two Orders to Conduct Discovery for Use in Foreign Proceedings

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1. At the Working Party meeting of 7 May 2018, the Commission informed delegations of its intention to intervene on behalf of the Union before a US Court as ***amicus curiae*** regarding an Order to Conduct Discovery for Use in Foreign Proceedings ('First Discovery Petition', Case 1:18-mc-00085-ER). The aim of the Commission's intervention is to protect the Union interests that may be at stake in these proceedings, in particular to protect the confidentiality of EU classified information.
2. The proceedings in question were launched by a group of Mexican investors who held capital instruments of Banco Popular and who seek to obtain the disclosure of certain documents for use in proceedings that those investors have initiated against the Commission and the Single Resolution Board before the General Court (Case T-510/17), as well as against the Kingdom of Spain before arbitration tribunals, following the resolution of Banco Popular on 7 June 2017.

3. Subsequently to the abovementioned meeting of the Working Party, a further Discovery Petition was initiated by two US investors who held capital instruments of Banco Popular ('Subsequent Discovery Petition', Case 1:18-mc-00127). They seek before the same US court as the First Discovery Petition to obtain the disclosure of certain documents for use in proceedings that those investors have initiated, following the resolution of Banco Popular on 7 June 2017, against the Commission and the Single Resolution Board before the General Court (Cases T-570/17 and T-575/17), as well for use in proceedings before the Spanish Central Criminal Court.
4. In order to protect the Union's interests and to ensure a coherent treatment of these two materially identical discovery requests, the Commission also intends to intervene on behalf of the Union before a US Court as ***amicus curiae*** regarding this subsequent Order to Conduct Discovery for Use in Foreign Proceedings.
5. It is suggested that COREPER recommend the COUNCIL to authorise the Commission to intervene on behalf of the Union before US Courts as ***amicus curiae*** regarding two Orders to Conduct Discovery for Use in Foreign Proceedings ('First Discovery Petition', Case 1:18-mc-00085-ER and 'Subsequent Discovery Petition', Case 1:18-mc-00127) in line with the position presented to the Council Working Party on 7 May 2018 regarding the First Discovery Petition.

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