



Council of the
European Union

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(OR. en)

8145/24
PV CONS 15
AG 63

DRAFT MINUTES
COUNCIL OF THE EUROPEAN UNION
(General Affairs)
19 March 2024

1. Adoption of the agenda

The Council adopted the agenda set out in document 7809/24.

2. Approval of ‘A’ items

7806/24

(a) Non-legislative list

The Council adopted all "A" items listed in the document above, including all linguistic COR and REV documents presented for adoption. Statements to these items are set out in the Addendum.

(b) Legislative list (public deliberation in accordance with Article 16(8) of the Treaty on European Union)

7808/24

General Affairs

1. Statute of the Court of Justice

Adoption of the legislative act

approved by Coreper, Part 2, on 13 March 2024



7296/24 + ADD 1

PE-CONS 85/23

JUR

COUR

The Council approved the European Parliament's position at first reading and the proposed act has been adopted, pursuant to Article 294(4) and (15) of the Treaty on the Functioning of the European Union (legal basis: Article 256(3) and the second paragraph of Article 281 TFEU).

A statement to this item is set out in the Annex.

Justice and Home Affairs

2. Directive against strategic lawsuits against public participation (‘anti-SLAPP Directive’)

Adoption of the legislative act

approved by Coreper, Part 2, on 13 March 2024



7298/24 + ADD 1

PE-CONS 88/23

JUSTICIV

The Council approved the European Parliament's position at first reading and the proposed act has been adopted pursuant to Article 294(4) of the Treaty on the Functioning of the European Union, with Hungary voting against (legal basis: Article 81(2)(f) TFEU). In accordance with the relevant Protocols annexed to the Treaties, Denmark did not participate in the vote.

Statements to this item are set out in the Annex.

3. Council position on draft amending budget No 1 to the general budget for 2024: Amendments of the 2024 budget required due to the MFF revision



7381/24

7382/24

7102/24

FIN

Adoption

Approval of a letter

approved by Coreper, Part 2, on 13 March 2024

The Council adopted its position on the draft amending budget No 1/2024 (legal basis:

Article 314 TFEU and Article 106a of the Treaty establishing the European Atomic Energy Community).

Non-legislative activities

3. Preparation for the European Council meeting on 21 and 22 March 2024: Conclusions

6087/24 + COR 1

Exchange of views

4. European Semester

(a) Synthesis report on Council contributions on the 2024 European Semester

6690/1/24 REV 1

Exchange of views

(b) Updated roadmap on the 2024 European Semester

14716/1/23 REV 1

Presentation by the Presidency

(c) 2024 recommendation on the economic policy of the euro area

5025/24

Transmission to the European Council

5026/24

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| 5. | Future of Europe
<i>Exchange of views</i> | 7313/24 |
| 6. | Any other business | |
| (a) | Council Regulation amending Regulation No 1
determining the languages to be used by the European
Economic Community
<i>Information from Spain</i> | 7468/2/24 REV 2 |
| (b) | Rule of law in Poland
<i>Information from Poland</i> | 7358/24 |
| (c) | Elections in candidate countries
<i>Information from Germany</i> | 7437/24 |
| (d) | Future of the EU Single Market
<i>Information from Austria</i> | 7674/24 |
| (e) | Russia's aggression against Ukraine
<i>Information from Lithuania</i> | 7878/24 |
| (f) | Unilateral United Kingdom restrictive measures in the
field of fisheries
<i>Information from France</i> | 7872/24 |
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Statements to the legislative "A" items set out in doc. 7808/24**Statute of the Court of Justice****Ad "A" item 1:***Adoption of the legislative act***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.”

**Directive against strategic lawsuits against public participation
(‘anti-SLAPP Directive’)**
Adoption of the legislative act

Ad "A" item 2:

STATEMENT BY ESTONIA

“Estonia supports the purpose of the Directive, which is to protect freedom of speech and free media, by giving journalists, human rights defenders and other persons against whom manifestly unfounded or abusive claims against public participation have been filed, certain additional guarantees in civil court proceedings when standing up for their rights. However, we consider it necessary to express the following concerns regarding the application of the Directive.

Firstly, there are no known problems with SLAPPs in Estonia. Even though we have sympathy to the fact that there might be difficulties with SLAPPs elsewhere, we can see the danger that in our case, the Directive would limit access to justice and would likely affect civil court proceedings more generally. Namely, the defendants might apply for the new measures even though no SLAPP has been filed against them. As we are not aware of problems with SLAPPs in our courts, the SLAPP-related applications would likely be made lightly, also in legitimate proceedings. Therefore, the new measures would likely burden the courts.

Furthermore, it must be taken into account that it may not be easy to determine whether it is a SLAPP or not. Before the court would be able to decide on the merits of the case, there might be proceedings in several court levels on whether it is a SLAPP and the claimant should be sanctioned or whether the claimant is exercising his or her right to go to court for protecting his or her rights. The Directive would make going to court riskier than before. In our view, the fear that going to court for protecting his or her rights may be sanctioned would itself hinder access to justice.

Secondly, we are concerned about the obligation to treat in an accelerated manner applications for award of costs of the proceedings, penalties or other appropriate measures such as compensation of damages or publication of the court decisions (Article 5a(2)). According to Estonian law, one of the purposes of civil procedure is to guarantee that the courts deal with civil cases within a reasonable period of time. At each stage of proceedings, the court takes steps to help the parties file their statements in full at the proper time and facilitate dealing with the case in the minimum possible time. Court proceedings in Estonia are among the fastest in the EU.

At the same time, we do not have an accelerated procedure for the remedies referred to in Article 5a(2). Creating such an accelerated procedure would also be legally problematic and the compliance with the Constitution would be questionable. For example, if we would need to allow an accelerated procedure for damages caused by SLAPP, it would create unequal treatment for victims who have suffered non-contractual damages on other legal grounds (e.g. damage caused by criminal offence, health damage, damage caused by bodily harm). Additionally, we cannot provide accelerated procedures for all cases, because judicial resources are limited and any accelerated procedure would be at the expense of other procedures.

Therefore, Estonia would like to interpret Article 5a(2) in such a way that it would not oblige us to create an accelerated procedure because the obligations foreseen in that provision are already fulfilled as prescribed above.

STATEMENT BY HUNGARY

“Hungary recognises and promotes equality between men and women in accordance with the Fundamental Law of Hungary and the primary law, principles and values of the European Union, as well as commitments and principles stemming from international law. Equality between women and men is enshrined in the Treaties of the European Union as a fundamental value. In line with these and its national legislation, Hungary interprets gender as providing equal chances and opportunities for women and men. In line with these and its national legislation, Hungary interprets the concept of ‘gender’ as reference to ‘sex’ and the concept of ‘gender equality’ as ‘providing equal chances and opportunities for women and men’ in the Directive of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”).”
