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By e-mail and registered mail

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Subject: Disclosure and publication of the procedural documents of the Council in Case T-138/23

Dear Mr Nagy, dear Mr Karsai,

It has recently come to the attention of the Council of the European Union that *Semmelweis Egyetem*, the applicant in Case T-138/23, has published on its website several procedural documents relating to the above case, including the Council's plea of inadmissibility and defence lodged with the General Court on 30 May 2023 and 21 May 2024, respectively.¹

The Council wishes to recall that procedural documents are drafted exclusively for the purposes of the court proceedings.²

In accordance with Article 20, second paragraph, of the Statute of the Court of Justice, which applies to proceedings before the General Court by virtue of Article 53, first paragraph, procedural documents are to be communicated only to the parties to the case. This is confirmed by Article 65(1) of the Rules of Procedure of the General Court. This means that the parties to a case are entitled to use procedural documents, which they have received from other parties, only for the purpose of pursuing their own case before the Court.³ They are therefore not at liberty to disclose to the public, without the consent of another party, any material obtained from that party in the course of the proceedings.

¹ Here is the link to the relevant website: <https://semmelweis.hu/english/2023/03/application-for-partial-annulment-in-respect-of-council-implementing-decision-eu-2022-2506/>.

² Judgment of 20 September 2010, *Sweden and Others v API and Commission*, C-514/07 P, C-528/07 P and C-532/07 P, EU:C:2010:541, paragraph 78.

³ Judgment of 17 June 1998, *Svenska Journalistförbundet v Council*, T-174/95, EU:T:1998:127, paragraph 137.

The purpose of the foregoing rules is to ensure, inter alia, compliance with the principles of equality of arms and the sound administration of justice.⁴

With regard to the principle of equality of arms, if a party's procedural documents were made public, there would be a risk that the criticisms made of them, irrespective of their actual legal significance, would influence the position defended by that party before the EU judicature.⁵

With regard to the principle of the sound administration of justice, it is necessary to ensure that the exchange of arguments between the parties and the deliberations of the Court in the case before it take place in an atmosphere of complete tranquillity. In this respect, the disclosure of a party's procedural documents would have the effect of exposing the judicial activities to external pressure and would disturb the tranquillity of the proceedings.⁶

Contrary to the rules recalled above, it is apparent that in the present case the Council was neither asked nor gave its consent to disclose its procedural documents, which, it should be recalled, include the full names of its agents. Such a conduct is incompatible with the principles of equality of arms and the sound administration of justice.

In the light of the foregoing and of paragraph 4.2 of the Code of Conduct for European Lawyers, which provides that "*a lawyer must always have due regard for the fair conduct of proceedings*", the Council requests you, in your capacity as counsel for the applicant in Case T-138/23, to inform your client, first, that the public disclosure of the Council's procedural documents seriously jeopardises respect for the principles of equality of arms and the sound administration of justice and, secondly, to ensure that those documents be immediately removed from the website.

Given the seriousness of this incident, the Council is compelled to inform the General Court of it. And should it become aware of further cases of disclosure or publication of its procedural documents, it reserves the right to take such action as it deems appropriate.

Yours faithfully,

Giacomo RUGGE Emanuele REBASTI

Lucie VETILLARD

Agents of the Council

⁴ Judgment of 20 September 2010, *Sweden and Others v API and Commission*, C-514/07 P, C-528/07 P and C-532/07 P, EU:C:2010:541, paragraph 85.

⁵ Ibid, paragraph 86.

⁶ Ibid, paragraphs 92 and 93.