



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 2 April 2013**

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AGRI 220  
AGRIORG 53**

**INFORMATION NOTE**

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from : Legal Service

to : Permanent Representatives Committee (part 1)

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Subject : **Case before the Court of Justice**

- **Case C-124/13** (European Parliament v Council of the European Union)
    - = Action for annulment of Council Regulation (EU) No 1243/2012 of 19 December 2012 amending Regulation (EC) No 1342/2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks
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1. By application of 14 March 2013, which was served on the Council on 18 March 2013, the European Parliament filed an action for annulment of the above Regulation<sup>1</sup> (hereinafter "the contested Regulation").
2. The European Parliament raises a single plea of annulment - divided into two limbs - of the contested Regulation on the grounds that Article 43(3) TFEU is not the appropriate legal basis for the contested Regulation and that it should have been adopted on the basis of Article 43(2) TFEU.

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<sup>1</sup> OJ L 352, 21.12.2012, p. 10.

3. In the first limb, the European Parliament asserts that each multiannual plan, such as that at stake in the present case, as a fish stock conservation and management tool, forms a whole which only contains provisions in the pursuit of the sustainability and conservation objectives of the Common Fisheries Policy (CFP) and must therefore be adopted in its entirety under Article 43(2) TFEU. Indeed, the European Parliament considers that the adopted measures, insofar as they lay down a special procedure for setting the total allowable catches ("TACs") and the fishing effort adjustments and the derogations therefrom, establish general rules and conditions that must be observed when the actual TACs and fishing effort adjustments are set. The aim and the contents of the adopted measures would therefore prove that they are measures necessary in the pursuit of the sustainability objective of the CFP. According to the European Parliament, the measures that the Council may only adopt in order to fix and allocate the fishing opportunities under Article 43(3) TFEU in this case would be the concrete numerical TACs and fishing effort and quotas thereof but not a more general framework of rules and conditions under which those numbers are fixed.
4. In the second limb, the European Parliament asserts that the adoption of the contested Regulation separately from the remainder of the Commission proposal constitutes in any event an abuse of the procedure and empties the established case law on the choice of the legal basis according to the centre of gravity of the act of its content. For the Parliament, splitting the proposal enabled the Council to artificially choose a separate legal basis for certain elements of the proposed act, whereas these would have been absorbed by the single legal basis of Article 43(2) TFEU, had the act been adopted in the form of the initially proposed whole.
5. The Council may, according to Article 124(1) of the Rules of Procedure of the Court of Justice, lodge a statement of defence within two months after service of the application.
6. The Director-General of the Legal Service of the Council has appointed Ms. Andrea WESTERHOF LÖFFLEROVÁ, Mr. Alberto DE GREGORIO MERINO and Mr. Eric SITBON, legal advisers in the said service, as the Council's agents in this case.