



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 21 December 2012

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ENV 967**

INFORMATION NOTE

from: Legal Service

to: COREPER I

Subject: **Case before the Court of First Instance**

Case T-458/12

- *Mouvement pour les droits et le respect des générations futures v Commission*

1. According to a notice published in the Official Journal on 15 December 2012¹ the *Mouvement pour les droits et le respect des générations futures* brought an action against a Commission decision refusing to review its earlier decision to approve the active substance metarm in accordance with the Pesticides Regulation². The Applicant, which is a French non-governmental organisation active in the environmental sphere, requested the Commission to review the latter decision on the basis of European Parliament and Council Regulation 1367/2006 ("the Aarhus Regulation").³

¹ OJ C389/7.

² Regulation 1007/2009, OJ L309 of 24.11.2009.

³ OJ L264/13 of 25.9.2006

2. In its reply to the Applicant's request for review, the Commission decided that the request was inadmissible. The basis for that decision was that the Commission took the view that an authorisation of an active substance is not an "administrative act" for the purposes of the Aarhus Regulation. Indeed, whilst Article 10 of the Aarhus Regulation grants a right of internal review to non-governmental organisations meeting the criteria in Article 11, Article 2(1)(g) of that Regulation defines "administrative act" as: "*... any measure of individual scope under environmental law, taken by a Community institution or body and having legally binding and external effects.*"
3. Although the Applicant's primary contention is that the Commission has misinterpreted the Aarhus Regulation, a secondary argument is raised concerning the validity of that Regulation. According to the Applicant, the Aarhus Regulation limits the category of acts that may be reviewed in a way that would not be in accordance with the Aarhus Convention. In this regard, the Applicant relies on the judgment of the General Court given in Case T-396/09 *Vereniging Milieudefensie and others v Commission*⁴. That judgment is currently the subject of an appeal before the Court of Justice⁵.
4. In view of the fact that the legality of an act of which the Council was co-author is in issue, it is appropriate for the Council to intervene in support of the form of order sought by the Commission. The time-limit for applying to intervene expires on 5 February 2012.
5. The Director-General of the Legal Service has nominated Mr. Matthew MOORE and Ms. Kristien MICHOEL, legal advisers, as agents to represent the Council in this case.

⁴ Judgment of 14.6.2012, not yet reported.

⁵ See doc. 12664/12 and doc. 12664/1/12.