



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 2 April 2013

8064/13

**JUR 169
PECHE 124
AGRI 218
AGRIORG 52**

INFORMATION NOTE

from : Legal Service

to : Permanent Representatives Committee (part 1)

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

- **Case C-125/13** (European Commission 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, with the preservation of its effects
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1. By application of 14 March 2013, which was served on the Council on 19 March 2013, the European Commission filed an action for annulment of the above Regulation¹ (hereinafter "the contested Regulation").
2. The Commission's application is based on three pleas.

¹ OJ L 352, 21.12.2012, p. 10.

3. The first plea concerns an alleged error in law concerning the legal basis of the contested Regulation. For the Commission, the Council has committed an error in splitting the Commission's proposal and adopting a part of it on the basis of Article 43(3) TFEU as the act should have been based in its entirety on Article 43(2) TFEU. The Commission considers that the contested Regulation contains provisions which do not fall within the scope of Article 43(3) TFEU, which alone can provide a basis for measures on the fixing and allocation of fishing opportunities.
4. The second plea concerns an alleged consequential error in law concerning the decision-making procedure and the institutional prerogatives of the European Parliament and of the European Economic and Social Committee. The Commission considers that the Council violated Articles 294 and 43(2) TFEU as it adopted the part of the proposal concerned alone, without participation of the European Parliament and without consultation of the European Economic and Social Committee.
5. The third plea concerns an alleged fundamental change in the nature of the Commission's proposal (fr. *dénaturation*). The Commission considers that in violation of Article 17 TEU and Article 43(3) TFEU, the splitting of the proposal by the Council and the consequential change of the legal basis of one part of it has resulted in a fundamental alteration in the nature of the Commission's proposal, in violation of its exclusive right of initiative.
6. In the event that the Court annuls the contested Regulation, the Commission requests that its effects be maintained for a reasonable time after the judgment, that is for a maximum of one full calendar year starting on 1 January of the year after the judgment.
7. 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.
8. The Director-General of the Legal Service of the Council has appointed Ms. Andrea WESTERHOF LÓFFLEROVÁ, Mr. Alberto DE GREGORIO MERINO and Mr. Eric SITBON, legal advisers in the said service, as the Council's agents in this case.