



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 12 September 2013

13579/13

**JUR 468
ENV 824**

INFORMATION NOTE

from : Council Legal Service
to : Coreper I
Subject : Case before the Court of Justice of the European Union
- C-425/13 Commission v. Council (ETS/Australia)

1. By letter dated 26 July 2013, received the same day, the Council was notified of the Commission's application before the Court of Justice seeking the annulment of Council decision of 13 May 2013 authorising the opening of negotiations on linking the EU emissions trading scheme with an emissions trading system in Australia ('the contested decision').
2. In its first plea, the Commission considers that the detailed procedure provided for in Section A of the negotiating directives which are attached to the contested decision goes beyond what is provided for in Article 218(2) to (4) TFEU and, as a consequence, that the Council has infringed Article 218(2) to (4) and Article 295 TFEU. Moreover, the Commission considers that the Council has also infringed Article 13(2) TEU, in conjunction with Article 218(4) TFEU, as well as the principle of institutional balance because, in its view, the Council has expanded its powers conferred on it by the Treaties to the detriment of the Commission and the European Parliament.

3. In its second plea, the Commission considers that insofar as the negotiating directives establish that "detailed negotiating positions of the Union shall be established" within the special committee (or within the Council), the Council has altered the institutional balance reflected in Article 218 TFEU and infringed Article 13(2) TEU, in conjunction with Article 218(4) TFEU.

4. 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.

5. The Director-General of the Council Legal Service has appointed Ms Kristien MICHOEL, Mr Matthew MOORE and Mr Jan-Peter HIX, members of the Legal Service, as the Council' s agents in this case.
