



**COUNCIL OF  
THE EUROPEAN UNION**

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**INFORMATION NOTE**

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from : the Legal Service  
to : the Permanent Representatives Committee (Part One)  
Subject : **Case before the Court of Justice of the European Union**  
- Case C-28/12 (European Commission against Council of the European Union)

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1. The Registrar of the Court of Justice of the European Union notified the Council on 25 January 2012 that the Commission lodged an application for the annulment of the Decision of the Council and of the Representatives of the Governments of the Member States of the European Union, meeting within the Council of 16 June 2011 concerning the Air Transport Agreement between the United States of America, the EU and its Member States, Iceland, and Norway. The Decision concerns the signing, on behalf of the Union, and provisional application of the Air Transport Agreement, and the signing, on behalf of the Union, and provisional application of the Ancillary Agreement between the European Union and its Member States, Iceland, and Norway on the application of the Air Transport Agreement.
2. The contested act is a single decision of a hybrid nature adopted by the Council and the representatives of the Member States, meeting within the Council.

3. The application is founded on the following three pleas of law:
  - breach of the procedure and the conditions to authorise the signing and provisional application of international agreements by the Union: the Decision should have been solely taken by the Council and not by the Council and the Member States (Article 13(2) TEU in conjunction with Article 218(2) and (5) TFEU);
  - violation of the voting rules in Council: the Council Decision should have been adopted by qualified majority and not by unanimity (Article 218(8) TFEU in conjunction with Article 100(2) TFEU);
  - breach of the objectives set out in the Treaties and the principle of sincere cooperation: the Council should have exercised its powers so as not to circumvent the Union institutional framework and procedures in conformity with the Treaty objectives (Article 13(2), Article 218 TFEU).
  
4. The Council may, according to Article 40(1) of the Rules of Procedure of the Court of Justice, lodge a statement of defence within one month after service of the application.
  
5. The Director General of the Legal Service of the Council has appointed Ms Eva KARLSSON, Mr Richard SZOSTAK and Ms Melpo-Menie JOSÉPHIDÈS, legal advisors in the said service, as the Council's agents in this case.

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