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INFORMATION NOTE

from : the Legal Service

to : the Permanent Representatives Committee (Part Two)

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

- Case **C-370/12** (Thomas Pringle against the Government of Ireland, Ireland and the Attorney General)

= Reference by the Supreme Court of Ireland to the Court of Justice of the question of the validity of European Council Decision 2011/199/EU¹

1. The Registrar of the Court of Justice of the European Union notified the General Secretariat of the Council on 14 August 2012 that the Supreme Court of Ireland requested the Court of Justice to give a preliminary ruling on two questions concerning the validity of European Council Decision 2011/199/EU of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro and whether Ireland, by entering into and ratifying the Treaty establishing the European Stability Mechanism done at Brussels on 2nd February 2012 would undertake obligations incompatible with the Union Treaties.

¹ European Council Decision 2011/199/EU of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro (OJ L 91, 6.4.2011, p. 1).

2. The reference to the Court of Justice is made in the course of proceedings between Thomas Pringle (the plaintiff), the Government of Ireland, Ireland and the Attorney General (the defendants).

3. In particular, the following questions are referred to the Court of Justice:

(1) *Whether European Council Decision 2011/199/EU of 25th March 2011 is valid:*

- *Having regard to the use of the simplified revision procedure pursuant to Article 48(6) TEU and, in particular, whether the proposed amendment to Article 136 TFEU involved an increase in the competences conferred on the Union in the Treaties;*
- *Having regard to the content of the proposed amendment, in particular whether it involves any violation of the Treaties or of the general principles of law of the Union.*

(2) *Having regard to*

- *Articles 2 and 3 TEU and the provisions of Part Three, Title VIII TFEU, and in particular Articles 119, 120, 121, 122, 123, 125, 126, and 127 TFEU;*
- *the exclusive competence of the Union in monetary policy as set out in Article 3(1)(c) TFEU and in concluding international agreements falling within the scope of Article 3(2) TFEU;*
- *the competence of the Union in coordinating economic policy, in accordance with Article 2(3) TFEU and Part Three, Title VIII, TFEU;*
- *the powers and functions of Union Institutions pursuant to principles set out in Article 13 TEU;*
- *the principle of sincere cooperation laid down in Article 4(3) TEU;*

- *the general principles of Union law including in particular the general principle of effective judicial protection and the right to an effective remedy as provided under Article 47 of the Charter of Fundamental Rights of the European Union and the general principle of legal certainty;*

is a Member State of the European Union whose currency is the euro entitled to enter into and ratify an international agreement such as the ESM Treaty?

(3) *If the European Council Decision is held valid, is the entitlement of a Member State to enter into and ratify an international agreement such as the ESM Treaty subject to the entry into force of that Decision?*

4. The European Council is, according to Article 23 of the Statute of the Court of Justice of the European Union, entitled to submit observations in a case governed by Article 267 of the Treaty on the Functioning of the European Union, should the validity of an act which it adopted be in dispute.
5. The validity of European Council Decision 2011/199/EU of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro being in dispute, the European Council should make use of this right.
6. Pursuant to Article 235(4) of the Treaty on the Functioning of the European Union, the European Council shall be assisted by the General Secretariat of the Council. Accordingly, the European Council should be represented by the Council Legal Service in the present proceedings.
7. In line with the practice established in relation to the Council, the agents of the European Council will submit observations in defence of the validity of the European Council Decision. The agents of the European Council therefore do not intend to intervene in respect of the questions concerning compliance by Ireland with its obligations under the Treaties nor on questions of interpretation of the European Council Decision on which the European Council has not expressed itself, in particular the question whether the entry into force of the ESM Treaty is contingent upon the entry into force of the said European Council Decision.

8. The Supreme Court of Ireland has requested the Court of Justice to apply to this reference for preliminary ruling the accelerated procedure pursuant to Article 104a of the Rules of Procedure of the Court of Justice.
 9. The President of the Court of Justice has decided to apply the accelerated procedure. It has established 14 September 2012, including the extension on account of distance, as the date by which written observations should be lodged by the parties and other interested persons. The estimated date of the hearing in this case is 23 October 2012.
 10. The Director-General of the Legal Service of the Council has appointed on 22 August 2012 Mr Hubert LEGAL, Mr Giorgio MAGANZA and Mr Alberto DE GREGORIO MERINO, respectively Director-General, Director and Legal Adviser in the said service, as the European Council's agents in this case.
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