



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 14 September 2012**

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**INFORMATION NOTE**

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from : Legal Service  
to : Permanent Representatives Committee (part 1)  
Subject : **Case before the Court of Justice**  
- **Case C-399/12** (Federal Republic of Germany v Council of the European Union)

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1. By application of 28 August 2012, which was notified to the General Secretariat of the Council by the Registrar of the Court of Justice of the European Union on 31 August 2012, the Federal Republic of Germany filed an action for annulment of the Council decision of 18 June 2012 (doc. 11436/12) establishing the position to be adopted on behalf of the European Union with regard to certain resolutions to be voted in the framework of the International Organisation for Vine and Wine ("OIV").
2. Germany argues that the above-mentioned Council decision is wrongly based on Article 218(9) of the Treaty on the Functioning of the European Union ("TFEU") as a procedural legal basis.
3. Firstly Germany claims that Article 218(9) TFEU can only be applied to international agreements concluded by the European Union itself and not to international agreements concluded by Member States. According to Germany, as long as the European Union has not made use of the possibility to become a member of the OIV pursuant to Article 8 of the OIV agreement, the Council cannot adopt a decision based on Article 218(9) TFEU.

4. Secondly, Germany claims that OIV resolutions are not acts having legal effects within the meaning of Article 218(9) TFEU. According to Germany, the expression "acts having legal effects" would mean acts binding under international law. The recommendations of the OIV General Assembly, such as the resolutions adopted on 22 June 2012, would not constitute acts having legal effects within the meaning of Article 218(9) TFEU because they are neither binding under international law nor can the secondary law of the European Union confer upon them effects binding under international law.
5. According to Article 40(1) of the Rules of Procedure of the Court of Justice, the Council may lodge a statement of defence within one month after service of the Application.
6. The Director-General of the Legal Service of the Council has appointed Mr Eric SITBON and Mr Jan-Peter HIX, legal advisors in the said service, as the Council's agents in this case.
7. The Member States may request to intervene in the case, pursuant to Article 93 of the Rules of Procedure of the Court of Justice, in conjunction with Article 40 of the Statute of the Court of Justice.

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