



**COUNCIL OF
THE EUROPEAN UNION**

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INFORMATION NOTE

From : Legal Service
To : Coreper (Part I)
Subject : **Case before the General Court of the European Union**
-Case C-427/12 Commission v European Parliament and Council - biocidal products - determining fees payable to the European Chemicals Agency by implementing act rather than delegated act.

1. On 24 September 2012, the Council was served with the Commission's application to the Court of Justice in the abovementioned case¹. The Commission is seeking the annulment of Article 80(1) of European Parliament and Council Regulation 528/2012² concerning the making available on the market and use of biocidal products, in so far as it provides for the use of an implementing act (adopted through the comitology procedure) for the determination of the fees payable to the European Chemicals Agency. In the event that Article 80(1) is not regarded by the Court as being severable from the remainder of the Regulation, the Commission seeks, by way of subsidiary plea, the annulment of the entire Regulation. According to the Commission, the Parliament and Council acted unlawfully by not providing for the use of a delegated act for determining the fees.

¹ The case was lodged at the Court of Justice on 19 September.

² OJ L167 of 27.6.2012.

2. The present case is the first occasion on which the legality of the interpretation of Articles 290 and 291 TFEU made by the co-legislators has been brought before the Court of Justice. It will be recalled that this issue was of considerable importance to the Council during the legislative procedure. In accordance with Article 40 of the Court's Statute, Member States may intervene in a case in support of the conclusions of one of the parties, provided that a request to that effect is submitted within 6 weeks of the date of publication of the notice of the case in the Official Journal.

3. The Director-General of the Legal Service has appointed Mr. Matthew MOORE and Ms. Inese ŠULCE, members of the Legal Service, as agents to represent the Council before the Court.
