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INFORMATION NOTE

From:	Legal Service
To:	Permanent Representatives Committee/Council
Subject:	Case before the General Court of the European Union: - Case T-685/14 European Environmental Bureau ("EEB") against European Commission

1. Notice of the abovementioned case was published in the Official Journal on 1 December 2014¹. The applicant seeks the annulment of a Commission decision by which it declared inadmissible a request for internal review, pursuant to European Parliament and Council Regulation 1367/2006². That request related to a Commission decision regarding the notification by Bulgaria of a transitional national plan pursuant to Article 32 of Directive 2010/75 of the European Parliament and of the Council.
2. In addition to its primary claims against the Commission, the applicant has also indirectly challenged the legality of Regulation 1367/2006, claiming that it is unlawful in the light of the Aarhus Convention³. In so far as an act of which the Council was co-author is being challenged, it would ordinarily be appropriate for the Council to intervene, in support of the form of order being sought by the Commission, in order to defend the validity of Regulation 1367/2006.

¹ OJ C431/05.

² OJ L264/13 of 25.9.2006.

³ Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 1998.

3. However, the present case is one of several raising the same issue, and which are currently before the Court of Justice or the General Court. Moreover, the Council has recently been notified by the Court of Justice that judgment will be given on 13 January 2015 in the appeals brought by the Council in Cases C-401/12 P *Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht* and C-404/12 P *Stichting Natuur en Milieu and Pesticide Action Network Europe*⁴. It is highly likely that the judgment in those cases will provide an authoritative reply to the issue of legality of Regulation 367/2006. However, since the deadline by which the Council would have to apply to intervene in the present case is 22 January 2015, the Legal Service is taking the precaution of informing Coreper already, rather than waiting until 13 January 2015. Nevertheless, it is clear that, in the event that the Court finds against the Council in Cases C-401/12 P and C-404/12 P, then no useful purpose would be served by intervening in the present case.
4. Subject to the outcome of the appeals in Cases C-401/12 P and C-404/12 P, the Director-General of the Legal Service intends to appoint Mr Matthew MOORE and Ms Marion SIMM, legal advisers, as agents to represent the Council in this case.
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⁴ See doc. 12664/12