



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 12 May 2010

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INFORMATION NOTE

from:	Council Legal Service
to:	COREPER (2nd part)
Subject:	Case C-130/10 before the Court of Justice of the European Union - European Parliament v. Council of the European Union

1. By an application notified to the Council on 18 March 2010, the European Parliament has brought an action before the Court of Justice of the EU for the annulment of Council Regulation (EU) 1286/2009 of 22 December 2009 amending Regulation (EC) 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban.¹
2. It is recalled that the contested Regulation 1286/2009 was adopted, following the judgment of the Court of Justice in Joined Cases C-402/05 P and C-415/05 P, *Kadi and Al Barakaat*, in order to lay down provisions ensuring that listed persons and entities are given the reasons for their designation and that they are given the opportunity to present observations thereon, with a view to having their designation reviewed.

¹ OJ L 34 of 23.12.09, p. 42.

3. The European Parliament invokes the following grounds in support of its claim for annulment:
- a) Incorrect legal basis, insofar as the contested Regulation should have been adopted on the basis of Article 75 TFEU (area of freedom, security and justice) instead of Article 215(2) TFEU (external action/restrictive measures);
 - b) In the alternative, breach of the requirements in Article 215 TFEU, insofar as a valid Commission proposal and prior CFSP decision were absent:
 - The Commission had no authority, during the period between the expiry of its term of office on 31 October 2009 and the appointment of a new Commission on 10 February 2010, to re-submit or confirm its original proposal based on ex-Arts. 60, 301 and 308 EC, for adoption as a non-legislative act under Art. 215 TFEU without consultation of the European Parliament;
 - The Council could not rely on a previous Common Position (2002/402/CFSP) as satisfying the requirement in Art. 215 TFEU that acts adopted thereunder be preceded by the adoption of a CFSP decision, since such Common Position cannot be considered as equivalent to a CFSP decision under the Lisbon Treaty.
4. According to Article 40(1) of the Rules of Procedure of the Court of Justice, the Council has to lodge a statement of defence within one month of being notified of the application. The Court has extended this period by one month. The Director-General of the Council's Legal Service has appointed Mr. Michael Bishop and Mr. Richard Szostak, members of the Legal Service, as the Council's agents in this case.
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