



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 25 June 2012

11844/12

**JUR 354
EF 156
ECOFIN 648**

INFORMATION NOTE

from : Legal Service

to : Permanent Representatives Committee (part II)

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

- **Case C-270/12**

(United Kingdom v Council of the European Union and European
Parliament)

1. By application of 1 June 2012, which was notified to the General Secretariat of the Council by the Registrar of the Court of Justice of the European Union on 6 June 2012, the European Commission filed an action for annulment of Article 28 of Regulation (EU) 236/2012 of the European Parliament and of the Council on short-selling and certain aspects of credit default swaps ("the contested Act").
2. Article 28 of the contested Act empowers the European Securities and Markets Authority (ESMA) to adopt certain decisions in connection with short sales or similar transactions.
3. The Applicant raises four pleas in law:
 - contradiction with the *Meroni* case-law of the Court of Justice (Case 9/56): the power conferred on ESMA implies a wide policy discretion with economic policy implications;

- contradiction with the *Romano* case-law of the Court of Justice (Case 98/80): the power conferred on ESMA allows it to adopt measures of general application with the force of law;
 - infringement of Articles 290 and 291 TFEU: the Council does not have the authority to confer on an agency the power to adopt non-legislative acts of general application;
 - infringement of Article 114 TFEU: Article 28 of the contested Act would be *ultra vires* if it were to be interpreted as empowering ESMA to adopt individual measures.
4. 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.
 5. The Director-General of the Legal Service of the Council has appointed Mr. Hubert LEGAL, Legal Counsel and Director-General of the Legal Service of the Council, and Mr Álvaro DE ELERA-SAN MIGUEL HURTADO and Ms Eugenia DUMITRIU-SEGNANA, legal advisors in the said service, as the Council's agents in this case.
 6. 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.
-