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INFORMATION NOTE

From: Legal Service
To: Permanent Representatives Committee (Part 1)
Subject: Case before the General Court of the European Union
- Case T-648/22 (ClientEarth AISBL v Council)
- Application for annulment of the Council's Decision of 3 August 2022 in connection to the request for internal review under Title IV of the Aarhus Regulation in relation to Council Regulation (EU) 2022/515 of 31 March 2022 amending Regulation (EU) 2022/109 fixing for 2022 the fishing opportunities for certain fish stocks and groups of fish

DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (05.12.2022)

1. By application lodged on 13 October 2022 with the General Court of the European Union and notified to the Council on 3 November 2022, the applicant, ClientEarth AISBL, has brought an action under Article 263 TFEU for annulment of the Council's Decision of 3 August 2022 (SGS 22/3264) (hereinafter "the Contested Decision")¹ in relation to the request for internal review under Title IV of the Aarhus Regulation in relation to Council Regulation (EU) 2022/515 of 31 March 2022 amending Regulation (EU) 2022/109 fixing for 2022 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in Union waters and for Union fishing vessels in certain non-Union waters (OJ L 104, 01.04.2022, p. 1) (hereinafter "the Amending TAC Regulation").

¹ In fact, while this decision was notified to the Applicant on 3 August 2022, it was adopted by the Council on 26 July 2022, see documents ST 10616/2/22 REV 2 and ADD 1 (draft reply and statement) as well as 10970/22 (note to COREPER/Council), 11426/22 + COR 1 (list of A items) and 11590/22 (draft minutes of the Council meeting).

2. The Applicant claims that the Council has committed manifest errors of law and of assessment in issuing the Contested Decision and invokes the following four pleas in law:

First plea in law, alleging a manifest error of law and of assessment as regards the scope of the Applicant's access to review rights under the Aarhus Regulation, due to the Council having found that the Applicant's pleas that the Council lacked competence and misused its powers in adopting the TAC Regulation were inadmissible for falling outside the scope of Article 10 of the Aarhus Regulation².

Second plea in law, alleging manifest errors of law and of assessment as regards essential elements of secondary law and the scope of the Council's competence to set Total Allowable Catches ("TACs") under Article 43(3) TFEU, due to the Council having committed

- i) a manifest error of law as regards the alleged impact of the Trade and Cooperation Agreement with the United Kingdom on the Council's competence to set TACs in contradiction to the EU's fisheries legislation;
- ii) manifest errors of law as regards the margin of discretion it has to set fishing opportunities, as limited by the overarching Maximum Sustainable Yield ("MSY") Objective of Article 2(2) of the CFP Basic Regulation³; and
- iii) manifest errors of law and of assessment regarding the limits of its competence under Article 43(3) TFEU.

² Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, OJ L 264, 25.9.2006, p. 13 (as amended).

³ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC, OJ L 354, 28.12.2013, p. 22 (as amended).

Third plea in law, alleging manifest errors of assessment regarding the Council's obligations to:

- i) implement the precautionary approach, as commanded by the 1st and 2nd subparagraphs of Article 2(2), Articles 4(1)(8) and 9(2) of the CFP Basic Regulation, and strictly limited by the MSY Objective;
- ii) implement the ecosystem-based approach as required by Article 2(3) of the CFP Basic Regulation.

Fourth plea in law, alleging a manifest error of assessment regarding the misuse of powers committed by the Council when adopting the Amending TAC Regulation.

3. The Acting Director-General of the Council Legal Service has appointed **DELETED**, **DELETED** and **DELETED**, Legal Advisers in that Service, as the Council's agents in this case.
