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FISC 65  
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### INFORMATION NOTE

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From: Legal Service  
To: Permanent Representatives Committee (Part 2)  
Subject: Case brought before the General Court of the European Union  
• T-143/23 (Action for annulment – Council Directive (EU) 2022/2523)

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### **DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (04.05.2023)**

1. By application notified to the Council on 4 April 2023, the Applicant has brought an action before the General Court, on the basis of Article 263 TFEU, seeking the annulment of Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union<sup>1</sup>, in so far as : Article 17 excludes from its scope income from a shipping activity covered by Member States' tonnage tax regimes authorized under State aid rules, other than '*international shipping income*' and '*qualified ancillary international shipping income*'. Article 17 applies only if "the constituent entity demonstrates that the strategic or commercial management of all ships concerned is effectively carried on from within the jurisdiction where the constituent entity is located". The Directive does not lay down transitional measures for taxpayers that made substantial investments relying on a national tonnage tax regime.

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<sup>1</sup>OJ L 328, 22.12.2022

2. In support of its application for annulment, the Applicant relies on five pleas in law:
- infringement of the general principle of equal treatment;
  - infringement of the general principle of proportionality because the effects of the contested Directive exceed what is necessary to achieve its purpose;
  - infringement of the principle of proportionality because of the application of the rules under the Directive to purely domestic situations;
  - infringement of the principle of protection of legitimate expectations and legal certainty; and
  - infringement of Articles 115 and 107 TFEU.
3. In accordance with Article 81 of the Rules of Procedure of the Court, the Council has to lodge its statement of defence within two months of receipt of the notification of the application.
4. The Director-General of the Council Legal Service has appointed **DELETED**, members of the Council Legal Service, as the Council's agents in the case.