

### Question referred

Do the principles of freedom of establishment, non-discrimination and the preservation of competition under Article 49 et seq TFEU preclude national legislation which does not allow a pharmacist, who is qualified and entered in the relevant professional register but does not own a pharmacy on the '*pianta organica*' [territorial grid], also to offer for retail sale, in the para-pharmacy owned by that pharmacist, pharmaceutical products which are subject to a prescription in the form of a '*ricetta bianca*' — that is to say, pharmaceutical products the cost of which is borne not by the [national health service] but wholly by the citizen — and which accordingly also establishes in that sector a prohibition on the sale of certain categories of pharmaceutical product, as well as a quota in relation to the number of commercial outlets which may be established in the national territory?

### Action brought on 3 April 2012 — European Commission v Council of the European Union

(Case C-165/12)

(2012/C 157/10)

*Language of the case: French*

### Parties

*Applicant:* European Commission (represented by: A. Bouquet and E. Paasivirta, acting as Agents)

*Defendant:* Council of the European Union

### Form of order sought

— Annul Council Decision 2012/19/EU <sup>(1)</sup> of 16 December 2011 on the approval, on behalf of the European Union, of the Declaration on the granting of fishing opportunities in EU waters to fishing vessels flying the flag of the Bolivarian Republic of Venezuela in the exclusive economic zone off the coast of French Guiana, inasmuch as it is based on Article 218(6)(b) TFEU in conjunction with Article 43(3) TFEU;

— Maintain the effects of the annulled decision until the entry into force of a new decision adopted, within a reasonable period, on an appropriate legal basis, namely Article 218(6)(a) TFEU in conjunction with Article 43(2) TFEU, or, in the event of a refusal by the Parliament to give its approval, until expiry of a reasonable short period after the Parliament's decision refusing approval, and

— order the Council of the European Union to pay the costs.

### Pleas in law and main arguments

The Commission seeks the annulment, with maintenance of its effects until adoption of a new measure, of Council Decision 2012/19/EU, inasmuch as the choice of legal basis departs fundamentally from that proposed by the Commission, namely Article 218(6)(a) TFEU (in conjunction with Article 43(2) TFEU), with the approval of the Parliament.

The Commission submits that, by so acting, the Council has erred and that, in accordance with the Commission's proposal, it should seek the approval of the Parliament before adopting the measure in question.

In support of its action, the Commission puts forward three pleas in law: the first plea in law, split into three parts, alleging, firstly, infringement of Article 218(6)(a) TFEU and Article 43(2) TFEU in that the Council has used Article 218(6)(b) TFEU and Article 43(3) TFEU as the legal basis for the contested measure and, secondly, infringement of the second paragraph of Article 296 TFEU in that the Council has given contradictory reasons for its choice of legal basis.

The second plea in law, following from the first, also alleges infringement of Article 218(6)(a) TFEU in that the Council has disregarded the institutional prerogatives of the European Parliament by failing to obtain its approval despite the fact that that approval is required by the article in question.

The third plea in law alleges infringement of Articles 17 TEU and 218(6) TFEU in that the Council has distorted the Commission's proposal.

<sup>(1)</sup> OJ 2012 L 6, p. 8.