



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 9 December 2010**

**17586/10**

**JUR 519  
API 93**

**INFORMATION NOTE**

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from: Council Legal Service  
to: Permanent Representatives' Committee (part 2)  
Subject: **Case T-452/09 before the General Court**  
- ClientEarth v. Council of the European Union

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1. By an application registered with the General Court on 26 October 2010 and notified to the Council on 17 November 2010, ClientEarth has brought an action before the General Court for the annulment, pursuant to Article 263 TFEU, of the Council's decision of 26 July 2010, to refuse full public access to document 6865/09.

By the latter decision, the Council refused, pursuant to Article 4(2) second indent and Article 4(3) first subparagraph of Regulation (EC) N° 1049/2001<sup>1</sup>, full public access to document 6865/09 which concerns an opinion of the Council Legal Service concerning a Proposal for a Regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (recast), and notably the European Parliament's recommended amendments contained in the Cashman report. At the same time, the Council granted partial access to those parts of the requested document which were not covered by any exceptions under Regulation (EC) N° 1049/2001.

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<sup>1</sup> OJ L 145, 31.5.2001, p. 43.

2. The applicant invokes the following grounds in support of his claim for annulment:
- a) Violation of the second indent of Article 4(2) of Regulation (EC) N° 1049/2001, as far as the Council allegedly failed to explain how full disclosure would damage the protection of legal advice, in particular in the light of the Turco judgment of the Court of Justice<sup>1</sup>, and by failing to take sufficient account of the overriding public interest in disclosure, and, furthermore, by failing to provide the European Parliament with full reasons which led to the adoption of its position at first reading in accordance with Article 294(6) TFEU;
  - b) Violation of the first subparagraph of Article 4(3) of the said Regulation, as far as the Council invoked allegedly incorrectly the exception relating to the protection of the Council's decision-making process with regard to the requested legal advice, and, in addition, for failing to establish how the disclosure of the legal advice would seriously prejudice the institution's decision-making process;
  - c) Violation of Article 4(2) and (3) of the aforementioned Regulation, for failure to examine the existence of an overriding public interest in disclosure; and
  - d) Violation of 4(6) of Regulation (EC) N° 1049/2001, for failure to provide partial access to the requested document.
4. According to Article 46(1) of the Rules of Procedure of the General Court, the Council must lodge a statement of defence within two months of the date on which the application was notified to it. The Director-General of the Council Legal Service has appointed Ms Csilla FEKETE and Mr Bart DRIESSEN, members of the said Legal Service, as the Council's agents in this case.
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<sup>1</sup> Joined cases C-39 P and C-52/05 P Sweden and Turco v. Council [2008] ECR I-4723.