



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 27 March 2012

7908/12

**JUR 155
API 31**

INFORMATION NOTE

from: Council Legal Service
to: Permanent Representatives' Committee (part 2)
Subject: **Case T-62/12 before the General Court**
- ClientEarth v. Council of the European Union

1. By an application lodged with the General Court on 9 February 2012 and notified to the Council on 1 March 2012, ClientEarth has brought an action before the General Court for the annulment, pursuant to Article 263 TFEU, of the Council's decision of 1 December 2011 to refuse full public access to document 6865/09.
2. By the said decision, the Council confirmed its decision of 26 July 2010 taken in regard of the applicant's previous application relating to the same document, having concluded that there was no change in the legal or factual situation as compared to the situation underlying the Council's earlier decision¹. Consequently, the Council refused full public access to document 6865/09 for the reasons set out in its earlier decision, notably on grounds of the protection of

¹ It is noted that the applicant had brought an action for annulment against the Council's decision of 26 July 2010 before the General Court (Case T-452/10 *ClientEarth vs. Council*), which has since been dismissed by the General Court as manifestly inadmissible (see Order of the General Court of 6 September 2011 in Case T-452/10 *ClientEarth vs. Council* (not yet reported)). An appeal against the General Court's Order is currently pending before the Court of Justice (C-573/11 P *ClientEarth vs. Council*).

legal advice under the second indent of Article 4(2) and the institution's ongoing decision-making process under the first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001².

3. The applicant invokes the following grounds in support of his claim for annulment:
 - a) Misapplication of the second indent of Article 4(2) of Regulation (EC) No 1049/2001, insofar as the Council allegedly failed to give detailed reasons of how full disclosure would prejudice the protection of legal advice, in particular in the light of the *Turco* judgment of the Court of Justice³;
 - b) Misapplication of the first subparagraph of Article 4(3) of the said Regulation, insofar as the Council allegedly failed to establish how the disclosure of the legal advice would seriously prejudice the institution's decision-making process, in particular in the light of the *Access Info Europe* judgment of the General Court⁴;
 - c) Misapplication of Article 4(2) and (3) of the aforementioned Regulation, insofar as the Council allegedly failed to balance the protected interests against the overriding democratic interest in transparency; and
 - d) Violation of 4(6) of the said Regulation, for failure to provide fuller 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 Mr Bart DRIESSEN and Ms Csilla FEKETE, members of the said Legal Service, as the Council's agents in this case.

² OJ L 145, 31.5.2001, p. 43.

³ Joined Cases C-39 P and C-52/05 P *Sweden and Turco v. Council* [2008] ECR I-4723.

⁴ Case T-233/09 *Access Info Europe v. Council* (not yet reported)