



Council of the
European Union

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INFORMATION NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee (Part 2)
Subject: **Case T-710/14 before the General Court**
Herbert Smith Freehills LLP v. Council of the European Union
Action for annulment of the Council's decision to refuse public access to certain e-mails drafted by an official of the Council Legal Service

1. By an application registered with the General Court on 7 October 2014 and notified to the Council on 9 October 2014, Herbert Smith Freehills LLP has brought an action before the General Court for the annulment, pursuant to Article 263 TFEU, of the Council's decision 18/c/01/14, to refuse public access to certain e-mails sent by an official of the Council Legal Service during the trilogue negotiations leading to the adoption of Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Members States concerning the manufacture, presentation and sale of tobacco and related products.¹ The requested e-mails contain legal views on the drafting of Article 24 of the said Directive.

¹ OJ L 127, 29.4.2014, p. 1–38.

2. By its decision 18/c/01/14 the Council refused public access to the requested documents pursuant to Article 4(2), second indent (protection of court proceedings and legal advice), of Regulation (EC) 1049/2001.² In particular, the Council held the view that there is a reasonably foreseeable risk that disclosure of the requested e-mails would undermine the interest of the Council in receiving a frank legal advice by seriously hampering the defence of the legality of Directive 2014/40/EU in legal proceedings brought before national Courts and the EU Court of Justice.
3. The applicant invokes the following grounds in support of his claim for annulment:
 - a) Breach of Article 4(2), second indent, of the Regulation 1049/2001 insofar as (a) not all documents identified by the Council fall within the scope of the exception relating to the protection of legal advice; and (b) the Council failed to acknowledge the existence of an overriding public interest in the disclosure of the documents which relate to a legislative procedure.
 - b) Breach of Article 4(6) insofar as the Council did not provide partial access to the requested e-mails.
 - c) The Council has committed a manifest error of assessment with regard to the scope of the request for access to documents submitted by the applicant.
4. The applicant also filed a request for expedited procedure according to Article 76a of the Rules of the Procedure of the General Court, which was however rejected by the General Court on 7 November 2014.
5. According to Article 46(1) of the Rules of the 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. Emanuele REBASTI, Mrs. Madalena ALMEIDA VEIGA and Mr. Joachim HERRMANN, members of the said Legal Service, as the Council's agents in this case.

² Regulation (EC) 1049/2001 of the European Parliament and the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.05.2001.