



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 27 January 2010

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INFORMATION NOTE

from: Council Legal Service
to: Permanent Representatives' Committee (part 2)
Subject: **Case T-529/09 before the General Court**
- Sophie in 't Veld v. Council of the European Union

1. By an application registered with the General Court on 31 December 2009 and notified to the Council on 18 January 2010, the Ms Sophie in 't Veld has brought an action before the General Court for the annulment, pursuant to Article 263 TFEU, of the Council's decision of 29 October 2009, to refuse full public access to document 11897/09.
2. By the latter decision, the Council refused, pursuant to the third indent of Article 4(1)(a) (protection of international relations) and the second indent of Article 4(2) (protection of legal advice) of Regulation (EC) N° 1049/2001¹, full public access to document 11897/09 (RESTREINT UE), which comprises an opinion of the Legal Service of the Council on a Recommendation from the Commission to the Council to authorise the opening of negotiations between the European Union and the United States of America for an international agreement to

¹ OJ L 145, 31.5.2001, p. 43.

make available to the United States Treasury Department financial messaging data to prevent and combat terrorism and terrorist financing. At the same time, the Council granted partial access to those parts of the requested document which are not covered by any exceptions under Regulation (EC) N° 1049/2001.

3. The applicant invokes the following grounds in support of her claim for annulment:
 - a) Breach of Article 4(1)(a), third indent of Regulation (EC) N° 1049/2001, insofar as the Council allegedly failed to demonstrate how full disclosure of the requested document would undermine the protection of international relations;
 - b) Breach of Article 4(2), second indent 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 Justice¹, and furthermore, by failing to take sufficient account of the overriding public interest in disclosure;
 - c) Breach of Article 4(6) of Regulation (EC) N° 1049/2001, and notably the principle of proportionality, in granting a very limited partial access to the requested document; and
 - d) Breach of the obligation to provide a sufficient statement of reasons, pursuant to Article 296 TFEU.

4. According to Article 46(1) of the Rules of Procedure of the Court of First Instance, 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 Martin BAUER, Ms Csilla FEKETE and Mr Ole PETERSEN, members of the said Legal Service, as the Council's agents in this case.

¹ Joined cases C-39 P and C-52/05 P Sweden and Turco v. Council [2008] ECR I-4723.