

**The Council of the European Union refuses to release legal advice  
on reform of transparency rules  
in contravention of European Court of Justice jurisprudence  
Access Info launches legal challenge**

Going against rulings of the European Court of Justice (ECJ) in the Turco case<sup>1</sup>, the Council of the European Union has refused to release legal advice about its proposed reforms to the EU access to documents rules.

Access Info yesterday (23 March 2009) filed a legal appeal against this refusal arguing that recent decisions of the ECJ make clear that legal advice relating to the legislative process should be made public. On 1 July 2008 the European Court of Justice ruled in the Turco case that there is an “*overriding public interest*” in “*disclosure of documents containing the advice of an institution’s legal service on legal questions arising when legislative initiatives are being debated*”.

In a particularly ironic twist, the legal advice being sought by Access Info is about how the Turco decision would impact upon the current access to documents practice of the Council of the European Union and how it might affect the reform of the EU’s transparency rules.

“European citizens have the right to know how European Court of Justice decisions are interpreted and, potentially, being deprived of meaning by other European institutions,” commented Eva Moraga, Lawyer for Access Info who filed the requests for documents. “This right is particularly strong when the ECJ decisions impact upon legislative initiatives, and even more so legislative initiatives about transparency.”

Access Info’s legal challenge (a “confirmatory application”) notes that in its 2 March 2009 letter the Council of the European Union argues that the legal advice relating to reform of the transparency rules cannot be disclosed because it “is of a particularly sensitive nature” and “analyses delicate issues” but the Council failed to provide any well-founded justification for this assertion.

In the Turco the European Court of Justice reasoned that “*transparency and openness of the legislative process and strengthens the democratic right of European citizens to scrutinize the information which has formed the basis of a legislative act*”.

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<sup>1</sup> European Court of Justice, 1 July 2008, Kingdom of Sweden and Maurizio Turco v Council of the European Union, (joined cases C-39/05 P and C-52/05 P), the “Turco case”