

Appeal brought on 6 June 2011 by Council of the European Union against the judgment of the General Court (Third Chamber) delivered on 22 March 2011 in Case T-233/09: Access Info Europe v Council of the European Union (Case C-280/11 P)

Language of the case: English

Parties

Appellant: Council of the European Union (represented by: G. Maganza, B. Driessen, Cs. Fekete, Agents)

Other parties to the proceedings: Access Info Europe, Hellenic Republic, United Kingdom of Great Britain and Northern Ireland

Form of order sought

The appellant claims that the Court should:

set aside the contested judgement by which the General Court annulled the Council's decision of refusing public access to the requested document;

give a final judgment in the matters that are the subject of this appeal; and

order the Applicant in Case T-233/09 to pay the costs of the Council arising from that case and from the present appeal.

Pleas in law and main arguments

At the outset, the Council would like to recall that the adoption of the contested decision, on 26 February 2009, pre-dates the entry into force of the Lisbon Treaty on 1 December 2009. Accordingly, the applicable Treaty framework for the purposes of the present action is the one established by the Treaty on European Union and Treaty establishing the European Community, prior to the entry into force of the Lisbon Treaty. The Council respectfully submits that first, the General Court has erred in law in its interpretation and application of the exception laid down in Article 4(3) first subparagraph of Regulation 1049/2001¹, since its findings are inconsistent with the applicable Treaty provisions, and in particular, disregard the limits of the principle of wider access of the institutions' legislative activities set by the Treaty and reflected by secondary law, on account of the preservation of the effectiveness of the institution's decision-making.

Second, the Council argues that the General Court's reasoning is inconsistent with the case-law of the Court which allows the institution to rely upon general considerations. Third, the Council submits that the General Court has erred in law in applying the "requisite legal and factual standard" to the present case in order to review the reasons the Council brought to justify invocation of the exception laid down in Article 4(3) first sub-paragraph of the Regulation. In its assessment, the General Court committed legal errors in so far as it required evidence of an adverse effect on the decision-making process, disregarded the importance of the early stage of the decision-making for appreciating the impact of full disclosure, and failed to take account of the sensitivity of the requested document.

¹ - Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents OJ L 145, p. 43