



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-213/15 P
Commission v Patrick Breyer

Advocate General Bobek proposes broader access to Court documents

Regulation No 1049/2001 obliges the Commission to grant a third party access to the pleadings submitted by a Member State, of which it holds a copy, in a case that has already been closed. However, it should be the Court, as master of the judicial file, who should primarily decide on access to documents contained in that file.

Mr Patrick Breyer requested the Commission to grant him access to the written pleadings submitted by Austria to the Court of Justice in infringement proceedings brought by the Commission against that Member State for failing to transpose the Data Retention Directive.¹ At the time of his request these proceedings had already been closed.² The Commission refused access to those pleadings, of which it held a copy, on the grounds that it is a Court document and therefore does not fall within the scope of Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents.³

Mr Breyer brought an appeal against this decision to the General Court, which annulled the Commission's decision refusing access.⁴ According to the General Court, written pleadings of a Member State of which the Commission holds a copy fall, like the Commission's own pleadings,⁵ within the scope of Regulation No 1049/2001.

The Commission appealed this judgment of the General Court before the Court of Justice.

In today's Opinion, Advocate General Michal Bobek proposes to the Court of Justice to confirm the General Court's judgment and dismiss the Commission's appeal. According to Mr Bobek, **the Regulation obliges the Commission to grant a third party access to the pleadings submitted by a Member State, of which it holds a copy, in a case that has already been closed.**

However, acknowledging the need for the Court to become more open, **the Advocate General suggests to the Court to revisit its institutional arrangements on access to some of the documents relating to its judicial activity.**

Even if the Court is exempt from the right of access to documents in so far as its judicial tasks are concerned, **the Court remains subject to the principle of openness.** More openness would not only increase public confidence in the EU judiciary, but it would also improve the overall quality of justice.

In terms of providing access to documents of the Court, Advocate General Bobek makes a **distinction between internal and external judicial documents** of the Court. **Internal judicial**

¹ Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (OJ 2006 L 105, p. 54).

² Case [C-189/09](#), Commission v Austria.

³ 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 2001 L 145, p. 43).

⁴ Case [T-188/12](#), Breyer v Commission, see also Press Release No [26/15](#).

⁵ Cases [C-514/07 P](#), [C- 528/07 P](#) and [C-532/07 P](#) Sweden and Others v API and Commission.

documents, such as the preliminary report⁶ of the reporting judge and the notes for deliberation⁷ **cannot**, in Mr Bobek's view, **be concerned by openness** and, thus, cannot be disclosed.

As regards **external judicial documents**, such as pleadings submitted by the parties, **they may in principle be accessible**. Advocate General Bobek suggests that those documents ought to be made available upon request, in both closed as well as, to a more limited extent, in pending cases. However, beyond individual requests for access, Advocate General Bobek also suggests that the pleadings of the parties and the request for a preliminary ruling could be put on the website of the Court as a matter of routine.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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⁶ This report is addressed to all judges and advocates general of the Court and contains proposals as to which chamber should decide the case, as to whether there should be a hearing and whether the responsible advocate general should write an opinion.

⁷ These are written notes by means of which the other judges of the chamber comment on the draft judgment prepared by the reporting judge.