



Press and Information

Court of Justice of the European Union
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Judgment in Case C-213/15 P
Commission v Patrick Breyer

The Commission cannot refuse access to written submissions of the Member States held by it, on the sole ground that they are documents relating to court proceedings

The Court of Justice confirms the judgment of the General Court holding that the decision on such an application for access must be made on the basis of the regulation concerning public access to documents held by the European Parliament, the Council and the Commission

In March 2011 Mr Patrick Breyer requested the Commission to grant him access inter alia to the written submissions that Austria had presented to the Court of Justice in infringement proceedings brought by the Commission against Austria for failing to transpose the Data Retention Directive.¹ Those judicial proceedings were concluded by a judgment of the Court of 29 July 2010.² The Commission refused access to those documents, of which it held copies, on the ground that they did not fall within the scope of Regulation No 1049/2001 on public access to documents of the European Parliament, the Council and the Commission.³ Mr Breyer then brought an action before the General Court seeking the annulment of the decision refusing access.

By judgment of 27 February 2015,⁴ the General Court allowed Mr Breyer's action and annulled the Commission's decision to refuse access. The General Court considered that the Commission may not automatically refuse access to the written submissions of Member States in proceedings before the Court of Justice, of which it holds a copy, on the grounds that they are documents used in court proceedings. In its view, any decision on such an application for access must be taken on the basis of Regulation No 1049/2001.

The Commission thereupon brought an appeal before the Court of Justice, seeking to have the General Court's judgment set aside and Mr Breyer's action finally dismissed.⁵

By today's judgment, the Court of Justice dismisses the Commission's appeal and confirms the judgment of the General Court.

The Court observes, first, that it does not have to decide whether the Commission must grant Mr Breyer access to the written submissions concerned. It only has to determine whether Regulation No 1049/2001 applies to Mr Breyer's application for access.

Next, the Court confirms that the regulation does indeed apply to an application such as Mr Breyer's.

The fact that Regulation No 1049/2001 does not apply to applications for access to documents addressed to the Court of Justice does not mean that documents linked to that institution's 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 In the appeal the Commission was supported by Spain and France, while Mr Breyer was supported, as in the proceedings before the General Court, by Finland and Sweden.

activity are, as a matter of principle, outside the scope of the regulation where they are in the possession of the EU institutions listed in the regulation, such as the Commission.

The legitimate interests of the Member States regarding such documents can be protected on the basis of the exceptions laid down in the regulation to the principle of the right of access to documents. Thus the regulation provides that the institutions are to refuse access to a document *inter alia* where disclosure would undermine the protection of court proceedings, unless there is an overriding public interest in disclosure of the document.

That exception is intended to ensure that the right of access to documents of the institutions is exercised without undermining the protection of court proceedings. That protection implies in particular that compliance with the principles of equality of arms and the sound administration of justice must be ensured.

The Court notes that it has accepted the existence of a general presumption that disclosure of the written submissions lodged by an institution in court proceedings would undermine the protection of court proceedings within the meaning of that exception, as long as those proceedings remain pending. That general presumption of confidentiality applies also to written submissions lodged by a Member State in court proceedings.

The Court also observes that the regulation provides that a Member State may request an institution not to disclose a document originating from that State without its prior agreement. However, the regulation does not confer on that Member State a general and unconditional right of veto enabling it to oppose, in a discretionary manner, the disclosure of documents originating from it and held by an institution.

The Court further points out that, while the Treaty of Lisbon continues to exclude the Court of Justice from the system of access to documents of the institutions when it exercises judicial functions,⁶ it extended the scope of the principle of transparency in EU law, pursuing the objective of an open European administration.

Finally, the Court decides that Mr Breyer must bear half the costs incurred by him in connection with the present appeal, despite the fact that the Commission has been wholly unsuccessful. Mr Breyer published on the internet anonymised versions of the pleadings exchanged in the appeal proceedings. That unauthorised publication constitutes misuse of the pleadings, liable to harm the sound administration of justice, which must be taken into account when sharing the costs incurred in the present proceedings.

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 judgment is published on the CURIA website on the day of delivery.

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⁶ Access to documents of the Court of Justice of the European Union of an *administrative* nature is governed by its decision of 11 December 2012 concerning public access to documents held by the Court of Justice in the exercise of its administrative functions (OJ 2013 C 38, p. 2), replaced by a decision of 11 October 2016 (OJ 2016 C 445, p. 3).