

Case T-191/99

David Petrie and Others

v

Commission of the European Communities

(Transparency — Public access to documents —
Commission Decision 94/90/ECSC, EC, Euratom — Proceedings
for failure to fulfil obligations — Formal notice — Reasoned opinion —
Exception relating to protection of the public interest —
Inspections and investigations — Court proceedings — Authorship rule —
Direct effect of Article 255 EC)

Judgment of the Court of First Instance (Fourth Chamber, Extended Com-
position), 11 December 2001 II - 3681

Summary of the Judgment

1. *Actions for annulment — Interest in bringing proceedings — Applicant challenging a decision refusing to grant him access to an institution's documents (Art. 230, fourth para., EC; Commission Decision 94/90)*

2. *Commission — Right of public access to Commission documents — Article 255 EC and Article 1, second paragraph, EU — Direct effect — None — Relevance (Art. 255 EC; Art. 1, second para., EU; Commission Decision 94/90)*
3. *Commission — Right of public access to Commission documents — Decision 94/90 — Limitations on the principle of access to documents — Rule on authorship — Scope — Refusal of access to documents originating with a Member State (Arts 253 EC and 255 EC; Commission Decision 94/90)*
4. *Commission — Right of public access to Commission documents — Decision 94/90 — Transparency — Exceptions to the principle of access to documents — Protection of the public interest — Judicial proceedings — Proceedings for failure to fulfil obligations — Letters of formal notice and reasoned opinions drafted in connection with investigations and inspections carried out by the Commission (Art. 226 EC; Commission Decision 94/90)*

1. It follows from the overall scheme of Decision 94/90 on public access to Commission documents that it is intended to apply generally to requests for access to documents and that, pursuant to that decision, any person may request access to any unpublished Commission document and is not required to give a reason for the request. It follows that any person refused access to a document or to part of a document has already, by virtue of that very fact, established an interest in the annulment of the decision refusing access.

are that the rule should be clear and unconditional, in the sense that its implementation must not be subject to any substantive condition, and that its implementation must not depend on the adoption of subsequent measures which either the Community institutions or the Member States may take in the exercise of a discretionary power of assessment.

(see para. 26)

That is not the case with regard to Article 1, second paragraph, EU and Article 255 EC. It is evident that Article 1, second paragraph, EU is unclear. Likewise, it is obvious that Article 255 EC is, by virtue of paragraphs 2 and 3 thereof, not unconditional and that its implementation is dependent on the adoption of subsequent measures. The determination of general principles and limits which, on grounds of public

2. The criteria for deciding whether a Treaty provision is directly applicable

or private interest, govern exercise of the right of access to documents is a matter entrusted to the Council in the exercise of its legislative discretion.

It follows that the entry into force of Article 1, second paragraph, EU and Article 255 EC did not automatically render inoperative the provisions contained in Decision 94/90 on public access to Commission documents.

reasoning for their decisions. Adequate reasoning means that, if it bases itself on a document originating with a third party, the institution must explain the content of that document in that decision and justify that document's choice as a basis for that decision. Consequently, the Commission did not err in law in taking the view that it was not under an obligation to grant access to documents drawn up by national authorities.

(see paras 34-36)

(see paras 47, 49-50)

3. The authorship rule may be applied so long as there is no higher principle of law which prohibited the Commission, in Decision 94/90 on public access to Commission documents, from excluding from the scope of the Code of Conduct documents of which it is not the author. That conclusion cannot be invalidated by the fact that the Community institutions, when adopting decisions, make use of documents originating with third parties, given that the transparency of the decision-making process and the confidence of citizens in Community administration can be assured by adequate reasoning of those decisions. The restrictions on access to documents originating with third parties and held by the institutions have no bearing on the duty imposed on those institutions under Article 253 EC to provide adequate
4. The Commission was justified in refusing to disclose letters of formal notice and reasoned opinions drawn up in connection with investigations and inspections carried out by the Commission on the ground that such disclosure might adversely affect the public interest. Member States are entitled to expect the Commission to guarantee confidentiality during investigations which might lead to infringement proceedings. This requirement of confidentiality remains even after the matter has been brought before the Court of Justice, on the ground that it cannot be ruled out that the discussions between the Commission and the Member State in question regarding the latter's voluntary compliance with the Treaty requirements may continue during the judicial proceedings and up to the

delivery of the judgment of the Court of Justice. The preservation of that objective, namely an amicable resolution of the dispute between the Commission and the Member State concerned before the Court of Justice has delivered judgment, justifies refusal of access to the letters of formal notice and reasoned opinions drawn up in connection with Article 226 EC proceedings on the ground of protection of

the public interest relating to inspections, investigations and judicial proceedings, which comes within the first category of exceptions in Decision 94/90.

(see paras 68-69)