

Case T-2/03

Verein für Konsumenteninformation

v

Commission of the European Communities

(Access to documents — Regulation (EC) No 1049/2001 — Request relating to a very large number of documents — Total refusal of access — Obligation to carry out a concrete, individual examination — Exceptions)

Judgment of the Court of First Instance (First Chamber, Extended Composition), 13 April 2005 II - 1125

Summary of the Judgment

- 1. Procedure — Intervention — Application for leave to intervene in support of the form of order sought by one of the parties — Application containing additional arguments altering the framework of the dispute — Inadmissibility of those arguments*
(Statute of the Court of Justice, Art. 40, fourth para.; Rules of Procedure of the Court of First Instance, Art. 116(3))

2. *European Communities — Institutions — Right of public access to documents — Regulation No 1049/2001 — Obligation on the institution to carry out a concrete, individual examination of the documents — Scope — Exclusion of the obligation — Conditions*
(*European Parliament and Council Regulation No 1049/2001, Art. 4*)

3. *European Communities — Institutions — Right of public access to documents — Regulation No 1049/2001 — Obligation on the institution to carry out a concrete, individual examination of the documents — Failure to perform the obligation — Breach of principle of proportionality — Examination proving particularly onerous and inappropriate — Derogation from the obligation to examine — Burden of proof on the institution — Obligation on the institution to consult with the applicant*
(*European Parliament and Council Regulation No 1049/2001, Art. 4*)

1. Although the fourth paragraph of Article 40 of the Statute of the Court of Justice, which applies to the Court of First Instance by virtue of Article 53 of that Statute and under Article 116(3) of the Rules of Procedure of the Court of First Instance, does not preclude an intervener from using arguments different from those used by the party it is supporting, that is nevertheless on the condition that they do not alter the framework of the dispute and that the intervention is still intended to support the form of order sought by that party. That condition is not met, *inter alia*, where the intervener's additional arguments, assuming that they are well founded, would permit a finding that the contested decision is unlawful whereas the form of order sought by the party which the intervener claims to support is only the dismissal of the action for annulment. Thus having the effect of altering the framework of the dispute as defined in the application and the defence, those additional arguments must therefore be rejected as inadmissible.

(see paras 52-53, 55)

2. The examination required for the purpose of processing a request for access to documents made on the basis of Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents must be specific in nature. On the one hand, the mere fact that a document concerns an interest protected by an exception cannot justify its application. Such application may, in principle, be justified only if the institution has previously assessed, firstly, whether access to the document

would specifically and actually undermine the protected interest and, secondly, in the hypothetical case referred to in Article 4(2) and (3) of that regulation, there is no overriding public interest in disclosure. On the other hand, the risk of a protected interest being undermined must be reasonably foreseeable and not purely hypothetical. The institution concerned must therefore undertake a concrete and individual examination of the contents of each of the documents referred to in the application and indicate, at the very least by reference to categories of documents, the reasons for which it considers that the documents detailed in the request received by it are related to a category of information covered by an exception.

individual assessment by the institution in similar circumstances.

(see paras 69, 72-73, 75)

3. The refusal by an institution to examine concretely and individually the documents covered by a request for access constitutes, in principle, a manifest breach of the principle of proportionality which requires measures adopted by Community institutions not to exceed the limits of what is appropriate and necessary in order to attain the objectives pursued.

However, that examination may not be necessary where, due to the particular circumstances of the individual case, it is obvious that access must be refused or, on the contrary, granted. Such could be case, inter alia, if certain documents are either manifestly covered in their entirety by an exception to the right of access or; conversely, manifestly accessible in their entirety, or; finally, have already been the subject of a concrete,

However, an institution applied to must retain the right, in particular cases where concrete, individual examination of the documents would entail an unreasonable amount of administrative work, to balance the interest in public access to the documents against the burden of work so caused, in order to safeguard, in those particular cases, the interests of good administration. It is only in exceptional cases and only where the administrative burden entailed by a concrete, individual examination of the documents proves to be particularly heavy, thereby exceeding the limits of what may reasonably be required, that such a

derogation from the obligation to examine the documents must be permissible.

The institution relying on that exception must adduce proof of the scale of such an administrative burden. It must, where appropriate, try to consult with the applicant in order, on the one hand, to ascertain or to ask him to specify his interest in obtaining the documents in question and, on the other, to consider

specifically whether and how it may adopt a measure less onerous than a concrete, individual examination of the documents, preferring the option which, whilst not itself constituting a task which exceeds the limits of what may reasonably be required, remains the most favourable to the applicant's right of access.

(see paras 99-100, 102, 112-114)