

# Case T-76/02

Mara Messina

v

Commission of the European Communities

(Regulation (EC) No 1049/2001 — Access to documents — Non-disclosure of a document originating from a Member State without the prior agreement of that State)

Judgment of the Court of First Instance (Fourth Chamber, Extended Composition), 17 September 2003 . . . . . II - 3205

## Summary of the Judgment

1. *European Communities — Institutions — Public right of access to documents — Regulation No 1049/2001 — Limits on the right of access to documents — Non-disclosure of a document originating from a Member State without that State's prior agreement*  
(Art. 255 EC; Regulation No 1049/2001 of the European Parliament and of the Council, Art. 4(5))

2. *European Communities — Institutions — Public right of access to documents — Regulation No 1049/2001 — Communication of documents originating from a Member State in the institution's possession — Letter of objection sent to the institution on behalf of a Member State — Determination of the competence of the letter's author — Institution's lack of competence*  
 (*Regulation No 1049/2001 of the European Parliament and of the Council, Art. 4(5)*)

1. It follows from Article 4(5) of Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents that, as regards access to documents originating from third parties in the possession of those institutions, a Member State's documents are subject to special treatment. That provision confers on each Member State the power to request the institutions not to disclose documents originating from that State without its prior agreement. It transposes Declaration No 35 annexed to the final act of Amsterdam, by which the principles and conditions regarding access to documents set out in Article 255 EC will allow a Member State to request the Commission or the Council not to communicate to third parties a document originating from that State without its prior agreement. The power thus conferred on Member States is explained by the fact that it is neither the object nor the effect of Regulation No 1049/2001 to amend national legislation on access to documents.
2. It is not for the Commission to rule on the division of competences by the institutional rules proper to each Member State. Therefore, where that institution is in possession of a document originating from a Member State and receives a letter of objection in accordance with Article 4(5) of Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents to the disclosure of that document, it is not obliged to determine the competence of the author of that letter to raise such an objection, but must only verify whether the letter in question is, *prima facie*, that of a Member State within the meaning of that provision.

(see paras 40-41)

(see paras 46, 48)