

Case T-187/03

Isabella Scippacercola

v

Commission of the European Communities

(Access to documents of the institutions — Article 4(5)
of Regulation (EC) No 1049/2001)

Judgment of the Court of First Instance (Third Chamber), 17 March 2005 . . . II - 1032

Summary of the Judgment

1. *European Communities — Institutions — Right of public access to documents — Regulation No 1049/2001 — Limitations to the right of access to documents — No disclosure of a document originating from a Member State without the prior agreement of that State — Concept of a document originating from a Member State — Report created by a third party on behalf of a Member State — Inclusion (European Parliament and Council Regulation No 1049/2001, Art. 4(5))*

2. *European Communities — Institutions — Right of public access to documents — Regulation No 1049/2001 — Exceptions to the right of access to documents — Documents originating from third parties and documents originating from a Member State — Differential treatment of requests for access — Power of a Member State to request an institution not to disclose documents — Obligation on the institution not to disclose them without prior agreement*
(*European Parliament and Council Regulation No 1049/2001, Art. 4(4) and (5)*)

1. It follows from Article 4(5) of Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents that, among third parties, the Member States are subject to special treatment. That provision confers on a Member State the power to request an institution not to disclose documents originating from that State without its prior agreement. That power conferred on Member States by Article 4(5) is explained by the fact that it is neither the object nor the effect of that regulation to amend national legislation on access to documents.

that State, regardless of the fact that it was created by a third party on behalf of that State.

(see paras 34, 36-39)

A cost-benefit analysis report received by the Commission in connection with an application for financing from the Cohesion Fund submitted by the only beneficiary Member State, which necessarily forms part of the information such an application must contain, must be regarded as a document originating from

2. Article 4(4) of Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents requires the institutions to consult the third party author of the document to which access has been requested with a view to assessing whether an exception in Article 4(1) or (2) is applicable, unless it is clear that the document must or must not be disclosed. Consequently, consultation of the third party concerned constitutes, as a general rule, a prerequisite for determining whether the exceptions to access provided for in Article 4(1) and (2) of that regulation are applicable in the case of third party documents.

On the other hand, according to Article 4(5) of that regulation, Member States are the subject of special treatment. With regard to documents originating from a Member State which are in the possession of an institution, the Member State has the right to request that institution not to disclose them. That Member State is not obliged to state reasons for its request under Article 4(5) and it is not for the institution to examine whether non-disclosure of the

document in question is justified, *inter alia*, in the public interest. Consequently, where a Member State requests an institution not to disclose a document originating from that Member State without its prior agreement, the institution is bound by that request.

(see paras 54, 56, 58, 62)