

Case T-264/04

WWF European Policy Programme

v

Council of the European Union

(Access to documents — Regulation (EC) No 1049/2001 — Exceptions relating to the protection of the public interest — Partial access)

Judgment of the Court of First Instance (Fourth Chamber), 25 April 2007 . . . II - 915

Summary of the Judgment

1. *Acts of the Community institutions — Statement of reasons — Obligation — Scope*
(Art. 253 EC; European Parliament and Council Regulation No 1049/2001)
2. *European Communities — Institutions — Right of public access to documents — Regulation No 1049/2001*
(European Parliament and Council Regulation No 1049/2001, Art. 4)

3. *European Communities — Institutions — Right of public access to documents — Regulation No 1049/2001*
(*European Parliament and Council Regulation No 1049/2001, Art. 4(1)(a)*)
4. *European Communities — Institutions — Right of public access to documents — Regulation No 1049/2001*
(*European Parliament and Council Regulation No 1049/2001, Art. 4(1)*)
5. *European Communities — Institutions — Right of public access to documents — Regulation No 1049/2001*
(*European Parliament and Council Regulation No 1049/2001, Art. 4(6)*)
6. *European Communities — Institutions — Right of public access to documents — Regulation No 1049/2001*
(*European Parliament and Council Regulation No 1049/2001*)
7. *European Communities — Institutions — Right of public access to documents — Regulation No 1049/2001*
(*European Parliament and Council Regulation No 1049/2001*)

1. The purpose of the obligation on the institution to state the reasons for its decision to refuse access to a document is, first, to provide the person concerned with sufficient information to make it possible to determine whether the decision is well founded or whether it is vitiated by an error which may permit its validity to be contested and, secondly, to enable the Community judicature to review the lawfulness of the decision. The extent of that obligation depends on the nature of the measure at issue and the context in which it was adopted.
2. The rule is that the public is to have access to the documents of the institutions and refusal of access is the exception to that rule. Consequently, the provisions sanctioning a refusal provided in Article 4 of Regulation EC No 1049/2001 regarding public access to European Parliament, Council and Commission documents must be construed and applied strictly so as not to defeat the application of the rule. Moreover, an institution is obliged to consider in respect of each document to which access is sought whether, in the light of the information available to that institution, disclosure of the document is in fact likely to undermine one of the public interests protected by the exceptions which permit refusal of access. In

(see para. 36)

order for those exceptions to be applicable, the risk of the public interest being undermined must therefore be reasonably foreseeable and not purely hypothetical.

(see para. 39)

3. The institutions enjoy a wide discretion when considering whether access to a document may undermine the public interest protected under Article 4(1)(a) of Article 4 of Regulation EC No 1049/2001 regarding public access to European Parliament, Council and Commission documents and, consequently, that the Court's review of the legality of the institutions' decisions refusing access to documents on the basis of the mandatory exceptions relating to the public interest must be limited to verifying whether the procedural rules and the duty to state reasons have been complied with, the facts have been accurately stated, and whether there has been a manifest error of assessment of the facts or a misuse of powers.

(see para. 40)

4. The exceptions set out in Article 4(1) of Regulation No 1049/2001 regarding

public access to European Parliament, Council and Commission documents are framed in mandatory terms and it follows that the institutions are obliged to refuse access to documents falling under any one of those mandatory exceptions once the relevant circumstances are shown to exist. Those exceptions are therefore different from the exceptions relating to the interest of the institutions in maintaining the confidentiality of their deliberations laid down in Article 4(3) of Regulation No 1049/2001, in the application of which the institutions enjoy a discretion which allows them to balance, on the one hand, their interest in maintaining the confidentiality of their deliberations against, on the other hand, the interest of the citizen in gaining access to documents.

(see para. 44)

5. It is clear from the wording itself of Article 4(6) of Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents that an institution is required to consider whether it is appropriate to grant partial access to documents requested and to confine any refusal to information covered by the relevant exceptions. The institution must grant partial access if the aim

pursued by that institution in refusing access to a document may be achieved where all that is required of the institution is to blank out the passages which might harm the public interest to be protected.

minutes on an item on the agenda of one of its committee meetings, given the purely informative nature of that item and the absence of any specific implementing measure. It cannot therefore be concluded that the Council infringed the interested party's right of access to documents conferred by Regulation No 1049/2001.

(see para. 50)

(see paras 61-63)

6. It would be contrary to the requirement of transparency which underlies Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents for institutions to rely on the fact that documents do not exist in order to avoid the application of that regulation. In order that the right of access to documents may be exercised effectively, the institutions concerned must, in so far as possible and in a non-arbitrary and predictable manner, draw up and retain documentation relating to their activities.
7. For the purpose of applying Article 4 of Regulation EC No 1049/2001 regarding public access to European Parliament, Council and Commission documents, the concept of a document must be distinguished from that of information. The public's right of access to the documents of the institutions covers only documents and not information in the wider meaning of the word and does not imply a duty on the part of the institutions to reply to any request for information from an individual.

It is not possible to conclude that the Council acted in an arbitrary or unpredictable manner by failing to produce

(see paras 75, 76)