

Case T-168/02

IFAW Internationaler Tierschutz-Fonds gGmbH

v

Commission of the European Communities

(Action for annulment — Access to documents — Regulation (EC) No 1049/2001 — Article 4(5) — No disclosure of a document from a Member State without the prior agreement of that State)

Judgment of the Court of First Instance (Fifth Chamber, Extended Composition), 30 November 2004 II - 4137

Summary of the Judgment

1. *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 the Member State to request the 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))

2. *Acts of the institutions — Statement of reasons — Obligation — Scope — Decision refusing access to documents originating from a Member State following a request for non-disclosure made by that State*
 (Art. 253 EC; European Parliament and Council Regulation No 1049/2001, Art. 4(5))

1. Article 4(4) of Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents places the institutions under an obligation to consult the third party author of the document in respect of which access is sought with a view to assessing whether an exception in Article 4(1) or (2) is applicable, unless it is clear that the document should or should not be disclosed. Accordingly, consultation of the third party is, as a general rule, a precondition for determining whether the exceptions to the right of access provided for in Article 4(1) and (2) of the regulation are applicable in the case of third-party documents.

However, according to Article 4(5) of the regulation, which reflects Declaration No 35 annexed to the Final Act of the Treaty of Amsterdam regarding documents from a Member State in possession of an institution, the Member State has the power to request that institution not to disclose that document without its prior agreement. Thus, a request made by a Member State under Article

4(5) does constitute an instruction to the institution not to disclose the document in question.

(see paras 55, 57-58)

2. The restrictions imposed, by Article 4(5) of Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents, on the access to the documents originating from a Member State and in the possession of an institution do not affect the institution's duty to state sufficient reasons for the decision to refuse the request for access to documents which the Member State has requested not to be disclosed. However, that institution is not required to explain why the Member State had made a request for non-disclosure, since there is no obligation on the Member States themselves to state the reasons for such a request.

(see paras 59, 72)