Reports of Cases

JUDGMENT OF THE GENERAL COURT (First Chamber)

26 April 2016*

(Access to documents — Regulation (EC) No 1049/2001 — Documents relating to an OLAF investigation file — Action for annulment — Implied and express refusal to grant access — Exception relating to the protection of privacy and the integrity of the individual — Exception relating to the protection of the commercial interests of a third party — Exception relating to the protection of the decision-making process — Duty to state reasons — Non-contractual liability)

In Case T-221/08,

Guido Strack, residing in Cologne (Germany), represented by H. Tettenborn and N. Lödler, lawyers,

applicant,

v

European Commission, represented initially by P. Costa de Oliveira and B. Eggers, and subsequently by B. Eggers and J. Baquero Cruz, acting as Agents,

defendant,

APPLICATION for the annulment of all the implied and express decisions of the Commission adopted following the initial requests for access to documents made by Mr Strack on 18 and 19 January 2008, and an application for damages,

THE GENERAL COURT (First Chamber),

composed of I. Pelikánova, President, E. Buttigieg (Rapporteur) and L. Madise, Judges,

Registrar: K. Andová, Administrator,

having regard to the written procedure and further to the hearing on 21 October 2014,

gives the following

* Language of the case: German.

Judgment[1]

Procedure and forms of order sought by the parties

37 By application lodged at the Registry of the General Court on 6 June 2008, the applicant brought the present action. By separate document lodged at the Court Registry on 8 September 2008, the Commission raised an objection of inadmissibility under Article 114 of the Rules of Procedure of the General Court of 2 May 1991, on which decision was reserved for final judgment by order of the Court (Third Chamber) of 14 January 2010.

38 Following the amendment of his form of order, inter alia, by document lodged at the Court Registry on 7 September 2010, the applicant claims that the Court should:

— annul the implied and express decisions refusing access to documents of the Commission and OLAF, as adopted by the Commission in the context of the processing of the initial applications for access of 18 and 19 January 2008 and of the confirmatory requests of 22 February, of 18 April and, in particular, of 21 April 2008, and inter alia the decisions of 19 May and 17 June 2008 and of 30 April and 7 July 2010 in so far as they refuse those applications for access to the documents either in full or in part;

— order the Commission to pay damages in an appropriate amount, but no less than symbolic damages in the amount of one euro;

— order the Commission to pay the costs.

39 The Commission contends, in essence, that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

40 By letter of 5 July 2010, the Court informed the parties that, by decision of 2 July 2010, the Chamber seised had rejected the application to extend the subject matter of the proceedings to encompass the express decision of 17 June 2008 refusing access and granted the application to extend the subject matter of the proceedings to include the initial OLAF decision.

41 By decision of 16 November 2010, notified to the parties on 25 November 2010, the Court granted the applicant's application to extend the subject matter of the proceedings to include the second OLAF decision.

42 Following the departure of the Judge-Rapporteur, the case was re-assigned. The composition of the chambers of the Court having changed, the Judge-Rapporteur was assigned to the First Chamber, to which the case was accordingly also allocated. On a proposal from the Judge-Rapporteur, the Court (First Chamber) decided to open the oral part of the procedure.

43 By order of 5 February 2014, pursuant to Article 65(b) to Article 66(1) and to the third subparagraph of Article 67(3) of the Rules of Procedure of 2 May 1991, a measure of inquiry was adopted, requiring the Commission to produce a copy of the confidential versions of all the documents in connection with Request No 590/2008, whilst stating that those documents would not be disclosed to the applicant. By letter of 5 March 2014, the Commission responded to that measure of inquiry.

1 — Only the paragraphs of this judgment which the Court considers it appropriate to publish are reproduced here.

44 In the context of the measures of organisation of procedure provided for in Article 64 of the Rules of Procedure of 2 May 1991, the Court invited the parties to answer a number of questions. The parties complied with those requests within the prescribed time limits. Accordingly, the Commission and the applicant answered on 5 and on 6 March 2014, respectively, the questions put by the Court. By pleadings dated 27 March 2014, the applicant submitted his observations on the Commission's answers of 5 March 2014.

45 On 20 October 2014, the applicant lodged at the Court Registry a letter concerning OLAF's decision of 31 July 2014 regarding its 're-examination of the [applicant's] request for access to personal data, OF/2002/0356' ('OLAF's re-examination decision of 31 July 2014'), taken pursuant to Article 13 of Regulation No 45/2001, a table setting out the documents at issue and an annex thereto containing the documents held by OLAF.

46 The parties presented oral argument and replied to the questions put to them by the Court at the hearing on 21 October 2014.

47 By letter of 4 November 2014, the Commission submitted its observations on the applicant's letter of 20 October 2014 (see paragraph 45 above).

48 Following the Commission's written observations of 2 December 2014 concerning the applicant's written observations of 7 November 2014 in connection with the Commission's written replies of 22 October 2014 to the questions put by the Court in the light of the hearing, the President of the First Chamber closed the oral part of the procedure on 8 December 2014.

Law ...

I – *The application for annulment* ...

A – *Request No 590/2008* ...

1. Substance of the application ...

a) (b) Pleas and complaints calling into question the merits of the refusals to grant access to the documents in part or in full ...

(i) The documents included in OLAF's list of 30 April 2010 ...

The previously disclosed documents ...

128 The purpose of Regulation No 1049/2001 is to make documents of the institutions accessible to the public at large (see, to that effect, judgment of 1 February 2007 in *Sison* v *Council*, C-266/05 P, ECR, EU:C:2007:75, paragraphs 43 and 44) and, as OLAF also observed under title 7 of its initial decision, documents disclosed under the regulation enter the public domain (judgment in *Catinis* v *Commission*, cited in paragraph 86 above, EU:T:2014:267, paragraph 62; see, also, judgment in *Agapiou Joséphidès* v *Commission and EACEA*, cited in paragraph 82 above, EU:T:2010:442, paragraph 116, and order of 7 March 2013 in *Henkel and Henkel France* v *Commission*, T-64/12, EU:T:2013:116, paragraph 47).

129 That consequence is also reflected in Article 9(2)(e) of the annex to the rules of procedure of the Commission, relating to the provisions concerning the implementation of Regulation No 1049/2001, in the version resulting from Commission Decision 2001/937/EC, ECSC, Euratom of 5 December 2001 amending its rules of procedure (OJ 2001 L 345, p. 94), under which documents already disclosed following a previous application are to be 'automatically' provided on request.

130 It is true, as the Commission has observed, that in the case which gave rise to the order of 14 January 2014 in *Miettinen* v *Council* (T-303/13, EU:T:2014:48, paragraphs 17 to 19), the Court held that, in so far as the applicant had been granted access to the requested document, he had obtained the only result that his action could have secured for him. However, unlike in the present case, in *Miettinen* v *Council*, the requested document had in fact been disclosed to the public so that it could not be concluded from that decision that the mere fact that the interested party had had access to the requested document in a certain capacity could categorically prevent him from requesting access to the same document on the basis of Regulation No 1049/2001, despite that document not having been disclosed to the public.

131 Consequently, it is clear that OLAF's initial decision, in so far as it refused to grant the applicant access to the documents marked 'PD' on the basis of Regulation No 1049/2001, prevents, as appropriate and as the Commission also submitted in its pleadings, those documents from being regarded as public, which is precisely the aim sought by the applicant and corresponds to the objective pursued by Regulation No 1049/2001 which consists in conferring the widest possible access to documents with a view to increased openness in order to enable citizens to participate more closely in the decision-making process and to guarantee that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system, as stated in recital 2 of Regulation No 1049/2001 (judgment of 1 July 2008 in *Sweden and Turco* v *Council*, C-39/05 P and C-52/05 P, ECR, EU:C.2008:374, paragraph 45).

132 Accordingly, the fact that the applicant already held the documents concerned by his request for access and that the purpose of the request was therefore not to enable him to discover their content but rather to disclose them to third parties is irrelevant, even more so as the reasons justifying the applicant's decision to make such a request are irrelevant, since Regulation No 1049/2001 provides neither that the interested party must state reasons for the request for access to documents nor that the reasons stated for such a request may play a role in whether that request is granted or not (order in *Henkel and Henkel France* v *Commission*, cited in paragraph 128 above, EU:T:2013:116, paragraph 47).

133 Similarly, the Commission's argument based on the excessive workload with which it would be saddled if it had to grant access to documents which are already in the applicant's possession, even if the applicant did not gain access to those documents pursuant to Regulation No 1049/2001, must be rejected.

134 Suffice it to note in that regard that, although an institution may, in exceptional circumstances, refuse to grant access to documents on the ground that the workload relating to their disclosure would be disproportional to the objectives sought by the request for access to those documents (judgment in *Strack* v *Commission*, cited in paragraph 56 above, EU:C.2014:2250, paragraph 28), the Commission has not, in any event, relied on such exceptional circumstances in the present case. Moreover, the majority of the documents at issue have already been disclosed by that same institution.

135 Accordingly, the Commission cannot rely on the sole fact that the applicant requesting access was already, or was regarded as already being, in possession of the requested documents but on a different basis, for refusing to examine the request for access to those same documents under Regulation No 1049/2001, with the exception of the documents which, such as the annex to document No 267, had been made public due to their publication, inter alia.

136 In those circumstances, this plea in law must be upheld in so far as it concerns the documents which the applicant had, or has, in his possession, due to the fact that he is the author of those documents, or which have already been disclosed on a basis other than Regulation No 1049/2001 without, however, having been disclosed to the public.

The undisclosed documents ...

– The alleged infringement of the second subparagraph of Article 4(3) of Regulation No 1049/2001 ...

148 It should first be noted that, according to case-law, reliance on the exception laid down by the second subparagraph of Article 4(3) of Regulation No 1049/2001, applicable after a decision has been taken, is subject to strict conditions. It only covers certain types of documents and the condition justifying refusal to disclose is that the disclosure would 'seriously' undermine the institution's decision-making process (judgment in *Commission* v *Agrofert Holding*, cited in paragraph 139 above, EU:C:2012:394, paragraph 77).

149 Next, it should be noted that request No 590/2008 is characterised by the fact that it does not concern a single document but a whole host of documents referred to generally. As appears from paragraph 69 above, the applicant, in essence, requested access to a collection of documents referred to in a general manner, namely the complete OLAF investigation file OF/2002/0356, the complete and exact transcriptions of the sound recordings included in that file, all types of document which although not included in the file nevertheless concerned the abovementioned case/investigation or the applicant. OLAF's initial decision states in that regard that OLAF's file includes all documents relating to the case in question and that there are no documents relating to the case that are not in that file and are concerned by request No 590/2008.

150 As has been stated in paragraph 91 above, in such a situation, the recognition that there is a general presumption that the disclosure of documents of a certain nature would, in principle, undermine the protection of one of the interests listed in Article 4 of Regulation No 1049/2001 enables the institution concerned to deal accordingly with a global request (see, to that effect, judgment in *Commission* v *EnBW*, cited in paragraph 90 above, EU:C:2014:112, paragraphs 65 and 68).

151 OLAF's initial decision states in that regard that the documents included in category 1 concern notes taken by the investigators entrusted with the investigation file in question and contain the reasoning and analysis of the investigators and other agents responsible for the development and direction of the investigation, on both substantive and administrative issues. According to that decision, category 2 documents relate to correspondence between members of OLAF's staff or between its staff and that of the Commission as regards the investigation in question, the preparation of replies to the Ombudsman or to questions of the European Parliament. Those documents contain OLAF's and the Commission services' reflections on the investigation, which led to internal decisions. Lastly, the category 7 document is a draft final report on the investigation in question.

152 OLAF's initial decision states that, although the investigative operations have been brought to an end, the category 1, 2 and 7 documents, to which access is refused, were drafted exclusively for internal use, contain views intended for internal use and are part of deliberations and preliminary consultations within OLAF and the Commission. Those documents were disclosed to investigators of OLAF and of the Commission's services in order to obtain precise information from the officials concerned. The documents contain provisional positions as regards possible investigation strategies, operational activities and decisions to be taken. They contain reflections, analysis of the facts and the measures to be considered and reflect the process of elaborating external correspondence.

153 As OLAF's initial decision correctly states, public access to such documents would be particularly harmful to the ability of the Commission, and in particular of OLAF, to accomplish its mission to combat fraud in the public interest. The disclosure of the documents concerned would seriously undermine the Commission's and OLAF's decision-making process, because it would seriously compromise the complete independence of future OLAF investigations and their objectives by revealing OLAF's strategy and working methods and by reducing OLAF's chances of receiving independent assessments from its collaborators and of consulting the Commission's services on very sensitive subjects. Disclosure would also run the risk of discouraging individuals from providing information concerning possible cases of fraud and thereby deprive OLAF and the Commission of information that is of use for the purpose of undertaking investigations for the protection of the financial interests of the European Union (see, to that effect, judgment in *Catinis* v *Commission*, cited in paragraph 86 above, EU:T:2014:267, paragraph 54, concerning an ongoing OLAF investigation relating to the exception concerning the protection of the purpose of inspections, investigations and audits under the third indent of Article 4(2) of Regulation No 1049/2001).

154 That conclusion is all the more compelling since, according to the case-law, the exceptions to the right of access to documents, set out, in particular, in Article 4 of Regulation No 1049/2001, cannot, where, as in the present case, the documents in question fall within a particular area of EU law — in this case, the protection of the financial interests of the European Union and the fight against fraud, corruption and any other illegal activities detrimental to the financial interests of the European Union — be interpreted without taking account of the specific rules governing access to those documents (see, to that effect, judgment in *Commission* v *EnBW*, cited in paragraph 90 above, EU:C:2014:112, paragraph 83).

155 As is stated in Article 3 of Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999 establishing OLAF (OJ 1999 L 136, p. 20), OLAF is to exercise its powers of investigation in complete independence (see, to that effect, judgment of 8 July 2008 in *Franchet and Byk* v *Commission*, T-48/05, ECR, EU:T:2008:257, paragraph 255).

156 Article 8(2) of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by OLAF (OJ 1999 L 136, p. 1), adopted on the basis of Article 324 TFEU in order to fight against fraud and any other illegal activity affecting the financial interests of the European Union, provides that all information forwarded or obtained in the course of internal investigations, in whatever form, is to be subject to professional secrecy. Such information may not be communicated to persons other than those who, within the institutions of the European Union or of the Member States, are, as a result of their functions required to know that information. Nor may such information be used for purposes other than to prevent fraud, corruption or any other illegal activity.

157 As the Commission observed, the special confidentiality from which those documents relating to the investigation enjoy, and which is enjoyed even, to a certain extent, by persons allegedly concerned by such an investigation (see, to that effect, judgment in *Franchet and Byk* v *Commission*, cited in paragraph 155 above, EU:T:2008:257, paragraph 255), is justified not only in so far as OLAF receives, in the course of such an investigation, sensitive trade secrets and highly sensitive information in relation to persons in respect of whom disclosure could considerably harm their reputation, but also in so far as access to documents concerning an internal OLAF investigation, even after the procedure in question has been closed, and more specifically to those containing opinions intended for internal use as part of deliberations and preliminary consultations within OLAF would run the risk of seriously hindering the operations of that institution, revealing OLAF's methodology and strategy for obtaining information, compromising the willingness of persons involved in a procedure from collaborating in the future and, thereby, compromising the proper running of the procedures in question and the attainment of the objectives pursued.

158 Although Regulations No 1049/2001 and No 1073/1999 do not contain a provision expressly giving one regulation primacy over the other, and although it is necessary to ensure that each of those regulations is applied in a manner which is compatible with the other and enables them to be applied consistently (see, to that effect, judgment in *Commission* v *EnBW*, cited in paragraph 90 above, EU:C:2014:112, paragraph 84), in the present case, such application fully justifies the recognition of a presumption of refusal to grant access.

159 Moreover, in accordance with the Court's case-law, the administrative activity of the Commission does not require such extensive access to documents as that required by the legislative activity of an EU institution (judgment in *Commission* v *EnBW*, cited in paragraph 90 above, EU:C:2014:112, paragraph 91).

160 It follows that, as regards OLAF's internal investigation procedures under Regulation No 1073/1999, a general presumption of no access to the documents related to the investigation and, in particular, to those containing opinions intended for internal use in the course of deliberations and preliminary consultations within OLAF may result, inter alia, from the provisions of that regulation.

161 In those circumstances, the Commission was entitled, for the purposes of applying the exceptions laid down in Article 4(2) and (3) of Regulation No 1049/2001, to presume, without conducting a concrete and individual assessment of each of the documents in question, that public access to those documents, on the basis of Regulation No 1049/2001, would in principle harm the protection of the interests referred to in that regulation in order to conclude that all those documents were covered by the exception laid down in the second subparagraph of Article 4(3) of that regulation.

162 In the light of the foregoing considerations, the general presumption that the interests protected, inter alia, by the second subparagraph of Article 4(3) of Regulation No 1049/2001 would be undermined, which is justified in order to prevent any risk of seriously undermining the institution's decision-making process within the meaning of that provision, must be applied irrespective of the question whether the request for access concerns an investigation procedure which has already been closed or one which is ongoing.

163 The fact that a document relating to an OLAF internal investigation is dated after the closure of the investigation in question cannot, moreover, preclude its disclosure from being refused on the basis of the general presumption of refusal to grant access, provided that that document relates to the investigation, contains information relating to opinions for internal use as part of deliberations and preliminary consultations within OLAF and thereby contains information the disclosure of which could undermine OLAF's operations in its mission to combat fraud and corruption.

164 Similarly, the applicant's argument that correspondence between OLAF and the Commission cannot, in any event, fall within the definition of documents containing opinions for 'internal' use as part of deliberations and preliminary consultations within the meaning of the second subparagraph of Article 4(3) of Regulation No 1049/2001, in so far as OLAF and the Commission are not to be regarded as part of the same institution, must be rejected. In that regard, suffice it to note that Regulation No 1049/2001 is applicable to OLAF in so far as that institution is recognised, for the purposes of that regulation, as forming part of the Commission, which is referred to in Article 1(a) of the regulation among the institutions to which the regulation applies.

165 The same applies to the argument that OLAF's correspondence with third parties must necessarily be excluded from the exception laid down in the second subparagraph of Article 4(3) of Regulation No 1049/2001. Such exchanges may clearly contain information relating to opinions for internal use as part of deliberations and preliminary consultations within the institution concerned, in accordance with that provision, and the refusal to disclose them is therefore necessary in order to guarantee OLAF's independence and the confidentiality of its operations.

166 Furthermore, contrary to what the applicant claims, document No 2 of OLAF's list of 30 April 2010 cannot be regarded as being incorrectly filed among the investigation file notes in so far as that document is 'a note for the OLAF investigation file' in connection with a search linked to the case in question. The same applies to document No 34, which is clearly part of the investigation file notes in question, as the Court has been able to determine.

167 In addition, the applicant has not established, in his requests for access, that there is nonetheless a public interest which justifies the granting of access to the documents of the investigation at issue. It is for the applicant to point specifically to circumstances showing that there is an overriding public interest justifying the disclosure of the documents concerned (see, to that effect, judgment in *Strack* v *Commission*, cited in paragraph 56 above, EU:C:2014:2250, paragraph 128). Moreover, it appears from OLAF's initial decision that OLAF had in fact assessed whether there were any overriding interests and concluded that there was no evidence to that effect. Mere reliance on the principle of transparency and its importance is not sufficient in that regard (see, to that effect, judgment in *Strack* v *Commission*, cited in paragraph 56 above, EU:C:2014:2250, paragraphs 129 and 131). Finally, the applicant's contention that there is a special interest in disclosure in the particular case of internal investigations of fraud, such as that at issue in the present case, in order to avoid, by guaranteeing complete transparency, any appearance of recourse to arbitrary and irregular procedures, which would harm the reputation of the institutions and of the companies involved in the investigation, must be rejected, since such considerations are clearly not capable of taking precedence over the compelling grounds justifying the refusal to disclose the information in question.

168 Moreover, the abovementioned general presumption of refusal to grant access implies that the documents covered by that presumption fall outside the scope of the obligation to disclose their content in part pursuant to Article 4(6) of Regulation No 1049/2001 (see, to that effect, judgment in *Commission* v *EnBW*, cited in paragraph 89 above, EU:C:2014:112, paragraphs 134 and 135).

169 For all those reasons, the Commission could validly refuse to grant access to the documents marked 'NA' on the basis of the second subparagraph of Article 4(3) of Regulation No 1049/2001.

...

The documents disclosed in part

– Alleged infringement of Article 4(1)(b) of Regulation No 1049/2001 ...

198 The Court has previously held that the disclosure of personal data exclusively concerning the applicant for access in question cannot be refused on the ground that it would undermine the protection of privacy and the integrity of the individual (judgment of 22 May 2012 in *Internationaler Hilfsfonds* v *Commission*, T-300/10, ECR, EU:T:2012:247, paragraph 107).

199 That must be the case, in particular, where, as in the present case, there was no reason for considering that the applicant, who sought inter alia to make public alleged dysfunctions within OLAF in the processing of its complaint, had wished to limit the access to his personal data. Furthermore, OLAF's initial decision had granted him access to the data concerning him, stating that it acted in such a way on the sole basis of Regulation No 45/2001, without asking him to clarify the scope of his request for access in accordance with Article 6(2) of Regulation No 1049/2001, with the result that the Commission is ill-placed to reproach the applicant for not having been clear in that regard.

200 Accordingly, the Commission was wrong, as regards inter alia the documents referred to by the applicant in paragraph 173 above, to refuse to disclose the identity of the applicant on the basis of the exception set out in Article 4(1)(b) of Regulation No 1049/2001, with the result that the plea must be upheld to that extent and rejected as to the remainder.

...

Documents No 266 and No 268 and the circulation sheets ...

– The circulation sheets ...

249 The notion of a 'document', which is defined broadly in Article 3(a) of Regulation No 1049/2001 (see, to that effect, judgment of 12 September 2007 in *API* v *Commission*, T-36/04, ECR, EU:T:2007:258, paragraph 59), covers 'any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility'.

250 It is clear that the definition set out in Article 3(a) of Regulation No 1049/2001 is based, in essence, on the existence of content that is saved and that may be copied or consulted after it has been generated, it being stated, first, that the nature of the storage medium, the type and nature of the content stored, as well as the size, length, volume or presentation of the content, are irrelevant to the question whether or not content is covered by that definition and, second, that the only restriction on content that is capable of falling within that definition is the condition that it must relate to a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility (see, by analogy, judgment of 26 October 2011 in *Dufour* v *ECB*, T-436/09, ECR, EU:T:2011:634, paragraphs 88 and 90 to 93).

251 There is therefore no reason for excluding the circulation sheets from the scope of Article 3(a) of Regulation No 1049/2001 the scope of which cannot under any circumstances be restricted by any internal procedural rule adopted, where relevant, by the institutions, such as the Commission's detailed rules on the application of the annex to its internal rules of procedure (see paragraph 129 above), on which the Commission relies in support of its contention that the circulation sheets should be regarded as documents containing information which is 'irrelevant', 'ephemeral' and for which there are no grounds for recording in order to exclude them from the notion of a document within the meaning of Article 3(a) of Regulation No 1049/2001.

252 Moreover, in so far as the applicant for access does not have to justify his request for access to the documents (order in *Henkel and Henkel France* v *Commission*, cited in paragraph 128 above, EU:T:2013:116, paragraph 48), the real interest that the disclosure of the circulation sheets may represent for the applicant is also irrelevant for the purposes of Regulation No 1049/2001. Those circulation sheets make it possible, according to the applicant, to assign potential individual liability by making available information on officials who participated in the drafting of a document or whose approval is required and on the date of their participation in the drafting process of the document in question.

253 Furthermore, the Commission itself admits that the circulation sheets may include annotations and are not necessarily limited to setting out the names of the persons involved in the process of drafting and adopting the document to which they refer.

254 Lastly, since the files exist, the Commission has failed to explain how the disclosure of such files would represent a disproportional workload for OLAF.

...

The restriction-of-use clause ...

264 It should be noted that Article 2(4) of Decision 2006/291 provides that that decision is without prejudice to, and in no way affects, Regulation No 1049/2001. In addition, Article 16 of Regulation No 1049/2001 states that that regulation is to be without prejudice to any existing rules on copyright which may limit a third party's right to reproduce or exploit released documents.

265 As the Commission correctly submits, Decision 2006/291 lays down, for the purposes of reuse of public documents in its possession, as defined in Article 2(1) of the decision, an authorisation procedure for accessing the same documents distinct from that laid down in Regulation No 1049/2001.

266 Under Article 5(2) and (3) of Decision 2006/291, within 15 working days from registration of the application, the Commission service or the OPOCE is either to allow reuse of the document requested, and, where relevant, to provide a copy of the document, or, in a written reply, to indicate the total or partial refusal of the application, stating the reasons. In exceptional cases, the time limit may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given. In accordance with Article 5(4) of that decision, in the case of a refusal, the applicant is to be informed of the right to bring an action before the Court or to lodge a complaint with the Ombudsman.

267 There is no reason for considering that the applicant's requests for access were required to be interpreted as involving a request on the basis of Decision 2006/291, despite the fact that they mentioned only the possibility of publication of the documents without referring to that decision. Furthermore, as the Commission submits, the application of that decision presupposes that the documents in question are sufficiently identified and made public. Finally and most importantly, even supposing that the applicant's requests for access may be interpreted as having encompassed a request on the basis of Decision 2006/291 and that the restriction-of-use clause may be interpreted as containing an implied decision of OLAF refusing to grant access, and not as a mere reminder that the reuse of the documents at issue presupposes authorisation from the Commission, the applicant has not called that decision into question on the basis of Decision 2006/291.

...

On those grounds,

THE GENERAL COURT (First Chamber)

hereby:

1. **Declares that there is no longer any need to adjudicate on the lawfulness of the implied decisions refusing access to the documents, taken in the context of the applications for access made by Mr Guido Strack;**

2. **Declares that there is no longer any need to adjudicate on the lawfulness of the express decisions refusing access, in full or in part, to the documents, adopted by the Commission of the European Communities and by the European Anti-Fraud Office (OLAF) in the context of the confirmatory applications for access to documents made by Mr Strack on 22 February and 21 April 2008, in so far as those documents did not exist or were not available, those documents, or parts thereof, have been released to the public, or Mr Strack accepts the lawfulness of the decisions refusing access;**

3. Annuls OLAF's decision of 30 April 2010 in so far as:

— access to the documents marked 'PD' was refused;

— Mr Strack's name was concealed in the documents marked 'PA';

— documents were omitted from OLAF's list of 30 April 2010 or were not communicated to Mr Strack solely on the grounds that he was the author thereof, he had them in his possession for the purposes of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the institutions and bodies of the European Union and on the free movement of such data, or another provision, without those documents having been disclosed to the public, or they were not included in the application for access, since they related to exchanges between OLAF and the European Ombudsman, or between OLAF and Mr Strack, and they concerned Mr Strack, without being part of the investigation file in question;

4. Annuls OLAF's decision of 7 July 2010 in so far as:

— access to document No 266 was refused on the basis of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents;

— access to document No 268 was refused, with the exception of the information to which Mr Strack could have had access on the basis of Regulation No 1049/2001 in the context of the transmission of other documents;

— Mr Strack's name was concealed in the circulation sheets annexed to that decision;

5. Dismisses the action as to the remainder;

6. Orders the Commission to bear its own costs and to pay three quarters of those incurred by Mr Strack;

7. Orders Mr Strack to bear one quarter of his own costs.

Pelikánová Buttigieg Madise

Delivered in open court in Luxembourg on 26 April 2016.

[Signatures]