Reports of Cases

JUDGMENT OF THE GENERAL COURT (Seventh Chamber, Extended Composition)

22 March 2018 *

(Access to documents — Regulation (EC) No 1049/2001 — Documents concerning an ongoing legislative procedure — Trilogues — Four-column tables relating to the Proposal for a Regulation of the European Parliament and of the Council on Europol and repealing Decisions 2009/371/JAI and 2005/681/JAI — Partial refusal of access — Action for annulment — Interest in bringing proceedings — Admissibility — First subparagraph of Article 4(3) of Regulation No 1049/2001 — Exception relating to the protection of the decision-making process — No general presumption that access should be refused to four-column tables drawn up for the purposes of trilogues)

In Case T-540/15,

Emilio De Capitani, residing in Brussels (Belgium), represented by O. Brouwer, J. Wolfhagen and E. Raedts, lawyers,

applicant,

v

European Parliament, represented initially by N. Görlitz, A. Troupiotis and C. Burgos, and subsequently by Görlitz, Burgos and I. Anagnostopoulou, acting as Agents,

defendant,

supported by

Council of the European Union, represented by E. Rebasti, B. Driessen and J.-B. Laignelot, acting as Agents,

and by

European Commission, represented by J. Baquero Cruz and F. Clotuche-Duvieusart, acting as Agents,

interveners,

APPLICATION pursuant to Article 263 TFEU seeking annulment of Decision A(2015) 4931 of the European Parliament of 8 July 2015, refusing to grant the applicant full access to the documents LIBE-2013-0091-02 and LIBE-2013-0091-03,

THE GENERAL COURT (Seventh Chamber, Extended Composition),

composed of M. Van der Woude, acting as President, V. Tomljenović, E. Bieliūnas, A. Marcoulli and A. Kornezov (Rapporteur), Judges,

* Language of the case: English.

Registrar: P. Cullen, Administrator,

having regard to the written part of the procedure and further to the hearing on 20 September 2017,

gives the following

Judgment

Background to the dispute

1 By letter of 15 April 2015, the applicant, Mr Emilio De Capitani, submitted to the European Parliament, 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 (OJ 2001 L 145, p. 43), an application for access to documents drawn up by, or made available to, the Parliament and containing the following information: 'justifications for seeking early agreements on the current co-decision procedures put forward in all committees; multi-column tables (describing the Commission proposal, the Parliamentary Committee orientation, the Council internal bodies suggested amendments and, if existing, suggested draft compromises) submitted to trilogues for ongoing co-decision procedures' ('the initial application').

2 On 3 June 2015, the Parliament replied to the applicant that, because of the very large number of documents covered by the initial application, its processing would create an excessive administrative burden, and therefore the application had to be rejected.

3 By letter of 19 June 2015, the applicant submitted to the Parliament an application under Article 7(2) of Regulation No 1049/2001, in which he limited the documents referred to in paragraph 1 above to the multi-column tables drawn up in connection with ongoing trilogues at the time of the initial request, relating to ordinary legislative procedures which have as their legal basis Title V of the TFEU ('Area of freedom, security and justice') and Article 16 TFEU relating to the protection of personal data ('the confirmatory application').

4 In Decision A(2015) 4931 of 8 July 2015, the Parliament informed the applicant that it had identified seven multi-column tables relating to the confirmatory application. Parliament granted full access to five of them. However, as regards the other two tables, namely those contained in documents LIBE-2013-0091-02 and LIBE-2013-0091-03 ('the documents at issue'), the Parliament granted access only to the first three columns of those tables, thereby refusing to disclose the fourth column. The applicant challenges the refusal to grant full access to the documents at issue ('the contested decision').

5 The tables in the documents at issue contain four columns, the first containing the text of the Commission's legislative proposal, the second the position of the Parliament as well as the amendments that it proposes, the third the position of the Council and the fourth the provisional compromise text (document LIBE-2013-0091-02) or the preliminary positions of the Presidency of Council in relation to the amendments proposed by the Parliament (document LIBE-2013-0091-03).

6 The Parliament based the contested decision on the first subparagraph of Article 4(3) of Regulation No 1049/2001 in so far as, first, the fourth column of the documents at issue contains provisional compromise texts and preliminary positions of the Presidency of Council, the disclosure of which would actually, specifically and seriously undermine the decision-making process of the institution as well as the inter-institutional decision-making process in the context of the ongoing legislative procedure and, second, no overriding public interest which outweighs the public interest in the effectiveness of the legislative procedure had been identified in the present case.

7 The Parliament based the alleged serious undermining of the decision-making process on the following reasons:

– the decision-making process would be actually, specifically and seriously affected by the disclosure of the fourth column of the documents at issue;

– the area to which the documents at issue relate — police cooperation — is a very sensitive area and disclosure of the fourth column of those documents would harm the trust between the Member States and the EU institutions and, therefore, their good cooperation and the Parliament's internal decision-making process;

– disclosure at a time when the negotiations are still ongoing would likely lead to public pressure being exerted on the rapporteur, shadow rapporteurs and political groups, since the negotiations concern the very sensitive issues of data protection and the management board of the European Union Agency for Law Enforcement Cooperation and Training (Europol);

– granting access to the fourth column of the documents at issue would make the Presidency of Council more wary of sharing information and cooperating with the Parliament negotiating team and, in particular, the rapporteur; moreover, the Parliament negotiating team would be forced, on account of the increased pressure from national authorities and interest groups, to make premature strategic choices of determining where to give in to the Council and where to demand more from the Presidency, which would 'complicate dramatically the finding of an agreement on a common position';

– the principle that 'nothing is agreed until everything is agreed' is very important for the proper functioning of the legislative procedure and, therefore, disclosure before the end of the negotiations of one element, even if it is itself not sensitive, may have negative consequences on all other parts of a dossier; furthermore, disclosure of positions that have not yet become final risks giving an inaccurate idea of what the positions of the institutions actually are;

– therefore, access to the whole of the fourth column should be refused until the text agreed has been approved by the co-legislators.

8 As regards the existence of a possible overriding public interest, the Parliament maintains that the principle of transparency and the higher requirements of democracy do not and cannot constitute in themselves an overriding public interest.

Procedure and forms of order sought

9 The applicant brought the present action by application lodged at the Court Registry on 18 September 2015.

10 By documents lodged at the Court Registry on 21 January 2016, the Council and the Commission sought leave to intervene in the present proceedings in support of the form of order sought by the Parliament. In their observations, neither the applicant nor the Parliament raised any objections to those interventions.

11 On 9 February 2016, the Parliament lodged its defence at the Court Registry.

12 By decision of the President of the Fourth Chamber of the Court of 22 March 2016, the Council and the Commission were granted leave to intervene in the present case.

13 The reply was lodged at the Court Registry on 4 April 2016.

14 On 13 and 17 May 2016, the Commission and the Council submitted their respective statements in intervention to the Court Registry.

15 On 17 May 2016, the rejoinder was also lodged at the Court Registry.

16 On 6 July 2016, the applicant sent the Court Registry his observations on the statements in intervention.

17 As the composition of the Chambers of the General Court had been altered, the present case was assigned to the Seventh Chamber of the Court and to a new Judge-Rapporteur.

18 On 5 April 2017, the Court decided to refer the case to the Seventh Chamber, Extended Composition.

19 As a Member of the Chamber was unable to sit in the present case, the President of the Court designated the Vice-President of the Court to complete the Chamber pursuant to Article 17(2) of the Rules of Procedure of the Court.

20 By order of 18 May 2017, the Seventh Chamber, Extended Composition, of the Court ordered the Parliament, by way of measures of inquiry, to provide it with a copy of the documents at issue, which was, pursuant to Article 104 of the Rules of Procedure, not communicated to the applicant.

21 On 23 May 2017, the Seventh Chamber, Extended Composition, of the Court put questions to the parties for written answer by way of measures of organisation of procedure.

22 On 14 June 2017, the Parliament complied with the measures of inquiry.

23 On the same day, the applicant, the Parliament, the Council and the Commission lodged at the Court Registry the replies to the measures of organisation of procedure.

24 The applicant claims that the Court should:

– annul the contested decision;

– order the Parliament to pay the costs.

25 The Parliament, supported by the Council and the Commission, contends that the Court should:

– dismiss the action;

– order the applicant to pay the costs.

Law

Interest in bringing proceedings

26 In its reply of 14 June 2017 to the questions put by the Court by way of measures of organisation of procedure, the Parliament stated that it had received, on 23 October 2016, a request for access concerning, inter alia, the documents at issue and responded by making them available to the public through the register of parliamentary documents, given that the legislative procedure to which they related had been closed. The Parliament has cited the internet link providing access to those documents in footnote 3 of that reply.

27 At the hearing, the Council and the Commission claimed, in essence, that the applicant had thereby obtained satisfaction and thus lost his interest in bringing proceedings, and that there was therefore no need to adjudicate.

28 The applicant contends that he has not lost any interest in bringing proceedings.

29 It is settled case-law that an action for annulment brought by a natural or legal person is admissible only in so far as that person has an interest in the annulment of the contested measure (judgment of 10 December 2010, *Ryanair* v *Commission*, T-494/08 to T-500/08 and T-509/08, EU:T:2010:511, paragraph 41; orders of 9 November 2011, *ClientEarth and Others* v *Commission*, T-120/10, not published, EU:T:2011:646, paragraph 46, and of 30 April 2015, *EEB* v *Commission*, T-250/14, not published, EU:T:2015:274, paragraph 14).

30 An applicant's interest in bringing proceedings must, in the light of the purpose of the action, exist at the stage of lodging the action, failing which the action will be inadmissible and must continue until the final decision, failing which there will be no need to adjudicate, which presupposes that the action must be likely, if successful, to procure an advantage for the party bringing it (judgment of 10 December 2010, *Ryanair* v *Commission*, T-494/08 to T-500/08 and T-509/08, EU:T:2010:511, paragraphs 42 and 43; orders of 9 November 2011, *ClientEarth and Others* v *Commission*, T-120/10, not published, EU:T:2011:646, paragraphs 47 and 49, and of 30 April 2015, *EEB* v *Commission*, T-250/14, not published, EU:T:2015:274, paragraphs 15 and 17).

31 It is therefore necessary to examine whether the making available to the public of the documents at issue on the electronic register of parliamentary documents, after the legislative procedure to which they belonged has come to an end, deprives of purpose the application for annulment of the contested decision.

32 In that regard, it follows from the case-law that the applicant retains an interest in seeking annulment of the act of an EU institution to prevent its alleged unlawfulness recurring in the future. That interest in bringing proceedings follows from the first paragraph of Article 266 TFEU, under which the institution whose act has been declared void is required to take the necessary measures to comply with the judgment of the Court. However, that interest in bringing proceedings can exist only if the alleged unlawfulness is liable to recur in the future independently of the circumstances which have given rise to the action brought by the applicant (see judgment of 7 June 2007, *Wunenburger* v *Commission*, C-362/05 P, EU:C:2007:322, paragraphs 50 to 52 and the case-law cited). That is the situation in the present case, since the applicant's allegation of unlawfulness is based on an interpretation of one of the exceptions provided for in Regulation No 1049/2001 that the Parliament is very likely to rely on again at the time of a new request, particularly since part of the grounds for the refusal to grant access set out in the contested decision are universally applicable to any application for access to the work of ongoing trilogues (see, to that effect, judgment of 22 March 2011, *Access Info Europe* v *Council*, T-233/09, EU:T:2011:105, paragraph 35).

33 Moreover, both the applicant's initial application and confirmatory application explicitly sought for a certain number of documents to be disclosed to him relating to on-going legislative procedures. Accordingly, the making available to the public of the documents at issue after the legislative procedure to which they relate has come to an end does not give full satisfaction to the applicant on account of the purpose of his applications, so that he retains an interest in seeking the annulment of the contested decision.

Substance

34 In support of his application, the applicant raises two pleas in law: the first alleges a misapplication of the first subparagraph of Article 4(3) of Regulation No 1049/2001; the second alleges a failure to state reasons in the contested decision. It is necessary to start by examining the first plea.

35 There are three parts to that plea. The first part alleges that the Parliament did not demonstrate to the requisite legal standard, in order to refuse to grant full access to the documents at issue, that access to those documents would specifically, effectively and in a non-hypothetical manner seriously undermine the legislative process. The content of the second part relates to disregard for the principle of the widest possible access to EU legislative documents. According to the third part, the Parliament wrongly refused to recognise the existence of an overriding public interest in the present case justifying full access to the documents at issue. It is appropriate to examine first and together, the first two parts of the first plea.

Arguments of the parties

36 In the first place, the applicant submits that access to the fourth column of the documents at issue could be refused to him only if the Parliament had shown that there was a reasonably foreseeable — and not purely hypothetical — likelihood of the decision-making process being seriously undermined, and how full access to both documents at issue could specifically and actually undermine the protected interest. He highlights the importance of access to the fourth column of those documents in a representative democracy so that citizens can ask their representatives to account for the choices they have made and, where appropriate, to express their views, by the means they consider appropriate, on agreements reached in the relevant trilogues.

37 First, he states that the Parliament did not specify why the legislative proposal at issue, solely because it falls within the area of police cooperation, was to be regarded as being very sensitive and did not justify how it would have harmed the trust between the Member States or between the institutions if the compromise text in the fourth column of the two documents at issue had been disclosed. He states that the fact that intense discussions may result or do result from a legislative proposal does not in any way mean that an issue is sensitive to the point of justifying its being kept secret.

38 Second, the applicant disputes the ground for refusal given by the Parliament in the contested decision that disclosure of the fourth column of the documents at issue would give rise to increased public pressure, since the positions of the different institutions, with the exception of the compromise text, are already known and the legislative process must, in principle, take place publicly and in a transparent manner. The temporary nature of the information contained in the fourth column of tables such as those contained in the documents at issue ('the trilogue tables'), which the public is perfectly capable of grasping, does in fact demonstrate the importance of access to the tables, in order to give the public an idea of how the legislative negotiations are conducted and an overview of the various proposals that have been or are being discussed.

39 Third, the applicant submits that the Parliament failed to provide reasons why it considered that the principle that 'nothing is agreed until everything is agreed' justifies not disclosing the fourth column of the trilogue tables and how that principle is related to a serious undermining of the decision-making process. The applicant adds that the efficiency of the legislative process as such is not an objective that is cited or contained in Article 294 TFEU.

40 In the second place, the applicant claims that Parliament failed to take into consideration, in the contested decision, the fact that, in the present case, it acted in its capacity as co-legislator and that, in such a case, in principle, access should have been as wide as possible, in the light of the specific nature of the legislative process recognised in recital 6 and Article 12(2) of Regulation No 1049/2001.

He submits, moreover, that, in accordance with the case-law, the discretion left to the institutions not to disclose documents that are part of the normal legislative process is extremely limited or non-existent (judgment of 17 October 2013, *Council* v *Access Info Europe*, C-280/11 P, EU:C:2013:671, paragraph 63). To hold otherwise would mean that, by using trilogues during the first reading, the legislative procedure provided for in the Treaty be circumvented and EU citizens prevented from accessing documents to which they would otherwise have access.

41 More generally, he notes that the democratic model adopted by the European Union has two dimensions, the first relating to the presence of a representative democracy, as set out in Article 10(1) and (2) TEU, which means that representatives may be held accountable to citizens for the legislative decisions they take, and the second relating to the existence of a participatory democracy, which is enshrined in both Article 10(3) TEU and recital 2 of Regulation No 1049/2001, entitling EU citizens to participate in the decision-making process. The concept of transparency is relevant to both of those dimensions, although the Parliament has taken account of only the first of them.

42 In the third place, as regards the existence of a general presumption of non-disclosure of documents relating to the work of trilogues, as maintained by the Commission and the Council, the applicant, in his observations on the statements in intervention, contended that the presumption was contrary to the judgment of 16 July 2015, *ClientEarth* v *Commission* (C-612/13 P, EU:C:2015:486, paragraphs 77 and 78). In response to the measures of organisation of procedure set out in paragraph 21 above, concerning whether the trilogue tables satisfied the conditions required by the case-law in order to be covered by such a presumption, it replied in the negative, stating that the Court of Justice has allowed such general presumptions of non-disclosure only in relation to ongoing administrative or judicial proceedings. The trilogues do not qualify as such proceedings, but belong to the legislative process. Even if such a presumption could apply in the legislative field, it could not extend to trilogue tables, since they are currently the most crucial part in the EU legislative process.

43 First, the Parliament, supported by the Council and by the Commission, contends, in particular, that the organisation of a police force touches upon one of the core competences of the Member States and that some Member States may consider that cooperation in that area encroaches on their sovereignty. The sensitivity of the area concerned and of the legislative proposal in question is also illustrated by the extensive discussions that took place during negotiations on some of the aspects of that same proposal, such as the organisation of the management board of Europol or data protection. In that context, it becomes essential to ensure a time-limited non-disclosure of the fourth column of the trilogue tables.

44 The Parliament adds that the composition and powers of the management board of a newly created agency always give rise to intense discussions between the institutions. Similarly, there were considerable differences between the respective initial positions of the institutions concerning the protection and processing of data held by Europol. Given that those subjects have been a central feature throughout the trilogue procedure, which are merely examples of the parts of the legislative procedure at issue that were, according to the Parliament, objectively delicate, the contested decision, which seeks to maintain the confidentiality of the fourth column of the trilogue tables for a very brief period of time, was justified in the light of the effort made by the institutions in order to reach a satisfactory compromise.

45 The principle of ‘nothing is agreed until everything is agreed’ is thus merely a means of ensuring the internal and external consistency of the final compromise text. Early disclosure of the initial proposals of the institutions would significantly compromise the credibility of the legislative process and of the co-legislators themselves, who would have to be held accountable for a text that did not necessarily reflect their official position at that point in time.

46 Since the fourth column of the trilogue tables contains only provisional drafts of wording proposed during those trilogues and is not binding on the institutions, it cannot even be regarded as a preparatory document. Having full transparency during the legislative process and, in particular, during the trilogues would not only render the exception provided for in the first subparagraph of Article 4(3) of Regulation No 1049/2001 devoid of purpose, it could also undermine the 'objectives of good governance and participation of civil society provided for in Article 15(1) TFEU'.

47 Furthermore, the Parliament notes that the proper functioning of the legislative procedure provided for in Article 294 TFEU enjoys Treaty protection and could, following a case-by-case examination, 'justify the application of the exception laid down in Article 4(3)' of Regulation No 1049/2001, which 'also refers to the well-functioning and thus the efficiency of the decision-making process'.

48 The Council and the Commission submit, in particular, that the applicant's claim, that the efficiency of the legislative process as such is not an objective that is cited or contained in Article 294 TFEU, is manifestly incorrect.

49 Second, the Parliament, supported by the Council and the Commission, relying on an interpretation of the same legal framework and case-law that differs from that of the applicant, submits that the concepts of 'wider access' and, more specifically, the 'widest possible access', as provided for in Article 1 of Regulation No 1049/2001 cannot be regarded as equivalent to 'absolute access'. It submits that, with regard to the trilogue tables, it has a certain degree of discretion, the limit of which is defined by the proper functioning of the legislative process, as laid down in Article 294 TFEU and specified by the institutions, being jeopardised.

50 Moreover, the Parliament takes the view that the facts in the present case may be distinguished from those in the case giving rise to the judgment of 17 October 2013, *Council* v *Access Info Europe* (C-280/11 P, EU:C:2013:671), in that, inter alia, the negotiating mandates and the composition of the negotiating teams were voted on in public so that the institution's position was adopted in full transparency. It is only at a later stage of the procedure, when the legislative negotiations take place and a sensitive political balance is developing, that the Parliament considers that the fourth column of the trilogue table must be temporarily protected from any disclosure for a very limited period of time.

51 Third, in their statements in intervention, the Council and Commission proposed that the Court find there to be a general presumption of non-disclosure of the fourth column of trilogue tables while the trilogue procedure is ongoing. That presumption is dictated by the need to ensure that the integrity of the procedure be preserved by limiting intervention by third parties and to put the institutions in a position to perform effectively one of the powers entrusted to them by the Treaties. In response to the measures of organisation of procedure set out in paragraph 21 above, the Council added that, regardless of the subject matter and form of those tables, a general presumption of non-disclosure of the fourth column of the tables should be applied so as to ensure the viability of a potential compromise between institutions as well as the climate of trust in which the institutions are willing to make reciprocal concessions. In its view, the Court has already recognised the existence of a presumption despite the fact that it was not mentioned in the contested decision, as is clear from the judgment of 1 July 2008, *Sweden and Turco* v *Council* (C-39/05 P and C-52/05 P, EU:C:2008:374, paragraph 50).

52 In response to the measures of organisation of procedure set out in paragraph 21 above, the Parliament stated that it shared the view of the Commission and the Council that a general presumption of non-access to the fourth column of tables from ongoing trilogues should be recognised in order to preserve its efficiency at this very sensitive stage in interinstitutional negotiations.

Findings of the Court

53 In the contested decision, the Parliament refused to grant access to the fourth column of the documents at issue on the basis of the first subparagraph of Article 4(3) of Regulation No 1049/2001, claiming that disclosure of that column would actually, specifically and seriously undermine the decision-making process in question.

54 The applicant challenges the correctness of the contested decision on the ground that, in essence, the reasons underlying that decision are general and hypothetical, and are not such as to establish that there is a likelihood that the decision-making processes in question would be seriously undermined.

55 The Council and the Commission, on the other hand, ask the Court to find that there is a general presumption of non-disclosure according to which the institution concerned can refuse to grant access to the fourth column of ongoing trilogue tables. The Parliament, which did not rely on there being such a presumption in the contested decision, nevertheless endorsed that position.

56 In those circumstances, the Court considers it necessary to set out, as a preliminary matter, the case-law on the interpretation of Regulation No 1049/2001, followed by the principle characteristics of trilogues, before ascertaining, next, whether or not there is a general presumption that the institution concerned may refuse to grant access to the fourth column of ongoing trilogue tables. Lastly, in the event that the Court finds that there is no such presumption, it will consider whether the full disclosure of the documents at issue would seriously undermine the decision-making process in question within the meaning of the first paragraph of Article 4(3) of Regulation No 1049/2001.

– *Preliminary observations*

57 In accordance with recital 1 of Regulation No 1049/2001, that regulation reflects the wish to create a union in which decisions are taken as openly as possible and as closely as possible to the citizen. As is stated in recital 2 of Regulation No 1049/2001, the right of public access to documents of the institutions is related to the democratic nature of those institutions (judgments of 1 July 2008, *Sweden and Turco* v *Council*, C-39/05 P and C-52/05 P, EU:C:2008:374, paragraph 34, and of 17 October 2013, *Council* v *Access Info Europe*, C-280/11 P, EU:C:2013:671, paragraph 27).

58 To that end, the purpose of Regulation No 1049/2001, as indicated in recital 4 and Article 1 thereof, is to give the public a right of access that is as wide as possible (judgments of 1 February 2007, *Sison* v *Council*, C-266/05 P, EU:C:2007:75, paragraph 61; of 21 September 2010, *Sweden and Others* v *API and Commission*, C-514/07 P, C-528/07 P and C-532/07 P, EU:C:2010:541, paragraph 69, and of 17 October 2013, *Council* v *Access Info Europe*, C-280/11 P, EU:C:2013:671, paragraph 28).

59 That right is nonetheless subject to certain limitations based on grounds of public or private interest (judgment of 1 February 2007, *Sison* v *Council*, C-266/05 P, EU:C:2007:75, paragraph 62). More specifically, and in accordance with recital 11 of Regulation No 1049/2001, Article 4 of the regulation lays down a series of exceptions authorising the institutions to refuse access to a document where its disclosure would undermine the protection of one of the interests protected by that provision (judgments of 21 September 2010, *Sweden and Others* v *API and Commission*, C-514/07 P, C-528/07 P and C-532/07 P, EU:C:2010:541, paragraphs 70 and 71; 21 July 2011, *Sweden* v *MyTravel and Commission*, C-506/08 P, EU:C:2011:496, paragraph 74; and 17 October 2013, *Council* v *Access Info Europe*, C-280/11 P, EU:C:2013:671, paragraph 29).

60 One of the exceptions to such access is set out in the first subparagraph of Article 4(3) of Regulation No 1049/2001, which provides that 'access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution is to be refused where its disclosure would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure'.

61 Since such exceptions derogate from the principle that the public should have the widest possible access to the documents, they must be interpreted and applied strictly (judgments of 1 February 2007, *Sison* v *Council*, C-266/05 P, EU:C:2007:75, paragraph 63; of 1 July 2008, *Sweden and Turco* v *Council*, C-39/05 P and C-52/05 P, EU:C:2008:374, paragraph 36, and of 17 October 2013, *Council* v *Access Info Europe*, C-280/11 P, EU:C:2013:671, paragraph 30).

62 In accordance with the principle that derogations are to be interpreted strictly, if the institution concerned decides to refuse access to a document which it has been asked to disclose, it must, in principle, explain how access to that document could specifically and actually undermine the interest protected by the exception — among those laid down in Article 4 of Regulation No 1049/2001 — upon which it is relying. Moreover, the risk of that undermining must be reasonably foreseeable and not purely hypothetical (judgments of 21 July 2011, *Sweden* v *MyTravel and Commission*, C-506/08 P, EU:C:2011:496, paragraph 76; of 17 October 2013, *Council* v *Access Info Europe*, C-280/11 P, EU:C:2013:671, paragraph 31, and of 15 September 2016, *Herbert Smith Freehills* v *Council*, T-710/14, EU:T:2016:494, paragraph 33). The mere fact that a document concerns an interest protected by an exception is not of itself sufficient to justify application of that exception (judgments of 13 April 2005, *Verein für Konsumenteninformation* v *Commission*, T-2/03, EU:T:2005:125, paragraph 69; of 7 June 2011, *Toland* v *Parliament*, T-471/08, EU:T:2011:252, paragraph 29, and of 15 September 2016, *Herbert Smith Freehills* v *Council*, T-710/14, EU:T:2016:494, paragraph 32).

63 Therefore, the application of the exception laid down in the first subparagraph of Article 4(3) of Regulation No 1049/2001 requires it to be established that access to the documents requested was likely to undermine specifically and actually the protection of the institution's decision-making process, and that the likelihood of that interest being undermined was reasonably foreseeable and not purely hypothetical (see, to that effect, judgment of 7 June 2011, *Toland* v *Parliament*, T-471/08, EU:T:2011:252, paragraph 70 and the case-law cited).

64 According to the case-law, the decision-making process is 'seriously' undermined, within the meaning of the first subparagraph of Article 4(3) of Regulation No 1049/2001 where, inter alia, the disclosure of the documents in question has a substantial impact on the decision-making process. The assessment of that serious nature depends on all of the circumstances of the case including, inter alia, the negative effects on the decision-making process relied on by the institution as regards disclosure of the documents in question (judgments of 18 December 2008, *Muñiz* v *Commission*, T-144/05, not published, EU:T:2008:596, paragraph 75; of 7 June 2011, *Toland* v *Parliament*, T-471/08, EU:T:2011:252, paragraph 71, and of 9 September 2014, *MasterCard and Others* v *Commission*, T-516/11, not published, EU:T:2014:759, paragraph 62).

65 That case-law cannot be interpreted as requiring the institutions to submit evidence to establish the existence of such a risk. It is sufficient in that regard if the contested decision contains tangible elements from which it can be inferred that the risk of the decision-making process being undermined was, on the date on which that decision was adopted, reasonably foreseeable and not purely hypothetical, showing, in particular, the existence, on that date, of objective reasons on the basis of which it could reasonably be foreseen that the decision-making process would be undermined if the documents were disclosed (see, to that effect, judgment of 7 June 2011, *Toland* v *Parliament*, T-471/08, EU:T:2011:252, paragraphs 78 and 79).

66 However, according to the case-law, it is open to the institution concerned to base its decisions on general presumptions which apply to certain categories of documents, as considerations of a generally similar kind are likely to apply to requests for disclosure relating to documents of the same nature (judgments of 1 July 2008, *Sweden and Turco* v *Council*, C-39/05 P and C-52/05 P, EU:C:2008:374, paragraph 50; of 29 June 2010, *Commission* v *Technische Glaswerke Ilmenau*, C-139/07 P, EU:C:2010:376, paragraph 54, and of 17 October 2013, *Council* v *Access Info Europe*, C-280/11 P, EU:C:2013:671, paragraph 72).

67 While, in such a case, the institution concerned would not be under an obligation to carry out a specific assessment of the content of each of those documents, it must nevertheless specify on which general considerations it bases the presumption that disclosure of the documents would undermine one of the interests protected by the exception at issue, in the present case the exception laid down in the first paragraph of Article 4(3) of Regulation No 1049/2001 (see, to that effect, judgments of 21 September 2010, *Sweden and Others* v *API and Commission*, C-514/07 P, C-528/07 P and C-532/07 P, EU:C:2010:541, paragraph 76, and of 17 October 2013, *Council* v *Access Info Europe*, C-280/11 P, EU:C:2013:671, paragraph 73).

– *The nature of trilogues*

68 Given that the present dispute concerns access to the fourth column of tables drawn up for the purposes of ongoing trilogues, the Court considers it expedient to describe their essential characteristics. A trilogue is an informal tripartite meeting in which the representatives of the Parliament, the Council and the Commission take part. The aim of such exchanges is to reach a prompt agreement on a set of amendments acceptable to the Parliament and the Council, which must subsequently be approved by those institutions in accordance with their respective internal procedures. The legislative discussions conducted during a trilogue may concern both political and technical legal issues (see, to that effect, judgment of 15 September 2016, *Herbert Smith Freehills* v *Council*, T-710/14, EU:T:2016:494, paragraph 56).

69 Thus, the ordinary legislative procedure set out in Article 294 TFEU comprises three stages (first reading, second reading and third reading with conciliation), but it may be concluded after any one of those stages if the Parliament and the Council reach an agreement. Although the procedure may require up to three readings, the increased use of trilogues shows that an agreement is often reached during the first reading (judgment of 15 September 2016, *Herbert Smith Freehills* v *Council*, T-710/14, EU:T:2016:494, paragraph 57).

70 Trilogue meetings thus form an ‘established practice by which most EU legislation is adopted’ and are therefore regarded, by the Parliament itself, as ‘decisive phases of the legislative process’ (see Parliament resolution of 28 April 2016 on public access to documents, paragraphs 22 and 26). At the hearing, the Parliament stated that currently between 70 and 80% of the European Union’s legislative acts are adopted following a trilogue.

71 It is therefore important to recognise that the use of trilogues has over the years proved effective and flexible in that it has contributed significantly to increasing the possibilities for agreement at the various stages in the legislative process.

72 Furthermore, it is common ground that trilogue meetings are held in camera and that the agreements reached in those meetings, usually reflected in the fourth column of trilogue tables, are subsequently adopted, mostly without substantial amendment, by the co-legislators, as confirmed by the Parliament in its defence and at the hearing.

73 The Rules of Procedure of the Parliament, in the version applicable at the date on which the contested decision was adopted, provide in that regard certain rules governing the Parliament's participation in trilogues. Those rules are laid down in Rules 73 and 74 of Chapter 6, headed 'Conclusion of the legislative procedure', of the Rules of Procedure and Annexes XIX and XX thereof, which clearly shows that, according to the Rules of Procedure of the Parliament, trilogues are, indeed, part of the legislative process.

74 Moreover, it is clear from paragraph 27 of Parliament resolution of 28 April 2016 (see paragraph 70 above) that trilogue documents 'are related to legislative procedures and cannot, in principle, be treated differently from other legislative documents'.

75 Accordingly, and contrary to what the Council maintains in paragraph 43 of its statement in intervention, the Court finds that the trilogue tables form part of the legislative process.

– The existence of a general presumption of non-disclosure of the fourth column of tables from ongoing trilogues

76 It is now appropriate to determine, notwithstanding the fact that the documents at issue must be regarded as part of the legislative process, whether there is a general presumption of non-disclosure of the fourth column of tables from ongoing trilogues.

77 In that regard, first, it must be pointed out that primary EU law establishes a close relationship that, in principle, exists between legislative procedures and the principles of openness and transparency (see, to that effect, Opinion of the Advocate General Cruz Villalón in the case *Council* v *Access Info Europe*, C-280/11 P, EU:C:2013:325, points 39 and 40). In particular, Article 15(2) TFEU lays down that 'the Parliament shall meet in public, as shall the Council when considering and voting on a draft legislative act'.

78 In addition, it is precisely openness in the legislative process that contributes to conferring greater legitimacy on the institutions in the eyes of EU citizens and increasing their confidence in them by allowing divergences between various points of view to be openly debated. It is in fact rather a lack of information and debate which is capable of giving rise to doubts in the minds of citizens, not only as regards the lawfulness of an isolated act, but also as regards the legitimacy of the decision-making process as a whole (see, to that effect, judgment of 1 July 2008, *Sweden and Turco* v *Council*, C-39/05 P and C-52/05 P, EU:C:2008:374, paragraph 59).

79 The Court of Justice has already had occasion to point out that, in the context of the exception laid down in the first subparagraph of Article 4(3) of Regulation No 1049/2001, the terms 'decision' and 'decision-making process' of the institution concerned are to be seen in a particular light where the Council is acting in a legislative capacity (see, to that effect, judgments of 1 July 2008, *Sweden and Turco* v *Council*, C-39/05 P and C-52/05 P, EU:C:2008:374, paragraph 46, and of 22 March 2011, *Access Info Europe* v *Council*, T-233/09, EU:T:2011:105, paragraph 57).

80 Although, in general, giving the public the widest possible right of access, referred to in paragraph 58 above, entails that the public must have a right to full disclosure of the requested documents, the only means of limiting that right being the strict application of the exceptions provided for in Regulation No 1049/2001, those considerations are clearly of particular relevance where those documents are part of the European Union's legislative activity, a fact reflected in recital 6 of Regulation No 1049/2001, which states that even wider access must be granted to documents in precisely such cases. Openness in that respect contributes to strengthening democracy by allowing citizens to scrutinize all the information which has formed the basis of a legislative act. The possibility for citizens to find out the considerations underpinning legislative action is a precondition for the effective exercise of their democratic rights (see, to that effect, judgments of 1 July 2008, *Sweden and*

Turco v *Council*, C-39/05 P and C-52/05 P, EU:C:2008:374, paragraph 46; of 17 October 2013, *Council* v *Access Info Europe*, C-280/11 P, EU:C:2013:671, paragraph 33, and of 15 September 2016, *Herbert Smith Freehills* v *Council*, T-710/14, EU:T:2016:494, paragraph 35).

81 The principles of publicity and transparency are therefore inherent to the EU legislative process.

82 Second, it must be found that the case-law of the Court of Justice has found there to be a general presumption of non-disclosure only in relation to a set of documents which were clearly defined by the fact that they all belonged to a file relating to ongoing administrative or judicial proceedings (judgment of 16 July 2015, *ClientEarth* v *Commission*, C-612/13 P, EU:C:2015:486, paragraphs 77 and 78), but, until present, never in respect of the legislative process. Moreover, even in respect of administrative proceedings, the presumptions upheld by the EU Courts have been concerned with specific proceedings (see, regarding the review of State aid, judgment of 29 June 2010, *Commission* v *Technische Glaswerke Ilmenau*, C-139/07 P, EU:C:2010:376, paragraphs 54 and 55; regarding the review of mergers, judgment of 28 June 2012, *Commission* v *Éditions Odile Jacob*, C-404/10 P, EU:C:2012:393, paragraph 123, and, regarding Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 TFEU] and [102 TFEU] (OJ 2003 L 1, p. 1), judgment of 27 February 2014, *Commission* v *EnBW*, C-365/12 P, EU:C:2014:112, paragraph 93), whereas trilogue works cover, by definition, all fields of legislative activity.

83 Lastly, although the Council and the Commission contend that the effectiveness and integrity of the legislative process as set out in Article 13(1) TEU and Article 294 TFEU entitle the institutions to rely on a general presumption of non-disclosure of the fourth column of tables from ongoing trilogues, it should be noted that neither of those articles establishes such a presumption and that there is nothing in their wording to suggest the interpretation advanced by the intervening institutions, particularly since the effectiveness and integrity of the legislative process cannot undermine the principles of publicity and transparency which underlie that process.

84 Accordingly, the Court finds that no general presumption of non-disclosure can be upheld in relation to the fourth column of trilogue tables concerning an ongoing legislative procedure.

– *The existence of serious prejudice to the decision-making process*

85 Since the Parliament cannot base the contested refusal of access on a general presumption of non-disclosure, it remains to be examined whether that institution complied with its obligation to provide, in accordance with the case-law set out in paragraphs 62 and 63 above, explanations as to how full access to the documents at issue could undermine specifically and actually the interest protected by the exception laid down in the first subparagraph of Article 4(3) of Regulation No 1049/2001, the likelihood of which must be reasonably foreseeable and not purely hypothetical.

86 As a preliminary matter, it is important to note that the present action does not seek to obtain direct access to ongoing trilogue work within the meaning of Article 12 of Regulation No 1049/2001. Indeed, the present dispute is concerned solely with access to the fourth column of the documents at issue, which may take place only on specific request lodged pursuant to that regulation.

87 In the contested decision, the Parliament stated, in particular, that the tables at issue were drawn up for the purposes of ongoing trilogues, relating to a matter where a final decision had not yet been adopted either by it or by the co-legislators, so that the decision-making process ought to be regarded as ongoing. According to the Parliament, that process would be 'actually, specifically and seriously' affected by the disclosure of the fourth column of the tables at issue on account of the fact that the area of police cooperation, to which those tables related, was very sensitive, in particular as regards data protection and the management board of Europol. The Parliament also relies on the foreseeable

risk that disclosing the Presidency of Council's position before the end of the negotiations would be damaging to the good cooperation between institutions and affect the negotiation process, with the prospect of the loss of mutual trust and a revision of working methods, the risk of which could be prevented only after an agreement on all texts had been reached. It also stated that disclosure of the fourth column of the tables at issue would most probably lead to increased public pressure on the persons involved in the negotiations, rendering the adoption of a common position impossible or, at least, considerably more difficult. The Parliament thus invoked the principle that 'nothing is agreed until everything is agreed' to show that disclosure of one element, even if in itself not sensitive, could have negative consequences on all other parts of a dossier. The Parliament therefore concluded that access to the entirety of the fourth column of the tables at issue should be rejected 'until the text agreed has been approved by both parties'.

88 It follows from the foregoing, first, that the Parliament relied on specific considerations concerning an ongoing legislative procedure relating to the very sensitive nature of the area of police cooperation and, in particular, data protection in the context of such cooperation as well as the composition of Europol's management board. Second, the Parliament also relied on considerations of a general nature based, in essence, on the provisional nature of the information contained in the fourth column of the trilogue tables, the climate of trust during trilogue discussions, the risk of external pressure liable to affect the conduct of ongoing discussions, safeguarding its space to think and the temporary nature of the refusal to grant access.

89 In the first place, as far as concerns the specific considerations in the contested decision relating to the legislative procedure in question, it must first be pointed out that the fact, mentioned in the contested decision, that the documents at issue relate to the area of police cooperation cannot per se suffice in demonstrating the special sensitivity of the documents. To hold otherwise would mean exempting a whole field of EU law from the transparency requirements of legislative action in that field.

90 Second, as regards the assertion that the policies on the management and storage of data held by Europol are of a particularly sensitive nature, the Court notes that the documents at issue concern a proposal for a draft regulation, of general scope, binding in all of its elements and directly applicable in all the Member States, which naturally concerns citizens, all the more so since at issue here is a legislative proposal directly affecting the rights of EU citizens, inter alia their right to personal data protection (see, to that effect, judgment of 22 March 2011, *Access Info Europe* v *Council*, T-233/09, EU:T:2011:105, paragraph 77), from which it follows that the legislative proposal could not be regarded as sensitive by reference to any criterion whatsoever (see, to that effect, judgment of 17 October 2013, *Council* v *Access Info Europe*, C-280/11 P, EU:C:2013:671, paragraph 63).

91 Third, as regards the assertion that the discussions surrounding the composition of Europol's management board are of a very sensitive nature, the Court points out that this matter seems rather institutional or organisational in nature. Although such a matter may prove delicate, or even difficult, on account of the interests at stake, it cannot, however, be considered to be particularly sensitive in the absence of concrete evidence supporting such an assertion.

92 Fourth, it is clear from the complete version of the documents at issue, now published by the Parliament (see point 26 above), that the provisional proposals or agreements entered into the fourth column of those documents concerned abstract and general matters without any mention whatsoever of sensitive information relating, for example, to the fight against terrorism or organised crime or concerning, in any way, police data in respect of persons, operations or concrete projects.

93 It is clear, in particular, from document LIBE-2013-0091-02 that the text contained in the fourth column is an example of classic legislative work concerning the organisation of an agency, namely Europol, the definition of its relationship with national authorities and of its tasks, the composition of

its management board, etc. That column contains rules of a general nature, showing the agreed drafting amendments, indication of the points to be discussed at a later date or the subject of further discussion, shown by the term 'idem' at certain points, and several empty fields.

94 As far as concerns document LIBE-2013-0091-03, the fourth column also does not appear to contain any sensitive information and does no more than provide a limited number of general rules as well as several indications, such as 'the Parliament is invited to reconsider its amendment', 'the amendments by the Parliament may be considered' or 'the amendment by the Parliament could possibly be reflected in a recital', and several empty fields.

95 In addition, the information included in the fourth column of the documents at issue does not appear, in the circumstances of the present case, inherently more 'sensitive' than the information contained in the first three columns to which access was granted to the applicant in the contested decision.

96 Lastly, it should be noted that Regulation No 1049/2001 lays down a specific procedure in Article 9 where the document to which access is requested may be regarded as a 'sensitive document' (judgment of 22 March 2011, *Access Info Europe* v *Council*, T-233/09, EU:T:2011:105, paragraph 78), of which the Parliament did not, however, avail itself in the present case.

97 Accordingly, whilst relating to a matter of some importance, certainly characterised by both political and legal difficulty, the content of the fourth column of the documents at issue does not seem to be particularly sensitive to the point of jeopardising a fundamental interest of the European Union or of the Member States if disclosed (see, to that effect, judgment of 22 March 2011, *Access Info Europe* v *Council*, T-233/09, EU:T:2011:105, paragraph 78).

98 In the second place, as far as concerns the considerations of a general nature advanced in the contested decision, first, it must be noted, as regards the assertion that access, during a trilogue, to the fourth column of the documents at issue would increase public pressure on the rapporteur, shadow rapporteurs and political groups, that, in a system based on the principle of democratic legitimacy, co-legislators must be held accountable for their actions to the public. If citizens are to be able to exercise their democratic rights they must be in a position to follow in detail the decision-making process within the institutions taking part in the legislative procedures and to have access to all relevant information (judgment of 22 March 2011, *Access Info Europe* v *Council*, T-233/09, EU:T:2011:105, paragraph 69). Furthermore, Article 10(3) TEU states that every citizen is to have the right to participate in the democratic life of the Union and that decisions are to be taken as openly and as closely as possible to the citizen. Thus, the expression of public opinion in relation to a particular provisional legislative proposal or agreement agreed in the course of a trilogue and reflected in the fourth column of a trilogue table forms an integral part of the exercise of EU citizens' democratic rights, particularly since, as noted in paragraph 72 above, such agreements are generally subsequently adopted without substantial amendment by the co-legislators.

99 Although it has been recognised in the case-law that the risk of external pressure can constitute a legitimate ground for restricting access to documents related to the decision-making process, the reality of such external pressure must, however, be established with certainty, and evidence must be adduced to show that there is a reasonably foreseeable risk that the decision to be taken would be substantially affected owing to that external pressure (see, to that effect, judgment of 18 December 2008, *Muñiz* v *Commission*, T-144/05, not published, EU:T:2008:596, paragraph 86). There is no tangible evidence in the case file establishing, in the event of disclosure of the fourth column of the documents at issue, the reality of such external pressure. Therefore, nothing in the case file before the Court suggests that, as regards the legislative procedure in question, the Parliament could reasonably expect there to be a reaction beyond what could be expected from the public by any member of a legislative body who proposes an amendment to draft legislation (see, to that effect, judgment of 22 March 2011, *Access Info Europe* v *Council*, T-233/09, EU:T:2011:105, paragraph 74).

100 Second, as regards the provisional nature of information contained in the fourth column of trilogue tables, since its content is liable to evolve in line with the state of progress of the trilogues, the Court notes that the preliminary nature of that information does not per se justify the application of the exception provided for in the first subparagraph of Article 4(3) of Regulation No 1049/2001, since that provision does not draw a distinction according to the state of progress of the discussions. That provision envisages in general the documents relating to a question where a 'decision has not been taken' by the institution concerned, by contrast with the second subparagraph of Article 4(3) of that regulation, which envisages the situation where a decision has been taken by the institution concerned. In the present case, the preliminary nature of the ongoing discussions and the fact that no agreement or compromise has yet been reached concerning some of the proposals suggested do not therefore establish that the decision-making process has been seriously undermined (judgment of 22 March 2011, *Access Info Europe* v *Council*, T-233/09, EU:T:2011:105, paragraph 76).

101 In that regard, it is irrelevant whether the documents at issue were produced or received at an early, late or final stage of the decision-making process. In the same way, the fact of the documents having been produced or received in a formal or informal context has no effect on the interpretation of the exception laid down in the first sentence of Article 4(3) of Regulation N° 1049/2001 (see, to that effect, judgment of 15 September 2016, *Herbert Smith Freehills* v *Council*, T-710/14, EU:T:2016:494, paragraph 48).

102 Moreover, the Court has already had occasion to observe that a proposal is, by its nature, intended to be discussed and is not liable to remain unchanged following such discussion. Public opinion is perfectly capable of understanding that the author of a proposal is likely to amend its content subsequently (judgment of 22 March 2011, *Access Info Europe* v *Council*, T-233/09, EU:T:2011:105, paragraph 69). For precisely the same reasons, an applicant for access to documents of an ongoing trilogue will be fully aware of the preliminary character of that information. Similarly, he will be perfectly able to grasp that, in line with the principle that 'nothing is agreed until everything is agreed', the information contained in the fourth column is liable to be amended throughout the course of the trilogue discussions until an agreement on the entire text is reached.

103 Third, as regards the ground relating to a potential loss of trust between the institutions of the European Union and the likely deterioration of cooperation between them and, in particular, with the Presidency of Council, it must be borne in mind that the EU institutions are required to comply with the second sentence of Article 13(2) TEU, which states that 'the institutions shall practice mutual sincere cooperation' (judgment of 16 July 2015, *Commission* v *Council*, C-425/13, EU:C:2015:483, paragraph 64). That cooperation is of particular importance for the legislative activity of the European Union, which requires there to be a close process of collaboration between the institutions concerned. Thus, where the responsibility for conducting an EU legislative procedure is conferred on several institutions, they are required, in accordance with the duty of sincere cooperation also set out in the first subparagraph of Article 4(3) TEU, to act and cooperate so that the procedure can be conducted effectively, which implies that any deterioration in the confidence incumbent on the institutions would constitute a failure to fulfil that duty.

104 It must be observed, on the one hand, that it is precisely in accordance with the principle of sincere cooperation that, in this case, the Parliament consulted, as it stated at the hearing, the Council and the Commission before adopting the contested decision, but that, on the other hand, in support of the assertion of the principle set out in paragraph 103 above, the Parliament has not produced any tangible evidence, which implies that the alleged risk is hypothetical in the absence of any specific evidence capable of demonstrating that, as regards the legislative procedure in question, access to the fourth column of the documents at issue would have undermined the loyal cooperation incumbent on the institutions concerned. Moreover, since in the course of trilogues the institutions express their respective positions on a given legislative proposal, and accept that their position could thus evolve, the fact that those elements are then disclosed, on request, is not per se capable of undermining the mutual loyal cooperation which the institutions are required to practice pursuant to Article 13 TEU.

105 Fourth, as regards the need, emphasised by the Parliament, the Council and the Commission in the context of the present proceedings, to have space to think, the Court points out that trilogues are part of the legislative process, as has been stated in paragraph 75 above, and that trilogues represent, in the words of Parliament itself, 'a substantial phase of the legislative procedure, and not a separate "space to think"' (Parliament resolution of 14 September 2011 on public access to documents, paragraph 29).

106 Moreover, as the Parliament stated at the hearing, prior to the entry of the compromise text into the fourth column of trilogue tables, discussions may take place during meetings for the preparation of such text between the various participants, so that the possibility of a free exchange of views is not called into question, particularly since, as noted in paragraph 86 above, the present case does not concern the issue of direct access to the work of the trilogues, but only that of access to documents drawn up in the context of those trilogues following a request for access.

107 Fifth, as regards the ground relating to the temporary character of the refusal, owing to the fact that, once the work is completed, full access to the trilogue tables could, depending on the case, be granted, it must be noted, first of all, that the work of the trilogues could be prolonged over significant periods of time. The applicant thus stated at the hearing, without being contradicted, that the duration of trilogues lasted on average seven to twelve months. There could therefore be a significant period of time during which trilogue work remains a secret from the public. In addition, the duration of that work remains open-ended in so far as it varies according to each legislative procedure.

108 Next, the minutes which the Parliament's negotiating team participating in the trilogues is required to draw up for the next meeting of the relevant parliamentary committee, pursuant to the second subparagraph of Rule 73(4) of the Rules of Procedure of the Parliament, are not capable of remedying the lack of transparency in trilogue work during that period of time. In response to the measures of organisation of procedure, the Parliament explained that these minutes were characterised by 'great flexibility in their form' and that '[there] [was] no uniform practice as regards the form and disclosure of the minutes reporting between the various parliamentary committees'. Such minutes can thus take the form of a communiqué from the president or rapporteur of the relevant commission, addressed to all members or only to the coordinators' meeting, the latter of which is generally held in camera, or generally of an oral communiqué, or even a brief note in the news bulletin of that committee. The absence of detailed and uniform minutes, and the variable disclosure thereof, do not therefore mitigate the lack of transparency of ongoing trilogue work.

109 Lastly, as has been stated in paragraph 70 above, the work of the trilogues constitutes a decisive stage in the legislative process, since the agreement eventually reached is liable to be adopted, mostly without substantial amendment, by the co-legislators (see paragraph 72 above). For those reasons, the refusal to grant the access at issue cannot legitimately be justified by its temporary character, without exception and without distinction. Such a blanket justification, capable of being applied to all trilogues, could de facto operate to all intents and purposes as a general presumption of non-disclosure, reliance on which has, however, been rejected (see paragraphs 76 to 84 above).

110 The Court notes, moreover, that, in its resolution of 11 March 2014 on public access to documents, the Parliament called on the Commission, the Council and itself 'to ensure the greater transparency of informal trilogues, by holding the meetings in public, publishing documentation including calendars, agendas, minutes, documents examined, amendments, decisions taken, information on Member State delegations and their positions and minutes, in a standardised and easily accessible online environment, by default and without prejudice to the exemptions listed in Article 4(1) of Regulation No 1049/2001'.

111 Having regard to all the foregoing, none of the grounds relied on by the Parliament, considered separately or as a whole, demonstrates that it was reasonably foreseeable and not purely hypothetical that full access to the documents at issue was likely to undermine, specifically and actually, the decision-making process at issue within the meaning of the first subparagraph of Article 4(3) of Regulation No 1049/2001.

112 However, the Court notes that the applicant's assertion that the Parliament does not have any discretion to refuse to grant access to documents drawn up in the framework of ongoing trilogues cannot be upheld. That line of argument amounts to denying the institutions the possibility of justifying a refusal to grant access to legislative documents on the basis of the exception set out in the first subparagraph of Article 4(3) of Regulation No 1049/2001, despite the fact that that exception does not exclude the legislative process from its scope. Thus, it remains open to the institutions to refuse, on the basis of that provision, to grant access to certain documents of a legislative nature in duly justified cases.

113 It follows from all the foregoing that the Parliament infringed the first subparagraph of Article 4(3) of Regulation No 1049/2001 by refusing, in the contested decision, to disclose, whilst the procedure was ongoing, the fourth column of the documents at issue on the ground that to do so would seriously undermine its decision-making process.

114 Consequently, it is necessary to annul the contested decision without there being any need to determine whether there is an overriding public interest justifying the disclosure of that information or to consider the second plea, alleging breach of the obligation to state reasons (see, to that effect, judgment of 22 March 2011, *Access Info Europe* v *Council*, T-233/09, EU:T:2011:105, paragraph 85).

Costs

115 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Parliament has been unsuccessful, it must be ordered to bear its own costs and to pay those of the applicant, in accordance with the form of order sought by it.

116 In accordance with Article 138(1) of the Rules of Procedure, the institutions which have intervened in the proceedings are to bear their own costs. The Council and the Commission must therefore bear their own costs.

On those grounds,

THE GENERAL COURT (Seventh Chamber, Extended Composition)

hereby:

1. **Annuls Decision A(2015) 4931 of the European Parliament of 8 July 2015 in so far as it refuses to grant Mr Emilio De Capitani full access to documents LIBE-2013-0091-02 and LIBE-2013-0091-03;**

2. **Orders the Parliament to bear its own costs and to pay those incurred by Mr De Capitani;**

3. **Orders the Council of the European Union and the European Commission to bear their own costs.**

Van der Woude Tomljenović Bieliūnas

Marcoulli Kornezov

Delivered in open court in Luxembourg on 22 March 2018.

E. Coulon
Registrar

S. Frimodt Nielsen
President