Reports of Cases

JUDGMENT OF THE GENERAL COURT (Third Chamber)

6 February 2020*

(Access to documents — Regulation (EC) No 1049/2001 — Commission documents relating to the interpretation of a provision of EU law — Documents originating from a third party — Documents originating from a Member State — Regulation (EC) No 1370/2007 — Partial refusal to grant access — Total refusal to grant access — Obligation to state reasons — Exception relating to the protection of court proceedings — Overriding public interest)

In Case T-485/18,

Compañía de Tranvías de la Coruña, SA, established in Corunna (Spain), represented by J. Monrabà Bagan, lawyer,

applicant,

v

European Commission, represented by W. Mölls and C. Ehrbar, acting as Agents,

defendant,

APPLICATION under Article 263 TFEU for annulment of the Commission's decision of 7 June 2018 refusing, partially or totally, to grant the applicant access to documents relating to the Commission's opinion sent to the French Republic concerning the fact that the metro lines contract is valid until 2039,

THE GENERAL COURT (Third Chamber),

composed, at the time of the deliberation, of S. Frimodt Nielsen, President, V. Kreuschitz (Rapporteur) and N. Półtorak, Judges,

Registrar: E. Coulon,

gives the following

* Language of the case: English.

Judgment

Background to the dispute

1 On 19 December 2017, the applicant, Compañía de Tranvías de la Coruña, SA, requested access to several documents of the European Commission's Directorate-General (DG) Mobility and Transport pursuant to 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).

2 In the request for access, the applicant referred to the entry into force of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) No 1191/69 and (EEC) No 1107/70 (OJ 2007 L 315, p. 1), and Loi n.º 2009-1503, du 8 décembre 2009, relative à l'organisation et à la régulation des transports ferroviaires et portant diverses dispositions relatives aux transports (French Law No 2009-1503 of 8 December 2009 on the organisation and regulation of rail transport and introducing various provisions relating to transport) (JORF of 9 December 2009, p. 21226). In addition, it explained that it was aware that the Commission had sent the French Republic its opinion on the fact that the metro lines contract is valid until 2039. In that context, it requested access to all existing documents relating to that matter, including any internal correspondence, to all documents relating to that matter whether or not exchanged with the Société nationale des chemins de fer français (SNCF), the Régie autonome des transports parisiens (RATP) or representatives or officials of the French Government, to the Commission's opinions and to the minutes of meetings or any other document of any kind relating to that matter.

3 By letter of 5 March 2018, the Director-General of DG Mobility and Transport informed the applicant that 27 documents were liable to fall within the scope of the request for access and that, after examining the documents, he had decided, on the basis of Article 4(1)(b) and the second indent of Article 4(2) of Regulation No 1049/2001, to grant partial access to 13 of those 27 documents and to refuse to disclose the other 14 documents. The Commission attached to its letter a list of those 27 documents and the documents in respect of which partial access had been granted.

4 On 19 March 2018, the applicant made a confirmatory application to the Commission pursuant to Article 8 of Regulation No 1049/2001, requesting it to reconsider the position set out in the letter of 5 March 2018. In that application, it disputed the total and partial refusals to disclose the documents at issue in so far as those refusals were justified by the protection of court proceedings in accordance with the second indent of Article 4(2) of Regulation No 1049/2001.

5 By decision of the Secretary General of the Commission of 7 June 2018, adopted on behalf of the Commission pursuant to Article 4 of the Implementing Rules for Regulation No 1049/2001 (C(2018) 3780 final), a response was given to the confirmatory application ('the contested decision').

6 In the contested decision, the Commission, pursuant to the second indent of Article 4(2) of Regulation No 1049/2001, first confirmed the refusal to disclose 10 of its documents and 4 documents originating from the French Republic, secondly, confirmed the granting of partial access to 10 of its documents and, thirdly, totally refused access to 3 documents originating from the RATP in respect of which disclosure had been partially authorised. It stated as the reason for that decision the need to protect ongoing court proceedings in the cases that have since given rise to the judgment of 21 March 2019, *Mobit and Autolinee Tuscane* (C-350/17 and C-351/17, EU:C:2019:237), and, in respect of the latter 3 documents, the order of 12 July 2018, *RATP* v *Commission*, (T-250/18 R, not published, EU:T:2018:458), and the order of 12 September 2019, *RATP* v *Commission*, (T-250/18, not published, EU:T:2019:615). It considered, in essence, that the content of the undisclosed passages in those documents was closely linked to the legal issues raised in the court proceedings in question. In

addition, the Commission examined whether it was possible to grant partial access to the documents requested or whether an overriding public interest could justify their disclosure and concluded that examination by confirming its partial or total refusal to grant access to the documents at issue.

Procedure and forms of order sought

7 By application lodged at the Court Registry on 9 August 2018, the applicant brought the present action.

8 The applicant claims that the Court should:

– annul the contested decision;

– order the Commission to pay the costs.

9 The Commission contends that the Court should:

– dismiss the action;

– order the applicant to pay the costs.

10 Pursuant to Article 91(c) of the Rules of Procedure of the General Court, the Court, by order of 3 May 2019, requested the Commission to produce all the documents to which access had been partially or totally refused in the contested decision. The Commission produced those documents within the prescribed time limits.

11 In addition, by way of measures of organisation of procedure pursuant to Article 89 of the Rules of Procedure, the Court invited the parties to lodge certain documents and put written questions to the parties. The parties provided those documents and responded to the questions within the prescribed time limits.

12 None of the parties made a request to be heard at a hearing pursuant to Article 106 of the Rules of Procedure. The Court (Third Chamber) decided, pursuant to Article 106(3) of the Rules of Procedure, to rule on the action without an oral part of the procedure.

Law

Preliminary observations

13 At the end of the section of the application setting out each of the pleas in law, the applicant also claims that the Court should order the Commission to disclose to it the documents to which the contested decision totally or partially refused to grant it access.

14 Those claims must be dismissed as inadmissible. It is settled case-law that the Court is not entitled, in the context of a review of legality on the basis of Article 263 TFEU, to issue directions to the institutions or to assume the role assigned to them. That limitation of the scope of judicial review applies to all types of contentious matters that might be brought before the Court (see, to that effect, order of 3 June 2010, *Z* v *Commission*, T-173/09, not published, EU:T:2010:221, paragraph 29 and the case-law cited, and judgment of 9 October 2018, *Pint* v *Commission*, T-634/17, not published, EU:T:2018:662, paragraph 19).

The first plea in law

Scope of the first plea

15 The applicant submits that the refusal to grant access to the documents which it had requested in the present case could not be justified on the basis of the second indent of Article 4(2) of Regulation No 1049/2001. According to the applicant, the main purpose of the request for access was to determine the commencement date used by the Commission for public service contracts awarded in accordance with EU law and national law where they fell within the scope of the exception provided for in Article 8(3)(b) of Regulation No 1370/2007. The applicant submits that none of the questions referred for a preliminary ruling in the cases that have since given rise to the judgment of 21 March 2019, *Mobit and Autolinee Toscane* (C-350/17 and C-351/17, EU:C:2019:237), explicitly asked the Court of Justice to interpret or determine the commencement date for public service contracts awarded in accordance with EU law and national law and falling within the scope of that exception. The applicant is not aware of any direct link, required for the application of the second indent of Article 4(2) of Regulation No 1049/2001, between those cases and the information it had initially requested. Moreover, the Commission failed to examine specifically and individually the content of the documents in respect of which access was requested.

16 The applicant concludes that the contested decision does not provide an adequate statement of reasons for linking the request for access to the cases that have since given rise to the judgment of 21 March 2019, *Mobit and Autolinee Toscane* (C-350/17 and C-351/17, EU:C:2019:237), and justifying the application of the exception laid down in the second indent of Article 4(2) of Regulation No 1049/2001. In particular, it submits that, when interpreting whether an institution has given an adequate explanation for its decision, the risk of undermining court proceedings must be reasonably foreseeable and not purely hypothetical. To that end, conclusions should be supported by detailed evidence, having regard to the specific content of the report, making it possible to understand the reasons why disclosure of that report would have been liable seriously to undermine the decision-making process. In addition, the statement of reasons for a measure should not be general and abstract. According to the applicant, the contested decision does not contain any detailed reasoning that justifies the partial or total refusal to grant access to the documents requested.

17 The Commission contends, in essence, that the non-disclosure of all or part of the documents at issue was justified by the existence of a sufficient link between those documents and the legal issues raised before the Court of Justice in the cases that have since given rise to the judgment of 21 March 2019, *Mobit and Autolinee Toscane* (C-350/17 and C-351/17, EU:C:2019:237), and that the contested decision contained an adequate statement of reasons.

18 As a preliminary point, it should be noted that although, in the application, the first plea formally alleges ‘infringement of essential procedural requirements’, some arguments put forward in support of that plea concern the obligation to state reasons and others concern the question whether the statement of reasons is well founded.

19 In that regard, it must be recalled that the obligation to state reasons is a general principle of EU law, enshrined in the second paragraph of Article 296 TFEU and in Article 41(1) of the Charter of Fundamental Rights of the European Union, under which any legal act adopted by the EU institutions must state the reasons on which it is based. That obligation means that the EU institutions must disclose clearly and unequivocally the reasoning of the author of the measure in such a way as to enable, on the one hand, interested parties to ascertain the reasons for the measure adopted in order to enable them to protect their rights, and, on the other hand, the court having jurisdiction to exercise its power of review (judgments of 2 April 1998, *Commission* v *Sytraval and Brink’s France*,

C-367/95 P, EU:C:1998:154, paragraph 63, and of 4 June 2013, *ZZ*, C-300/11, EU:C:2013:363, paragraph 53; see also judgment of 5 December 2013, *Commission* v *Edison*, C-446/11 P, not published, EU:C:2013:798, paragraph 21 and the case-law cited).

20 Thus, in the context of applying the provisions of Regulation No 1049/2001, it has been held that the purpose of the obligation on the institution to state the reasons for its decision refusing to grant access to a document is, first, to provide the person concerned with sufficient information to make it possible to determine whether the decision is well founded or whether it is vitiated by an error which may permit its validity to be contested and, secondly, to enable the Courts of the European Union to review the lawfulness of the decision. The extent of that obligation depends on the nature of the measure at issue and the context in which it was adopted (see judgment of 25 April 2007, *WWF European Policy Programme* v *Council*, T-264/04, EU:T:2007:114, paragraph 36 and the case-law cited).

21 In the light of its content and function in the EU legal order, the obligation to state reasons has been described as an essential procedural requirement which may, or even must, be raised by the Court of its own motion (see, to that effect, judgment of 20 May 2009, *VIP Car Solutions* v *Parliament*, T-89/07, EU:T:2009:163, paragraph 65 and the case-law cited) and which must be distinguished from the question whether the reasoning is well founded, which goes to the substantive legality of the measure at issue (judgment of 5 December 2013, *Commission* v *Edison*, C-446/11 P, not published, EU:C:2013:798, paragraph 20; see also judgment of 17 September 2015, *Total* v *Commission*, C-597/13 P, EU:C:2015:613, paragraph 18 and the case-law cited).

22 Accordingly, in the present case it is necessary to assess, first, the arguments put forward in support of the complaint alleging infringement of the obligation to state reasons and, secondly, those put forward in support of the complaint alleging infringement of the second indent of Article 4(2) of Regulation No 1049/2001.

The complaint alleging infringement of the obligation to state reasons

23 As regards the 20 documents originating from the Commission, it is apparent from the contested decision that access to them was partially or totally refused. The Commission justified its position in that decision by stating that those documents concerned the compatibility of French legislation with Regulation No 1370/2007 and included exchanges between it, the RATP and the French authorities, as well as exchanges between its various departments, including its legal service. In addition, the Commission stated that one of the questions referred for a preliminary ruling by the Italian Council of State to the Court of Justice in the cases that have since given rise to the judgment of 21 March 2019, *Mobit and Autolinee Toscane* (C-350/17 and C-351/17, EU:C:2019:237), concerned the interpretation of the provisions of that regulation, which was at issue in those assessments of the French legislation. It concluded that the information contained in the documents requested was directly related to the questions referred for a preliminary ruling by the Italian Council of State that were likely to be analysed by the Court of Justice. According to the Commission, the disclosure of the full versions of the documents requested would therefore affect the protection of those ongoing court proceedings in the cases that have since given rise to the judgment of 21 March 2019, *Mobit and Autolinee Toscane* (C-350/17 and C-351/17, EU:C:2019:237). The Commission also stated in that decision that disclosure of the documents requested would seriously affect its position and that of the French authorities and the RATP in those cases, which were pending, since those documents contained internal deliberations and arguments that could be used in such a way as to place the parties at a disadvantage in the ongoing proceedings.

24 As regards the four documents originating from the French authorities, the Commission found, in the contested decision, that those authorities had given appropriate reasons to refuse to grant access under the second indent of Article 4(2) of Regulation No 1049/2001. It stated that those authorities had taken

the view that the documents requested were closely linked to the legal issues raised by the Italian Council of State in the ongoing court proceedings in the cases that have since given rise to the judgment of 21 March 2019, *Mobit and Autolinee Toscane* (C-350/17 and C-351/17, EU:C:2019:237), and that, at first sight, those arguments justified the application of that provision. The Commission therefore decided not to disclose those documents pursuant to that provision.

25 As regards the three documents originating from the RATP, the Commission stated in the contested decision that the partial disclosure of those documents decided in response to another request for access had been contested before the Courts of the European Union by the RATP (see the cases that have since given rise to the order of 12 July 2018, *RATP* v *Commission*, (T-250/18 R, not published, EU:T:2018:458), and the order of 12 September 2019, *RATP* v *Commission* (T-250/18, not published, EU:T:2019:615)), with the result that it could not grant access to those documents pursuant to the second indent of Article 4(2) of Regulation No 1049/2001, owing not only to the cases that have since given rise to the judgment of 21 March 2019, *Mobit and Autolinee Toscane* (C-350/17 and C-351/17, EU:C:2019:237), which were pending, but also to the case that gave rise to the order of 12 September 2019, *RATP* v *Commission* (T-250/18, not published, EU:T:2019:615), which was pending.

26 Lastly, the Commission refused to grant partial access to the documents requested on the ground that there was no possibility of granting such access without jeopardising the interests in question. It also considered that there was no overriding public interest justifying disclosure of those documents. In particular, it found that, even if there could be a certain public interest underlying the questions of interpretation of Article 8(3) of Regulation No 1370/2007, there was no need to take into account the applicant's particular interest in connection with a request for access under Regulation No 1049/2001. Consequently, it concluded that, in the present case, there was no overriding public interest that might prevail over the interest in protecting ongoing court proceedings referred to in the second indent of Article 4(2) of that regulation.

27 In the light of the foregoing, it must be held that the Commission provided the applicant with sufficient information to enable it to determine whether the decision was well founded or whether it was vitiated by an error permitting its validity to be contested. Moreover, on the basis of those grounds, the applicant was able to challenge, in the present case, both the Commission's assessment that there was a direct link between the cases that have since given rise to the judgment of 21 March 2019, *Mobit and Autolinee Toscane* (C-350/17 and C-351/17, EU:C:2019:237), and the information requested by the applicant, and the Commission's assessment that the overriding public interest had been duly taken into account in the present case.

28 Moreover, the statement of reasons for the contested decision enables the Court to review the lawfulness of that decision.

29 Consequently, the complaint alleging infringement of the obligation to state reasons must be dismissed.

The complaint alleging infringement of the second indent of Article 4(2) of Regulation No 1049/2001

– *The right of access in general*

30 Regulation No 1049/2001 is intended, as is apparent from recital 4 and from Article 1, to give the fullest possible effect to the right of public access to documents of the institutions. That right is nonetheless subject to certain limitations based on grounds of public or private interest. Thus, Article 4 of Regulation No 1049/2001 provides for a system of exceptions allowing the institutions to refuse to grant access to a document where its disclosure would undermine the protection of one of the interests protected by that provision.

31 Since such exceptions derogate from the principle of the widest possible public access to documents, they must be interpreted and applied strictly (see judgments of 17 October 2013, *Council* v *Access Info Europe*, C-280/11 P, EU:C:2013:671, paragraph 30 and the case-law cited, and of 15 September 2016, *Philip Morris* v *Commission*, T-18/15, not published, EU:T:2016:487, paragraph 33 and the case-law cited).

32 Moreover, the mere fact that a document concerns an interest protected by an exception to the right of access laid down in Article 4 of Regulation No 1049/2001 is not sufficient to justify the application of that exception (judgments of 3 July 2014, *Council* v *in 't Veld*, C-350/12 P, EU:C:2014:2039, paragraph 51, and of 15 September 2016, *Philip Morris* v *Commission*, T-18/15, not published, EU:T:2016:487, paragraph 34).

33 First, if the institution concerned decides to refuse access to a document that it has been asked to disclose, it must, in principle, explain how disclosure of that document could specifically and actually compromise the interest protected by the exception, among those provided for in Article 4 of Regulation No 1049/2001, upon which it relies. Moreover, the risk of that undermining must be reasonably foreseeable and not purely hypothetical (see judgments of 3 July 2014, *Council* v *in 't Veld*, C-350/12 P, EU:C:2014:2039, paragraph 52 and the case-law cited, and of 15 September 2016, *Philip Morris* v *Commission*, T-18/15, not published, EU:T:2016:487, paragraph 35 and the case-law cited).

34 Secondly, if the institution applies one of the exceptions provided for in Article 4 of Regulation No 1049/2001, it is for that institution to weigh the particular interest to be protected through non-disclosure of the document concerned against, inter alia, the public interest in the document being made accessible, having regard to the advantages of increased openness, as described in recital 2 to Regulation No 1049/2001, in that it enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system (see judgment of 15 September 2016, *Philip Morris* v *Commission*, T-18/15, not published, EU:T:2016:487, paragraph 36 and the case-law cited).

35 Moreover, according to the Court of Justice's case-law, judicial activities and administrative activities do not require the same breadth of access to documents as that required by the legislative activities of an EU institution (see, to that effect, judgments of 29 June 2010, *Commission* v *Technische Glaswerke Ilmenau*, C-139/07 P, EU:C:2010:376, paragraph 60, and 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 77).

36 Lastly, the justification for applying one of the exceptions provided for in Article 4 of Regulation No 1049/2001 must be made in the light of the facts existing on the date of adoption of the decision refusing to grant access to the documents on the basis of that exception. The legality of an EU measure must be assessed on the basis of the facts and the law as they stood at the time when the measure was adopted (see judgment of 11 May 2017, *Sweden* v *Commission*, C-562/14 P, EU:C:2017:356, paragraph 63 and the case-law cited).

– *The second indent of Article 4(2) of Regulation No 1049/2001*

37 Under the second indent of Article 4(2) of Regulation No 1049/2001, the institutions are to refuse access to a document where disclosure would undermine the protection of court proceedings, unless there is an overriding public interest in disclosure of the document at issue.

38 The protection of court proceedings requires, in particular, that the principle of equality of arms is observed and that the sound administration of justice and the integrity of court proceedings are guaranteed.

39 First, as regards the observance of the principle of equality of arms, it must be noted that, if the content of documents setting out an institution's position in a dispute were to form the subject of public debate, criticism of them could unduly influence the position defended by the institution before the courts in question. In addition, the granting of access to documents relating to an institution's position in ongoing court proceedings to another party could upset the vital balance between the parties to a dispute, a state of balance which is at the root of the principle of equality of arms, inasmuch as only the institution concerned by a request for access to documents, and not all the parties to the proceedings, would be bound by the obligation of disclosure. Observance of the principle of equality of arms is, however, essential since it is a corollary of the very concept of a fair hearing (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, paragraphs 86 and 87 and the case-law cited, and of 28 June 2012, *Commission* v *Éditions Odile Jacob*, C-404/10 P, EU:C:2012:393, paragraph 132).

40 Secondly, as regards the sound administration of justice and the integrity of court proceedings, it must be borne in mind that the exclusion of judicial activities from the scope of the right of access to documents is justified in the light of the need to ensure that, throughout the court proceedings, the exchange of argument by the parties and the deliberations of the court concerned in the case before it take place in an atmosphere of total serenity, without any external pressure on judicial activities. Disclosure of the documents setting out the position defended by an institution in pending court proceedings would have the effect of exposing judicial activities to external pressure, albeit only in the perception of the public, and would disturb the serenity of the proceedings (see, to that effect, judgment 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 92, 93 and 130).

41 Thus, under the second indent of Article 4(2) of Regulation No 1049/2001, the public interest precludes the disclosure of the content of documents drawn up solely for the purposes of specific court proceedings. Those documents include the pleadings or other documents lodged during court proceedings, internal documents concerning the investigation of the case before the court and correspondence concerning the case between the Directorate-General concerned and the legal service or a lawyers' office (see, to that effect, judgment of 15 September 2016, *Philip Morris* v *Commission*, T-18/15, not published, EU:T:2016:487, paragraphs 51 and 52 and the case-law cited).

42 The second indent of Article 4(2) of Regulation No 1049/2001 also precludes the disclosure of documents that were not drawn up solely for the purposes of specific court proceedings, but whose disclosure is liable, in the context of specific proceedings, to compromise the principle of equality of arms. However, in order for the exception to apply, it is necessary that the documents requested, at the time of adoption of the decision refusing access to those documents, should have a relevant link either with a dispute pending before the Courts of the European Union, in respect of which the institution concerned is invoking that exception, or with proceedings pending before a national court, on condition that they raise a question of interpretation or validity of an act of EU law so that, having regard to the context of the case, a reference for a preliminary ruling appears particularly likely. In those two cases, although those documents have not been drawn up in the context of specific court proceedings, the integrity of the court proceedings concerned and the principle of equality of arms between the parties could be seriously compromised if parties were to benefit from privileged access to internal information belonging to the other party and closely connected to the legal aspects of pending or potential but imminent proceedings (judgments of 15 September 2016, *Philip Morris* v *Commission*, T-796/14, EU:T:2016:483, paragraphs 88 to 90, and of 15 September 2016, *Philip Morris* v *Commission*, T-18/15, not published, EU:T:2016:487, paragraphs 64 and 65).

43 Lastly, the application of the exception laid down in the second indent of Article 4(2) of Regulation No 1049/2001 precludes the disclosure of documents only for as long as the risk of undermining court proceedings persists (see, to that effect, judgment 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 130 to 135) and is therefore limited in time.

– *Scope of the contested decision*

44 In the contested decision, the Commission refused to grant total or partial access to 27 documents requested on the ground that their disclosure would affect the ongoing court proceedings in the cases that have since given rise to the judgment of 21 March 2019, *Mobit and Autolinee Toscane* (C-350/17 and C-351/17, EU:C:2019:237), as well as, with regard to the documents originating from the RATP, the ongoing court proceedings in the cases that have since given rise to the order of 12 July 2018, *RATP* v *Commission* (T-250/18 R, not published, EU:T:2018:458), and the order of 12 September 2019, *RATP* v *Commission* (T-250/18, not published, EU:T:2019:615). It found, in essence, that all the documents to which access was totally or partially refused fell within the exception in the second indent of Article 4(2) of Regulation No 1049/2001, on the ground that they were linked to the interpretation of Article 8 of Regulation No 1370/2007, which was at issue in the cases that have since given rise to the judgment of 21 March 2019, *Mobit and Autolinee Toscane* (C-350/17 and C-351/17, EU:C:2019:237), which were pending before the Court of Justice.

45 The applicant contests that assessment. It submits, in essence, that there is no direct link between the cases that have since given rise to the judgment of 21 March 2019, *Mobit and Autolinee Toscane* (C-350/17 and C-351/17, EU:C:2019:237), and the information requested, with the result that their disclosure could not affect the ongoing court proceedings in those cases. The applicant claims, in particular, that the question of the commencement date for public service contracts awarded pursuant to the exception laid down in Article 8(3)(b) of Regulation No 1370/2007 was not directly related to the questions referred for a preliminary ruling by the Italian court in those cases.

46 However, the fourth question referred for a preliminary ruling by the Italian court to the Court of Justice in the cases that have since given rise to the judgment of 21 March 2019, *Mobit and Autolinee Toscane* (C-350/17 and C-351/17, EU:C:2019:237), is worded as follows:

‘If the date of expiry of a directly awarded contract falls after the end of the 30-year period ending on 3 December 2039 (that period commencing on the date of entry into force of Regulation (EC) No 1370/2007) does that render the award inconsistent with the principles laid down in the combined provisions of Articles 5 and 8(3) of the regulation, or may such an irregularity be regarded as automatically remedied, for all legal purposes, by an implied shortening of the length of the contract by operation of law (Article 8(3)), so as to fall within the 30-year period?’

47 Thus, the Italian court asks the Court of Justice about the legal consequences of the award of a contract covered by the combined provisions of Article 5 and Article 8(3) of Regulation No 1370/2007 for a period exceeding 30 years expiring on 3 December 2039. By putting the question that way, the Italian court relies on the presumption that the period of 30 years referred to in Article 8(3) of that regulation starts to run from the date of entry into force of that regulation. However, that presumption is not binding on the Court of Justice. That is also the case as regards the Opinion of Advocate General Saugmandsgaard Øe in Joined Cases *Mobit and Autolinee Toscane* (C-350/17 and C-351/17, EU:C:2018:869), which was adopted after the contested decision and is not therefore, as follows from paragraph 36 above, to be taken into account in the present case.

48 Consequently, the applicant is wrong to claim that the question of the commencement date for public service contracts awarded pursuant to the exception laid down in Article 8(3)(b) of Regulation No 1370/2007 was not directly related to the questions referred for a preliminary ruling by the Italian court in the cases that have since given rise to the judgment of 21 March 2019, *Mobit and Autolinee Toscane* (C-350/17 and C-351/17, EU:C:2019:237).

– *Access to the documents originating from the Commission*

49 In the first place, the Commission, in the contested decision, totally refused to grant access to 10 of its documents on the ground that their disclosure would affect the position of the parties and the serenity of the deliberations in the ongoing court proceedings in the cases that have since given rise to the judgment of 21 March 2019, *Mobit and Autolinee Toscane* (C-350/17 and C-351/17, EU:C:2019:237).

50 The 10 documents in question comprise an internal memo of 24 November 2014 drawn up by DG Mobility and Transport, three memos of 15 July 2011, 6 February 2012 and 28 October 2014 sent by that DG to the Commission's legal service, three memos of 30 April 2012, 25 May 2012 and 9 April 2014 sent by that DG to the office of the Vice-President of the Commission, Mr Kallas, and three memos of 25 July 2011, 24 April 2012 and 1 December 2014 sent by the Commission's legal service to DG Mobility and Transport.

51 The memos sent by the Commission's legal service to DG Mobility and Transport and the memos sent by that DG to the Commission's legal service referred to in paragraph 50 above relate exclusively to the question of the interpretation and application to the RATP's contract of the exception laid down by Article 8(3) of Regulation No 1370/2007 following the adoption of the Law on the organisation and regulation of rail transport and introducing various provisions relating to transport. As for the memos sent by that DG to the office of the Vice-President of the Commission, Mr Kallas, referred to in paragraph 50 above, they concern the action to be taken in response to the Commission's interpretation of that regulation, as does the internal memo of 24 November 2014 drawn up by DG Mobility and Transport.

52 The 10 documents at issue are internal Commission documents relating to the interpretation of Article 8(3) of Regulation No 1370/2007 and the legal consequences of that interpretation. The disclosure of those documents to the applicant at a time when the cases that have since given rise to the judgment of 21 March 2019, *Mobit and Autolinee Toscane* (C-350/17 and C-351/17, EU:C:2019:237), were pending before the Court of Justice was liable to affect the sound administration of justice, the integrity of the court proceedings, and the principle of equality of arms between the Commission and the other parties to those cases.

53 First, the disclosure of the 10 documents at issue to the applicant on the date of adoption of the contested decision would have had the effect of exposing judicial activities to external pressure, albeit only in the perception of the public, and would disturb the serenity of the proceedings before the Court of Justice (see, to that effect, judgment 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 93).

54 Secondly, the disclosure of the 10 documents at issue was liable to lead to a public debate on the interpretation of Article 8(3) of Regulation No 1370/2007. In such a situation, any criticism of the Commission could have influenced the position defended by it in the cases that have since given rise to the judgment of 21 March 2019, *Mobit and Autolinee Toscane* (Case C-350/17 and C-351/17, EU:C:2019:237) and could therefore have infringed the principle of equality of arms (see, to that effect, judgment 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 86). If it were concluded that the Commission should have disclosed those internal documents, it would have been the only party to the preliminary ruling proceedings in those cases to have had to do so and could have considered itself potentially

bound to take account of the internal position taken by its departments in its observations before the Court of Justice, whereas the other parties could have defended their interests free from all external influences, which could have upset the vital balance between the parties before the Court of Justice established by the principle of equality of arms (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 87, and of 15 September 2016, *Philip Morris* v *Commission*, T-796/14, EU:T:2016:483, paragraphs 97 and 98).

55 Those assessments are not called into question by the fact that the ongoing court proceedings that have since given rise to the judgment of 21 March 2019, *Mobit and Autolinee Toscane* (C-350/17 and C-351/17, EU:C:2019:237), were preliminary ruling proceedings. The criterion of sound administration of justice and the principle of equality of arms, the aim of which is to ensure a procedural balance between the parties to court proceedings, guaranteeing the equality of rights and obligations of those parties as regards, inter alia, the rules that govern the bringing of evidence and the adversarial hearing before the court (see, to that effect, judgment of 28 July 2016, *Ordre des barreaux francophones et germanophone and Others*, C-543/14, EU:C:2016:605, paragraph 41 and the case-law cited), also apply to preliminary ruling proceedings (see, to that effect, judgment of 15 September 2016, *Philip Morris* v *Commission*, T-796/14, EU:T:2016:483, paragraph 97).

56 The fact that the applicant did not intervene in the preliminary ruling proceedings in the case that has since given rise to the judgment of 21 March 2019, *Mobit and Autolinee Toscane* (C-350/17 and C-351/17, EU:C:2019:237), does not invalidate those assessments either. Disclosure to the applicant of the information contained in the 10 documents at issue would have enabled it to share that information with third parties or to give them very wide publicity. In such a situation, the other parties to those proceedings could have relied on that information in those proceedings against the Commission.

57 Consequently, the Commission did not err in concluding that the disclosure of the 10 documents referred to in paragraph 50 above could have undermined the protection of court proceedings.

58 In the second place, the Commission, in the contested decision, also partially refused to grant access to 10 of its documents on the ground that the disclosure of redacted parts of those documents would affect the position of the parties and the serenity of the debate in the ongoing court proceedings in the cases that have since given rise to the judgment of 21 March 2019, *Mobit and Autolinee Toscane* (C-350/17 and C-351/17, EU:C:2019:237).

59 The 10 documents at issue are memos of 27 July 2010, 27 September 2010, 7 September 2012 and 9 April 2013 sent by DG Mobility and Transport to the Commission's legal service, to the office of the Vice-President of the Commission, Mr Kallas, and to the RATP, a memo of 11 August 2010 sent by the Commission's legal service to that DG, two letters of 25 and 28 October 2010 sent by the Commission to the French authorities, correspondence between the Vice-President of the Commission and the RATP of 27 July 2012 and 5 June 2013, and correspondence between that DG and the Commission's legal service of 24 September 2012.

60 As regards, first, the memos of 27 July 2010, 27 September 2010, 7 September 2012 and 9 April 2013 sent by DG Mobility and Transport to the Commission's legal service, to the office of the Vice-President of the Commission, Mr Kallas, and to the RATP, the memo of 11 August 2010 sent by the legal service to that DG, the letter of 28 October 2010 sent by the Commission to the French authorities, and the correspondence between that DG and the Commission's legal service of 24 September 2012, it should be noted that the parts of those documents that were not disclosed to the applicant either relate to personal data in respect of which the applicant does not dispute that they should not be disclosed, such as signatures, or set out the position of the Commission, the

French Republic or the RATP with regard to the interpretation of Article 8(3) of Regulation No 1370/2007 and compliance with that provision when the French Republic granted operating rights to the RATP.

61 In that connection, as regards the information concerning the Commission's interpretation of the scope of Article 8(3) of Regulation No 1370/2007 and the inferences it draws therefrom, taking into account the reasons set out in paragraphs 53 and 54 above, the Commission was fully entitled to conclude that their disclosure was liable to expose judicial activities to external pressure, albeit only in the perception of the public, and disturb the serenity of the proceedings before the Court of Justice. That disclosure was liable to lead to a public debate on the interpretation of that provision and any criticism of the Commission could have influenced its position in the cases that have since given rise to the judgment of 21 March 2019, *Mobit and Autolinee Toscane* (C-350/17 and C-351/17, EU:C:2019:237). Moreover, if it were concluded that the Commission should have disclosed those documents, it would have been the only party to the preliminary ruling proceedings to have to do so, which could have upset the vital balance between the parties before the Court of Justice established by the principle of equality of arms.

62 Furthermore, as regards the non-disclosure of the interpretation of the scope of Article 8(3) of Regulation No 1370/2007 adopted by the French Republic or the RATP in the documents referred to in paragraph 60 above, it must be noted that both the French Republic and the RATP were parties to the proceedings in the cases that have since given rise to the judgment of 21 March 2019, *Mobit and Autolinee Toscane* (C-350/17 and C-351/17, EU:C:2019:237).

63 Consequently, disclosure of the interpretation adopted by the French Republic and the RATP was liable to infringe the principle of equality of arms. Those parties could have considered themselves potentially bound to take account of the positions they took before the Commission when they intervened before the Court of Justice in the cases that have since given rise to the judgment of 21 March 2019, *Mobit and Autolinee Toscane* (C-350/17 and C-351/17, EU:C:2019:237), whereas the other parties before the Court of Justice in those cases could have defended their interests free from all external influences.

64 Consequently, the Commission did not err in concluding that the disclosure of the documents referred to in paragraph 60 above could have undermined the protection of court proceedings.

65 However, as regards, secondly, the passages deleted from the letter of 25 October 2010 sent by the Commission to the French authorities and from the letters of 27 July 2012 and 5 June 2013 sent by the Vice-President of the Commission, Mr Kallas, to the RATP, other than those relating to personal data, it must be observed that they do not directly concern the interpretation or legal consequences of the interpretation of Article 8(3) of Regulation No 1370/2007 adopted by the Commission, the French Republic or the RATP. Those deleted passages therefore do not relate directly to the questions forming the subject of the preliminary ruling proceedings in the cases that have since given rise to the judgment of 21 March 2019, *Mobit and Autolinee Toscane* (C-350/17 and C-351/17, EU:C:2019:237). Accordingly, those deletions cannot be justified by the application of the second indent of Article 4(2) of Regulation No 1049/2001.

66 The present complaint is therefore well founded in so far as it concerns the passages deleted from the documents referred to in paragraph 65 above other than those relating to personal data, and the contested decision must therefore be annulled in so far as it partially refused to grant access to them.

– *Access to documents originating from the French Republic*

67 As regards the non-disclosure of the documents originating from the French Republic, first of all, it must be noted that the documents in question are a letter of 3 June 2010 sent by the French Secretary of State for Transport to the Vice-President of the Commission, Mr Kallas, a memo of 23 December 2010, and the annexes thereto, concerning the application of Regulation No 1370/2007 drawn up by the French authorities in response to a letter of 25 October 2010 sent by the Commission, and a memo of 6 January 2012 drawn up by the French authorities in response to the letter of 28 October 2011 sent by the Commission.

68 Next, it must be borne in mind that, under Article 4(5) of Regulation No 1049/2001, a Member State may object to an institution's disclosure of a document originating from that State only if it states reasons for its opposition and bases it on the substantive exceptions in Article 4(1) to (3) of that regulation. Therefore, when taking a decision to refuse access, the institution must make sure that those reasons exist and refer to them in the decision adopted at the end of the procedure (see, to that effect, judgments of 18 December 2007, *Sweden* v *Commission*, C-64/05 P, EU:C:2007:802, paragraph 99; of 21 June 2012, *IFAW Internationaler Tierschutz-Fonds* v *Commission*, C-135/11 P, EU:C:2012:376, paragraph 62; and of 5 April 2017, *France* v *Commission*, T-344/15, EU:T:2017:250, paragraph 41).

69 It is not for the institution concerned to carry out an exhaustive assessment of the opposition decision of the Member State concerned, by carrying out an audit which goes beyond verifying the mere existence of a statement of reasons referring to the exceptions referred to in Article 4(1) to (3) of Regulation No 1049/2001 (judgments of 21 June 2012, *IFAW Internationaler Tierschutz-Fonds* v *Commission*, C-135/11 P, EU:C:2012:376, paragraph 63, and of 21 November 2018, *Stichting Greenpeace Nederland and PAN Europe* v *Commission*, T-545/11 RENV, EU:T:2018:817, paragraph 44).

70 However, the institution's obligation to conduct a careful examination must lead it to check whether the explanations given by the Member State to oppose the disclosure of its documents appear to it, prima facie, to be well founded (see, to that effect, judgments of 5 April 2017, *France* v *Commission*, T-344/15, EU:T:2017:250, paragraph 54, and of 21 November 2018, *Stichting Greenpeace Nederland and PAN Europe* v *Commission*, T-545/11 RENV, EU:T:2018:817, paragraph 44). It is necessary for the institution to determine whether, in the light of the circumstances of the case and of the relevant rules of law, the reasons given by the Member State for its objection were capable of justifying prima facie such refusal and, accordingly, whether those reasons made it possible for that institution to assume the responsibility conferred on it under Article 8 of Regulation No 1049/2001. It is a matter of preventing the institution from adopting a decision which it does not consider to be defensible since it is the author of that decision and is therefore responsible for its lawfulness (see, to that effect, judgment of 5 April 2017, *France* v *Commission*, T-344/15, EU:T:2017:250, paragraphs 46 and 47 and the case-law cited).

71 In the contested decision, the Commission stated that, after consulting the French authorities, they repeated their opposition to the disclosure of their documents on the ground that such disclosure would infringe the second indent of Article 4(2) of Regulation No 1049/2001. It noted that the French authorities had considered that the issues raised in those documents were closely linked to the legal issues raised by the Italian Council of State in the cases that have since given rise to the judgment of 21 March 2019, *Mobit and Autolinee Toscane* (C-350/17 and C-351/17, EU:C:2019:237), which were pending before the Court of Justice. According to the Commission, those authorities took the view, in particular, that the documents at issue contained their interpretation of the principles set out in Article 5 and Article 8(3) of Regulation No 1370/2007. It considered that, at first sight, those arguments justified the application of the exception in the second indent of Article 4(2) of Regulation No 1049/2001, as relied on by the French authorities. Consequently, it refused to grant access to those documents.

72 Thus, as regards the documents originating from the French Republic, the Commission based its decision on the French Republic's reliance on an exception laid down in Article 4(1) to (3) of Regulation No 1049/2001. In addition, the reasons put forward by the French Republic were prima facie capable of justifying the refusal. In view of the circumstances of the present case and, in particular, the matters addressed in the documents at issue, the disclosure of the French Republic's position on the interpretation of Article 8(3) of Regulation No 1370/2007 during the procedure before the Commission was liable to infringe the principle of equality of arms before the Court of Justice in the cases that have since given rise to the judgment of 21 March 2019, *Mobit and Autolinee Toscane* (C-350/17 and C-351/17, EU:C:2019:237). If the information contained in those documents had been made public by the applicant, that would potentially have placed the French Republic, which was a party to the preliminary ruling proceedings in those cases, at a significant disadvantage compared to the other parties to those proceedings. By becoming aware of the French Republic's position beforehand, the other parties could have been able to adjust and refine their arguments, which would have entailed a systematic advantage in their favour.

73 Consequently, the Commission was fully entitled to conclude that the explanations given by the French Republic concerning the disclosure of the documents referred to in paragraph 67 above appeared, prima facie, to be well founded.

– *Access to documents originating from the RATP*

74 The documents originating from the RATP to which the applicant was refused access are three letters from the Chief Executive Officer of the RATP: the first letter and the annexes thereto, dated 22 May 2012, sent to a Director-General of the Commission; the second, dated 21 May 2012, sent to the President of the Commission; and the third, dated 28 March 2013, sent to the Vice-President of the Commission, Mr Kallas. Each of those letters concerns the Commission's interpretation of the scope of Article 8(3) of Regulation No 1370/2007. For the same reasons as those set out in paragraphs 53, 54 and 61 above, their disclosure was liable to expose judicial activities to external pressure, albeit only in the perception of the public, disturb the serenity of the proceedings before the Court of Justice, and infringe the principle of equality of arms in the proceedings that have since given rise to the judgment of 21 March 2019, *Mobit and Autolinee Toscane* (C-350/17 and C-351/17, EU:C:2019:237), in which the RATP took part.

75 Moreover, on the date of adoption of the contested decision, both an action for annulment and an action for interim measures (cases that have since given rise to the order of 12 July 2018, *RATP* v *Commission*, (T-250/18 R, not published, EU:T:2018:458), and the order of 12 September 2019, *RATP* v *Commission* (T-250/18, not published, EU:T:2019:615)) were pending before the Court, by which actions the RATP objected to the partial disclosure of the documents referred to in paragraph 74 above to an applicant for access. Disclosure of those documents by the Commission following the request for access would have affected the sound administration of justice and the integrity of the court proceedings, given that such disclosure, at the time of the adoption of the contested decision, would have prevented the President of the General Court from effectively ordering the suspension of the disclosure of those documents if that had been his decision. Likewise, such disclosure would have prevented the Court from properly disposing of the dispute before it concerning the decision to disclose partially the documents at issue.

76 Consequently, the Commission did not err in concluding that the disclosure of the documents referred to in paragraph 74 above could have undermined the protection of court proceedings.

77 It follows from the foregoing that the first plea must be rejected, except in so far as it relates to the deleted passages other than those concerning personal data in the letter of 25 October 2010 sent by the Commission to the French authorities and in the letters of 27 July 2012 and 5 June 2013 sent by the Vice-President of the Commission, Mr Kallas, to the RATP.

The second plea in law

78 The applicant submits that, even assuming that there is a link between the cases that have since given rise to the judgment of 21 March 2019, *Mobit and Autolinee Toscane* (C-350/17 and C-351/17, EU:C:2019:237), and the documents not, or partially, disclosed, the public interest that they present for both public and private parties makes having access to them sufficiently relevant to lift any refusal to disclose. The Commission disputes that the overriding public interest justifies the disclosure of the documents at issue.

79 In that regard, it should be borne in mind that, if the institution applies one of the exceptions provided for in Article 4 of Regulation No 1049/2001, it is for that institution to weigh the particular interest to be protected through non-disclosure of the document concerned against, inter alia, the public interest in the document being made accessible, having regard to the advantages of increased openness, as described in recital 2 to Regulation No 1049/2001, in that it enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system (see judgment of 17 October 2013, *Council* v *Access Info Europe*, C-280/11 P, EU:C:2013:671, paragraph 32 and the case-law cited). Thus, an overriding public interest may justify the disclosure of a document to which access is requested notwithstanding the fact that one of the exceptions referred to in Article 4(2) of Regulation No 1049/2001 applies.

80 It must nevertheless be stated that the particular interest that may be claimed by a person requesting access to a document concerning him personally cannot, however, be taken into account as an overriding public interest within the meaning of Article 4(2) of Regulation No 1049/2001 (see, to that effect, judgment of 21 October 2010, *Umbach* v *Commission*, T-474/08, not published, EU:T:2010:443, paragraph 59 and the case-law cited). The purpose of Regulation No 1049/2001 is to give the general public a right of access to documents of the institutions, and not to lay down rules designed to protect the particular interest which a specific individual may have in gaining access to one of them (judgments of 1 February 2007, *Sison* v *Council*, C-266/05 P, EU:C:2007:75, paragraph 43, and of 11 December 2018, *Arca Capital Bohemia* v *Commission*, T-441/17, not published, EU:T:2018:899, paragraph 80).

81 Moreover, the onus is on the party arguing for the existence of an overriding public interest to rely on specific circumstances to justify the disclosure of the documents concerned. Setting out purely general considerations cannot provide an appropriate basis for establishing that an overriding public interest prevails over the reasons justifying the refusal to disclose the documents in question (see judgment of 11 May 2017, *Sweden* v *Commission*, C-562/14 P, EU:C:2017:356, paragraph 56 and the case-law cited).

82 In order to demonstrate the existence of an overriding public interest in the disclosure of the documents concerned, first, the applicant relies on the interest of public and private parties in knowing the Commission's interpretation of the scope of Article 8(3) of Regulation No 1370/2007. Secondly, it relies on the impossibility, if the documents requested are not disclosed, of determining the criterion applied when the contracts were awarded by the French Republic to the SNCF and the RATP pursuant to that regulation and whether that criterion applied to it or to any other operator or authority. It concludes that all stakeholders involved in the procedure for awarding public service contracts falling under Article 8(3)(b) of that regulation have a legitimate public interest in having access to the documents at issue. Thirdly, it relies on a greater legal certainty as to the application of the regulation in question and, consequently, the reduction of possible disputes as to the date of application of that regulation should the documents requested be disclosed. Fourthly and lastly, it submits that failure to disclose those documents will entail an infringement of the principle of non-discrimination with regard to the RATP and the other operators having an interest in knowing the Commission's position.

83 In the light of those arguments, it must be recalled that, in accordance with the case-law referred to in paragraph 80 above, the applicant cannot rely on its own interest in order to demonstrate the existence of an overriding public interest. Moreover, the Commission's interpretation of a provision of EU law is not authoritative since the Court of Justice has exclusive jurisdiction over the definitive interpretation of EU law (see, to that effect, Opinion 2/13, of 18 December 2014, EU:C:2014:2454, paragraph 246, and Opinion 1/17, of 30 April 2019, EU:C:2019:341, paragraph 111). Thus, when it is followed in a decision taken by a national authority, the Commission's interpretation of a provision of EU law may form the subject of a question referred to the Court of Justice for a preliminary ruling following a dispute before the national courts concerning that decision. Even when the Commission imposes its interpretation of a provision of EU law on a Member State in proceedings for failure to fulfil obligations, that interpretation may be subject to review by the Court of Justice where the Member State fails to comply with it. Consequently, the Commission's interpretation of a provision of EU law does not provide legal certainty and it is not demonstrated that it would limit the number of disputes relating to the scope of that provision. Furthermore, the fact that the Commission does not disclose its interpretation of the scope of Article 8(3) of Regulation No 1370/2007, as reproduced in the documents at issue, does not entail unequal treatment since the applicant is not in a situation comparable to that of the French Republic and the RATP, which were involved in an EU Pilot procedure and were part of the preliminary ruling proceedings in the cases that have since given rise to the judgment of 21 March 2019, *Mobit and Autolinee Toscane* (C-350/17 and C-351/17, EU:C:2019:237).

84 Moreover, and in any event, when weighing up interests, the interest of the stakeholders involved the procedure for awarding public service contracts falling within the scope of Article 8(3)(b) of Regulation No 1370/2007 in knowing the Commission's interpretation of the scope of that provision cannot be regarded as overriding that of the Commission and the Court of Justice in ensuring that the principle of equality of arms and the sound administration of justice are observed.

85 Consequently, the applicant has not demonstrated the existence of an overriding public interest in the disclosure of the documents requested.

86 Lastly, in so far as the applicant submits in the second plea that, since there is a clear public interest which should have lifted the refusal to grant access to the documents and since the Commission did not provide sufficient reasons for its decision not to apply that exception, the contested decision was adopted without an adequate statement of reasons, it must be borne in mind that the obligation to state reasons is an essential procedural requirement which must be distinguished from complaints disputing whether the contested decision is well founded (see paragraph 21 above). Consequently, in so far as the applicant alleges an inadequate statement of reasons in support of the second plea, that complaint must be dismissed as ineffective.

87 In any event, given the extent of the obligation to state reasons as set out in paragraphs 19 to 21 above, it must be held that the Commission gave an adequate statement of reasons in the contested decision as to why it considered that there was no overriding public interest in disclosing the documents at issue.

88 In the contested decision, the Commission found that the interest relied on by the applicant was its own interest and that it could not be taken into account and that, in the present case, there was no overriding public interest that prevailed over the interest in ensuring the protection of court proceedings as referred to in Article 4(2) of Regulation No 1049/2001. Moreover, that assessment by the Commission could have been challenged by the applicant before the Court, as the second plea shows, and the Court may rule on that matter, as is shown by the assessment made in paragraphs 79 to 85 above.

89 It follows that the complaint alleging an inadequate statement of reasons must also be rejected and, accordingly, the second plea must be dismissed in its entirety.

90 In the light of all the foregoing, the present action must be upheld in part and, consequently, the contested decision must be annulled in so far as it partially refused to grant access to data other than personal data contained in the letter of 25 October 2010 sent by the Commission to the French authorities and in the letters of 27 July 2012 and 5 June 2013 sent by the Vice-President of the Commission, Mr Kallas, to the RATP.

Costs

91 Under Article 134(2) of the Rules of Procedure, where there is more than one unsuccessful party the Court is to decide how the costs are to be shared.

92 In the present case, it is appropriate to order the Commission to bear its own costs and to pay one fifth of the applicant's costs. The applicant must bear four fifths of its own costs.

On those grounds,

THE GENERAL COURT (Third Chamber)

hereby:

1. **Annuls the decision of the European Commission of 7 June 2018 refusing, partially or totally, to grant Compañía de Tranvías de la Coruña, SA, access to documents relating to the Commission's opinion sent to the French Republic concerning the fact that the metro lines contract is valid until 2039, in so far as it refused in part to grant access to the data other than personal data contained in the letter of 25 October 2010 sent by the Commission to the French authorities and in the letters of 27 July 2012 and 5 June 2013 sent by the Vice-President of the Commission, Mr Kallas, to the RATP;**

2. **Dismisses the action as to the remainder;**

3. **Orders the Commission to bear its own costs and to pay one fifth of the costs incurred by Compañía de Tranvías de la Coruña;**

4. **Orders Compañía de Tranvías de la Coruña to bear four fifths of its own costs.**

Frimodt Nielsen Kreuschitz Półtorak

Delivered in open court in Luxembourg on 6 February 2020.

E. Coulon
Registrar

A. Marcoulli
President