Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

16 January 2025 *

(Appeal – Access to documents – Regulation (EC) No 1049/2001 – Article 4(3), first subparagraph – Protection of the decision-making process – Regulation (EU) No 182/2011 – Committee procedure – Positions expressed by Member States and other Members of Committees – Refusal to grant access)

In Case C-726/22 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 24 November 2022,

European Commission, represented by S. Delaude, C. Ehrbar and G. Gattinara, acting as Agents,

appellant,

the other party to the proceedings being:

Pollinis France, established in Paris (France), represented initially by T. Bégel and C. Lepage, avocats, and subsequently by D. Krzisch, avocate, and J. Stratford, Barrister-at-Law,

applicant at first instance,

THE COURT (Fifth Chamber),

composed of I. Jarukaitis, President of the Fourth Chamber, acting as President of the Fifth Chamber, D. Gratsias (Rapporteur) and E. Regan, Judges,

Advocate General: N. Emiliou,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 27 June 2024,

gives the following

* Language of the case: English.

Judgment

1 By its appeal, the European Commission seeks to have set aside the judgment of the General Court of the European Union of 14 September 2022, *Pollinis France* v *Commission* (T-371/20 and T-554/20, 'the judgment under appeal', EU:T:2022:556), by which the General Court annulled the Commission decisions C(2020) 4231 final of 19 June 2020 ('the decision at issue in Case T-371/20'), and C(2020) 5120 final of 21 July 2020 ('the decision at issue in Case T-554/20') (together, 'the decisions at issue'), in that, by those decisions, that institution refused to grant Pollinis France access to documents concerning the Guidance Document of the European Food Safety Authority (EFSA) on the risk assessment of plant protection products on bees, adopted by the EFSA on 27 June 2013 ('the guidance document adopted by the EFSA in 2013'), on the basis of the first subparagraph of Article 4(3) 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).

Legal context

Regulation No 1049/2001

2 Recitals 1 and 2 of Regulation No 1049/2001 are worded as follows:

'(1) The second subparagraph of Article 1 of the Treaty on European Union enshrines the concept of openness, stating that the Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.

(2) Openness 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. Openness contributes to strengthening the principles of democracy and respect for fundamental rights as laid down in Article 6 of the EU Treaty and in the Charter of Fundamental Rights of the European Union.'

3 In accordance with Article 1(a) of that regulation:

'The purpose of this Regulation is:

(a) to define the principles, conditions and limits on grounds of public or private interest governing the right of access to European Parliament, Council [of the European Union] and Commission … documents provided for in Article 255 [EC] in such a way as to ensure the widest possible access to documents'.

4 Article 2 of that regulation provides, in paragraph 3 thereof:

'This Regulation shall apply to all documents held by an institution, that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union.'

5 In accordance with Article 3 of the same regulation, the term 'document' is to mean 'any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility'.

6 Article 4 of Regulation No 1049/2001 provides, in paragraphs 1, 3 and 7:

'1. The institutions shall refuse access to a document where disclosure would undermine the protection of:

…

(b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.

…

3. 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, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

…

7. The exceptions as laid down in paragraphs 1 to 3 shall only apply for the period during which protection is justified on the basis of the content of the document. The exceptions may apply for a maximum period of 30 years. In the case of documents covered by the exceptions relating to privacy or commercial interests and in the case of sensitive documents, the exceptions may, if necessary, continue to apply after this period.'

7 Article 7(2) of that regulation provides that:

'In the event of a total or partial refusal, the applicant may, within 15 working days of receiving the institution's reply, make a confirmatory application asking the institution to reconsider its position.'

8 According to Article 8(3) of that regulation:

'Failure by the institution to reply within the prescribed time limit shall be considered as a negative reply and entitle the applicant to institute court proceedings against the institution …'

Regulation (EC) No 178/2002

9 Article 58 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety

(OJ 2002 L 31, p. 1), as amended by Regulation (EU) No 652/2014 of the European Parliament and of the Council of 15 May 2014 (OJ 2014 L 189, p. 1), provides in the first subparagraph of paragraph 1:

'The Commission shall be assisted by a Standing Committee on Plants, Animals, Food and Feed … That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council [of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ 2011 L 55, p. 13)]. …'

Regulation (EC) No 1107/2009

10 Article 29 of Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ 2009 L 309, p.1), entitled 'Requirements for the authorisation for placing on the market', provides, in paragraphs 1 and 6:

'1. Without prejudice to Article 50 a plant protection product shall only be authorised where following the uniform principles referred to in paragraph 6 it complies with the following requirements:

…

6. Uniform principles for evaluation and authorisation of plant protection products shall contain the requirements set out in Annex VI to [Council] Directive 91/414/EEC [of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1)] and shall be laid down in Regulations adopted in accordance with the advisory procedure referred to in Article 79(2) without any substantial modifications. Subsequent amendments to these Regulations shall be adopted in accordance with Article 78(1)(c).

…'

11 Article 33 of that regulation, headed 'Application for authorisation or amendment of an authorisation', provides, in paragraph 1:

'An applicant who wishes to place a plant protection product on the market shall apply for an authorisation or amendment of an authorisation himself, or through a representative, to each Member State where the plant protection product is intended to be placed on the market.'

12 Article 36 of that regulation, entitled 'Examination for authorisation', states, in the first subparagraph of paragraph 1, that the Member State examining the application is to make an independent, objective and transparent assessment in the light of current scientific and technical knowledge using guidance documents available at the time of application.

13 Article 77 of that regulation, entitled 'Guidance documents', provides:

'The Commission may, in accordance with the advisory procedure referred to in Article 79(2), adopt or amend technical and other guidance documents such as explanatory notes or guidance documents on the content of the application [for authorisation] concerning micro-organisms, pheromones and

biological products, for the implementation of this Regulation. The Commission may ask the [EFSA] to prepare or to contribute to such guidance documents.'

14 Article 78 of Regulation No 1107/2009, entitled 'Amendments and implementing measures', lists, in paragraph 1 thereof, the measures 'designed to amend non-essential elements of this Regulation, inter alia, by supplementing it', which are to be 'adopted in accordance with the regulatory procedure with scrutiny referred to in Article 79(4) [of that regulation]'. In particular, in accordance with Article 78(1)(c), that procedure is to be used for the adoption of 'amendments to the Regulation on uniform principles for evaluation and authorisation of plant protection products, as referred to in Article 29(6) [of the regulation], taking into account current scientific and technical knowledge'.

15 Article 79 of Regulation No 1107/2009, entitled 'Committee procedure', provides in paragraphs 1, 2 and 4:

'1. The Commission shall be assisted by the Standing Committee on the Food Chain and Animal Health, as established by Article 58 of Regulation [No 178/2002].

2. Where reference is made to this paragraph, Articles 3 and 7 of [Council] Decision 1999/468/EC [of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ 1999 L 184, p. 23)] shall apply, having regard to the provisions of Article 8 thereof.

…

4. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision [1999/468] shall apply, having regard to the provisions of Article 8 thereof.'

Regulation No 182/2011

16 Recitals 6, 13 and 19 to 21 of Regulation No 182/2011 are worded as follows:

'(6) In those basic acts which require the control of the Member States for the adoption by the Commission of implementing acts, it is appropriate, for the purposes of such control, that committees composed of the representatives of the Member States and chaired by the Commission be set up.

…

(13) The chair of a committee should endeavour to find solutions which command the widest possible support within the committee or the appeal committee and should explain the manner in which the discussions and suggestions for amendments have been taken into account. …

…

(19) Public access to information on committee proceedings should be ensured in accordance with Regulation [No 1049/2001].

(20) A register containing information on committee proceedings should be kept by the Commission. Consequently, rules relating to the protection of classified documents applicable to the Commission should also apply to the use of the register.

(21) Decision [1999/468] should be repealed. In order to ensure the transition between the regime provided for in Decision [1999/468] and this Regulation, any reference in existing legislation to the procedures provided for in that Decision should, with the exception of the regulatory procedure with scrutiny provided for in Article 5a thereof, be understood as a reference to the corresponding procedures provided for in this Regulation. The effects of Article 5a of Decision [1999/468] should be provisionally maintained for the purposes of existing basic acts which refer to that Article.'

17 Article 3 of Regulation No 182/2011, entitled 'Common provisions', provides:

'1. The common provisions set out in this Article shall apply to all the procedures referred to in Articles 4 to 8.

2. The Commission shall be assisted by a committee composed of representatives of the Member States. The committee shall be chaired by a representative of the Commission. …

3. The chair shall submit to the committee the draft implementing act to be adopted by the Commission.

…

4. Until the committee delivers an opinion, any committee member may suggest amendments and the chair may present amended versions of the draft implementing act.

The chair shall endeavour to find solutions which command the widest possible support within the committee. …

…

6. The committee's opinion shall be recorded in the minutes. …

…'

18 Article 4 of the regulation, which is entitled 'Advisory procedure', provides:

'1. Where the advisory procedure applies, the committee shall deliver its opinion, if necessary by taking a vote. …

2. The Commission shall decide on the draft implementing act to be adopted, taking the utmost account of the conclusions drawn from the discussions within the committee and of the opinion delivered.'

19 Article 9 of that regulation, entitled 'Rules of procedure', provides:

'1. Each committee shall adopt by a simple majority of its component members its own rules of procedure on the proposal of its chair, on the basis of standard rules to be drawn up by the

Commission following consultation with Member States. Such standard rules shall be published by the Commission in the *Official Journal of the European Union*.

In so far as may be necessary, existing committees shall adapt their rules of procedure to the standard rules.

2. The principles and conditions on public access to documents and the rules on data protection applicable to the Commission shall apply to the committees.'

20 Article 10 of the regulation, entitled 'Information on committee proceedings', provides for a register of the committee proceedings to be kept containing a number of elements. In accordance with Article 10(5), the references of all documents contained in that register, as well as the statistical data on the work of the committees 'shall be made public in the register'.

21 Article 11 of Regulation No 182/2011, entitled 'Right of scrutiny for the European Parliament and the Council', provides that, where a basic act is adopted under the ordinary legislative procedure, either the Parliament or the Council may at any time indicate to the Commission that, in its view, a draft implementing act exceeds the implementing powers provided for in the basic act. In such a case, the Commission is to review the draft implementing act, taking account of the positions expressed.

22 The first paragraph of Article 12 repealed Decision 1999/468.

23 Article 13 of the regulation, entitled 'Transitional provisions: adaptation of existing basic acts', provides:

'1. Where basic acts adopted before the entry into force of this Regulation provide for the exercise of implementing powers by the Commission in accordance with Decision [1999/468], the following rules shall apply:

(a) where the basic act makes reference to Article 3 of Decision [1999/468], the advisory procedure referred to in Article 4 of this Regulation shall apply;

…

(e) where the basic act makes reference to Articles 7 and 8 of Decision [1999/468], Articles 10 and 11 of this Regulation shall apply.

2. Articles 3 and 9 of this Regulation shall apply to all existing committees for the purposes of paragraph 1.

…'

Decision 1999/468

24 Article 5a of Decision 1999/468, entitled 'Regulatory procedure with scrutiny', which was inserted by Council Decision 2006/512/EC of 17 July 2006 (OJ 2006 L 200, p.11), provided, in paragraphs 1 to 3:

'1. The Commission shall be assisted by a Regulatory Procedure with Scrutiny Committee composed of the representatives of the Member States and chaired by the representative of the Commission.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 205(2) and (4) [EC] in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. If the measures envisaged by the Commission are in accordance with the opinion of the Committee, the following procedure shall apply:

(a) the Commission shall without delay submit the draft measures for scrutiny by the European Parliament and the Council;

(b) the European Parliament, acting by a majority of its component members, or the Council, acting by a qualified majority, may oppose the adoption of the said draft by the Commission, justifying their opposition by indicating that the draft measures proposed by the Commission exceed the implementing powers provided for in the basic instrument or that the draft is not compatible with the aim or the content of the basic instrument or does not respect the principles of subsidiarity or proportionality;

(c) if, within three months from the date of referral to them, the European Parliament or the Council opposes the draft measures, the latter shall not be adopted by the Commission. In that event, the Commission may submit to the Committee an amended draft of the measures or present a legislative proposal on the basis of the Treaty;

…'

Standard rules of procedure for committees

25 Article 10 of the Standard rules of procedure for committees (OJ 2011 C 206, p. 11), entitled 'Minutes and summary record of meetings', provides, in paragraph 2:

'For the purpose of Article 10 of Regulation [No 182/2011], the chair shall be responsible for drawing up a summary record briefly describing each item on the agenda and the results of the vote on any draft implementing act submitted to the committee. The summary record shall not mention the individual position of the members in the committee's discussions.'

26 Article 13 of the standard rules of procedure, entitled 'Access to documents and confidentiality', provides:

'1. Requests for access to committee documents shall be handled in accordance with Regulation [No 1049/2001]. It is for the Commission to take a decision on requests for access to those documents pursuant to its Rules of Procedure as amended by Decision 2001/937/EC, ECSC, Euratom [of the Commission of 5 December 2001 (OJ 2001 L 345, p. 94)]. …

2. The committee's discussions shall be confidential.

3. Documents submitted to members of the committee, experts and representatives of third parties shall be confidential …, unless access is granted to those documents pursuant to paragraph 1 or they are otherwise made public by the Commission.

4. The members of the committee, as well as experts and representatives of third parties, shall be required to respect the confidentiality obligations set out in this Article. The chair shall ensure that experts and representatives of third parties are made aware of the confidentiality requirements imposed upon them.'

Background to the dispute

27 The background to the dispute is set out in paragraphs 3 to 14 of the judgment under appeal. For the purposes of the present proceedings, it may be summarised as follows.

28 Pollinis France is a French non-governmental organisation whose activity concerns the protection of the environment and whose purpose is the protection of wild and honey bees as well as the promotion of sustainable agriculture in order to help preserve pollinators. On 27 January 2020, pursuant to Regulation No 1049/2001 and Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13), it submitted to the Commission a request for access to certain documents relating to the guidance document adopted by the EFSA in 2013. The scope of the request was subsequently reduced and limited, in essence, to the documents recording the positions of the Member States, the members of the Standing Committee on Plants, Animals, Food and Feed (SCoPAFF) and the Commission in relation to that guidance document adopted by the EFSA in 2013 and any draft relating to the same subject matter, received or drawn up by the Commission since October 2018.

29 By a letter of 16 March 2020, the Commission indicated to Pollinis France that 25 documents were covered by its request, 6 of which were available online. The remaining 19 documents were identified as being emails, sometimes with annexes, sent by certain Member States within the SCoPAFF between January 2019 and July 2019 and concerning, in essence, the guidance document adopted by the EFSA in 2013 or its implementation, in particular on a draft amendment to the uniform principles for evaluation and authorisation of plant protection products referred to in Article 29(6) of Regulation No 1107/2009. The Commission refused to grant access to those latter documents, relying on the exception provided for in the second subparagraph of Article 4(3) of Regulation No 1049/2001.

30 On 25 March 2020, Pollinis France made a confirmatory application within the meaning of Article 7(2) of that regulation.

31 By the decision at issue in Case T-371/20, the Commission replied explicitly to that confirmatory request by granting partial access to one of the 19 documents referred to in paragraph 29 of the present judgment, access to certain parts of that document being refused pursuant to the exceptions provided for in Article 4(1)(b) and the first subparagraph of Article 4(3) of Regulation No 1049/2001, and by refusing access to all the other documents referred to in that request pursuant to the exception laid down in the latter provision.

32 On 8 April 2020, Pollinis France lodged with the Commission a second request for access to certain documents concerning the guidance document adopted by the EFSA in 2013 relating, in essence, to correspondence, agendas, minutes or reports of meetings between members of the SCoPAFF and certain officials or Members of the Commission in the period between July 2013 and September 2018.

33 By a letter of 8 May 2020, the Commission identified 59 documents falling within the scope of that application for access, which it rejected in its entirety on the basis of the exception provided for in the first subparagraph of Article 4(3) of Regulation No 1049/2001. According to the findings of the General Court, those documents are emails or 'comments', sent by certain Member States to the SCoPAFF between September 2013 and December 2018 and concern, in essence, the guidance document adopted by the EFSA in 2013, or its implementation.

34 On 25 May 2020, Pollinis France submitted a confirmatory request for access to those documents.

35 By the decision at issue in Case T-554/20, the Commission granted partial access to four documents, relying, in respect of the parts thereof to which it had refused access, on the exceptions provided for in Article 4(1)(b) and the first subparagraph of Article 4(3) of Regulation No 1049/2001. That institution refused to grant even partial access to all the other documents covered by that request, which it identified as being emails, by relying on that first subparagraph of Article 4(3).

The actions before the General Court and the judgment under appeal

36 By an application lodged with the Registry of the General Court on 15 June 2020, Pollinis France brought, in the absence of an explicit reply to its confirmatory request of 25 March 2020, an action seeking the annulment of the implied rejection decision resulting from that absence of a reply, in accordance with Article 8(3) of Regulation No 1049/2001. Following the adoption on 19 June 2020 of the decision at issue in Case T-371/20, Pollinis France lodged with the Registry of the General Court a statement of modification of its application pursuant to Article 86 of the Rules of Procedure of the General Court.

37 By an application lodged with the Registry of the General Court on 8 September 2020, Pollinis France lodged an action seeking the annulment of the decision at issue in Case T-554/20.

38 In support of its actions, Pollinis France raised four pleas in law against each of the decisions at issue, alleging, in essence, first, an infringement of Article 4(3) of Regulation No 1049/2001, in that the Commission failed correctly to apply the exception relating to the protection of the decision-making process; second, an infringement of that provision, in that there is an overriding

public interest justifying the disclosure of the requested documents; third, an infringement of Article 6(1) of Regulation No 1367/2006, in that the exception provided for in Article 4(3) of Regulation No 1049/2001 should have been interpreted all the more strictly when the information requested related to emissions into the environment; and, fourth, a misapplication of Article 4(1)(b) and Article 4(6) of that latter regulation.

39 The second part of the first plea of the actions was divided into two complaints. By the first complaint of that second part, Pollinis France disputed the relevance of the exception provided for in the first subparagraph of Article 4(3), in so far as the decision-making process concerning the guidance document adopted by the EFSA in 2013 was no longer ongoing.

40 In that regard, the General Court, in the first place, held, in paragraph 49 of the judgment under appeal, that the guidance document adopted by the EFSA in 2013 was discussed for several years within the SCoPAFF without agreement being reached on its text due to disagreement amongst the Member States and without that document having been adopted by the Commission.

41 More specifically, as is stated in paragraphs 50 and 51 of the judgment under appeal, in the absence of the adoption of that document as such, the Commission, during 2018, proposed to implement certain parts of it by introducing amendments to the uniform principles laid down in Commission Regulation (EU) No 546/2011 of 10 June 2011 implementing Regulation No 1107/2009 of the European Parliament and of the Council as regards uniform principles for evaluation and authorisation of plant protection products (OJ 2011 L 155, p. 127). Accordingly, in 2018, the Commission submitted a draft regulation amending Regulation No 546/2011 to the SCoPAFF for an opinion, with a view to its adoption in accordance with the regulatory procedure with scrutiny provided for by Article 5a of Decision 1999/468, pursuant to Article 29(6), Article 78(1)(c) and Article 79(4) of Regulation No 1107/2009. In July 2019, the SCoPAFF issued a positive opinion on that draft regulation. However, that draft regulation was never adopted by the Commission since the Parliament opposed its adoption in October 2019, taking the view that it did not provide for a sufficient level of protection.

42 In the second place, the General Court found, in paragraphs 52 and 58 of the judgment under appeal, that although, prior to 2018, the Commission did not envisage that the EFSA should revise the guidance document it adopted in 2013, in March 2019, it asked that authority to carry out such a revision in order to take account of scientific developments since 2013.

43 It was therefore in that context that, in paragraph 53 of the judgment under appeal, the General Court noted that, in the decisions at issue adopted in June and July 2020, the Commission stated that, pending the finalisation of the revision of the guidance document adopted by the EFSA in 2013, its examination within the SCoPAFF was ‘halted’ and that that meant that the decision-making process could be regarded as being ‘ongoing’, since it would resume once the EFSA had completed the revision of that guidance document.

44 In the light of those findings, the General Court indicated, in paragraph 55 of the judgment under appeal, that, contrary to the position taken by the Commission, the decision-making process to which the requested documents relate could not be regarded as ongoing at the time when the decisions at issue were adopted.

45 More specifically, the General Court held, in paragraph 56 of the judgment under appeal, that, while it was true that the requested documents might be regarded as relating to a Commission decision-making process which took place from 2013 to 2019 and which sought the full or partial

implementation of the guidance document adopted by the EFSA in 2013 'either by adopting that [document] as such, in accordance with the advisory procedure provided for in Regulation No 182/2011, or by amending the uniform principles laid down by Regulation No 546/2011 in accordance with the regulatory procedure with scrutiny laid down by Decision 1999/468'. However, at the time of adoption of the decisions at issue, there was no longer any decision-making process with a view to implementing that document, either in accordance with the first or the second of those procedures. According to the General Court, on the contrary, the Commission had decided, implicitly but necessarily, not to implement that document. The fact that revision of that document was ongoing at the time when the decisions at issue were adopted meant, according to the General Court, that it was impossible to determine the content of any revised guidance document, the form of its possible adoption or the procedure that might be followed for that purpose, and so the Commission's decision-making process was devoid of any object.

46 In paragraph 57 of the judgment under appeal, the General Court found that, even if that institution 'still had the objective of implementing a guidance document on bees in order to provide the Member States' authorities with a document setting out "current scientific and technical knowledge" in accordance with Article 36(1) of Regulation No 1107/2009', that did not imply, in itself, that a decision-making process, the object of which was such a document, was ongoing at the time of adoption of the decisions at issue. On the contrary, according to the General Court, those documents in the file indicated that the Commission had decided not to implement the guidance document adopted by the EFSA in 2013. A decision-making process could have been regarded as ongoing once the EFSA sent a revised document to the Commission and the Commission decided to implement it, which, at the time of the adoption of the decisions at issue, was hypothetical according to the General Court.

47 Accordingly, the General Court concluded, in paragraph 59 of the judgment under appeal, that the Commission could not, at the time of adoption of the decisions at issue, validly rely on the exception provided for in the first subparagraph of Article 4(3) of Regulation No 1049/2001, and it furthermore emphasised, in paragraph 60 of the judgment under appeal, the distinction made by that provision according to whether the procedure was closed or not, citing, in that respect, paragraphs 78, 80 and 82 of the judgment of 21 July 2011, *Sweden* v *MyTravel and Commission* (C-506/08 P, EU:C:2011:496).

48 Thus, in paragraph 61 of the judgment under appeal, the General Court upheld the first complaint in the second part of the first plea in law and, consequently, annulled the decisions at issue in so far as they refused access to the requested documents on the basis of that provision.

49 However, as it explained in paragraph 62 of the judgment under appeal, the General Court considered it necessary, on the assumption that the first subparagraph of Article 4(3) of Regulation No 1049/2001 was applicable in the present case, to examine the second complaint in the second part of the first plea in law raised before it, by which Pollinis France disputed the reasons put forward by the Commission to justify the application of the exception provided for in that provision, concerning its conditions of application other than that relating to the existence of an ongoing decision-making process. At the end of an analysis of the merits of those reasons, set out in paragraphs 82 to 138 of the judgment under appeal, the General Court upheld the second complaint.

50 In the light of those considerations, the General Court annulled the decisions at issue in so far as they refused, on the basis of the first subparagraph of Article 4(3) of Regulation No 1049/2001, access to the requested documents.

Forms of order sought by the parties to the appeal

51 By its appeal, the Commission claims that the Court of Justice should:

– set aside the judgment under appeal; and

– order Pollinis France to pay the costs arising from Cases T-371/20 and T-554/20 and from the present appeal.

52 Pollinis France claims that the Court should:

– dismiss the present appeal; and

– order the Commission to pay its costs of the present appeal proceedings.

The appeal

53 The Commission raises two grounds in support of its appeal. The first ground of appeal alleges that the General Court misinterpreted, in particular in paragraphs 54 to 61 of the judgment under appeal, the concept of a 'matter where the decision has not been taken by the institution', within the meaning of the first subparagraph of Article 4(3) of Regulation No 1049/2001. The second ground of appeal alleges an error of law committed by the General Court, notably in paragraphs 85 to 138 of the judgment under appeal, by ruling on the question of whether the disclosure of the documents in question would 'seriously undermine the institution's decision-making process', within the meaning of that provision.

The first ground of appeal

Arguments of the parties

54 By its first ground of appeal, the Commission alleges, in essence, that the General Court made an error of law in holding that the first subparagraph of Article 4(3) of Regulation No 1049/2001 did not apply in the present case. It submits, more specifically, that the fact of asking the EFSA to carry out a revision of the guidance document adopted by that authority in 2013 in order to help obtain consensus with the SCoPAFF, necessary in the context of a committee procedure, in order for that committee to be able to give a positive opinion and that, consequently, the Commission could adopt the document in question, should suffice to permit a finding that a 'decision-making process', within the meaning of that provision, was ongoing at the time of adoption of the decisions at issue. According to the Commission, the advisory procedure that commenced in 2013 was ongoing due to that request for revision submitted to the EFSA.

55 The Commission criticises the General Court, in particular, for having held that that provision applied only when an institution was called upon imminently to adopt a specific and identifiable draft act. Moreover, the criteria used by the General Court in paragraphs 54, 56 and 57 of the judgment under appeal show that, according to the General Court, in order for that provision to be applicable, an institution must be called upon to adopt an act with a defined content and must have already determined the form of its possible adoption as well as the procedure which might be followed for that purpose, which is confirmed by the fact that the General Court concentrated, notably in paragraphs 56 and 57 of that judgment, on the content of the document submitted to the EFSA for revision. The Commission considers, furthermore, that contrary to the finding by the General Court in paragraph 58 of that judgment, the decision to carry out a revision of a text in order to improve its substance or to facilitate obtaining a consensus, in particular in the context of a committee procedure, constitutes a step in a decision-making process which has the ultimate aim of adopting a text.

56 Relying on paragraph 68 of the judgment of 13 July 2017, *Saint-Gobain Glass Deutschland* v *Commission* (C-60/15 P, EU:C:2017:540), the Commission states that, in order to determine whether the first subparagraph of Article 4(3) of Regulation No 1049/2001 applies, the relevant criteria is the actual exercise by the institution concerned of its competence and the objective pursued by its exercise, which may involve amendments of the content, of the strategy or of the procedure to be followed in order to achieve that objective. Accordingly, in paragraph 57 of the judgment under appeal, the General Court erred in law in finding that the objective of the implementation of a guidance document was not the decisive factor for assessing whether there was a 'matter where the decision has not been taken by the institution' within the meaning of that provision. The Commission submits that it has never renounced its intention to provide the authorities of Member States with a guidance document on bees in accordance with Article 36(1) of Regulation 1107/2009.

57 Pollinis France contests the entirety of that line of argument.

Findings of the Court

58 As a preliminary matter it should be recalled that, as is clear from recital 1 of Regulation No 1049/2001, that regulation reflects the intention, expressed in the second paragraph of Article 1 TEU, of marking a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.

59 That core EU objective is also reflected in Article 15(1) TFEU, which provides that the institutions, bodies, offices and agencies of the European Union are to conduct their work as openly as possible, that principle of openness also being expressed in Article 10(3) TEU and in Article 298(1) TFEU, and in Article 42 of the Charter of Fundamental Rights of the European Union which enshrines the right of access to documents (judgment of 8 June 2023, *Council* v *Pech*, C-408/21 P, EU:C:2023:461, paragraph 30 and the case-law cited).

60 It is apparent from recital 2 of Regulation No 1049/2001 that openness enables the EU institutions to have greater legitimacy and to be more effective and more accountable to EU citizens in a democratic system. By allowing divergences between various points of view to be openly debated, it also contributes to increasing those citizens' confidence in those institutions (judgment of 8 June 2023, *Council* v *Pech*, C-408/21 P, EU:C:2023:461, paragraph 31 and the case-law cited).

61 To those ends, Article 1(a) of that regulation provides that the purpose of that regulation is to confer on the public as wide a right of access as possible to the documents of the EU institutions that it covers.

62 It is also apparent from Article 4 of that regulation, which introduces a system of exceptions in that regard, that that right of access is, nevertheless, subject to certain limits based on reasons of public or private interest. Nevertheless, as such exceptions derogate from the principle of the widest possible public access to documents, they must be interpreted and applied strictly (judgment of 8 June 2023, *Council* v *Pech*, C-408/21 P, EU:C:2023:461, paragraph 33 and the case-law cited).

63 If the institution concerned decides to refuse access to a document which it has been asked to disclose, it must, in principle, first explain how disclosure of that document could specifically and actually undermine the interest protected by the exception – among those provided for in Article 4 of Regulation No 1049/2001 – upon which it is relying. Moreover, the risk of the interest being so undermined must be reasonably foreseeable and must not be purely hypothetical (judgment of 8 June 2023, *Council* v *Pech*, C-408/21 P, EU:C:2023:461, paragraph 34 and the case-law cited).

64 As regards, more specifically, the exception provided for in the first subparagraph of Article 4(3) of that regulation, 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 if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure of the document in question.

65 In that regard, the Court of Justice has already held that the concept of a 'decision-making process', within the meaning of that provision, must be construed as relating to decision-making, without covering the entire administrative procedure which led to the decision (judgment of 13 July 2017, *Saint-Gobain Glass Deutschland* v *Commission*, C-60/15, EU:C:2017:540, paragraph 76).

66 In addition, it should be borne in mind that, although the legislative activity of the EU institutions requires particularly wide access to documents, that does not in any way mean that the other activities of those institutions fall outside the scope of Regulation No 1049/2001 which, as provided in Article 2(3) thereof, applies to all documents held by those institutions, that is to say, drawn up or received by them and in their possession, in all areas of EU activity (see, to that effect, judgment of 13 July 2017, *Saint-Gobain Glass Deutschland* v *Commission*, C-60/15 P, EU:C:2017:540, paragraph 85 and the case-law cited).

67 It is in the light of those considerations that it must be examined whether the General Court was correct in law to hold, in paragraph 59 of the judgment under appeal, that the Commission's decision-making process relating to the guidance document adopted by the EFSA in 2013 had been closed at the time of the adoption of the decisions at issue and that, consequently, in the circumstances specific to the present cases, the Commission could not validly base its decisions on the exception provided for in the first subparagraph of Article 4(3) of Regulation No 1049/2001.

68 In that regard, it should be observed that the General Court held, in paragraph 56 of the judgment under appeal, that the requested documents might be regarded as relating to a decision-making process which took place from 2013 to 2019 and which sought the full or partial implementation by the Commission of the guidance document adopted by the EFSA in 2013 either by adopting that document as such, in accordance with the advisory procedure provided for in Regulation No 182/2011, or by amending the uniform principles laid down by Regulation No 546/2011 in accordance with the regulatory procedure with scrutiny laid down by Decision 1999/468. However, the General Court held, in paragraph 55 of the judgment under appeal, that, at the time when the decisions at issue were adopted, there was no decision-making process with the aim of implementing that document which could be regarded as being ongoing.

69 It must be noted that the Commission does not submit that those findings of fact made by the General Court are vitiated by distortion. First, the Commission's line of argument rests, in essence, on the premiss that it results from the sole fact of the revision of the guidance document adopted by the EFSA in 2013 following the request to that effect which the institution had made to that authority that a decision-making process, within the meaning of the first subparagraph Article 4(3) of Regulation No 1049/2001, was still ongoing at the time of the adoption of the decisions at issue.

70 The circumstance, referred to by the Commission, that the request for the revision in question had been made in March 2019, whilst at the same time that institution attempted partially in practice to implement the guidance document adopted by the EFSA in 2013 by amending the uniform principles laid down in Regulation No 546/2011, in accordance with the regulatory procedure with scrutiny, is irrelevant. As is clear from paragraphs 41, 42 and 45 of the present judgment, the General Court found, within the framework of its exclusive jurisdiction to assess the facts, without any allegation of distortion having been made in that respect, that, at the time of adoption of the decisions at issue, that attempt at partial implementation was no longer ongoing.

71 Secondly, while it is true that the Commission submits that it is apparent from paragraphs 48 to 53 of the judgment under appeal that no decision-making process concerning the guidance document adopted by the EFSA in 2013 had been concluded, either by implementing it as such or by amending the uniform principles, the fact that, as the Commission acknowledges in its appeal, neither of the two processes in question was concluded by the adoption of a decision can, in itself, mean that those processes were still ongoing at the time of adoption of the decisions at issue. As the Advocate General observed in point 73 of his Opinion, a decision-making process may also be closed even if its objective has not been achieved, such as when a particular matter is abandoned and not pursued further.

72 In addition, as the General Court indicated in paragraph 54 of the judgment under appeal, in response to a question at the hearing, the Commission stated that, whilst the revision, by the EFSA, of the guidance document it adopted in 2013 was pending, any consideration relating to the content of that document, to whether it would be binding, to the form of its possible adoption or to the procedure which might be followed for that purpose was hypothetical. Accordingly, the General Court was fully entitled to find, in paragraph 56 of the judgment under appeal, that that revision meant that the Commission's decision-making process was devoid of any object at the time when the decisions at issue were adopted.

73 In that regard, it must be held, taking account inter alia of the case-law cited in paragraphs 62 and 65 of the present judgment, that the concept of a 'decision-making process' within the meaning of the first subparagraph of Article 4(3) of Regulation No 1049/2001 must be understood as relating directly to the taking of a decision. The taking of a decision, within the meaning of that provision, presupposes that there is a specific matter to which the decision to be taken will relate, and that is so irrespective of whether the adoption of a specific and identifiable draft act is imminent. For the remainder, as the Advocate General observed in point 67 of his Opinion and contrary to the submission that the Commission appears to make, the General Court did not find, in paragraphs 54 to 61 of the judgment under appeal, that, if a decision were not to be taken imminently, there would in fact be no decision-making activities.

74 Furthermore, to hold that a decision has not yet been taken and therefore a 'decision-making process', within the meaning of the first subparagraph of Article 4(3) of Regulation No 1049/2001, is ongoing where there is no defined object of such a process would be contrary to both the scheme of that provision and the case-law cited in paragraph 63 of the present judgment. So long as the specific object of a decision to be taken in the future has not yet been defined, any risk that the decision-making process aimed at adopting that decision would be undermined as a result of the disclosure of a document requested pursuant to Regulation No 1049/2001 is by definition hypothetical, given that it would, in practice, be impossible to ascertain whether the content of that document actually relates to that decision-making process.

75 In the present case, as is clear from Article 77 of Regulation No 1107/2009, the Commission has discretion not only to ask the EFSA to prepare or contribute to drawing up a guidance document such as the one at issue in this case, but also as to the action to be taken in respect of such a document and, more specifically, to decide, as necessary, whether it will adopt or amend such documents in accordance with the advisory procedure referred to in Article 79(2) of that regulation, during which it is assisted by the SCoPAFF. It follows that, prior to gaining knowledge of the guidance document adopted by the EFSA in 2013 as it would become after being revised, as appropriate, by that authority, the Commission could not know the content thereof or foresee the subsequent action that it would take in relation to it and, in particular, whether it would launch that advisory procedure. It is consequently impossible for it to determine whether the disclosure of each of the documents requested by Pollinis France would be likely to undermine a possible decision-making process relating to that revised document.

76 Accordingly, it is without erring in law that the General Court found, in paragraph 56 of the judgment under appeal, that the Commission's decision-making process was devoid of any object at the time when the decisions at issue were adopted and that it held, in paragraph 57 of that judgment, that a decision-making process relating to a revised guidance document on bees could have taken place when the EFSA sent that document to the Commission.

77 Finally, contrary to the Commission's submissions, it is also without erring in law that the General Court did not find, as is clear from paragraph 57 of the judgment under appeal, that the argument put forward by that institution that it still had 'the objective' of implementing a guidance document on bees was decisive in the assessment of whether there was a 'matter where the decision has not been taken by [that] institution', within the meaning of the first subparagraph of Article 4(3) of Regulation No 1049/2001.

78 To accept that an institution's intention alone to take a decision on a matter within its competence makes it possible for it to rely on that provision, without it being required that there was a decision-making process with a view to adopting a decision on a defined object, would, in

practice, result in recognising that that institution has the option of refusing to disclose any document which related to that matter. In accordance with the case-law cited in paragraph 62 of the present judgment and as the Advocate General observed in point 41 of his Opinion, the concept of a 'matter where the decision has not been taken by the institution', within the meaning of that provision, should not be interpreted so broadly as to cover every document which relates to a given matter.

79 Consequently, contrary to the Commission's submissions, the General Court was fully entitled to find, in paragraph 57 of the judgment under appeal, that the fact that that institution still had the objective of implementing a guidance document on bees in order to provide the Member States' authorities with a document setting out 'current scientific and technical knowledge', in accordance with Article 36(1) of Regulation No 1107/2009, does not suffice, in itself, to make it possible to conclude that there was still a 'matter where the decision [had] not been taken by the institution', within the meaning of the first subparagraph of Article 4(3) of Regulation No 1049/2001.

80 In the light of all of the foregoing considerations, the first ground of appeal must be rejected.

The second ground of appeal

81 To the extent that the line of argument submitted by the Commission in support of its first ground of appeal does not permit it to call into question the General Court's conclusion that it could not, by the decisions at issue, refuse access to the requested documents on the basis of the first subparagraph of Article 4(3) of Regulation No 1049/2001, the second ground of appeal advanced by that institution, by which it alleges that the General Court erred in law in its subsidiary assessment concerning the conditions for the application of the exception provided for by that provision other than that relating to there being an ongoing decision-making process, cannot lead to the judgment under appeal being set aside. The second ground of appeal must therefore be rejected as ineffective.

82 In the light of all of the foregoing considerations, the present appeal must be dismissed in its entirety.

Costs

83 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to the costs.

84 Under Article 138(1) of the Rules of Procedure, which is applicable to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

85 Since Pollinis France has applied for costs and the Commission has been unsuccessful, the Commission must be ordered to pay, in addition to its own costs, the costs incurred by Pollinis France.

On those grounds, the Court (Fifth Chamber) hereby:

1. Dismisses the appeal;

2. Orders the European Commission to pay, in addition to its own costs, the costs incurred by Pollinis France.

Jarukaitis Gratsias Regan

Delivered in open court in Luxembourg on 16 January 2025.

A. Calot Escobar K. Lenaerts
Registrar President