



## Reports of Cases

### Case C-477/10 P

**European Commission**  
v  
**Agrofert Holding a.s.**

(Appeal — Access to documents of the institutions — Regulation (EC) No 1049/2001 — Documents relating to merger control proceedings — Regulation (EC) No 139/2004 — Refusal of access — Exceptions relating to the protection of the purpose of investigations, commercial interests, legal advice and the decision-making process of the institutions)

#### Summary of the Judgment

1. *European Union — Institutions — Right of public access to documents — Regulation No 1049/2001 — Exceptions to the right of access to documents — Scope — Application to administrative files relating to merger control proceedings — Documents exchanged between the Commission and the notifying parties or third parties*

*(Art. 15 TFEU; European Parliament and Council Regulation No 1049/2001, Art. 4(2); Council Regulation No 139/2004)*

2. *European Union — Institutions — Right of public access to documents — Regulation No 1049/2001 — Exceptions to the right of access to documents — Protection of the decision-making process — Internal documents of the Commission concerning merger control proceedings — Decision to close the procedure which has become final — Refusal of access — Duty to state reasons — Scope*

*(Art. 15 TFEU; European Parliament and Council Regulation No 1049/2001, Art. 4(3))*

3. *European Union — Institutions — Right of public access to documents — Regulation No 1049/2001 — Exceptions to the right of access to documents — Protection of legal advice — Internal documents of the Commission concerning merger control proceedings — Decision to close the procedure became final — Refusal of access — Obligation to state reasons — Scope*

*(Art. 15 TFEU; European Parliament and Council Regulation No 1049/2001, Art. 4(2); Council Regulation No 139/2004)*

1. Although Regulation No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents is intended to confer on the public as wide a right of access to the documents of the institutions as possible, that right is, nevertheless, subject, in the light of the exceptions laid down in Article 4 of that regulation, to certain limits based on reasons of public or private interest.

In order to justify refusal of access to a document, it is not sufficient, in principle, for that document to fall within an activity or an interest, such as the protection of the purpose of investigations, mentioned in Article 4(2) of Regulation No 1049/2001, the institution concerned must also supply explanations as to how

access to that document could specifically and actually undermine the interest protected by an exception laid down in that article. It is, however, open to that institution to base its decisions in that regard on general presumptions which apply to certain categories of documents, as considerations of a generally similar kind are likely to apply to requests for disclosure relating to documents of the same nature.

Such general presumptions are applicable to merger control proceedings, because the legislation which governs those proceedings, that is Regulation No 139/2004 on the control of concentrations between undertakings, also provides for strict rules regarding the treatment of information obtained or established in the context of such proceedings. It is true that the right to consult the administrative file in the context of merger control proceedings, as provided for in that regulation, and the right of access to documents pursuant to Regulation No 1049/2001 are legally distinct, but the fact remains that they lead to a comparable situation from a functional point of view since it is anticipated that access to the file enables the interested parties to obtain all the observations and documents submitted to the Commission.

Therefore, generalised access, on the basis of Regulation No 1049/2001, to the documents exchanged in the context of such a procedure, between the Commission and the notifying parties or third parties would jeopardise the balance which the European Union legislature wished to ensure in the merger regulation between the obligation on undertakings to communicate possibly sensitive commercial information to the Commission in order that it may assess the compatibility of the proposed transaction with the common market, on the one hand, and the guarantee of increased protection, by virtue of the requirement of professional and business secrecy, for the information so provided to the Commission, on the other hand.

If persons other than those authorised to access the file by the merger control legislation, or those who could be considered as involved parties but who did not use their right of access to the information or who have been refused access, were able to obtain access to the documents on the basis of Regulation No 1049/2001, the scheme instituted by that legislation would be undermined.

Such a general presumption justifying the refusal of access to those documents applies regardless of whether the request for access concerns control proceedings which have already been closed or proceedings which are pending.

However, that general presumption does not exclude the possibility of demonstrating that a given document, of which disclosure is sought, is not covered by that presumption or that there is a higher public interest justifying the disclosure of that document under Article 4(2) of Regulation No 1049/2001.

(see paras 53, 57, 59, 61-63, 66, 68, 84)

2. Within the meaning of the second subparagraph of Article 4(3) of Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents where the request for access to internal documents of the Commission relating to merger control proceedings was submitted when the Commission decision closing those proceedings had become definitive in the absence of an appeal against that decision, it is for the Commission to set out, in the decision to refuse access, the specific reasons, supported by detailed evidence, having regard to the actual content of the various documents sought, from which it may be concluded that the disclosure of those documents would seriously undermine that institution's decision-making process.

(see paras 75-77)

3. See the text of the decision.

(see para. 78)