

## GENERAL COURT

### Action brought on 25 July 2012 — Soltau v Commission

(Case T-333/12)

(2012/C 303/43)

*Language of the case: German*

#### Parties

*Applicant:* Christoff Soltau (Adendorf, Germany) (represented by: T. Rosenkranz, lawyer)

*Defendant:* European Commission

#### Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 14 May 2012;

— order the defendant to pay the costs.

#### Pleas in law and main arguments

In support of his action, the applicant claims that the second indent of Article 4(2) of Regulation (EC) No 1049/2001 <sup>(1)</sup> does not preclude him from accessing the Commission's opinion,

which the latter communicated to the Austrian Oberster Gerichtshof (Supreme Court) in accordance with Article 15(3) of Regulation (EC) No 1/2003 <sup>(2)</sup> in the context of a cartel case. In the applicant's view, Article 4(2) does not apply to the document to which the applicant seeks access, since the proceedings before the Austrian court do not, in principle, fall within the scope of protection of that provision. Even if that were the case, the document in question would not fall within the scope of the provision, since the document was not communicated by the Commission as a party to the proceedings. Moreover, the Commission's decision cannot be justified on the basis of protection of the proceedings in Case C-681/11 *Schenker and Others*, pending before the Court of Justice. Indeed, the reference for a preliminary ruling was made by the Austrian Oberster Gerichtshof in the context of the cartel case at issue; however, the document in question was neither issued by the Commission in the context of the proceedings for a preliminary ruling, nor does its content relate to the questions referred.

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<sup>(1)</sup> 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).

<sup>(2)</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles (101) and (102) (TFEU) (OJ 2003 L 1, p. 1).