



Reports of Cases

Case T-115/13

Gert-Jan Dennekamp

v

European Parliament

(Access to documents — Regulation (EC) No 1049/2001 — Documents relating to the affiliation of certain Members of the European Parliament to the additional pension scheme — Refusal to grant access — Exception relating to the protection of privacy and the integrity of the individual — Article 8(b) of Regulation (EC) No 45/2001 — Transfer of personal data — Conditions concerning the necessity of having the data transferred and the risk that the data subject's legitimate interests might be prejudiced)

Summary — Judgment of the General Court (Fifth Chamber), 15 July 2015

1. *Judicial proceedings — Subject-matter of the action — Publication of the names of certain MEPs following the bringing of an action by them — Action against the Parliament by a third party seeking disclosure of data concerning those MEPs devoid of purpose — No need to adjudicate*

(Rules of Procedure of the General Court, Art. 76)

2. *EU institutions — Right of public access to documents — Regulation No 1049/2001 — Exceptions to the right of access to documents — Strict interpretation and adoption — Obligation to make a specific and individual examination for documents covered by an exception — Scope*

(European Parliament and Council Regulation No 1049/2001, Art. 4)

3. *EU institutions — Right of public access to documents — Regulation No 1049/2001 — Exceptions to the right of access to documents — Protection of privacy and integrity of the individual — Scope — Obligation to assess in accordance with EU legislation concerning the protection of personal data — Provisions of Regulation No 45/2001 fully applicable to any application for access to documents containing personal data*

(European Parliament and Council Regulations No 45/2001, Art. 8, and No 1049/2001, Art. 4(1)(b))

4. *EU institutions — Right of public access to documents — Regulations No 1049/2001 and No 45/2001 — Relationship between the exceptions to the right of access to documents and protection of the private life and integrity of the individual — Criterion of the need for transfer of personal data provided for in Article 8(b) of Regulation No 45/2001*

(European Parliament and Council Regulations No 45/2001, twelfth recital and Arts 2(a), 5(b), and 8(b), and No 1049/2001, Arts 4(1)(b), and 6(1))

5. *Judicial proceedings — Introduction of new pleas during the proceedings — Conditions — Plea based on matters revealed during the proceedings — None — Inadmissibility*

(Rules of Procedure of the General Court, Art. 84(1))

6. *Approximation of laws — Protection of individuals with regard to the processing of personal data — Processing of those data by EU institutions and bodies — Regulation No 45/2001 — Application, pursuant to Regulation No 1049/2001, mentioning the names of MEPs affiliated to the additional pension scheme — Personal data — Obligation on the applicant to establish the necessity for transfer of those data — Obligation on the institution concerned to weigh up the interests involved by the disclosure of those data*

(European Parliament and Council Regulations No 45/2001, Art. 8(b), and No 1049/2001, Art. 4(1)(b))

7. *EU institutions — Right of public access to documents — Regulation No 1049/2001 — Members of an institution affiliated to an additional pension scheme — Risk of conflict of interests in the event of a vote concerning that scheme — Obligation on the institution in question to transfer to an applicant for documents the names of the affiliated members who participated in such votes*

(European Parliament and Council Regulation No 1049/2001)

8. *EU institutions — Right of public access to documents — Regulation No 1049/2001 — Application for access to documents capable of revealing a conflict of interests — Concept of conflict of interests*

(European Parliament and Council Regulation No 1049/2001, Arts 2 and 4(1)(b))

9. *Approximation of laws — Protection of individuals with regard to the processing of personal data — Processing of those data by EU institutions and organs — Regulation No 45/2001 — Application, pursuant to Regulation No 1049/2001, mentioning the names of MEPs affiliated to the additional pension scheme — Personal data — Lower degree of protection for the data of public figures*

(European Parliament and Council Regulations No 45/2001, Art. 8(b), and No 1049/2001)

10. *EU institutions — Right of public access to documents — Regulations No 1049/2001 and No 45/2001 — Application, pursuant to Regulation No 1049/2001, mentioning the names of MEPs affiliated to the additional pension scheme — Personal data — Lower degree of protection for the data of public figures — Primacy of interests intended to ensure the proper functioning of the European Union by increasing the confidence that citizens may place in the institutions*

(European Parliament and Council Regulations No 45/2001, Art. 8(b), and No 1049/2001)

11. *EU institutions — Right of public access to documents — Regulation No 1049/2001 — Exceptions to the right of access to documents — Protection of privacy and integrity of the individual — Refusal to grant access — Obligation to state reasons — Scope*

(European Parliament and Council Regulation No 1049/2001, Art. 4)

1. See the text of the decision.

(see paras 25-29)

2. Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents is intended, as is apparent from recital 4 in the preamble thereto and from Article 1, to give the fullest possible effect to the right of public access to documents of the institutions. Whilst that right is subject, by virtue of Article 4 of that regulation to certain limitations based on grounds of public or private interest, as in the case of refusal where disclosure would undermine the protection of one of the interests protected by that provision, such exceptions are in derogation from the principle of the widest possible public access to documents, and must therefore be interpreted and applied strictly. Thus, if the institution concerned decides to refuse access to a document which it has been asked to disclose, it must, in principle, 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 — that is relied upon by that institution. Moreover, the risk of that undermining must be reasonably foreseeable and not purely hypothetical.

(see paras 36-39, 133)

3. See the text of the decision.

(see paras 40-43, 49-51, 134)

4. In order to strike a balance between the right of access to documents held by the institutions, under Regulation No 1049/2001, and the obligations under Regulation No 45/2001 in respect of the transfer of personal data by those institutions, it is necessary to clarify the relationship between the rules laid down by those two regulations.

In that regard, first, where an application for access to documents may, if granted, result in the disclosure of personal data, the institution in receipt of the application must apply all the provisions of Regulation No 45/2001, and the full scope of the protection afforded to those data may not be limited as a result of the various rules and principles in Regulation No 1049/2001. In that general context, whilst the right of access to documents is not, in accordance with Article 6(1) of Regulation No 1049/2001, conditional upon an applicant justifying an interest in the disclosure of those documents, Article 4(1)(b) of Regulation No 1049/2001 indirectly requires an applicant for access to establish, through the provision of one or more express and legitimate reasons, the necessity of the transfer of the personal data contained in the documents to which he has requested access.

In the second place, it is necessary to take into particular consideration the essential characteristics of the system of protection which Regulation No 45/2001 provides to natural persons with respect to the processing of their personal data. According to recital 5 in the preamble to Regulation No 45/2001, the regulation seeks to provide individuals which it defines as data subjects with legally enforceable rights, and to define the data processing obligations of controllers within the EU institutions and bodies. In order to achieve that objective, the conditions subject to which an EU institution or body may transfer personal data must be interpreted strictly, so as not to jeopardise the rights of those persons, which are recognised by Regulation No 45/2001 as being fundamental rights, according to recital 12 in the preamble thereto. Thus, if the condition of necessity is to be fulfilled, it must be established that the transfer of personal data is the most appropriate of the possible measures for attaining the applicant's objective, and that it is proportionate to that objective, which means that the applicant must submit express and legitimate reasons to that effect.

Such an interpretation does not have the effect of creating a categorical exception for personal data to the principle of access to documents, but of reconciling two fundamental yet opposing rights where an application for access to documents relates to personal data, protected by Regulation No 45/2001.

None the less, the strict interpretation of the condition of necessity laid down by Article 8(b) of Regulation No 45/2001 does not mean that a general justification for the transfer of personal data, like the public's right to information, cannot be taken into consideration.

In the third place, where the person requesting access to the documents containing the personal data has established the necessity of having them transferred, and the institution in question has taken the view that there is no reason to assume that the data subjects' legitimate interests might be prejudiced, the data may be transferred and, provided that none of the exceptions provided for by Regulation No 1049/2001 applies, other than that relating to the undermining of the protection of privacy and the integrity of the individual, the document(s) containing the data are to be disclosed and, therefore, made available to the public.

It follows that the test of necessity laid down in Article 8(b) of Regulation No 45/2001 must be strictly interpreted; that the condition of the necessity of having the personal data transferred entails an examination of necessity by the relevant institution or body in the light of the objective pursued by the applicant for access to the documents, which restricts the scope of the rule on the absence of justification for an application for access; that the justification for the necessity of having those data transferred, invoked by the applicant, may be of a general nature; and that Regulation No 1049/2001 must not be rendered devoid of purpose by an interpretation of the relevant provisions that would mean that legitimate disclosure could never have the aim of full disclosure to the public.

(see paras 48, 51-54, 56, 59-61, 67, 68)

5. See the text of the decision.

(see para. 80)

6. The mere invocation, by an applicant for access to documents of an institution, of the right to information and to communicate to the public information concerning control over public expenditure does not enable it to be established in what way the transfer of the names of members of that institution participating in an additional pension scheme constitutes the most appropriate means of achieving the aim pursued by the applicant or in what way it is proportionate to that aim.

7. The same applies to the invocation of a debate already existing concerning such a scheme, which does not demonstrate the applicant's need to obtain the transfer of the data at issue. However, once the necessity of having the personal data transferred is established, the institution or body of the European Union in receipt of an application for access to documents containing such data must weigh up the various interests of the parties concerned and verify whether there is any reason to assume that the data subjects' legitimate interests may be prejudiced by that transfer, as required by Article 8(b) of Regulation No 45/2001.

(see paras 83, 84, 116, 127)

8. In the context of the application of Regulation No 1049/2009, in order to enable an applicant for access to documents held by an institution concerning the affiliation of some of its members to an additional pension scheme to attain his aim of bringing to light potential conflicts of interest of those members, the institution in question must transfer the names of those members participating in the additional pension scheme who were also members of the plenary at the time of the votes concerning that scheme and who actually took part in those votes, not just the names of those who took part in the votes organised in accordance with the procedure for voting by roll call. Irrespective of the voting procedure used in the votes relating to the scheme, all the members who actually voted and who were members of the scheme could be influenced by their personal interest. In that regard, the applicant is entitled merely to show that those members were in such a situation because of their dual role as members of the institution and members of the scheme. In those circumstances, the institution concerned makes a manifest error of assessment by finding that the necessity of the transfer of the names of the members participating in the scheme who participated in the votes on the latter has not been established.

(see paras 103, 110, 113)

9. In the context of the application of Regulation No 1049/2001, the concept of a conflict of interest relates not only to a situation in which a public official has a private interest which has actually influenced the impartial and objective performance of his official duties but also to a situation in which the interest identified may, in the eyes of the public, appear to influence the impartial and objective performance of his official duties. Furthermore, the disclosure of potential conflicts of interest is aimed not only at revealing those cases in which the public official has performed his duties with the intention of satisfying his private interests, but also at informing the public of the risks of public officials being subject to conflicts of interest, so that they act impartially in the performance of their official duties, after, in view of the circumstances in which they find themselves, having declared the potential conflict of interest to which they are subject and taken or proposed measures to resolve or avoid that conflict.

(see paras 106, 109)

10. The distinction in the case of public figures between the public and private spheres is relevant for the purposes of determining the degree of protection of personal data to which they are entitled under the rules in Regulation No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, even if that regulation does not contain any such rule. It would be entirely inappropriate for an application for the transfer of personal data to be assessed in the same way irrespective of the identity of the data subject. Since public figures have chosen to expose themselves to scrutiny by third parties, particularly the media and, through them, by a lesser or greater general public depending on the policy area, that environment needs to be taken into account when assessing the risk of the legitimate interests of public figures being prejudiced in the context of the application of Article 8(b) of Regulation No 45/2001, and in weighing those interests against the necessity of transferring the personal data requested.

In such a context, where an application under Regulation No 1049/2001 covers access to documents concerning members of an institution who participate in an additional pension scheme in respect of which they have taken part in a vote within that institution, in order to assess the risk of the legitimate interests of those members being undermined, account must be taken of the link which the personal data in question, namely the names of the members participating in the scheme who participated in the vote thereon, have with the mandate of the latter. Since the possibility of being a member of the scheme is open only to MEPs, the personal data at issue fall into the public sphere of MEPs. In the light of that feature, which limits the scope of application of the additional pension scheme to MEPs alone, the fact that membership of the scheme is optional and a result of voluntary affiliation, and thus does not arise automatically as a result of their mandate, or that the additional pension is paid after the end of their mandate is not determinative as regards the inclusion of the personal data at issue in the private sphere of MEPs. It follows that, in weighing up the interests involved, the legitimate interests of the MEPs who are members of the additional pension scheme, which fall into the public sphere of those MEPs, must be subject to a lesser degree of protection than that which, following the logic of Regulation No 45/2001, would be enjoyed by the interests falling into their private sphere.

(see paras 119-121, 124)

11. In the context of an application, under Regulation No 1049/2001, for access to European Parliament documents concerning the participation of some of its members in an additional pension scheme, personal data are transferred only if there is no reason to assume that the legitimate interests of the data subjects may be prejudiced by that transfer. Infringement of the principles of equal treatment and legitimate expectations. In that regard, since the legitimate interests of members participating in such a scheme, attaching to the public sphere of the latter, enjoy a lower degree of

protection than that which, under the logic of Regulation No 45/2001, is enjoyed by interests in their private sphere, the slightest degree of protection of the names of those members has the effect of giving greater weight to the interests represented by the aim of the transfer.

Thus, bringing to light potential conflicts of interest of MEPs, which is the aim of the transfer of data requested, ensures better scrutiny of the actions of MEPs and of the functioning of an EU institution which represents the peoples of the Member States, and improves the transparency of its actions. Consequently, in view of the importance of the interests invoked here, which are intended to ensure the proper functioning of the European Union by increasing the confidence that citizens may legitimately place in the institutions, the legitimate interests of the MEPs who are members of the additional pension scheme cannot be prejudiced by the transfer of the personal data at issue. The weighing up of the interests involved ought therefore to have resulted in approval of the transfer of the names of the MEPs participating in the additional pension scheme who took part in votes on it, since the European Parliament cannot lawfully maintain that there is a legally binding presumption favouring the legitimate interests of the data subjects to whom the personal data to be transferred relate. Nothing in the wording of Article 8(b) of Regulation No 45/2001 militates in favour of such a presumption being recognised, since the assessment of an application for personal data to be transferred requires the interests engaged to be weighed up after the applicant has established that there is a necessity for the data to be transferred.

In those circumstances, the Parliament makes a manifest error of assessment in finding that the legitimate interests of MEPs participating in the additional pension scheme who took part in a vote on it might be prejudiced by the transfer of their names.

(see paras 124-127, 130)

12. See the text of the decision.

(see paras 136-141)