



## Reports of Cases

ORDER OF THE GENERAL COURT (Third Chamber)

11 February 2025\*

(Access to documents – Regulation (EC) No 1049/2001 – Documents concerning the production of COVID-19 vaccines – Implied refusal of access – Express decision adopted after the action was brought – No need to adjudicate)

In Case T-178/24,

**Corinne Reverbel**, residing in Dému (France), represented by D. Protat, lawyer,

applicant,

v

**European Commission**, represented by M. Burón Pérez and K. Herrmann, acting as Agents,

defendant,

THE GENERAL COURT (Third Chamber),

composed of P. Škvařilová-Pelzl (Rapporteur), President, G. Steinfatt and R. Meyer, Judges,

Registrar: V. Di Bucci,

makes the following

### Order

- 1 By her action under Article 263 TFEU, the applicant, Ms Corinne Reverbel, seeks the annulment of the implied decision of the European Commission of 7 February 2024 rejecting her confirmatory application for access to several documents made on 15 December 2023 ('the contested decision').

### Background to the dispute and events subsequent to the bringing of the action

- 2 On 1 March 2023, the applicant submitted, pursuant to Article 7(1) 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), an application for access to several documents concerning the production of COVID-19 vaccines.

\* Language of the case: French.

- 3 The Commission replied to that application on 30 November 2023.
- 4 In that decision, in the first place, the Commission informed the applicant that it had identified a document falling within the scope of her application. The document in question was an assessment report of the European Medicines Agency (EMA) of 25 November 2021 ('the EMA report').
- 5 In the second place, the Commission granted partial access to the EMA report, the full disclosure of which was prevented, according to the Commission, by the exceptions to the right of access provided for, first, in Article 4(1)(b) of Regulation No 1049/2001, second, in the first indent of Article 4(2) of that regulation and, third, in the third indent of Article 4(2) of that regulation, exceptions which relate, first, to the protection of privacy and the integrity of the individual, in particular in accordance with EU legislation regarding the protection of personal data, second, to the protection of commercial interests of a natural or legal person, including intellectual property, and, third, to the protection of the purpose of inspections, investigations and audits.
- 6 By letter of 15 December 2023, registered by the Commission on 18 December 2023, the applicant made a confirmatory application under Article 7(2) of Regulation No 1049/2001 asking the Commission to reconsider its position.
- 7 By email of 17 January 2024, the Commission informed the applicant that a response to her confirmatory application could not be provided to her within the time limit of 15 days set out in Article 8(1) of Regulation No 1049/2001, which expired on the same day. According to the Commission, on that date, the material necessary to carry out a full analysis had not yet been gathered.
- 8 By email of 7 February 2024, the Commission informed the applicant that it could not issue a response to her confirmatory application because internal consultations were under way and, in view of the origin of the requested document, it was also required, pursuant to Article 4(4) of Regulation No 1049/2001, to consult third parties.
- 9 The applicant brought the present action on 2 April 2024.
- 10 On 4 June 2024, in response to the applicant's confirmatory application, the Commission adopted an express decision on the basis of Article 8(1) of Regulation No 1049/2001 ('the express confirmatory decision'). By that decision, it granted the applicant wider partial access to the EMA report.
- 11 In the express confirmatory decision, the Commission stated that full access to the EMA report was not possible, in view of the exceptions to the right of access provided for in the third indent of Article 4(1)(a) of Regulation No 1049/2001 and in Article 4(1)(b) of that regulation, which relate, first, to the protection of the public interest as regards international relations and, second, to the protection of privacy and the integrity of the individual. In addition, in that decision, the Commission confirmed that it did not possess any other document that might correspond to the description given in the application of 1 March 2023 (see paragraph 2 above).
- 12 On 17 June 2024, the Commission made an application for a declaration that there is no need to adjudicate.

### Forms of order sought

- 13 In her application, the applicant claims that the Court should annul the contested decision.
- 14 In its application for a declaration that there is no need to adjudicate, the Commission contends that the Court should:
- declare that the action has become devoid of purpose and that there is no longer any need to adjudicate on it;
  - order each party to bear its own costs.
- 15 In her observations on the Commission's application for a declaration that there is no need to adjudicate, the applicant asks the Court to reject that application and confirms that she seeks the annulment of the contested decision.

### Law

- 16 Under Article 130(2) and (7) of the Rules of Procedure of the General Court, on application by a party, the Court may declare that the action has become devoid of purpose and that there is no longer any need to adjudicate on it.
- 17 Since the Commission has applied for a declaration that the action has become devoid of purpose and that there is no longer any need to adjudicate on it, the Court, finding that it has sufficient information from the documents in the case file, has decided to rule on that application without taking further steps in the proceedings.
- 18 It should be borne in mind that, according to the settled case-law of the Court of Justice, the purpose of the action must, like the interest in bringing proceedings, continue until the final decision, failing which there will be no need to adjudicate. That presupposes that the action must be liable, if successful, to procure an advantage for the party bringing it (judgment of 4 September 2018, *ClientEarth v Commission*, C-57/16 P, EU:C:2018:660, paragraph 43).
- 19 In the present case, the Commission, by the decision of 30 November 2023 referred to in paragraph 3 above, partially rejected the application for access to documents made by the applicant on 1 March 2023. Following that decision, the applicant made a confirmatory application.
- 20 It is common ground that the Commission adopted the express confirmatory decision after the present action was brought. By that decision, it granted wider partial access to the EMA report and, as to the remainder, expressly confirmed the rejection of the applicant's confirmatory application.
- 21 In the first place, as regards the express rejection of the confirmatory application, it must be borne in mind that, by adopting an express decision rejecting a confirmatory application for access to documents, an institution withdraws the implied decision rejecting that application (see, to that effect, judgments of 2 October 2014, *Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraphs 88 and 89; of 2 July 2015, *Typke v Commission*, T-214/13, EU:T:2015:448,

paragraph 37; of 26 March 2020, *ViaSat v Commission*, T-734/17, not published, EU:T:2020:123, paragraphs 16 and 17; and of 29 September 2021, *AlzChem Group v Commission*, T-569/19, EU:T:2021:628, paragraph 27).

- 22 That withdrawal of the contested act, in view of its retroactive nature (see, to that effect, judgment of 17 April 1997, *de Compte v Parliament*, C-90/95 P, EU:C:1997:198, paragraph 35), results in the action becoming devoid of purpose (see, to that effect, judgments of 7 June 2007, *Wunenburger v Commission*, C-362/05 P, EU:C:2007:322, paragraphs 48 and 49; of 4 September 2018, *ClientEarth v Commission*, C-57/16 P, EU:C:2018:660, paragraph 45; and of 21 January 2021, *Leino-Sandberg v Parliament*, C-761/18 P, EU:C:2021:52, paragraph 33).
- 23 In such a case, consideration of an action against an implied decision cannot be justified either by the objective of preventing the alleged unlawfulness from recurring or by that of facilitating potential actions for damages, since it is possible to attain both those objectives through consideration of an action brought against the express decision (see, to that effect, judgment of 10 December 2010, *Ryanair v Commission*, T-494/08 to T-500/08 and T-509/08, EU:T:2010:511, paragraph 46 and the case-law cited).
- 24 In the present case, the adoption of the express confirmatory decision, in so far as it rejected the applicant's application, had the effect of partially withdrawing the contested decision and therefore eliminated, in that regard, the purpose of the present action, which sought the annulment of that decision.
- 25 That conclusion cannot be called into question by the applicant's arguments concerning the express rejection of her application.
- 26 Thus, the applicant submits that the express rejection of her confirmatory application is void and ineffective by reason of the abnormally long time taken to process it and that, consequently, it is not 'enforceable' against her.
- 27 In that regard, it should be noted that the partial refusal of the applicant's application necessarily affects her position, since the applicant does not have access to the documents in question as a result of that refusal.
- 28 Furthermore, even if the applicant were to be regarded as challenging the lawfulness of the express rejection of her confirmatory application and that potential unlawfulness could have an effect on the enforceability of that rejection, her argument would, in any event, have to be rejected.
- 29 First, as regards the adoption of an express confirmatory decision rejecting an application outside the time limits for replying set out in Article 8 of Regulation No 1049/2001, the Court of Justice has held that, where an institution fails to comply with the time limits for replying set out in that article, that institution remains under an obligation to provide, even belatedly, a reasoned reply to the application made by the person concerned. It has also held that, in such a situation, in accordance with Article 8(1) and (3) of Regulation No 1049/2001, the person concerned is entitled to pursue two kinds of procedure. He or she could, first, make a complaint to the European Ombudsman in accordance with Article 228 TFEU or, second, bring an action for damages before the General Court under Article 340 TFEU in order to obtain compensation for any damage caused by the failure to comply with the time limits for replying (judgment of 14 July 2016, *Sea Handling v Commission*, C-271/15 P, not published, EU:C:2016:557, paragraphs 85 to 87).

- 30 Accordingly, it must be held that failure to comply with the time limits set out in Article 8 of Regulation No 1049/2001 has no bearing on the lawfulness of the express confirmatory decision.
- 31 Second, as regards the adoption of a withdrawal decision after an unreasonable period of time, it is true that, according to the case-law, the retroactive withdrawal of an unlawful administrative act giving rise to a right must take place within a reasonable period (see judgment of 16 December 2010, *Athinaiki Techniki v Commission*, C-362/09 P, EU:C:2010:783, paragraph 59 and the case-law cited).
- 32 However, the contested decision, which is a decision refusing the applicant's application, does not, vis-à-vis the applicant, constitute an act giving rise to rights. Therefore, the case-law referred to in paragraph 31 above is irrelevant in the present case (see, to that effect, judgment of 16 December 2010, *Athinaiki Techniki v Commission*, C-362/09 P, EU:C:2010:783, paragraph 60).
- 33 Moreover, the condition making the withdrawal of an act subject to its unlawfulness applies in areas where it is necessary to ensure that such withdrawal does not allow an institution to avoid any judicial review of its actions (see, to that effect, judgments of 16 December 2010, *Athinaiki Techniki v Commission*, C-362/09 P, EU:C:2010:783, paragraphs 68 to 71, and of 11 July 2013, *BVGD v Commission*, T-104/07 and T-339/08, not published, EU:T:2013:366, paragraph 80). The adoption of an express confirmatory decision does not entail such a risk. On the contrary, it enables a person applying for access to documents to ascertain the reasons for the institution's rejection of the application.
- 34 Consequently, the applicant no longer has an interest in obtaining the annulment of the implied rejection of her confirmatory application for access to documents in so far as that implied decision was subsequently confirmed by an express rejection decision.
- 35 In the second place, as regards the wider partial access to the EMA report granted by the Commission, it should be borne in mind that the mere grant of access to the documents at issue following the rejection of an application, without the institution acknowledging its error by adopting an express withdrawal, cannot be regarded as a withdrawal (see, to that effect, judgments of 30 April 2020, *Izba Gospodarcza Producentów i Operatorów Urządzeń Rozrywkowych v Commission*, C-560/18 P, EU:C:2020:330, paragraphs 72 to 75, and of 22 March 2018, *De Capitani v Parliament*, T-540/15, EU:T:2018:167, paragraphs 31 to 33).
- 36 In that regard, the obsolescence of the contested decisions, which occurred after the lodging of the action, does not in itself place the Court under an obligation to declare that there is no need to adjudicate for lack of purpose or for lack of interest in bringing proceedings at the date of the delivery of the judgment (see, to that effect, judgments of 7 June 2007, *Wunenburger v Commission*, C-362/05 P, EU:C:2007:322, paragraph 47; of 4 September 2018, *ClientEarth v Commission*, C-57/16 P, EU:C:2018:660, paragraph 45; of 21 January 2021, *Leino-Sandberg v Parliament*, C-761/18 P, EU:C:2021:52, paragraph 33; and of 20 June 2024, *EUIPO v Indo European Foods*, C-801/21 P, EU:C:2024:528, paragraph 59).
- 37 The applicant may therefore retain an interest in the annulment of the contested decision for the purposes of a potential action for damages in so far as she was granted wider partial access to the EMA report only when the express confirmatory decision was adopted.

- 38 However, an applicant cannot substantiate an interest in bringing proceedings by relying merely on the possibility of bringing an action for compensation for the damage in the future, without adducing specific evidence concerning the impact of the alleged unlawfulness on its situation and the nature of the damage which it claimed to have suffered and in respect of which such an action would have sought compensation (see, to that effect, judgment of 30 April 2020, *Izba Gospodarcza Producentów i Operatorów Urządzeń Rozrywkowych v Commission*, C-560/18 P, EU:C:2020:330, paragraph 74, and order of 28 September 2021, *Airoldi Metalli v Commission*, T-611/20, not published, EU:T:2021:641, paragraphs 68 and 69).
- 39 In the present case, the applicant has not provided any specific evidence.
- 40 Consequently, the finding that there is no need to adjudicate cannot be opposed by the applicant on the ground that a potential finding that the contested decision is unlawful would then enable her to bring an action for damages in order to compensate for the damage allegedly caused to her by that decision.
- 41 In the light of all the foregoing, it must be held that the present action has become devoid of purpose and that there is no longer any need to adjudicate on it.

### **Costs**

- 42 According to Article 137 of the Rules of Procedure, where a case does not proceed to judgment the costs shall be in the discretion of the Court.
- 43 In the light of the circumstances of the present case, it is appropriate to order the parties to bear their own costs.

On those grounds,

THE GENERAL COURT (Third Chamber)

hereby orders:

- 1. There is no longer any need to adjudicate on the action.**
- 2. Ms Corinne Reverbel and the European Commission shall bear their own costs.**

Luxembourg, 11 February 2025.

[Signature]