



Reports of Cases

JUDGMENT OF THE GENERAL COURT (Third Chamber)

28 September 2022 *

(Access to documents – Regulation (EC) No 1049/2001 – Documents relating to the investigation against the former Prime Minister of the Czech Republic on the misuse of EU funds and potential conflicts of interest – Refusal to grant access – Exception relating to the protection of the purpose of inspections, investigations and audits – Interest in bringing proceedings ceasing in part to exist – No need to adjudicate in part – Obligation to state reasons)

In Case T-174/21,

Agrofert, a.s., established in Prague (Czech Republic), represented by S. Sobolová, lawyer,

applicant,

v

European Parliament, represented by N. Görlitz, J.-C. Puffer and O. Hrstková Šolcová, acting as Agents,

defendant,

supported by

European Commission, represented by C. Ehrbar, M. Salyková and J. Hradil, acting as Agents,

intervener,

THE GENERAL COURT (Third Chamber),

Composed, at the time of the deliberations, of G. De Baere (Rapporteur), President, G. Steinfatt and S. Kingston, Judges,

Registrar: E. Coulon,

having regard to the written part of the procedure,

* Language of the case: Czech.

having regard to the fact that no request for a hearing was submitted by the parties within three weeks after service of notification of the close of the written part of the procedure, and having decided to rule on the action without an oral part of the procedure, pursuant to Article 106(3) of the Rules of Procedure of the General Court,

gives the following

Judgment

- 1 By an action brought pursuant to Article 263 TFEU, the applicant, Agrofert, a.s., seeks annulment of Decision A(2019) 8551 C (D 300153) of the European Parliament of 15 January 2021 ('the contested decision'), by which the Parliament refused the applicant access to two documents relating to the investigation against the former Prime Minister of the Czech Republic on the misuse of EU funds and potential conflicts of interest.

Background to the dispute

- 2 The applicant is a Czech holding company which controls over 230 companies active in various sectors of the economy, such as agriculture, food production, the chemical industry or the media. It was originally formed by Mr Andrej Babiš, who became Prime Minister of the Czech Republic in 2017 and was in office until December 2021.
- 3 By letter of 31 July 2020, the applicant submitted to the Parliament a request for access to documents pursuant to 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).
- 4 In its request, the applicant states that Resolution 2019/2987(RSP) of the European Parliament, of 19 June 2020, on the reopening of the investigation against the Prime Minister of the Czech Republic on the misuse of EU funds and potential conflicts of interest (OJ 2021 C 362, p. 37; 'the resolution'), stated that Mr Babiš continued to control the Agrofert group after his appointment as Prime Minister of the Czech Republic. The applicant, which considered that statement to be inaccurate, indicated that it wished to know the sources and information which had been in the Parliament's possession prior to the adoption of the resolution, apart from the report of the fact-finding mission undertaken by the Budgetary Control Committee (CONT) in the Czech Republic between 26 and 28 February 2020 ('the fact-finding report'), which contained the same statement. It therefore sought access, first, to all documents gathered or used by the Budgetary Control Committee of the Parliament as evidence for its assertion that the Prime Minister of the Czech Republic, Mr Babiš, still controlled the Agrofert group and other assertions relating to the applicant or the Agrofert group contained in the fact-finding report, second, to all documents used in preparing and drafting the motion for a resolution of the Parliament of 15 June 2020 on the reopening of the investigation against the Prime Minister of the Czech Republic on the misuse of EU funds and potential conflicts of interest, and third, to all documents provided to or requested by Members of the European Parliament or political groups in the European Parliament in connection with the resolution or the motion for a resolution.
- 5 By decision of 14 September 2020, the Parliament responded to the applicant's request. First, it identified a certain number of documents as meeting the criteria in the request and informed the applicant that some of those documents were publicly available. Secondly, on the basis of the third

indent of Article 4(1)(a) and the third indent of Article 4(2) of Regulation No 1049/2001, the Parliament refused to grant access to two documents ('the requested documents'), namely a letter from a member of the European Commission, Mr Oettinger, to the Prime Minister of the Czech Republic of 29 November 2018, reference ARES (2018) 6120850 ('the Commission's letter') and the Commission's final audit report of 29 November 2019, reference ARES (2019) 7370050, relating to an audit of the functioning of the management and control systems in place in the Czech Republic to avoid conflicts of interest in accordance with Articles 72 to 75 and Article 125 of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ 2013 L 347, p. 320) ('the final audit report').

- 6 By letter of 9 October 2020, registered by the Parliament on 28 October 2020, the applicant made a confirmatory application asking the Parliament to reconsider its position. It stated that its original request had not been dealt with in accordance with Regulation No 1049/2001. First, it considered that the list of documents identified by the Parliament was incomplete and, second, that the refusal of access to the requested documents was unjustified.
- 7 In the contested decision, the Parliament, first, stated that the documents identified in its decision of 14 September 2020 constituted all the documents in its possession which met the criteria set out in the applicant's request. It then confirmed its decision to refuse access to the requested documents on the basis of the third indent of Article 4(2) of Regulation No 1049/2001, relating to the protection of the purpose of inspections, investigations and audits.
- 8 The Parliament stated that, as the Commission was the originator of the requested documents, it had consulted that institution pursuant to Article 4(4) of Regulation No 1049/2001, in order to obtain its opinion on the potential disclosure of those documents. The Commission had informed the Parliament that the disclosure of the requested documents would undermine ongoing investigations and audits concerning issues raised in the resolution, and compromise the integrity of the outcome of those investigations and audits.
- 9 The Parliament took the view that the requested documents had been produced by the Commission in the course of an ongoing investigation into a possible infringement, by the Czech Republic, of EU law on the prevention of conflicts of interest, and that their disclosure would endanger the purpose of that investigation.
- 10 First, the Parliament indicated that the purpose of Commission investigations into potential infringements of EU law is to give the Member State in question the opportunity to comply with its EU law obligations and to exercise its rights of defence in relation to the objections formulated by the Commission. It stated that the Member State in question was entitled to expect confidentiality from the Commission, otherwise it might prove even more difficult to begin a dialogue between the Commission and the Member State with a view to bringing the alleged infringement to an end, in order to achieve compliance with EU law and avoid legal proceedings. It considered that confidentiality warranted the refusal of access to documents relating to Commission investigations which might eventually lead to proceedings for infringement of EU law.

- 11 Secondly, the Parliament observed that, as had been stated in the resolution, the investigators and the stakeholders in the investigation appeared to be surrounded by a climate of threats. It considered that early publication of the requested documents would thus negatively affect the level of cooperation between investigators and stakeholders, who would be exposed to additional pressure from third parties, and would compromise the Commission's ability to carry out its investigation as effectively as possible. Furthermore, the quality of the information that the investigators would be able to collect would also be compromised.
- 12 For those reasons, the Parliament concluded that granting public access to the requested documents would undermine the purpose of the Commission investigation.
- 13 Lastly, it observed that the applicant's rights of defence, on which it had sought to rely in its confirmatory request, constituted a private interest and not an overriding public interest. It considered that it had not been demonstrated that, in the present case, there was a public interest in disclosure of the requested documents which outweighed the interest in protecting the purpose of the Commission investigation.

Events subsequent to the bringing of the present action

- 14 On 23 April 2021, the Commission published, on its website, a version of the final audit report from which information relating to the internal functioning of AB Private Trust I and AB Private Trust II, as well as personal data relating to the individuals concerned, had been redacted.

- 15 On its website, the Commission stated:

'Since the final audit report was issued, progress has been made to clarify some audit findings ... to adequately implement audit recommendations ... or to partially address others. The Czech authorities have also brought some improvements in the management and control system to mitigate potential conflicts of interests of public officials.

Due to the precautionary measures taken by the programme authorities at the request of the Commission, no expenditure was declared for the operations affected by the audit results, and EU funds remain protected against the risks identified during the audit.

Disclaimer: The Commission usually does not publish its audit reports or audit related information save for exceptional situations such as those in which there is an important public interest in transparency of the information. This final audit report is published taking into account the requirements for protection of certain information, such as personal data or commercial secrets pursuant to Regulation (EU) No 1049/2001.'

Forms of order sought

- 16 The applicant claims that the Court should:

- annul the contested decision;
- order the Parliament to pay the costs.

- 17 The Parliament, supported by the Commission, contends that the Court should:
- dismiss the application;
 - order the applicant to pay the costs.

Law

- 18 In support of its action, the applicant puts forward two pleas in law, alleging, in essence, infringement of the third indent of Article 4(2) of Regulation No 1049/2001. The first plea alleges that the Parliament has not demonstrated that the conditions for refusing access to the requested documents were met. The second plea alleges that the Parliament failed to have regard to an overriding public interest justifying disclosure of the requested documents.

The request for a number of documents annexed to the application to be removed from the case file

- 19 The Commission requests that the documents contained in Annexes A.10 to A.12 to the application be removed from the case file. It states that it did not authorise full disclosure of the documents in question, which are the draft audit report of 20 May 2019, the final audit report and the audit follow-up letter of 22 October 2020 ('the follow-up letter').
- 20 The Commission observes that subsidiaries of the applicant were given access to part of the follow-up letter for the purposes of the national administrative procedure relating to the grant of subsidies. The Commission indicates that, at the request of the Městský soud v Praze (City Court, Prague, Czech Republic), it agreed, on 4 February 2021, that one of the Agrofert group companies could have access to the draft audit report and the final audit report, but only for the purposes of the national judicial proceedings. It states that, on 23 April 2021, it published a version of the final audit report from which information relating to the internal functioning of AB Private Trust I and AB Private Trust II, as well as personal data relating to the individuals concerned, had been redacted.
- 21 Accordingly, it submits that if the three documents were to remain in the file relating to the present case, it would enable the applicant to circumvent the obligation of confidentiality which it undertook when receiving the documents under the principle of sincere cooperation, as well as the procedure for requesting access to documents laid down by Regulation No 1049/2001.
- 22 The applicant submits that the documents contained in Annexes A.10 to A.12 to the application are those which were published in the Czech media and are still available on the internet. Accordingly, they are not documents that were disclosed on a confidential basis by the Commission to the applicant or any of its subsidiaries, which also produced the final audit report, as it appeared in the press, in the course of their actions before the General Court, registered under case numbers T-101/21 and T-213/21.
- 23 It should be noted that the principle which prevails in EU law is that of the unfettered evaluation of evidence, from which it results that the admissibility of evidence produced in good time can be contested before the EU Courts only on the ground that it has been obtained improperly (see judgment of 30 September 2021, *Court of Auditors v Pinxten*, C-130/19, EU:C:2021:782, paragraph 104 and the case-law cited).

- 24 It must be observed that neither the fact that the documents in question may be confidential nor the fact that they may have been obtained improperly precludes in principle their remaining in the case file. There is no provision that expressly prohibits evidence obtained unlawfully from being taken into account (see judgment of 8 November 2018, *QB v ECB*, T-827/16, EU:T:2018:756, paragraph 63 and the case-law cited).
- 25 In the present case, it is common ground that the Commission did not authorise the disclosure of the full versions of the documents contained in Annexes A.10 to A.12 to the application.
- 26 First, in so far as the versions of those documents are those which were published on the internet by the Czech press, it has not been established that the applicant obtained those documents unlawfully. Thus, the Commission cannot argue that the applicant is producing them in breach of the duty of confidentiality arising from the fact that they were disclosed to it in the context of national legal proceedings.
- 27 In that regard, it should be observed that the confidentiality of the documents has, in any event, been compromised by the fact of their publication on the internet; accordingly, their inclusion in the file in the present case does not otherwise undermine their confidential nature (see, to that effect, judgment of 12 May 2015, *Dalli v Commission*, T-562/12, EU:T:2015:270, paragraph 50).
- 28 Second, the Commission, in arguing that if the documents were to remain on the file relating to the present case, that would constitute a circumvention of the procedure for requesting access to documents provided for by Regulation No 1049/2001, merely refers to the order of 14 May 2019, *Hungary v Parliament*, (C-650/18, not published, EU:C:2019:438, paragraph 14); the judgment of 31 January 2020, *Slovenia v Croatia* (C-457/18, EU:C:2020:65, paragraph 68); and the order of 17 December 2020, *Wagenknecht v Commission* (T-350/20, not published, EU:T:2020:635, paragraph 19).
- 29 In the case-law relied on by the Commission, however, the Court of Justice and the General Court held that, in relying upon and producing, in an action, a legal opinion from the legal service of an EU institution containing a legal assessment of the questions of law relevant to the subject matter of the action, the applicant was seeking to confront that institution with that opinion in the proceedings. They held that to authorise the opinion to be retained in the case file, when its disclosure had not been authorised by the institution in question, would effectively permit the applicant to circumvent the procedure set up by Regulation No 1049/2001 for applying for access to such a document.
- 30 First, it should be observed that the decisions cited in paragraph 28 above concerned the production, in court proceedings, of a legal opinion produced by the legal service of an EU institution, or in other words a document intended for internal use. Secondly, in those decisions, the justification for refusing to include the document in the file was based on the fact that it would lead to the institution in question taking a position publicly on the content of that document in the context of an action, which might undermine the interest of the institutions in seeking legal advice and in receiving frank, objective and comprehensive advice.
- 31 It must be observed that that case-law is not applicable in the present case.
- 32 In the present case, the documents produced in Annexes A.10 to A.12 to the application are not internal documents of the Parliament or of the Commission. Furthermore, given that the present action concerns the legality of the Parliament's decision refusing access to certain documents,

there is no question, in the present case, of asking the Parliament or the Commission to take a position on the content of the documents produced in Annexes A.10 to A.12 to the application, or more specifically on the audit carried out by the Commission or on the existence of conflicts of interest in the Czech Republic.

- 33 Accordingly, it would not be appropriate to grant the Commission's request for the documents produced by the applicant, as Annexes A.10 to A.12 to the application, to be removed from the file.

The partial loss of the applicant's interest in bringing proceedings

- 34 The applicant submits that it retains an interest in bringing proceedings even after the partial publication of the final audit report, that matter having no impact on the question whether the Parliament adopted the contested decision in accordance with the applicable regulations. According to the case-law, the institution in question cannot be regarded as having complied with its obligation to grant access to a document merely because that document has been disclosed by a third party. The applicant also observes that the Commission only published part of the final audit report, and not the full version.
- 35 The Parliament submits that, following publication by the Commission of the final audit report, the issue arises of whether the applicant still has an interest in bringing proceedings, in so far as the application for annulment relates to the refusal of access to that report, and states that it is content to leave that issue in the hands of the General Court. It adds that the case-law relied on by the applicant is not relevant in so far as, in the present case, the final audit report was published by its author, namely the Commission.
- 36 The Commission submits that the partial publication of the final audit report is consistent with the objectives of Regulation No 1049/2001 and deprives the first plea of its purpose in relation to that report.
- 37 In the present case, it is not disputed that the applicant had an interest in bringing proceedings when it lodged the present action on 31 March 2021.
- 38 However, after the present action had been brought, on 23 April 2021, the Commission published, on its website, a version of the final audit report from which information relating to the internal functioning of AB Private Trust I and AB Private Trust II, as well as personal data relating to the individuals concerned, had been redacted.
- 39 In accordance with the Court's settled case-law, an applicant's interest in bringing proceedings must, in the light of the purpose of the action, exist when the action is lodged, failing which the action will be inadmissible. That purpose must continue to exist, like the interest in bringing proceedings, until the final decision, failing which there will be no need to adjudicate, which presupposes that the action must be liable, if successful, to procure an advantage for the party bringing it (see judgments of 30 April 2020, *Izba Gospodarcza Producentów i Operatorów Urządzeń Rozrywkowych v Commission*, C-560/18 P, EU:C:2020:330, paragraph 38 and the case-law cited, and of 21 January 2021, *Leino-Sandberg v Parliament*, C-761/18 P, EU:C:2021:52, paragraph 32 and the case-law cited).

- 40 It must be observed that even if a redacted version of the final audit report has been published by the Commission, the contested decision has not been formally withdrawn by the Parliament, with the result that the legal proceedings, contrary to what the Commission submits, retain their purpose (see, to that effect, judgment of 21 January 2021, *Leino-Sandberg v Parliament*, C-761/18 P, EU:C:2021:52, paragraph 33 and the case-law cited).
- 41 However, it must be held that, as a result of that publication, the applicant has lost its interest in seeking annulment of the Parliament's refusal of access to that document, on the basis of the exception contained in the third indent of Article 4(2) of Regulation No 1049/2001.
- 42 By publishing the final audit report on the internet, the Commission made that document accessible to the public.
- 43 It should be observed that, according to settled case-law, in accordance with recital 1 of Regulation No 1049/2001, that regulation reflects the wish to create a union in which decisions are taken as openly as possible and as closely as possible to the citizen. As is stated in recital 2 of Regulation No 1049/2001, the right of public access to documents of the institutions is related to the democratic nature of those institutions (see judgment of 22 March 2018, *De Capitani v Parliament*, T-540/15, EU:T:2018:167, paragraph 57 and the case-law cited). The purpose of Regulation No 1049/2001 is to give the general public a right of access to documents of the institutions and not to lay down rules designed to protect the particular interest which a specific individual may have in gaining access to one of them (judgment of 1 February 2007, *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 43).
- 44 That is clear, as the Court has observed, from, in particular, Article 2(1), Article 6(1) and Article 12(1) of Regulation No 1049/2001, as well as the title and recitals 4 and 11 of that regulation. The first of those provisions guarantees, without distinction, the right of access to any citizen of the European Union, and any natural or legal person residing or having its registered office in a Member State, the second specifying in that regard that an applicant is not obliged to state reasons for the application. Under the third of those provisions, the institutions are as far as possible to make documents 'directly' accessible to the public in electronic form or through a register. The title of the regulation and recitals 4 and 11 thereof also emphasise that the purpose of the regulation is to make the institutions' documents accessible to the 'public' (judgment of 1 February 2007, *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 44).
- 45 It should also be observed that, under Article 2(1) of Regulation No 1049/2001, the beneficiaries of the right of access to documents of the institutions are 'any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State'. That provision makes it clear that the purpose of the regulation is to guarantee access for everyone to public documents and not merely access for the requesting party to documents concerning him or her (judgments of 6 July 2006, *Franchet and Byk v Commission*, T-391/03 and T-70/04, EU:T:2006:190, paragraph 136, and of 12 May 2015, *Technion and Technion Research & Development Foundation v Commission*, T-480/11, EU:T:2015:272, point 74).
- 46 It follows that, once the final audit report had been published, the Parliament's refusal of access to that document, on the ground set out in the third indent of Article 4(2) of Regulation No 1049/2001, no longer had any effect inasmuch as the author of the document, namely the Commission, had decided to make it accessible to the public.

- 47 It should be observed that, in the event of the contested decision being annulled in so far as the Parliament refused access to the final audit report, that institution, in a new decision on the applicant's request for access, would inevitably determine that that document had become public by virtue of having been published by the Commission. The annulment of the contested decision, in so far as it refuses the applicant access to the final audit report, would have no additional consequence in relation to the disclosure of that document and could not procure an advantage for the applicant.
- 48 That conclusion is not affected by the applicant's argument that the Commission has not published the full version of the final audit report.
- 49 It should be observed that a request for access to a document based on Regulation No 1049/2001 leads to that document becoming accessible to the public and thus can only result in the disclosure of the public version of that document.
- 50 In that regard, it should be observed that the Commission, when it published the final audit report on its website, stated that 'this final audit report is published taking into account the requirements for protection of certain information, such as personal data or commercial secrets pursuant to Regulation [EC] No 1049/2001'.
- 51 It follows that the Commission's decision not to make certain information contained in the final audit report accessible to the public was not based on the exception set out in the third indent of Article 4(2) of Regulation No 1049/2001, concerning protection of the purpose of inspections, investigations and audits.
- 52 Accordingly, the annulment of the contested decision in so far as the Parliament refused access to the final audit report on the basis of the third indent of Article 4(2) of Regulation No 1049/2001 could not have the effect of making that information public. As the Parliament is not the author of the final audit report, it cannot go beyond the disclosure granted by the Commission, which is the author.
- 53 Accordingly, as a result of the publication of the final audit report, the applicant has obtained the only benefit which its action – in so far as it relates to the refusal of access to that document on the basis of the third indent of Article 4(2) of Regulation No 1049/2001 – could have procured for it.
- 54 Moreover, it should be observed that it does not assist the applicant, in seeking to establish that it retains an interest in obtaining annulment of the refusal of access to the final audit report, to rely on paragraph 45 of the judgment of 21 January 2021, *Leino-Sandberg v Parliament* (C-761/18 P, EU:C:2021:52), which states that 'it cannot be held that the institution concerned satisfies its obligation to grant access to a document on the sole ground that the document has been disclosed by a third party and that the applicant has obtained knowledge of it'.
- 55 That case-law is not applicable in the present case, as the disclosure of the final audit report took place through its online publication by the Commission, the institution from which that document originated.
- 56 The fact that the applicant chose to request access to the final audit report from the Parliament and not from the originating institution does not mean that the publication of that document by the Commission constitutes disclosure by a 'third party'.

- 57 In that regard, it should be noted that in paragraph 46 of the judgment of 21 January 2021, *Leino-Sandberg v Parliament* (C-761/18 P, EU:C:2021:52), which is relied on by the applicant, the Court held that, contrary to a situation in which the institution itself has disclosed a document, thus allowing the applicant to obtain knowledge of it and to make use of it legally, while being assured of the exhaustive and complete nature of that document, a document disclosed by a third party cannot be regarded as constituting an official document, or as expressing the official position of the institution, in the absence of an unequivocal endorsement by that institution according to which the document obtained emanates from it and expresses its official position.
- 58 Accordingly, the Court held that in a situation where the applicant had only obtained access to the document at issue disclosed by a third party and where the Parliament continued to refuse to grant it access to the requested document, it could not be considered that the applicant had obtained access to that document, within the meaning of Regulation No 1049/2001, nor that, therefore, he or she no longer had any interest in seeking the annulment of the decision at issue solely as a result of that disclosure. On the contrary, in such circumstances, the applicant retained a genuine interest in obtaining access to an authenticated version of the requested document, within the meaning of Article 10(1) and (2) of the regulation, guaranteeing that that institution was the author and that the document expressed its official position (judgment of 21 January 2021, *Leino-Sandberg v Parliament*, C-761/18 P, EU:C:2021:52, paragraph 48).
- 59 However, that is not the case here. The fact that the final audit report was published by the Commission – its author – guarantees that the applicant had access to the authenticated version of the document.
- 60 It follows that, as the applicant no longer has any interest in seeking annulment of the contested decision in so far as the Parliament refused access to the final audit report, it would no longer be appropriate to rule on that claim.
- 61 Accordingly, the present action must be regarded as an action for partial annulment of the contested decision in so far as the Parliament refused to grant the applicant access to the Commission's letter.

The first plea, alleging infringement of the third indent of Article 4(2) of Regulation No 1049/2001, in that the Parliament has not demonstrated that the conditions for refusing access to the Commission's letter were met

- 62 The applicant submits that the Parliament was not entitled to refuse access to the Commission's letter under the third indent of Article 4(2) of Regulation No 1049/2001 on the basis that its disclosure would undermine the purpose of the ongoing investigation, inasmuch as, first, the audit investigation had already achieved its purpose and, second, the Parliament had not, in any event, established that disclosure of the letter might undermine that investigation.
- 63 It should be observed that 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. To those ends, Article 1 of Regulation No 1049/2001 provides that the purpose of that regulation is to confer on the public as wide a right of access as possible to documents of the EU institutions. It is also clear from Article 4 of that regulation, which introduces a system of exceptions in that regard, that that right is, nevertheless, subject to certain limits based on reasons of public or private interest (see judgments of

22 January 2020, *MSD Animal Health Innovation and Intervet International v EMA*, C-178/18 P, EU:C:2020:24, paragraphs 50 to 52 and the case-law cited, and of 28 May 2020, *Campbell v Commission*, T-701/18, EU:T:2020:224, paragraph 25 and the case-law cited).

- 64 As such exceptions derogate from the principle of the widest possible public access to documents, they must be interpreted and applied strictly (see judgments of 22 January 2020, *MSD Animal Health Innovation and Intervet International v EMA*, C-178/18 P, EU:C:2020:24, paragraph 53 and the case-law cited, and of 28 May 2020, *Campbell v Commission*, T-701/18, EU:T:2020:224, paragraph 26 and the case-law cited).
- 65 Among the exceptions to the right of access to documents is that set out in the third indent of Article 4(2) of Regulation No 1049/2001, according to which the institutions are to refuse access to a document where disclosure would undermine the protection of the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure of the document in question.
- 66 As a preliminary remark, it should be observed that the justification for applying one of the exceptions provided for in Article 4 of Regulation No 1049/2001 must be assessed in the light of the facts existing on the date of adoption of the decision refusing to grant access to the documents on the basis of that exception. It is settled case-law that the legality of an EU measure must be assessed on the basis of the facts and the law as they stood at the time when the measure was adopted (see judgment of 11 May 2017, *Sweden v Commission*, C-562/14 P, EU:C:2017:356, paragraph 63 and the case-law cited, and of 6 February 2020, *Compañía de Tranvías de la Coruña v Commission*, T-485/18, EU:T:2020:35, paragraph 36 and the case-law cited).
- 67 In the present case, 15 January 2021 is the only relevant date in determining whether it was justified to apply the exception set out in the third indent of Article 4(2) of Regulation No 1049/2001. Accordingly, the publication of the final audit report on the Commission website on 23 April 2021 – after the adoption of the contested decision – is not relevant to the assessment of the legality of the contested decision.
- 68 The arguments raised by the applicant in the reply, submitting that the fact that the Commission published the final audit report confirms that its action is well founded, in that the Commission has admitted, by publishing the final audit report, that it is no longer possible to undermine the purposes of its investigation and audit, must therefore be rejected as ineffective.

The first part of the first plea, alleging that the investigation had already achieved its purpose

- 69 The applicant submits that the Parliament was not entitled to refuse it access to the Commission's letter on the ground that its disclosure was liable to undermine the purpose of the ongoing investigation, because the audit investigation had already achieved its purpose.
- 70 It considers that the investigation, referred to by the Parliament, is an audit investigation opened by the Commission Directorates-General for Regional and Urban Policy and for Employment, Social Affairs and Inclusion, the purpose of which is to ensure that the management and control systems in place in the Czech Republic comply with the legal framework for the prevention of conflicts of interest.

- 71 The applicant submits that, as at the date of the Commission's follow-up letter, the investigation procedure had come to an end, that it was no longer possible to undermine the prospects of achieving the purposes of the audit, and thus that the exception was no longer applicable. The applicant states that, according to the follow-up letter, the audit findings had been clarified, some of the audit recommendations had been implemented and others remained open. It maintains that, as at that date, in accordance with Article 75(1) and (3) of Regulation No 1303/2013, the Commission had satisfied itself as to the manner in which the management and control systems set up by the Czech Republic were functioning and had required the Czech authorities to take the actions which it considered necessary.
- 72 The audit had thus achieved its purpose, in that it had enabled the Commission to present its findings and formulate its recommendations. According to the applicant, the Commission stated, in a letter sent to it on 22 October 2020, that 'at this stage of the process, after the final audit report was issued, it is for the [subsidy] programme authorities [concerned] to implement the recommendations'. The applicant submits that the implementation of recommendations formulated in the course of the audit cannot be regarded as constituting 'an ongoing investigation'. On a strict interpretation of the exception contained in the third indent of Article 4(2) of Regulation No 1049/2001, simply monitoring the implementation of recommendations which have already been adopted is not within the scope of that exception.
- 73 It should be observed that the exception provided for by the third indent of Article 4(2) of Regulation No 1049/2001, which, like any exception to the right of access to documents, is to be interpreted and applied strictly, is not designed to protect investigations as such, but the purpose of those investigations (see judgment of 5 April 2017, *France v Commission*, T-344/15, EU:T:2017:250, paragraph 83 and the case-law cited). Thus, that provision applies only if the disclosure of the documents in question may endanger the completion of inspections, investigations or audits (judgments of 6 July 2006, *Franchet and Byk v Commission*, T-391/03 and T-70/04, EU:T:2006:190, paragraph 109, and of 7 June 2011, *Toland v Parliament*, T-471/08, EU:T:2011:252, paragraph 43).
- 74 Admittedly, the various acts of investigation or inspection may remain covered by the exception based on the protection of inspections, investigations and audits as long as the investigations or inspections continue, even if the particular investigation or inspection which gave rise to the report to which access is sought has been completed (see judgments of 6 July 2006, *Franchet and Byk v Commission*, T-391/03 and T-70/04, EU:T:2006:190, paragraph 109 and the case-law cited, and of 7 June 2011, *Toland v Parliament*, T-471/08, EU:T:2011:252, paragraph 44 and the case-law cited).
- 75 Nevertheless, to allow that the various documents relating to inspections, investigations or audits are covered by the exception referred to in the third indent of Article 4(2) of Regulation No 1049/2001 until the follow-up action to be taken has been decided would make access to those documents dependent on an uncertain, future and possibly distant event, depending on the speed and diligence of the various authorities. Such a solution would be contrary to the objective of guaranteeing public access to documents relating to any irregularities in the management of financial interests, with the aim of giving citizens the opportunity to monitor more effectively the lawfulness of the exercise of public powers (see judgments of 6 July 2006, *Franchet and Byk v Commission*, T-391/03 and T-70/04, EU:T:2006:190, paragraphs 111 and 112 and the case-law cited, and of 7 June 2011, *Toland v Parliament*, T-471/08, EU:T:2011:252, paragraph 45 and the case-law cited).

- 76 It is therefore appropriate to ascertain whether, at the time of the adoption of the contested decisions, inspections and investigations were still in progress which could have been jeopardised by the disclosure of the Commission's letter, and whether these activities were carried out within a reasonable period (judgment of 6 July 2006, *Franchet and Byk v Commission*, T-391/03 and T-70/04, EU:T:2006:190, paragraph 113; see also judgment of 7 June 2011, *Toland v Parliament*, T-471/08, EU:T:2011:252, paragraph 46 and the case-law cited).
- 77 It is clear from those statements that the exception to the right of access laid down in the third indent of Article 4(2) of Regulation No 1049/2001 may be declared to be applicable to an audit report the disclosure of which could jeopardise inspections or investigations which were being conducted, for a reasonable period, on the basis of its content (judgment of 7 June 2011, *Toland v Parliament*, T-471/08, EU:T:2011:252, paragraph 47).
- 78 It should be noted that, in the contested decision, the Parliament observed that 'as long as the investigation continues, various acts of investigation, such as a particular audit that has given rise to an audit report, may remain covered by this exception'. The Parliament stated that 'the documents at stake have been drawn up by the Commission in the context of an ongoing investigation concerning a potential infringement, by the Czech Republic, of [EU] law concerning the avoidance of conflicts of interest', and that 'public disclosure of these documents would endanger the purpose of this investigation'.
- 79 In the present case, the Commission carried out the audit of the management and control systems set up in the Czech Republic in order to avoid conflicts of interest on the basis, in particular, of Article 75 of Regulation No 1303/2013.
- 80 In that regard, Article 75(1) of Regulation No 1303/2013 provides that the Commission is to satisfy itself, on the basis of available information, including audits carried out by EU bodies, that the Member States have set up management and control systems that comply with that regulation and the specific rules of each European Structural and Investment Fund ('ESI fund'), and that those systems function effectively during the implementation of programmes. Under Article 75(2) of that regulation, Commission officials or authorised Commission representatives may carry out audits the scope of which may include, in particular, verification of the effective functioning of management and control systems in a programme or a part thereof, in operations and assessment of the sound financial management of operations or programmes. Under Article 75(3) of that regulation, the Commission may require a Member State to take the actions necessary to ensure the effective functioning of their management and control systems or the correctness of expenditure in accordance with the specific rules of the ESI funds.
- 81 Furthermore, Article 144 of Regulation No 1303/2013, which sets out the criteria for financial corrections, provides for the Commission to make financial corrections, by cancelling all or part of the EU contribution to an operational programme where, after carrying out the necessary examination, it concludes inter alia that there is a serious deficiency in the effective functioning of the management and control system of the operational programme which has put at risk the EU contribution already paid to that programme. In accordance with the procedure laid down by Article 145 of Regulation No 1303/2013, before taking a decision on a financial correction, the Commission is to launch the procedure by informing the Member State of the provisional conclusions of its examination and requesting the Member State to submit its comments within two months. That article sets out the procedure for dialogue between the Commission and the Member State concerned and provides, in particular in paragraph 4 thereof, that where the Member State does not accept the provisional conclusions of the Commission, the Member State

is to be invited to a hearing by the Commission, in order to ensure that all relevant information and observations are available as a basis for conclusions by the Commission on the application of the financial correction. Moreover, Article 145(6) of the regulation provides that, in order to apply financial corrections, the Commission is to take a decision, by means of implementing acts, within six months of the date of the hearing, or of the date of receipt of additional information where the Member State agrees to submit such additional information following the hearing, and that it is to take account of all information and observations submitted during the course of the procedure. In addition, Article 145(7) of Regulation No 1303/2013 provides in particular that, where the Commission, in carrying out its responsibilities under Article 75 of that regulation, detects irregularities demonstrating a serious deficiency in the effective functioning of the management and control systems, the resulting financial correction is to reduce support from the ESI funds to the operational programme.

- 82 In that regard, the applicant is wrong to submit that the purpose of Article 75 of Regulation No 1303/2013 was achieved with adoption of the follow-up letter, on the basis that the Commission had satisfied itself as to the manner in which the management and control systems set up by the Czech Republic were functioning and had required the Czech authorities to take the actions which it considered necessary to ensure that they functioned. The purpose of the audit in question, carried out pursuant to that article, is for the Commission to satisfy itself that the management and control systems in place in the Czech Republic comply with EU law and, to that end, the Commission can require the Czech authorities to take the necessary measures.
- 83 As the Parliament observes, the purpose of the Commission investigation cannot be limited to an analysis by that institution of the systems put in place by the Czech Republic. The implementation by the Member State of the recommendations formulated by the Commission in the context of the audit is a stage in achieving the purpose of the investigation, which is to ensure that the management and control systems of a Member State comply with EU law.
- 84 It is apparent from the provisions referred to in paragraphs 80 and 81 above, and from the general scheme of Regulation No 1303/2013, that the drafting and sending of a final audit report, containing recommendations as to actions to be taken, brings to an end only one stage of the procedure – the audit phase – and opens a phase of discussions with the Member State concerned with regard to the actions in question (order of 16 September 2019, *Poland v Commission*, T-703/18, not published, EU:T:2019:628, paragraph 53).
- 85 The purpose of that discussion phase is to enable the Member State in question to provide further information which might alter the assessments contained in the final audit report, to undertake, where relevant, the actions recommended by the Commission, or to propose alternative actions (order of 16 September 2019, *Poland v Commission*, T-703/18, not published, EU:T:2019:628, paragraph 54).
- 86 That interpretation is also applicable to the follow-up letter in which the Commission ensures that the recommendations contained in the final audit report are followed up, and which also opens a phase of discussions with the Member State.
- 87 In the present case, it must be observed, the applicant acknowledges that in the follow-up letter, certain recommendations remain open. Accordingly, as at the date of adoption of the follow-up letter, and with regard to those recommendations of the final audit report which remained open, the Czech authorities could still present observations in response to those recommendations.

- 88 In accordance with the case-law cited in paragraphs 73 and 74 above, the protection of the purpose of investigations ensured by the exception based on the third indent of Article 4(2) of Regulation No 1049/2001 does not conclude with the adoption of the final audit report, or with the adoption of the Commission's follow-up letter. The phase of discussions with the Member State concerning those Commission recommendations which remain open is part of the investigation covered by the exception.
- 89 It follows that the applicant is wrong to submit, first, that the audit had achieved its purpose in that the Commission had presented its findings and made its recommendations in the follow-up letter, and secondly, that neither the implementation by the Czech authorities of the recommendations contained in the final audit report and the follow-up letter, nor the monitoring of that implementation by the Commission, were part of the ongoing investigation.
- 90 It follows from the foregoing that the applicant cannot argue that, following the adoption by the Commission of the follow-up letter, the audit had achieved its purpose and no longer constituted an ongoing investigation.
- 91 The applicant also submits that to regard the audit procedure provided for by Article 75 of Regulation No 1303/2013 as including an indeterminate number of exchanges between the Commission and the Member State concerned, which would continue as long as the findings and recommendations contained in the audit report could be changed, would make disclosure of the Commission letter dependent on an uncertain, future and possibly distant event, depending on the diligence of the various authorities. It submits that the point at which the dialogue between the Member State and the Commission is concluded is not formalised by Regulation No 1303/2013 and would be within the Commission's control. It argues that, under the case-law referred to in paragraph 75 above, that unlimited interpretation of the concept of an audit is contrary to the objective of Regulation No 1049/2001.
- 92 It is apparent from the case-law that the Parliament is entitled to rely on the general presumption that the purposes of investigations, inspections and audits would be undermined, so as to refuse to disclose documents relating to an investigation, where that investigation is under way or has just been concluded, and where, in the latter case, the competent national authorities have not yet decided, within a reasonable time, on the action to be taken in response to the investigation report (see, by analogy, judgment of 1 September 2021, *Homoki v Commission*, T-517/19, not published, EU:T:2021:529, paragraph 63 and the case-law cited).
- 93 It suffices to note that, in the present case, the Commission sent the English-language version of the follow-up letter to the Czech Republic on 22 October 2020 and the Czech-language version on 18 December 2020. As the Parliament has observed, and as is apparent from the follow-up letter, the period of three months available to the Czech authorities for responding to the follow-up letter began with the sending of the Czech-language version and thus had not expired on the date of adoption of the contested decision, which was 15 January 2021.
- 94 Accordingly, it must be held that, as at the date of adoption of the contested decision, which was 15 January 2021, and given that the Czech authorities had not yet taken a position on the follow-up letter, the purpose of the investigation had not yet been achieved.
- 95 It follows from the foregoing that the applicant is wrong to submit that, as at the date of the contested decision, the Parliament was not entitled to rely on the exception contained in the third indent of Article 4(2) of Regulation No 1049/2001.

96 The first part of the first plea must therefore be rejected.

The second part of the first plea, alleging that the Parliament has not demonstrated that disclosure of the Commission's letter might undermine the investigation

- 97 The applicant submits that, supposing that the investigation was still 'ongoing', the Parliament has not demonstrated that disclosure of the Commission letter might undermine that investigation. It submits that, according to the case-law, the fact that a document relates to an investigation is not sufficient, in itself, to justify the application of the exception based on the third indent of Article 4(2) of Regulation No 1049/2001, and that the institution must explain how granting access to that document would involve a reasonably foreseeable risk of the interest protected being specifically and actually undermined.
- 98 It should be observed that, in accordance with the conclusion set out in paragraph 60 above, there is no longer any need to adjudicate on the applicant's arguments concerning refusal of access to the final audit report.
- 99 As regards refusal of access to the Commission's letter, the applicant submits that the statement of reasons for the contested decision is inadequate.
- 100 According to settled case-law, the statement of reasons required under Article 296 TFEU must be appropriate to the measure in question and must disclose in a clear and unequivocal fashion the reasoning followed by the institution or body which adopted that measure, in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the EU judicature to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see judgments of 1 February 2007, *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 80 and the case-law cited, and of 26 March 2020, *Bonnaïfous v Commission*, T-646/18, EU:T:2020:120, paragraphs 22 and 23 and the case-law cited).
- 101 It also follows from settled case-law that where an EU institution, body, office or agency that has received a request for access to a document decides to refuse to grant that request on the basis of one of the exceptions laid down in Article 4 of Regulation No 1049/2001, it must, in principle, explain how access to that document could specifically and actually undermine the interest protected by that exception, and the risk of the interest being undermined must be reasonably foreseeable and must not be purely hypothetical (see judgments of 29 October 2020, *Intercept Pharma and Intercept Pharmaceuticals v EMA*, C-576/19 P, EU:C:2020:873, paragraph 51 and the case-law cited, and of 29 September 2021, *AlzChem Group v Commission*, T-569/19, EU:T:2021:628, paragraph 39 and the case-law cited).
- 102 It is therefore for the institution which has refused access to a document to provide a statement of reasons from which it is possible to understand and ascertain, first, whether the requested document does in fact fall within the sphere covered by the exception relied on and, secondly, whether the need for protection relating to that exception is genuine (judgment of

1 February 2007, *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 61; see also judgment of 26 March 2020, *Bonnaïfous v Commission*, T-646/18, EU:T:2020:120, paragraph 24 and the case-law cited).

- 103 Even though the institution concerned is required to set out the reasons justifying the application to the particular case of one of the exceptions to the right of access provided for by Regulation No 1049/2001, it is not required to provide more information than is necessary in order for the person requesting access to understand the reasons for its decision and for the Court to review the legality of that decision (see judgment of 26 March 2020, *Bonnaïfous v Commission*, T-646/18, EU:T:2020:120, paragraph 25 and the case-law cited).
- 104 Moreover, where – as in the present case – a reply confirms the rejection of an application on the same grounds as those given in the initial decision to reject, it is appropriate to consider the sufficiency of the reasons given in the light of all the exchanges between the institution and the applicant, taking into account also the information available to the applicant about the nature and content of the documents requested (see, to that effect, judgment of 6 April 2000, *Kuijjer v Council*, T-188/98, EU:T:2000:101, paragraph 44).
- 105 In the first place, the applicant submits that the Parliament has not demonstrated that there is any relevant link between the Commission’s letter and the audit investigation. It argues that, having regard to the fact that there was no reference to the Commission’s letter in the draft audit report, or in the final audit report, or in the follow-up letter, the Parliament has not demonstrated that the outcome of the audit investigation was dependent on that letter, and it can be presumed that there is no link between that letter and the audit investigation.
- 106 In the present case, first, it should be borne in mind that the requested letter is a letter from a Commissioner, Mr Oettinger, who was responsible amongst other things for the budget, to the Prime Minister of the Czech Republic, which was identified by the Parliament, in response to the applicant’s request for access, as being among the documents relating to the investigation of the Prime Minister of the Czech Republic for misuse of EU funds and potential conflicts of interests.
- 107 Second, it should be pointed out that, in the decision of 14 September 2020, responding to the applicant’s initial request, the Parliament stated that, having examined the letter, it related to an investigation into economic interests within the meaning of Article 61(3) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018 L 193, p. 1), which contains the definition of conflict of interests.
- 108 Third, in the contested decision, the Parliament stated that the Commission had informed it that the disclosure of the Commission’s letter would undermine the investigations and audits that were ongoing in relation to the issues raised in the resolution. The Parliament considered that as long as the investigation was ongoing, various acts of investigation, such as a particular audit that had given rise to an audit report, could remain covered by the exception provided for in the third indent of Article 4(2) of Regulation No 1049/2001. It stated that the Commission’s letter had been written in the context of an ongoing investigation concerning a potential infringement, by the Czech Republic, of EU law on the avoidance of conflicts of interest.

- 109 Thus, as the Parliament has observed, it is apparent that the Commission's letter related to the same subject matter as the audit investigation.
- 110 Fourth, it should be observed that, as the Commission has pointed out, the correspondence with Commissioner Oettinger is referred to in the final audit report and in the follow-up letter as relating to the activities of the Czech Prime Minister, Mr Babiš, in the Czech Council for the ESI Fund.
- 111 As the applicant itself submits, the final audit report and the follow-up letter were published in the Czech press and were known to it prior to the adoption of the contested decision. It cannot argue, therefore, that the Commission's letter was not mentioned in the final audit report or the follow-up letter, documents which, moreover, it has produced as annexes to the application.
- 112 It follows that those facts and matters were sufficient, taken together, for the applicant to understand that the Commission's letter was a document relating to an audit investigation concerning a possible infringement by the Czech Prime Minister of EU law on the prevention of conflicts of interest, and the applicant cannot rely on inadequate reasoning in that regard.
- 113 Furthermore, the applicant cannot legitimately argue that the Parliament has not established any link between the Commission's letter and the audit investigation in that it has not demonstrated that the outcome of the audit investigation depended on that letter. In order to establish such a link, the Parliament had only to show that the letter was among the documents relating to the activities of the ongoing investigation.
- 114 In the second place, the applicant submits, on the basis that the Parliament has not established a link between the Commission's letter and the audit investigation, that it has not shown that disclosure of the letter would create a reasonably foreseeable risk of the audit investigation being specifically and actually undermined. It argues that the Parliament has not explained how disclosure of the Commission's letter could undermine the audit.
- 115 First, it should be observed that, in the contested decision, the Parliament justified refusing access to the Commission's letter on the ground, in particular, that the purpose of the Commission investigation was to give the Member State concerned the opportunity to comply with its obligations under EU law and to exercise its rights of defence in respect of the objections formulated by the Commission, and that the Member State was entitled to expect confidentiality from the Commission, failing which it might be even more difficult to begin a dialogue between the Commission and the Member State with a view to bringing the alleged infringement to an end.
- 116 It should be observed that the purpose of the audit investigation, and in particular that of the dialogue between the Commission and the Czech authorities concerning the recommendations set out in the final audit report, is to enable the Czech Republic to bring its control and management systems into conformity with EU law in order to avoid conflicts of interest. Inasmuch as it is apparent from the analysis of the first part of the first plea that, as at the date of adoption of the contested decision, that dialogue was still ongoing, and inasmuch as the Commission's letter formed part of that investigation, the reasoning set out in the contested decision is sufficient to explain why the disclosure of that letter might undermine the purpose of the audit investigation.

- 117 In addition, as the Parliament has pointed out, the fact that the Czech Prime Minister was directly involved, being suspected of having a conflict of interests, made it all the more important to observe confidentiality as regards the dialogue between him and the Commissioner, in order to ensure that that dialogue was open and conducted in a spirit of cooperation.
- 118 Second, the Parliament also observed, in the contested decision, that the investigators and the stakeholders in the investigation appeared to be surrounded by a climate of threats, and that early publication of the Commission's letter would negatively affect the level of cooperation between them and compromise the Commission's ability to carry out its investigation as effectively as possible.
- 119 In that regard, it should be observed that the interest protected by the exception relating to the protection of the purpose of audits, provided for in the third indent of Article 4(2) of Regulation No 1049/2001, is the interest in allowing audits to be conducted independently and free of pressures, whether these come from the body being audited, from other interested bodies or from the general public (judgment of 12 May 2015, *Technion and Technion Research & Development Foundation v Commission*, T-480/11, EU:T:2015:272, paragraph 63).
- 120 The applicant is therefore wrong to argue that the Parliament did not adequately indicate, in the contested decision, why disclosure of the Commission's letter might specifically and actually undermine the purpose of the audit investigation.
- 121 The applicant also submits that, bearing in mind that the draft audit report, the final audit report and the follow-up letter were published in the Czech media – respectively in June 2019, November 2019 and December 2020 – disclosure of the Commission's letter would not create a specific and actual threat to the audit investigation.
- 122 However, inasmuch as the applicant acknowledges that the Commission's letter was not published, even in part, and inasmuch as the contents of that letter are not reproduced in the documents that were published in the Czech media, that argument must be held to be irrelevant to the question whether the letter was covered by the exception provided for by the third indent of Article 4(2) of Regulation No 1049/2001, having regard in particular to the need for the dialogue between the Czech Prime Minister and the Commission to remain confidential.
- 123 It follows from all of the foregoing that the reasons given in the contested decision were sufficient to understand that the Commission's letter related to the audit investigation and was therefore within the exception contained in the third indent of Article 4(2) of Regulation No 1049/2001, and that, since that investigation was ongoing as at the date of adoption of the contested decision, there was a genuine need for the protection to which that exception relates.
- 124 It follows that the second part of the first plea and, as a result, the plea in its entirety, must be rejected.

The second plea, alleging infringement of the third indent of Article 4(2) of Regulation No 1049/2001 in that the Parliament failed to have regard to an overriding public interest justifying disclosure of the Commission's letter

- 125 The applicant submits that, even supposing that the audit constituted an ongoing investigation which might be undermined by disclosure of the Commission's letter, the Parliament was not entitled to refuse it access to that document because there was an overriding public interest in its disclosure, within the meaning of the third indent of Article 4(2) of Regulation No 1049/2001.
- 126 The applicant observes that the European Union is founded on respect for the rule of law and for human rights, including the rights of defence. Having regard to the fact that, in the fact-finding report and the resolution, the Parliament had made serious accusations as to the way in which the Agrofert group was managed, the applicant should have been put in a position to analyse the documents on which those allegations were based and to oppose them. The Parliament was obliged, according to the applicant, to have regard to the overriding public interest justifying disclosure of the Commission's letter which consisted in the protection of the fundamental rights and freedoms of the applicant as a person directly and individually concerned by those allegations. The applicant argues that the rule of law, based on the protection of fundamental rights and freedoms, can only be maintained by respecting those rights and freedoms in each individual case, and that the applicant's interest thus constitutes a public interest within the meaning of the third indent of Article 4(2) of Regulation No 1049/2001.
- 127 According to settled case-law, it is for the party arguing that there is an overriding public interest to show that there are specific circumstances justifying the disclosure of the documents concerned (see judgments of 11 May 2017, *Sweden v Commission*, C-562/14 P, EU:C:2017:356, paragraph 56 and the case-law cited, and of 29 September 2021, *AlzChem Group v Commission*, T-569/19, EU:T:2021:628, paragraph 124 and the case-law cited).
- 128 It should be observed that, according to the case-law cited in paragraph 45 above, Regulation No 1049/2001 is intended to guarantee access to documents for everyone and not merely access for the requesting party to documents concerning him or her.
- 129 Consequently, the individual interest which may be asserted by a requesting party in obtaining access to a document concerning him or her personally cannot be taken into account for the purposes of the assessment of the existence of an overriding public interest within the meaning of the final part of Article 4(2) of Regulation No 1049/2001 (judgment of 6 July 2006, *Franchet and Byk v Commission*, T-391/03 and T-70/04, EU:T:2006:190, paragraph 137; see also judgment in *Technion and Technion Research & Development Foundation v Commission*, T-480/11, EU:T:2015:272, paragraph 75 and the case-law cited).
- 130 The general interest which the applicant claims consists in the rights of defence. It is certainly true that the rights of defence are in themselves a general interest. However, the fact that those rights are manifested in the present case by the applicant's individual interest in defending itself implies that the interest which the applicant invokes is not a general, but rather a private, interest (judgment of 6 July 2006, *Franchet and Byk v Commission*, T-391/03 and T-70/04, EU:T:2006:190, paragraph 138).

- 131 It follows that the Parliament was entitled, in the contested decision, to consider, on the basis of the case-law cited in paragraphs 128 to 130 above, that the rights of defence relied on by the applicant do not constitute an overriding public interest justifying disclosure of the Commission's letter.
- 132 Accordingly, the second plea in law must be rejected and, as a result, the action must be dismissed in its entirety.

Costs

- 133 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the Parliament.
- 134 Furthermore, under Article 137 of the Rules of Procedure, where a case does not proceed to judgment, the costs are to be in the discretion of the Court. In the present case, having regard to the considerations which led the Court not to proceed to judgment on part of the case, it would be fair for the applicant also to bear the costs relating to that part of the case.
- 135 In accordance with Article 138(1) of the Rules of Procedure, the institutions which have intervened in the proceedings are to bear their own costs. Consequently, the Commission must be ordered to bear its own costs.

On those grounds,

THE GENERAL COURT (Third Chamber)

hereby:

- 1. Rules that there is no longer any need to adjudicate on the claim for annulment of Decision A(2019) 8551 C (D 300153) of the European Parliament of 15 January 2021, in so far as it refused access to the Commission's final audit report of 29 November 2019, bearing reference ARES (2019) 7370050, concerning an audit on the functioning of the management and control systems in place in the Czech Republic to avoid conflicts of interest;**
- 2. Dismisses the action as to the remainder;**
- 3. Orders Agrofert a.s. to bear its own costs and to pay those incurred by the Parliament;**
- 4. Orders the European Commission to bear its own costs.**

De Baere

Steinfatt

Kingston

Delivered in open court in Luxembourg on 28 September 2022.

[Signatures]