



Reports of Cases

JUDGMENT OF THE GENERAL COURT (First Chamber)

25 November 2020 *

(Access to documents – Regulation (EC) No 1049/2001 – Agreement between the European Community and the United Mexican States on the mutual recognition and protection of designations for spirit drinks – Documents submitted within the framework of the Joint Committee – Refusal to grant access – Exception relating to the protection of the public interest in respect of international relations – Exception relating to the protection of the commercial interests of a third party)

In Case T-166/19,

Marco Bronckers, residing in Brussels (Belgium), represented by P. Kreijger, lawyer,

applicant,

v

European Commission, represented by C. Ehrbar and A. Spina, acting as Agents,

defendant,

APPLICATION pursuant to Article 263 TFEU seeking annulment of Commission Decision C(2019) 150 final of 10 January 2019, rejecting the confirmatory application for access to the documents ‘Tequila cases found by the Tequila Regulatory Council to be informed to the European Commission (Ares(2018 4023479)’ and ‘Verification Reports in the European Market (Reportes de Verificación en el Mercado Europeo) (Ares(2018) 4023509)’,

THE GENERAL COURT (First Chamber),

composed of H. Kanninen, President, N. Póltorak (Rapporteur) and M. Stancu, Judges,

Registrar: P. Cullen, Administrator,

having regard to the written part of the procedure and further to the hearing on 15 July 2020,

gives the following

* Language of the case: English.

Judgment

Background to the dispute

- 1 On 8 May 2018, the applicant, Mr Marco Bronckers, applied under 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) to have access to all of the minutes of the meetings of the Joint Committee on Spirit Drinks ('the joint committee') set up under the 1997 Agreement between the European Community and the Mexican United States on the mutual recognition and protection of designations for spirit drinks (OJ 1997 L 175, p. 33, 'the 1997 agreement'). The European Commission decided to grant the applicant partial access to the minutes of two meetings of the joint committee, that is to say on 30 March 2011 and 3 June 2013.
- 2 On 3 July 2018, the applicant acknowledged receipt of the documents disclosed and did not challenge the redactions made, but only the completeness of the documents selected by the Commission. In parallel, he submitted to the Commission's Directorate-General (DG) for Agriculture a further request for access to certain documents referred to in the documents disclosed. The applicant stated the following:
 - 'In the minutes of the meeting held on 30 March 2011 (at point 2) reference is made to a discussion of cases where Mexico detected violations regarding Tequila on the European market. This was done on the basis of a list (referred to in the minutes of the meeting on 3 June 2013, at point 4).
 - In the minutes of the meeting held on 3 June 2013, reference is made (at point 4) to documents presented by the Consejo Regulador de Tequila involving products produced in the European Union that are considered by Mexico to be a clear infringement of the geographical indication Tequila.'
- 3 By letter of 21 August 2018, the Commission identified two relevant documents, namely Ares(2018) 4023479 and Ares(2018) 4023509 ('the documents requested'). Since the documents requested originated, according to the Commission, from the Mexican authorities, those authorities were consulted in accordance with Article 4(4) of Regulation No 1049/2001. The Commission refused to grant access to those documents on the basis of the exceptions laid down in Article 4(2) and (l)(a) of Regulation No 1049/2001 relating to protection of the commercial interests of a legal person and protection of the public interest as regards international relations.
- 4 On 5 September 2018, the applicant filed a confirmatory application requesting that the Commission reconsider its position. By email of 26 September 2018, the Commission extended the time limit for replying to the confirmatory application by 15 working days, pursuant to Article 8(2) of Regulation No 1049/2001. By email of 17 October 2018, the Commission informed the applicant that it would be unable to respond within the extended time limit.
- 5 By email of 14 November 2018, the Commission informed the applicant that, in accordance with Article 4(4) and (5) of Regulation No 1049/2001, the Secretariat-General of the Commission had again consulted the Mexican authorities on the possibility of (partially) disclosing the documents at issue.
- 6 On 10 January 2019, the Commission dismissed the applicant's confirmatory application for access to the documents requested ('the contested decision').

Procedure and forms of order sought

- 7 By application lodged at the Registry of the General Court on 14 March 2019, the applicant brought the present action.
- 8 On 19 July 2019, the applicant requested that the Court grant a measure of inquiry with a view to verifying the content and the private nature of the documents requested.
- 9 On 31 March 2020, the Court, by way of a measure of organisation of procedure pursuant to Article 89(3) of the Rules of Procedure, questioned the parties on whether they wished to be heard at an oral hearing despite the COVID-19 health crisis. The parties replied within the prescribed period.
- 10 The parties presented oral argument and replied to the Court's oral questions at the hearing on 15 July 2020.
- 11 The applicant claims that the Court should:
- annul the contested decision;
 - order the Commission to pay the costs.
- 12 The Commission contends that the Court should:
- dismiss the action;
 - order the applicant to pay the costs.

Law

- 13 The applicant raises four pleas in support of his action.
- 14 The first plea alleges infringement of Article 4(1)(a), third indent, of Regulation No 1049/2001 and/or of Article 296 TFEU. The second plea alleges infringement of Article 4(2) of Regulation No 1049/2001 and/or of Article 296 TFEU. The third plea alleges infringement of the obligation to disclose the documents requested on grounds of an overriding public interest, on the assumption that all or some of the documents to which access is sought involve commercial interests under Article 4(2) of Regulation No 1049/2001. Finally, the fourth plea alleges infringement of Article 4(6) and (7) of Regulation No 1049/2001 and/or of Article 296 TFEU.
- 15 The Court considers it appropriate to examine the complaints relating to the infringement of Article 296 TFEU before examining the other complaints and pleas in law.

The complaints alleging infringement of Article 296 TFEU

- 16 The applicant raises complaints relating to an infringement of Article 296 TFEU concerning the Commission's application of the exceptions under Article 4(1)(a), third indent, and Article 4(2) of Regulation No 1049/2001, and the possibility of granting partial access to the documents requested.
- 17 The Commission disputes those arguments.

- 18 The Commission contends that the complaint alleging a failure to state reasons, raised under the first plea in law, is inadmissible on the ground that the arguments submitted by the applicant in that respect do not satisfy the requirements of Article 76 of the Rules of Procedure.
- 19 In that regard, it should be recalled that, according to settled case-law, the requirement under Article 76 of the Rules of Procedure that the application must contain, inter alia, the subject matter of the dispute and a brief statement of the pleas in law on which it is based implies that the statement must be sufficiently clear and precise as to enable the defendant to prepare its defence and the Court to decide the case, if necessary without other supporting information (judgment of 29 April 2020, *Intercontact Budapest v CdT*, T-640/18, not published, EU:T:2020:167, paragraph 24).
- 20 In the present case, Article 296 TFEU is mentioned in the title of the first plea in law of the application. Furthermore, the applicant puts forward a number of arguments calling into question not just the merits of the contested decision, but also whether its statement of reasons is sufficient. Those elements enable the Court to understand the applicant's reasoning and the Commission to set out its arguments in that regard.
- 21 Consequently, it must be concluded that, contrary to what the Commission contends, the complaint alleging a failure to state reasons is admissible.
- 22 As a preliminary point, it should be noted that the statement of reasons required by Article 296 TFEU and by Article 41(2)(c) of the Charter of Fundamental Rights of the European Union must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure, in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the Court having jurisdiction to exercise its power of review (see, to that effect, judgment of 29 September 2011, *Elf Aquitaine v Commission*, C-521/09 P, EU:C:2011:620, paragraph 147 and the case-law cited).
- 23 In the case of a request for access to documents, where the institution in question refuses such access, it must demonstrate in each individual case, on the basis of the information at its disposal, that the documents to which access is sought do indeed fall within the exceptions listed in Regulation No 1049/2001 (judgments of 10 September 2008, *Williams v Commission*, T-42/05, not published, EU:T:2008:325, paragraph 95, and of 7 July 2011, *Valero Jordana v Commission*, T-161/04, not published, EU:T:2011:337, paragraph 49).
- 24 Although the Commission 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 nevertheless 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 (judgment of 30 January 2008, *Terezakis v Commission*, T-380/04, not published, EU:T:2008:19, paragraph 119).
- 25 In that respect, it should be pointed out that the reasons underlying the contested decision are clearly set out in that decision.
- 26 In particular, the Commission identified the exceptions on which it based its refusal, namely the exceptions relating to public interest as regards international relations and commercial interests, referred to in Article 4(1)(a), third indent, and (2), first indent, of Regulation No 1049/2001.
- 27 In particular, in the contested decision, the Commission indicated in essence that, by refusing access to the documents requested on the basis of Article 4(1)(a), third indent, of Regulation No 1049/2001, first, it had taken into consideration the Mexican authorities' opposition to disclosure of the documents at issue, including their arguments on the content of the documents requested, and secondly, it had concluded that their disclosure risked compromising the workings of the joint committee. In that

regard, it emphasised that the documents requested had been presented to it by the Mexican authorities in the course of meetings of the joint committee. Furthermore, the Commission indicated that the documents requested listed cases of alleged fraud, along with entities which allegedly used or sold ‘pseudo-Tequila’ throughout the European Union. Some of those possible fraudulent uses are already the subject of legal proceedings brought by the Mexican authorities against EU Member States for ‘pirating Tequila’. The European Union and the Mexican authorities cooperated closely in those proceedings. Moreover, both parties examined possible actions concerning the geographical indications of spirit drinks.

- 28 The Commission decided that disclosure of the documents requested, against the opinion of the third country partner, could be regarded by that country as a breach of trust and could result in a refusal to send certain information to the Commission, in particular to the joint committee, in the future. Consequently, that would have a negative impact on the workings of the joint committee and on all future cooperation concerning geographical indications and their protection in the European Union.
- 29 On the basis of Article 4(2), first indent, of Regulation No 1049/2001, the Commission declared further that the documents requested contained confidential commercial information concerning Mexican Tequila producers. According to the Commission, those documents contain, inter alia, the list of disputes in the European Union between the Mexican authorities, the Mexican Tequila producers and the EU companies selling Tequila on the EU internal market without any certification or authorisation, and the names of products and trade marks not certified by the Mexican authorities to be sold as Tequila in the European Union, the geographical areas where they can be found, information on their producers, the EU companies selling those products and the actions to be taken by the Mexican authorities against them, including the proposed legal proceedings. The Commission added that that information had to be classified as commercially sensitive and that, consequently, it could be presumed that the Mexican authorities had provided it with those documents containing commercially sensitive information in the legitimate expectation that it would not be made public. According to the Commission, there is a foreseeable and not hypothetical risk that disclosure of that commercially sensitive information would undermine the commercial interests and activities of the companies concerned, for the purposes of Article 4(2), first indent, of Regulation No 1049/2001.
- 30 In addition, the Commission examined the possibility of granting partial access to the requested documents. However, for the reasons set out above, no significant partial access would be possible without undermining the interests described above.
- 31 In view of the foregoing, it must be held that, in the contested decision, the Commission set out in sufficient detail the matters of fact and law, and all the considerations which led it to adopt that decision. In any event, the reasoning was sufficient to enable the applicant to be aware of the grounds for the decision in order to defend his rights, and to enable the Court to exercise its power of review.
- 32 Therefore, the complaints alleging infringement of Article 296 TFEU must be rejected.

First plea, alleging infringement of Article 4(1)(a), third indent, of Regulation No 1049/2001

- 33 As a preliminary point, it must be observed that Regulation No 1049/2001, as is indicated in recital 4 and Article 1, is intended to give the public a right of access to documents of the institutions which is as wide as possible (judgments of 1 February 2007, *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 61, and of 27 November 2019, *Izuzquiza and Semsrott v Frontex*, T-31/18, EU:T:2019:815, paragraph 58).
- 34 However, the particularly sensitive and essential nature of the interests protected by Article 4(1)(a) of Regulation No 1049/2001, combined with the fact that access must be refused by the institution, under that provision, if disclosure of a document to the public would undermine those interests,

confers on the decision which must thus be adopted by the institution a complex and delicate nature which calls for the exercise of particular care (judgment of 1 February 2007, *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 35).

- 35 This is corroborated by the fact that the exceptions set out in Article 4(1) of Regulation No 1049/2001 are framed in mandatory terms, and it follows that the institutions are obliged to refuse access to documents falling under any one of those exceptions once the relevant circumstances are shown to exist and that there is no need to weigh the protection of the public interest against the protection of other interests (judgment of 11 July 2018, *ClientEarth v Commission*, T-644/16, not published, EU:T:2018:429, paragraph 23).
- 36 Furthermore, first, since such exceptions derogate from the principle of the widest possible public access to documents, they must be interpreted and applied strictly (judgments of 1 February 2007, *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 63, and of 7 February 2018, *Access Info Europe v Commission*, T-851/16, EU:T:2018:69, paragraph 36), with the result that the mere fact that a document concerns an interest protected by an exception is not in itself sufficient to justify application of the exception (judgments of 27 February 2014, *Commission v EnBW*, C-365/12 P, EU:C:2014:112, paragraph 64, and of 7 February 2018, *Access Info Europe v Commission*, T-851/16, EU:T:2018:69, paragraph 36).
- 37 Secondly, the principle of the strict construction of the exceptions provided for in Article 4 of Regulation No 1049/2001, as far as the exceptions relating to public interest in paragraph 1(a) of that article are concerned, does not preclude the institution in question from enjoying a wide discretion for the purpose of determining whether disclosure of a document to the public would undermine the interests protected by that provision, and, by way of corollary, the review by the Court of the legality of a decision by that institution refusing access to a document on the basis of one of those exceptions must be limited to verifying whether the procedural rules and the duty to state reasons have been complied with, whether the facts have been accurately stated and whether there has been a manifest error of assessment or a misuse of powers (see, to that effect, judgments of 1 February 2007, *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 64, and of 12 September 2013, *Besselink v Council*, T-331/11, not published, EU:T:2013:419, paragraph 34).
- 38 It is in the light of the foregoing considerations that, in the present case, a ruling must be given on whether the Commission correctly applied the exception in Article 4(1)(a), third indent, of Regulation No 1049/2001, according to which the institutions are to refuse access to a document where its disclosure would undermine the protection of the public interest in respect of international relations.

The first part

- 39 In the first part, the applicant submits that disclosure of the documents requested would not raise fundamental concerns. In that regard, he submits that the contested decision suggests that the Mexican authorities' opposition depends on whether those documents qualify as commercial secrets covered by Article 4(2) of Regulation No 1049/2001. The applicant notes that the Commission takes the approach that the mere objection of a foreign government to disclosure of documents, regardless of the nature of the documents or the merits of the objections, is in and of itself sufficient to conclude that disclosure would undermine international relations. However, the Mexican authorities cannot be given a right to prevent disclosure of any and all complaints from private Mexican organisations concerning the conduct of EU citizens without having to show that those complaints contain commercial secrets of Mexican companies or citizens. The applicant relies, in particular, on the fundamental principle of EU law that EU citizens are entitled to have access to documents held by EU institutions, including those containing claims made by foreign citizens about EU citizens. The only explanation advanced by the Mexican authorities is that disclosure would undermine the commercial interests of private persons, that is, Mexican producers of Tequila, for the purposes of Article 4(2) of

Regulation No 1049/2001. The applicant adds that the European Union's position in international relations is sufficiently robust to withstand some disagreement with its trading partners about the need to preserve values that are of such importance to the European Union as transparency and accountability to its citizens.

40 The Commission disputes that argument.

41 As is apparent from paragraph 1 above, the Commission granted the applicant partial access to the minutes of two meetings of the joint committee. However, as is apparent from paragraph 2 above, the Commission did not authorise access to the documents requested.

42 Under Article 4(4) of Regulation No 1049/2001, as regards third-party documents, the institution is to consult the third party with a view to assessing whether an exception in paragraph 1 or 2 is applicable, unless it is clear that the document must or must not be disclosed.

43 In the present case, the documents requested were drawn up by the Consejo Regulador de Tequila. That non-profit organisation was accredited by the Mexican Government to supervise the production, bottling and labelling of Tequila and to certify that these are done in accordance with the official Mexican rules for Tequila. It also oversees and monitors the implementation of the 1997 agreement. Therefore, although they were drawn up by the Consejo Regulador de Tequila and contain information on infringements of private interests relating to the name Tequila, the documents requested were intended solely to be submitted to the European Union by the Mexican authorities in connection with the joint committee operating on the basis of the 1997 agreement. Consequently, the Commission consulted the Mexican authorities before adopting the contested decision.

44 In the course of the consultations, the Mexican authorities raised the possibility of the protection of commercial interests, including intellectual property, of a natural or legal person being undermined as a result of the possible disclosure of the documents requested.

45 In that regard, it should be recalled that the consultation of a third party other than a Member State, provided for by Article 4(4) of Regulation No 1049/2001, does not bind the institution, but must enable it to assess whether an exception provided for in paragraph 1 or 2 of that article is applicable (judgment of 30 January 2008, *Terezakis v Commission*, T-380/04, not published, EU:T:2008:19, paragraph 60).

46 Therefore, in the case of documents coming from a third party, while it certainly is mandatory to consult that party, it is for the Commission to assess the risks that may result from disclosure of those documents. In particular, it may not take the view that the opposition of that third party automatically means that disclosure may not take place as a result of a risk to international relations, but must independently examine all the relevant circumstances and take a decision within its margin of discretion.

47 Furthermore, the decision to be adopted by an institution pursuant to the provision at issue is of a complex and delicate nature and calls for the exercise of particular care, having regard in particular to the singularly sensitive and essential nature of the protected interest (judgment of 4 May 2012, *In't Veld v Council*, T-529/09, EU:T:2012:215, paragraph 24).

48 In the present case, it is clear from the information in the case file that, when implementing the exception in Article 4(1)(a), third indent, of Regulation No 1049/2001, as set out in paragraph 27 above, the Commission took into account not only the Mexican authorities' reasoned opposition, but also the content of the information in the documents requested and the Mexican authorities' argument, in that regard, that the information in those documents concerned commercial interests, the particular context in which those documents were obtained and the potential negative consequences connected with their disclosure.

- 49 In that regard, after examining the matters set out in paragraph 48 above, the Commission concluded, as is indicated in paragraph 28 above, that disclosure of the documents requested could be viewed by the Mexican authorities as a breach of trust and could result in a refusal to pass on certain information, in particular to the joint committee, in the future, which would have a negative impact on the workings of that committee and on any future cooperation concerning geographic indications and their protection in the European Union. Thus, the Mexican authorities' opposition did not automatically lead the Commission to refuse to disclose the documents requested.
- 50 Consequently, the applicant's argument that the Commission concluded that the mere fact that the Mexican authorities objected to disclosure of documents, regardless of the nature of the documents or the merits of the objections, is in and of itself sufficient to conclude that disclosure would undermine international relations, must be rejected.
- 51 That conclusion cannot be called into question by the applicant's argument that the fundamental question in the present case is the legitimacy of the justification of the Mexican authorities' opposition lying in the fact that disclosure of the documents requested would undermine the commercial interests of private persons for the purposes of Article 4(2), first indent, of Regulation No 1049/2001. As is apparent from the applicant's pleadings and his position expressed at the hearing, it is clear from that argument, in essence, that the Commission could refuse to disclose the documents requested only if the exception in Article 4(2), first indent, of Regulation No 1049/2001, on which the Mexican authorities based their opposition, was applicable.
- 52 In that regard, in the first place, the Commission is not required to take a position on the applicability of the exception in Article 4(2), first indent, of Regulation No 1049/2001 when examining the applicability of the exception in Article 4(1)(a), third indent, of Regulation No 1049/2001. However, the justification of a third country's opposition is one of the circumstances which it must take into account in the course of that examination in the present case. In particular, the assessment of the risk of disclosure for international relations carried out by the Commission is not based solely on an assessment of the reason for the opposition to disclosure of the requested documents relied on by a third country, but is based on an assessment of all the circumstances connected with a possible disclosure of those documents.
- 53 In the second place, as the applicant acknowledged at the hearing, the Commission examined the reasons for the Mexican authorities' opposition relating to the content of the documents requested as one of the circumstances which it took into account when examining any undermining of the protection of the public interest in respect of international relations. In that regard, the Commission found that the documents requested contained sensitive information. That finding is well founded, given that those documents, as is apparent from paragraph 27 above, include information on cases of alleged fraud and on entities which allegedly use or sell 'pseudo-Tequila' in the European Union and on possible actions concerning the geographical indications of spirit drinks.
- 54 Therefore, the applicant's argument that, in essence, the Commission could not refuse to disclose the documents requested without establishing that the Mexican authorities' opposition was justified must be rejected.
- 55 Consequently, the first part of the first plea must be rejected.

The second part

- 56 In the second part, the applicant submits that the risk that disclosure of the documents concerned could undermine the protection of the relationship with the international trade partner is hypothetical, if not implausible. In that regard, it is more likely that a broader knowledge of the

responsiveness of EU Member States to complaints from Mexico about the infringements of the 1997 agreement would improve the European Union's reputation as a faithful treaty partner in international relations.

57 The Commission disputes that argument.

58 It must be determined whether, in the contested decision, the Commission provided plausible explanations as to how access to the documents at issue could specifically and actually undermine the protection of the EU's international relations and whether, in the Commission's broad discretion in applying the exceptions in Article 4(1) of Regulation No 1049/2001, the risk of that undermining might be considered reasonably foreseeable and not purely hypothetical (judgment of 28 November 2013, *Jurašinović v Council*, C-576/12 P, EU:C:2013:777, paragraph 45).

59 In that regard, when an action has been brought before the Court against a Commission decision refusing access to a document on the basis of Article 4(1)(a), third indent, of Regulation No 1049/2001, in support of which the applicant submits that the Commission has not demonstrated that disclosure of that document would undermine the public interest protected by the exception provided for in that provision, the Court must ascertain, within the limits of the pleas in law raised before it, whether the Commission has indeed provided in its decision the requisite explanations and established that there is a reasonably foreseeable risk of that interest being undermined, which is not purely hypothetical (judgment of 19 March 2020, *ClientEarth v Commission*, C-612/18 P, not published, EU:C:2020:223, paragraph 33).

60 In the present case, as the applicant makes clear, the Commission, in making use of the conditional tense, considered that disclosure of the documents requested would negatively impact international relations without establishing the certain nature of that risk. Nevertheless, it should be pointed out that, in doing so, the Commission did not disregard the requirements under Article 4(1)(a), third indent, of Regulation No 1049/2001, since, in accordance with the case-law cited in paragraphs 58 and 59 above, it is not required to establish the existence of a definite risk of undermining the protection of the European Union's international relations, but merely the existence of a reasonably foreseeable and not purely hypothetical risk.

61 Moreover, the Court found that the way in which the authorities of a third country perceived the decisions of the European Union was a component of the international relations established with that third country. Indeed, the pursuit and the quality of those relations depend on that perception (judgment of 27 February 2018, *CEE Bankwatch Network v Commission*, T-307/16, EU:T:2018:97, paragraph 90).

62 Furthermore, as is apparent from the case-law cited in paragraph 37 above, when applying Article 4(1)(a) of Regulation No 1049/2001, the Commission has a wide discretion for the purpose of determining whether disclosure to the public of a document would undermine the interests protected by that provision.

63 In that regard, it is apparent from the contested decision that the purpose of the joint committee is to protect the geographical indications of the goods. Therefore, when examining the exception at issue, the Commission could legitimately consider that, in the event that the documents requested, which were brought to the attention of that committee by the Mexican authorities and which are directly connected to the work of that committee and to cooperation in the protection of geographical indications, were to be disclosed despite the opposition expressed on two occasions by those authorities, the latter could regard such an act as a breach of trust. The Commission could also have validly considered that, as a consequence, cooperation in the protection of geographical indications with that third country could be threatened, which could result in the Mexican authorities refusing to pass on certain information, in particular to the joint committee, in the future. As was stated in paragraph 27 above, the documents requested list cases of alleged fraud, mention entities which

allegedly use or sell ‘pseudo-Tequila’ in the European Union and contain information that some of those possible fraudulent uses are already the subject of legal proceedings in which the European Union and the Mexican authorities are cooperating closely. Thus, the Commission did not commit a manifest error of assessment in considering that disclosure of the documents requested could have a negative impact on the workings of the joint committee, whose objective is to protect the geographical indications of the goods, and on all future cooperation concerning geographical indications and their protection in the European Union.

- 64 Therefore, the Court finds that the explanations provided by the Commission in the contested decision, as set out in paragraph 63 above, are plausible and demonstrate, as is required by the case-law cited in paragraph 58 above, the existence of a foreseeable and not purely hypothetical risk for international relations. The existence of that risk is sufficient to justify the use of the exception mentioned in Article 4(1)(a), third indent, of Regulation No 1049/2001 for all of the documents requested, within the broad discretion which, in accordance with the case-law cited in paragraph 37 above, the Commission must be recognised as enjoying when implementing that exception.
- 65 Accordingly, the second part of the first plea in law must be rejected.
- 66 That conclusion cannot be called into question by the two additional arguments raised by the applicant.
- 67 In the first place, the applicant states that the documents to which he seeks access do not relate to the negotiation of an international agreement where the positions of the negotiating parties evolve. The documents in question concern, rather, the actual implementation of an international agreement concluded by the European Union and Mexico. In that regard, implementation of a legal norm, such as a treaty, is a matter of legal certainty. Expectations regarding legal certainty reinforce the importance of the principle of transparency in the implementation phase.
- 68 That argument cannot succeed.
- 69 First of all, it should be noted that the concept of ‘international relations’ to which Article 4(1)(a), third indent, of Regulation No 1049/2001 refers is a concept peculiar to EU law (see, to that effect, judgment of 14 February 2012, *Germany v Commission*, T-59/09, EU:T:2012:75, paragraph 62).
- 70 In that regard, neither the wording of that provision, nor the case-law indicate that, a priori, a different level of protection applies to documents coming from the ‘negotiation’ and ‘implementation’ phases of a particular international agreement.
- 71 Therefore, the assessment of the risk of compromising the workings of the joint committee and, consequently, collaboration over the protection of geographical indications may be an appropriate standard for examining the risk of undermining the protected interest concerning disclosure of the documents connected with the implementation of the 1997 agreement.
- 72 In the second place, the applicant claims that the implementation of the 1997 agreement remains relevant to private EU stakeholders, none of whom has been admitted to meetings of the Joint Committee. The transparency of documents being discussed in that committee is therefore especially important.
- 73 Similarly, that argument cannot be accepted.

- 74 It follows from Article 4(1)(a), third indent, of Regulation No 1049/2001 that the possible existence of an overriding public interest does not need to be examined when the exception relating to the protection of the public interest as regards international relations is invoked (judgment of 27 February 2018, *CEE Bankwatch Network v Commission*, T-307/16, EU:T:2018:97, paragraph 124) It should be added that the same applies to a private interest.
- 75 However, even if this argument was relied on in order to corroborate the other arguments relating to the first plea, it cannot call into question the findings set out above, which show that the Commission did not commit a manifest error of assessment in applying the exception mentioned in Article 4(1)(a), third indent, of Regulation No 1049/2001.
- 76 Therefore, the additional arguments must be rejected.
- 77 In the light of all the foregoing, the first plea must be rejected in its entirety.
- 78 Accordingly, there is no need to examine the merits of the second and third pleas, in so far as they allege infringement of Article 4(2) of Regulation No 1049/2001, or the assertion of an overriding public interest associated with that provision, since, in order for the contested decision to be well founded in law, it is sufficient if one of the exceptions put forward by the Commission in order to refuse access to the requested documents was justified (see, to that effect, judgment of 11 July 2018, *ClientEarth v Commission*, T-644/16, not published, EU:T:2018:429, paragraph 78).
- 79 The fourth plea concerning the refusal to grant partial access to the documents requested must also be rejected. As is apparent from paragraph 64 above, by refusing access to the documents requested, the Commission concluded, without making a manifest error of assessment, that the exception mentioned in Article 4(1)(a), third indent, of Regulation No 1049/2001 applied to those documents in their entirety.

Application for a measure of inquiry

- 80 In his reply, the applicant requested that the Court grant a measure of inquiry with a view to verifying the content and the private nature of the documents requested.
- 81 In the present case, it must be pointed out that the reasoning for the contested decision concerning the application of the exception provided for in Article 4(1)(a), third indent, of Regulation No 1049/2001 is based on protection of the public interest as regards international relations if the documents requested are disclosed in spite of the opposition expressed by the Mexican authorities on two occasions. In that regard, the applicant, who does not call into question the possibility, in itself, of applying the exception relating to protection of the public interest in respect of international relations in view of the content of those documents, claims that the assessment, in the present case, of the risk of undermining that interest depends on whether those documents contain commercial secrets covered by Article 4(2) of Regulation No 1049/2001. However, as is apparent from the examination of the first part of the first plea, that argument is unfounded. In that regard, the Court is able to assess in the specific case whether access to that document could validly be refused by that institution on the basis of the exception relied on and, consequently, to assess the lawfulness of a decision refusing access to that document (see, to that effect, judgments of 28 November 2013, *Jurašinović v Council*, C-576/12 P, EU:C:2013:777, paragraphs 26 to 30, and of 2 October 2014, *Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 73).
- 82 Therefore, the request for a measure of inquiry must be rejected.
- 83 Accordingly, the action must be dismissed in its entirety.

Costs

- 84 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.
- 85 In the present case, since the applicant has been unsuccessful, he must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

On those grounds,

THE GENERAL COURT (First Chamber)

hereby:

- 1. Dismisses the action;**
- 2. Orders Mr Marco Bronckers to pay the costs.**

Kanninen

Póltorak

Stancu

Delivered in open court in Luxembourg on 25 November 2020.

E. Coulon
Registrar

M. van der Woude
President