JUDGMENT OF THE GENERAL COURT (Sixth Chamber, Extended Composition)

14 September 2022*

(Access to documents – Regulation (EC) No 1049/2001 – Standing Committee for Plants, Animals, Food and Feed – EFSA guidance document on the risk assessment of plant protection products on bees – Individual positions of the Member States – Refusal to grant access – Article 4(3) of Regulation No 1049/2001 – Exception relating to protection of the decision-making process)

In Joined Cases T-371/20 and T-554/20,

Pollinis France, established in Paris (France), represented by C. Lepage and T. Bégel, lawyers,

applicant,

v

European Commission, represented by S. Delaude, C. Ehrbar and G. Gattinara, acting as Agents,

defendant,

THE GENERAL COURT (Sixth Chamber, Extended Composition),

composed of A. Marcoulli (Rapporteur), President, S. Frimodt Nielsen, J. Schwarcz, C. Iliopoulos and R. Norkus, Judges,

Registrar: P. Cullen, Administrator,

having regard to the written part of the procedure,

having regard to the decision of 15 December 2020 joining Cases T-371/20 and T-554/20 for the purposes of the written part of the procedure, any oral part of the procedure and the decision which closes the proceedings,

further to the hearing on 6 May 2022,

gives the following

* Language of the case: English.

Judgment

1 By its application pursuant to Article 263 TFEU, the applicant, Pollinis France, seeks the annulment of Commission Decision C(2020) 4231 final of 19 June 2020 ('the first contested decision'), and Commission Decision C(2020) 5120 final of 21 July 2020 ('the second contested decision'), by which the European Commission refused to grant the applicant access to certain documents concerning the Guidance Document of the European Food Safety Authority (EFSA) on the risk assessment of plant protection products on bees, adopted by the EFSA on 27 June 2013, originally published on 4 July 2013, then republished on 4 July 2014 ('the 2013 guidance document on bees') and granted partial access to certain other documents concerning the 2013 guidance document on bees.

I. Background to the dispute

2 The applicant is a French non-governmental organisation whose activity concerns the protection of the environment and whose purpose is the protection of wild and honey bees and the promotion of sustainable agriculture in order to help preserve pollinators.

A. Case T-371/20

3 On 27 January 2020, on the basis of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43) and Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in the Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13), the applicant lodged with the Commission a request for access to certain documents relating to the 2013 guidance document on bees.

4 Following correspondence between the Commission and the applicant in order to define and reduce the scope of the request, that request was limited, in essence, to the documents recording the positions of the Member States, the members of the Standing Committee on Plants, Animals, Food and Feed (SCoPAFF) and the Commission in relation to the 2013 guidance document on bees and any draft relating to the same subject matter, received or drawn up by the Commission since October 2018.

5 By letter of 16 March 2020, the Commission identified 25 documents covered by the applicant's request for access, indicated that 6 documents (documents 20 to 25) were available on the Europa internet site and rejected the request for access to the remaining 19 documents (documents 1 to 19) pursuant to the exception provided for in the second subparagraph of Article 4(3) of Regulation No 1049/2001. It is apparent from the table annexed to that letter that the documents 1 to 19 are emails, sometimes with annexes, sent by certain Member States within the SCoPAFF between January 2019 and July 2019 and concerning, in essence, the 2013 guidance document on bees or its implementation, in particular on a draft amendment to the uniform principles for evaluation and authorisation of plant protection products referred to in Article 29(6) of Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ 2009 L 309, p. 1) ('the uniform principles').

6 On 25 March 2020, the applicant submitted a confirmatory request for access to the documents.

7 By email on 15 April 2020, the Commission informed the applicant that it would be necessary to extend the time for responding to the confirmatory request for access and, by email of 11 May 2020, it informed the applicant that it was not in a position to provide it with a reply to the confirmatory request within that extended period of time.

8 In the absence of an express reply to the confirmatory request, the applicant brought an action on 15 June 2020 for annulment of the implied decision to reject the request ('the implied rejection decision'), in accordance with Article 8(3) of Regulation No 1049/2001.

9 By the first contested decision, sent to the applicant by email of 22 June 2020, the Commission replied expressly to the confirmatory request, by granting partial access to document 2, access to certain parts of which were refused on the basis of the exceptions provided for in Article 4(1)(b) and the first subparagraph of Article 4(3) of Regulation No 1049/2001, and by refusing access to all the other documents referred to in that request (documents 1 and 3 to 19) pursuant to the exception laid down in the first subparagraph of Article 4(3) of Regulation No 1049/2001.

B. Case T-554/20

10 On 8 April 2020, the applicant lodged with the Commission a second request for access to certain documents concerning the 2013 guidance document on bees. That request related, in essence, to correspondence, agendas, minutes or reports of meetings between members of the SCoPAFF and certain officials or Members of the Commission regarding the 2013 guidance document on bees in the period between July 2013 and September 2018.

11 By letter of 8 May 2020, the Commission identified 59 documents covered by the applicant's request for access and rejected that request for all of those documents pursuant to the exception provided for in the first subparagraph of Article 4(3) of Regulation No 1049/2001. It is apparent from the table annexed to that letter that those documents are emails or 'comments', sometimes with annexes, sent by certain Member States to the SCoPAFF between September 2013 and December 2018 and concern, in essence, the 2013 guidance document on bees or its implementation (together with documents 1 to 19 referred to in paragraph 5 above, 'the requested documents').

12 On 25 May 2020, the applicant submitted a confirmatory request for access to those documents.

13 By email of 17 June 2020, the Commission informed the applicant that it would be necessary to extend the time for responding to the confirmatory request.

14 By the second contested decision, the Commission replied to the confirmatory request by granting partial access to four documents (documents 3, 10, 12 and 33), access to certain parts of which were refused on the basis of the exceptions provided for in Article 4(1)(b) and the first subparagraph of Article 4(3) of Regulation No 1049/2001, and by refusing access to all the other documents referred to in that request (documents 1, 2, 4 to 9, 11, 13 to 32 and 34 to 59) pursuant to the exception laid down in the first subparagraph of Article 4(3) of Regulation No 1049/2001. The Commission furthermore stated that those documents were all emails.

II. Forms of order sought

15 The applicant claims that the Court should:

– declare the statement of modification of the application admissible and well founded in Case T-371/20;

– declare the application admissible and well founded in Case T-554/20;

– annul the first and second contested decisions;

– order the commission to pay it EUR 3 000 in costs in respect of each of the joined cases.

16 The Commission contends that the Court should:

– declare that the action against the implied rejection decision is devoid of purpose and declare the statement of modification of the application inadmissible and, in the alternative, dismiss the action as unfounded in Case T-371/20;

– dismiss the application in Case T-554/20;

– dismiss the application for an order that the Commission pay costs of EUR 3 000 in respect of each of the joined cases as inadmissible;

– order the applicant to pay the costs.

III. Law

17 The applicant submits four pleas in law, which are in essence identical, against each of the contested decisions.

18 The first plea in law alleges, in essence, an infringement of Article 4(3) of Regulation No 1049/2001, in that the Commission failed correctly to apply the exception relating to the protection of the decision-making process. The second plea in law alleges, in essence, an infringement of Article 4(3) of Regulation No 1049/2001, in that there is an overriding public interest justifying the disclosure of the requested documents, which should benefit from the wider access granted to legislative documents. The third plea in law alleges an infringement of Article 6(1) of the Regulation No 1367/2006, in that the exception provided for in Article 4(3) of Regulation No 1049/2001 should be interpreted and applied all the more strictly when the information requested relates to emissions into the environment. The fourth plea in law alleges the misapplication of Article 4(1)(b) and Article 4(6) of Regulation No 1049/2001.

19 Before examining those pleas in law, it is necessary to ascertain precisely the subject matter of the action in Case T-371/20, having regard to the Commission's application for a declaration of no need to adjudicate and the applicant's statement of modification of the application.

A. The subject matter of the action in Case T-371/20

20 On 15 July 2020, the Commission submitted an application for a declaration that there was no need to adjudicate on the action in Case T-371/20. The applicant submitted a statement on the modification of the application on 18 August 2020. The applicant's observations on the application for a declaration of no need to adjudicate and the Commission's observations on the statement on the modification of the application were lodged on 31 August 2020 and 1 October 2020 respectively. On 13 November 2020, the Court decided to join to the substance the examination of the application for a declaration of no need to adjudicate.

21 In the first place, it is common ground between the parties that the implied rejection decision was replaced by the first contested decision, in so far as that decision expressly responds to the confirmatory application made by the applicant on 25 March 2020.

22 It should be recalled that where an implied decision refusing access has been withdrawn by the effect of a decision taken subsequently, there is no longer any need to adjudicate on the action in so far as it is directed against that implied decision (judgment of 2 July 2015, *Typke* v *Commission*, T-214/13, EU:T:2015:448, paragraph 36; see also, to that effect, judgment of 2 October 2014, *Strack* v *Commission*, C-127/13 P, EU:C:2014:2250, paragraphs 88 and 89).

23 Consequently, as the Commission contends, there is no longer any need to adjudicate on the application for annulment of the implied rejection decision.

24 In the second place, however, pursuant to Article 86 of the Rules of Procedure of the General Court, the applicant submitted a statement of modification of the application in the light of the adoption of the first contested decision after it had been lodged, requesting that the action be regarded as seeking annulment of that express decision.

25 Although the forms of order sought by the parties may not, in principle, be altered, Article 86 of the Rules of Procedure provides for a derogation from that principle. Thus, in accordance with Article 86(1) and (2) of the Rules of Procedure, where a measure the annulment of which is sought is replaced by another measure with the same subject matter, the applicant may, before the oral part of the procedure is closed or before the decision of the Court to rule without an oral part of the procedure, modify the application to take account of that new factor by introducing that modification by a separate document and within the time limit down in the sixth paragraph of Article 263 TFEU within which the annulment of the measure justifying the modification of the application may be sought.

26 In the present case, the implied rejection decision was replaced by the first contested decision and the statement of modification of the application was lodged in the form and within the period prescribed for that purpose, which, moreover, the Commission expressly acknowledged in its observations on that statement of modification.

27 First, the Commission however made the general observation that it was not clearly stated whether that statement replaced or supplemented the application, but that it proceeded on the latter understanding. When questioned in that regard, the applicant, in its response to a measure of organisation of procedure lodged at the Court Registry on 25 March 2022, confirmed that its statement of modification supplemented the application. In so far as that is the common understanding of the parties and as, moreover, as stated in Article 86(4) of the Rules of Procedure, the statement of modification is not to replace the application in its entirety, but

must contain the modified form of order sought and, where appropriate, the modified pleas in law and arguments and evidence offered in connection with the modification of the form of order sought, the Commission's observation cannot call into question the admissibility of the statement of modification in itself.

28 Second, the Commission pleaded the inadmissible, ineffective or manifestly unfounded nature of the pleas submitted in the statement of modification. Nevertheless, since those criticisms relate to the admissibility, the effectiveness and the merits of those pleas, they fall within the scope of the assessment of each of those pleas and are therefore irrelevant as regards the admissibility of the statement of modification as a whole.

29 Consequently, since the conditions laid down in Article 86(1) and (2) of the Rules of Procedure are satisfied in the present case, it must be held that the subject matter of the action in Case T-371/20 is now the application for annulment of the first contested decision.

30 Furthermore, in that regard, the Commission stated, on the basis of a sentence contained in the observations lodged by the applicant on the application for a declaration of no need to adjudicate, that the applicant did not appear to challenge the first contested decision in so far as it had granted partial access to document 2 (see paragraph 9 above). It should be noted, first, that the applicant's sentence relied on by the Commission merely refers to its interest in obtaining the annulment of the first contested decision by recalling that it continued to refuse access to all the other documents (paragraph 9 above) and, second, that the statement of modification of the application does not limit the subject matter of the action solely to the documents which were the subject of a total refusal of access. Moreover, when asked at the hearing, the applicant confirmed that its actions sought to challenge the contested decisions, including in so far as they granted partial access to certain documents, formal note of which was taken in the minutes of the hearing. Consequently, it must be held that, contrary to the Commission's submissions, the subject matter of the action in Case T-371/20 is the application for annulment of the first contested decision in its entirety.

B. The first plea in law, alleging, in essence, an infringement of Article 4(3) of Regulation No 1049/2001, in that the Commission failed correctly to apply the exception relating to the protection of the decision-making process

31 As a preliminary point, it should be noted that it is true that the heading and the initial and final paragraphs of the first plea in law as set out in the statement of modification in Case T-371/20 and in the application in Case T-554/20 refer to the second subparagraph of Article 4(3) of Regulation No 1049/2001, thereby reproducing the terminology and structure of the first plea put forward in the application in Case T-371/20 concerning the implied rejection decision. However, the arguments relating to that plea, contained in the statement of modification in Case T-371/20 and in the application in Case T-554/20, do not relate solely to an alleged infringement of the second subparagraph of that provision, but refer more specifically to the reasons put forward by the Commission in the contested decisions and also relate to the first subparagraph of Article 4(3) of Regulation No 1049/2001.

32 The first plea is therefore divided, in essence, into two parts, which relate to an infringement, first, of the second subparagraph of Article 4(3) of Regulation No 1049/2001 and, second, of the first subparagraph of that provision.

33 At the outset, as regards the first part of the first plea, as the Commission submits, to the extent that the applicant relies on a line of argument alleging a misapplication of the second subparagraph of Article 4(3) of Regulation No 1049/2001, or even a failure to state the reasons for applying that provision, it must be held that that part of the plea is ineffective because it cannot lead to the annulment of the contested decisions. In those decisions, the Commission did not apply the second subparagraph of Article 4(3) of Regulation No 1049/2001, but refused access to the requested documents on the basis of the exception laid down in the first subparagraph of Article 4(3) of that regulation. It is also irrelevant in that regard that the Commission, in its letter of 16 March 2020 (see paragraph 5 above), referred to the second subparagraph of Article 4(3), since the present cases seek the annulment not of that letter but of the contested decisions, in which the Commission relied on the exception provided for in the first subparagraph of Article 4(3) of that regulation. The first part of the first plea in law must therefore be rejected as ineffective.

34 The second part of the first plea, alleging an infringement of the first subparagraph of Article 4(3) of Regulation No 1049/2001, comprises two complaints. The applicant disputes, in essence, first, the relevance of the exception laid down in that provision, relied on by the Commission, in that the decision-making process at issue is not ongoing, and, second, the reasons put forward by the Commission to justify the application of that exception.

1. Preliminary observations

35 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 recalled in recital 2 of that regulation, 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).

36 To that end, the purpose of Regulation No 1049/2001, as indicated in recital 4 and Article 1 thereof, is to give the public a right of access that is as wide as possible (see judgment of 22 March 2018, *De Capitani* v *Parliament*, T-540/15, EU:T:2018:167, paragraph 58 and the case-law cited).

37 That right is nonetheless subject to certain limitations based on grounds of public or private interest. More specifically, and in accordance with recital 11 of Regulation No 1049/2001, Article 4 of the regulation lays down a series of exceptions authorising the institutions to refuse access to a document where its disclosure would undermine the protection of one of the interests protected by that article (see judgment of 22 March 2018, *De Capitani* v *Parliament*, T-540/15, EU:T:2018:167, paragraph 59 and the case-law cited).

38 Since those exceptions depart from the principle of the widest possible public access to documents, they must be interpreted and applied strictly (see judgment of 22 March 2018, *De Capitani* v *Parliament*, T-540/15, EU:T:2018:167, paragraph 61 and the case-law cited).

39 In accordance with the principle that derogations are to be interpreted strictly, if the institution concerned decides to refuse access to a document which it has been asked to disclose, it must, in principle, explain how access to that document could specifically and actually undermine the interest protected by the exception – among those laid down in Article 4 of Regulation No 1049/2001 – upon which it is relying. Moreover, the risk of that interest being undermined

must be reasonably foreseeable and not purely hypothetical. The mere fact that a document concerns an interest protected by an exception is not by itself sufficient to justify application of that exception (see judgment of 22 March 2018, *De Capitani* v *Parliament*, T-540/15, EU:T:2018:167, paragraph 62 and the case-law cited).

40 It should also be borne in mind that the application of the exception laid down in the first subparagraph of Article 4(3) of Regulation No 1049/2001 requires it to be established that access to the documents requested is likely to undermine specifically and actually the protection of the institution's decision-making process, and that the likelihood of that interest being undermined is reasonably foreseeable and not purely hypothetical (see judgment of 22 March 2018, *De Capitani* v *Parliament*, T-540/15, EU:T:2018:167, paragraph 63 and the case-law cited).

41 In order to be covered by the exception provided for in the first subparagraph of Article 4(3) of Regulation No 1049/2001, the decision-making process must be seriously undermined. That is the case, in particular, where the disclosure of the document in question has a substantial impact on the decision-making process. The assessment of that serious nature depends on all of the circumstances of the case including, inter alia, the negative effects on the decision-making process relied on by the institution (judgment of 7 June 2011, *Toland* v *Parliament*, T-471/08, EU:T:2011:252, paragraph 71 and the case-law cited).

42 The institutions cannot be required to submit evidence to establish the existence of such a risk. It is sufficient in that regard if the decision contains tangible elements from which it can be inferred that the risk of the decision-making process being undermined is, on the date on which that decision was adopted, reasonably foreseeable and not purely hypothetical, showing, in particular, the existence, on that date, of objective reasons on the basis of which it could reasonably be foreseen that the decision-making process would be undermined if the requested documents were disclosed (see judgment of 22 March 2018, *De Capitani* v *Parliament*, T-540/15, EU:T:2018:167, paragraph 65 and the case-law cited).

43 It is in the light of those provisions and principles that the second part of the first ground of appeal must be examined.

2. The first complaint of the second part of the first plea, alleging that the decision-making process was not ongoing

44 The applicant submits that the Commission's interpretation and application of the exception laid down in the first subparagraph of Article 4(3) of Regulation No 1049/2001 are not justified. According to the applicant, the reason given by the Commission for refusing access, namely to protect the ongoing decision-making process, is contradicted by the Commission's statement that the decision-making process had been 'halted'. That latter indication gives rise to confusion and is misleading, since the process is, according to the applicant, either 'halted' or 'ongoing'. Even if it were accepted that the decision-making process was suspended and would recommence on the basis of the revised version of the 2013 guidance document on bees, that document would no longer be the same.

45 The Commission replies that the decision-making process at issue has not been completed and states that, in the contested decisions, it used the term 'halted' as meaning 'suspended' or 'paused'. In addition, the fact that the 2013 guidance document on bees may be amended is

irrelevant for the application of the exception referred to in the first subparagraph of Article 4(3) of Regulation No 1049/2001. The reasoning of each of the contested decisions is therefore not contradictory.

46 As a preliminary point, it should indeed be noted that, although the Commission has disputed the admissibility and relevance of numerous arguments put forward by the applicant under the second part of the first plea in so far as they do not relate to the exception applied in the contested decisions or were improperly presented at the reply stage, that is not necessarily the case for the arguments relating to the ongoing nature of the decision-making process set out in paragraph 44 above. In its observations on the statement of modification of the application in Case T-371/20, the Commission acknowledged that such arguments appeared in that statement of modification and related to the exception relied on in the contested decisions, stating that, 'except in paragraphs … of the statement of modification which [referred] to the ongoing character of the decision-making process, the applicant [had] failed to adapt its pleas to the new legal ground invoked in the [first contested decision]'. It should be noted that those arguments were set out in the statement of modification in Case T-371/20. In addition, those arguments were set out, identically, in the application in Case T-554/20. Consequently, any later allegation by the Commission, presented inter alia in its defences or at the hearing, seeking to suggest that those arguments were inadmissible or ineffective or that the applicant did not contest that the decision-making process was ongoing must be rejected as unfounded.

47 It is necessary, therefore, to examine whether the applicant's first complaint is well founded.

48 It is apparent from the file that the 2013 guidance document on bees was prepared by the EFSA in 2013 at the Commission's request. That document was submitted by the Commission to the SCoPAFF in 2013 for an opinion, with a view to its adoption in accordance with the advisory procedure provided for in Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ 2011 L 55, p. 13), and in accordance with Article 77 and Article 79(2) of Regulation No 1107/2009.

49 It is common ground between the parties that the 2013 guidance document on bees was discussed for several years within the SCoPAFF, without it being possible to reach any agreement on its text due to disagreement amongst the Member States and without the Commission having thus succeeded in adopting that guidance document.

50 In 2018, in the absence of the adoption of the 2013 guidance document on bees as such and for the purposes of the partial implementation of that document, the Commission proposed to implement certain parts of it by introducing amendments to the uniform principles laid down in Commission Regulation (EU) No 546/2011 of 10 June 2011 implementing Regulation No 1107/2009 as regards the uniform principles for evaluation and authorisation of plant protection products (OJ 2011 L 155, p. 127). The Commission accordingly submitted, in 2018, a draft regulation amending Regulation No 546/2011 to the SCoPAFF for an opinion, with a view to its adoption in accordance with the regulatory procedure with scrutiny provided for by Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ 1999 L 184, p. 23), and in accordance with Article 29(6), Article 78(1)(c) and Article 79(4) of Regulation No 1107/2009.

51 It is common ground between the parties that the SCoPAFF gave a positive opinion on a draft regulation amending Regulation No 546/2011 in the course of July 2019, but that that regulation was also not adopted by the Commission because, during the regulatory procedure with scrutiny, the European Parliament opposed its adoption in October 2019 taking the view, in essence, that that draft did not provide for a sufficient level of protection.

52 Although, prior to 2018, the Commission was not planning to revise the 2013 guidance document on bees, in the course of March 2019, the Commission asked the EFSA to revise that document in order to take account of scientific developments since 2013.

53 It was therefore in that context that, in the contested decisions, adopted in June and July 2020, the Commission stated that, pending the finalisation of the revision of the 2013 guidance document on bees by the EFSA, its examination within the SCoPAFF was 'halted' and that that meant that the decision-making process could be regarded as being 'ongoing', since it would resume once the EFSA had completed the revision of that guidance document. In addition, in the contested decisions, the Commission stated that it had pointed out to the EFSA the importance of submitting 'its revised report' by March 2021 and also asked it to involve the Member States' experts and stakeholders to ensure that all views can be taken into account, which should permit swift acceptance of the revised guidance document on bees.

54 When asked at the hearing as to the state of the revised guidance document on bees, the Commission stated that any consideration relating to the content and possibly binding nature of that document was hypothetical, as the EFSA's procedure for revising that document had not yet been completed. The Commission added that the same applies to any consideration relating to the form of its possible adoption by the Commission and to the procedure which might be followed for that purpose.

55 It follows from the circumstances set out in paragraphs 48 to 54 above that, contrary to the position taken by the Commission in the contested decisions, the decision-making process to which the requested documents relate could not be regarded as ongoing at the time when those decisions were adopted.

56 It is true that the requested documents may be regarded as relating to a Commission decision-making process which took place from 2013 to 2019 and which sought the full or partial implementation by the Commission of the 2013 guidance document on bees, either by adopting that guidance document as such, in accordance with the advisory procedure provided for in Regulation No 182/2011, or by amending the uniform principles laid down by Regulation No 546/2011 in accordance with the regulatory procedure with scrutiny laid down by Decision 1999/468. However, it must be observed that, at the time when the contested decisions were adopted, there was no longer any decision-making process which had the aim of implementing that 2013 guidance document, either as such or in the form of an amendment to the uniform principles. On the contrary, the Commission had decided, implicitly but necessarily, not to implement that 2013 guidance document and had even expressly asked the EFSA to revise it. That revision, which was still ongoing at the time of the adoption of the contested decisions, meant furthermore that it was impossible to determine the content of any revised guidance document, the form of its possible adoption or the procedure that might be followed for that purpose. That review therefore means that the Commission's decision-making process was devoid of any object at the time when the contested decisions were adopted.

57 A different conclusion cannot be reached on the basis of the Commission's submission that, despite the circumstances referred to in paragraphs 48 to 54 above, it still had the objective of implementing a guidance document on bees in order to provide the Member States' authorities with a document setting out 'current scientific and technical knowledge' in accordance with Article 36(1) of Regulation No 1107/2009. Even if that objective were to be established, it does not mean, in itself, that a decision-making process concerning such a document was ongoing at the time when the contested decisions were adopted. On the contrary, the documents in the file indicate that the Commission had decided not to implement the 2013 guidance document on bees and that, if appropriate, a decision-making process relating to a revised guidance document on bees could have taken place when the EFSA sent that document to the Commission and the Commission decided to implement it, which was moreover hypothetical at the time of the adoption of the contested decisions and remained so on the date of the hearing. For the same reasons, contrary to what is claimed by the Commission, the fact that the applicant had requested, or even still requests, that the 2013 guidance document on bees be adopted in its entirety does not mean that a decision-making process relating to that document was ongoing at the time of the adoption of the contested decisions or is still ongoing.

58 Furthermore, it must be observed that the fact that the EFSA's review of the 2013 guidance document on bees was still ongoing does not in any way mean that a Commission decision-making process relating to the implementation of that same document was still ongoing on the dates of adoption of the contested decisions. On the contrary, the undertaking of that review process itself supports the finding that, after the amendment of the uniform principles was rejected, at the time of the adoption of the contested decisions, the Commission was no longer conducting any decision-making process relating to the 2013 guidance document on bees. As the applicant has pointed out, without being contradicted by the Commission, the Commission did not plan to request such a review prior to 2018. As is apparent from the contested decisions, that review appears to have been contemplated in view of the impossibility of adopting the 2013 guidance document on bees and in order to enable the swift acceptance of a revised guidance document on bees.

59 It follows that the Commission's decision-making process relating to the 2013 guidance document on bees had been closed at the time when the contested decisions were adopted and that, consequently, in the particular circumstances of the present cases, the Commission could not validly base those decisions on the exception provided for in the first subparagraph of Article 4(3) of Regulation No 1049/2001, which seeks to protect the institution's decision-making process relating to a matter where the institution has not yet taken a decision.

60 Article 4(3) of Regulation No 1049/2001 draws a clear distinction by reference to whether a procedure has been closed or not. Once the decision is adopted, the requirements for protecting the decision-making process are less acute, so that disclosure of any document other than those referred to in the second subparagraph of Article 4(3) of Regulation No 1049/2001 can never undermine that process and that refusal of access to such a document cannot be permitted, even if its disclosure would have seriously undermined that process if it had taken place before the adoption of the decision in question. Thus, the reasons invoked by an institution and capable of justifying refusal of access to such a document of which communication was requested before the closure of the administrative procedure might not be sufficient for refusing disclosure of the same document after the adoption of the decision (see, to that effect, judgment of 21 July 2011, *Sweden* v *MyTravel and Commission*, C-506/08 P, EU:C:2011:496, paragraphs 78, 80 and 82).

61 The first complaint in the second part of the first plea in law must therefore be upheld and, consequently, the contested decisions must be annulled in so far as they refuse access to the requested documents on the basis of the first subparagraph of Article 4(3) of Regulation No 1049/2001.

62 In the circumstances of the present cases, however, it is also necessary to examine, in addition, the second complaint of the second part of the first plea relating to the reasons put forward by the Commission in the contested decisions to justify the application of the exception provided for in the first subparagraph of Article 4(3) of Regulation No 1049/2001, on the assumption that that provision is applicable in the present case.

3. The second complaint of the second part of the first plea, relating to the reasons given in the contested decisions

63 As a preliminary point, it should be recalled that, in the contested decisions, the Commission relied, in essence, on a set of three related grounds in order to refuse access to the requested documents on the basis of the first subparagraph of Article 4(3) of Regulation No 1049/2001. According to the Commission, first, comitology procedures maintain the confidentiality of the individual positions of the Member States. Second, disclosure of the positions of the Member States exchanged in a context of confidentiality would compromise cooperation between the Member States and the mutual trust between the Member States and the Commission. Certain circumstances surrounding the discussions on the 2013 guidance document on bees constitute strong evidence of the complexity and the sensitivity of the decision-making process in question, which should be protected. Third, the Commission was, and continues to be, the target of external pressures from various stakeholders with conflicting interests, with the result that disclosure of the requested documents would expose a long and complex decision-making process to additional external pressure. Disclosure of the requested documents would reduce the margin for manoeuvre and the flexibility of the Member States, which should be free to explore, without external pressure, all options within standing committees.

64 Before examining the applicant's arguments challenging those reasons put forward by the Commission in the contested decisions, it is necessary first of all to examine the admissibility of those arguments, which is disputed by the Commission on the ground that they constitute a new plea.

(a) Admissibility of applicant's arguments

65 In the reply, the applicant confirms that it alleges that the contested decisions also infringe the first subparagraph of Article 4(3) of Regulation No 1049/2001, and that it does so without altering its arguments, except in order to 'replace the "second subparagraph" with the "first subparagraph"', since the applicable law is the same. In any event, the applicant expressly referred to the first subparagraph in its statement on the modification of the application in Case T-371/20 and in the application in Case T-554/20. That argument is therefore not a 'new plea' because the reasoning set out is exactly the same and the applicant has already referred to it. In addition, relying on the case-law concerning the amplification of pleas, the applicant submits that, in the present case, the two subparagraphs constitute 'necessary complements to the conditions of disclosure of documents … in regard to the need to protect the decision-making

process' and that the meaning of its arguments, in the application and in the reply lodged in each of the joined cases, is the same. The applicant concludes that the first plea is therefore not inadmissible in that it relates to the first subparagraph of Article 4(3) of Regulation No 1049/2001.

66 In the rejoinder, the Commission, as regards the possibility for the applicant to clarify the scope of the first plea, observes as a preliminary point that the applicant's argument is based on the incorrect premiss that the first and second subparagraphs of Article 4(3) of Regulation No 1049/2001 concern one and the same exception, whereas they relate to two separate exceptions which apply as alternatives. In that context, first, the Commission submits that the applicant confirmed that it intended to rely on an infringement of the second subparagraph of that provision and so reliance on that subparagraph is therefore not a clerical error. By contrast, it is the reference to the first subparagraph of that provision (once in the statement of modification in Case T-371/20 and once in the application in Case T-554/20) which is a clerical error, since there is no independent argument in that regard, especially since the two exceptions apply in the alternative. If the applicant intended to develop alternative or cumulative reasoning relating to the first subparagraph, it should have indicated this clearly in the statement of modification in Case T-371/20 or in the application in Case T-554/20; it cannot make such an extension retroactively. Second, the Commission submits that the applicant cannot rely in the reply on arguments relating to the first subparagraph on the ground that they are closely linked to those put forward in the application, since the two exceptions are distinct and protect two different interests. The fact that the documents could fall within the scope of both exceptions has no bearing on the assessment which the Commission must carry out, which differs according to whether the interest protected is an ongoing or closed decision-making process. Moreover, the fact that the applicant could have relied on the same line of argument is irrelevant. The Commission therefore concludes that the applicant, in the reply, raised a new plea which is inadmissible.

67 First, it is necessary to reject the applicant's claim that the argument developed in relation to the second subparagraph of Article 4(3) of Regulation No 1049/2001 may be transposed to the first subparagraph of that provision, on the ground that the applicable law is the same and so the applicant's argument could remain the same by simply substituting the words 'second subparagraph' for the words 'first subparagraph'. That claim is based on incorrect premisses. As is apparent from paragraph 60 above, the reasoning applicable in the context of each of those exceptions provided for in Article 4(3) of Regulation No 1049/2001 is not the same, since the purpose of those two exceptions is to protect two different interests and they are each subject to different conditions of application. Furthermore, the applicant cannot validly claim to be able to rely on provisions other than those referred to on the ground that it would be sufficient to change, in its arguments, the only reference to the provisions at issue.

68 Secondly, however, the applicant submits that, in any event, in the applications initiating the proceedings it relied on an infringement of the first subparagraph of Article 4(3) of Regulation No 1049/2001 and that, consequently, in the reply, it could amplify the arguments put forward in support of that claim.

69 In that regard, first, it is sufficient to recall that, as is indeed also apparent moreover from paragraphs 44 to 46 above, in the statement of modification of the application in Case T-371/20 and in the application in Case T-554/20, in the first plea, the applicant expressly alleged an infringement of the exception laid down in the first subparagraph of Article 4(3) of Regulation

No 1049/2001 by stating that 'the applicant considers that the Commission's interpretation and use of the exception provided for in the first subparagraph of Article 4(3) (protection of the ongoing decision-making process) of Regulation … No 1049/2001 is not justified'.

70 Furthermore, in a manner consistent with that reference, in the statement of modification in Case T-371/20 and in the application in Case T-554/20, in the arguments developed in the first plea, the applicant expressly referred to 'the reason given by the Commission for refusing access to the documents, i.e. "to protect the on-going decision-making process"'.

71 Similarly, in the introductory part of both the statement of modification in Case T-371/20 and the application in Case T-554/20, the applicant stated that each of the contested decisions was 'based on the exception in the first subparagraph of Article 4(3) (protection of the ongoing decision-making process) of Regulation … No 1049/2001'.

72 Furthermore, in the statement of modification in Case T-371/20 and in the application in Case T-554/20, in the third plea in law, the applicant alleged infringement of Article 6(1) of Regulation No 1367/2006, in relation to the exception provided for in the first subparagraph of Article 4(3) of Regulation No 1049/2001.

73 It therefore follows from the wording of the first plea, as well as from the actions taken as a whole, that the first subparagraph of Article 4(3) of Regulation No 1049/2001 was expressly invoked by the applicant in the arguments relating to the first plea in law. The Commission's argument that those references are clerical errors on the part of the applicant cannot therefore be accepted.

74 While it is certainly regrettable that, in the statement of modification in Case T-371/20 and in the application in Case T-554/20, in the context of the first plea in law, the applicant relied without distinction on provisions each of which have a different scope, such as the first and second subparagraphs of Article 4(3) of Regulation No 1049/2001, the fact remains that the allegation of an infringement of the first subparagraph of Article 4(3) of Regulation No 1049/2001 is clear both from the statement of modification in Case T-371/20 and from the application in Case T-554/20.

75 Second, it is indeed true that, in addition to the arguments already recalled in paragraph 44 above, it was only in the reply that, in response to the Commission's criticisms, the applicant further articulated its reliance on the first subparagraph of Article 4(3) of Regulation No 1049/2001 by developing a line of argument seeking to substantiate further the second part of the first plea.

76 Article 84(1) of the Rules of Procedure provides that no new plea in law may be introduced in the course of proceedings unless it is based on matters of law or fact which have come to light in the course of the procedure. However, a submission which may be regarded as amplifying a plea made previously, whether directly or by implication, in the original application, and which is closely connected therewith, must be declared admissible. Moreover, arguments which in substance have a close connection with a plea raised in the application initiating the proceedings cannot be considered new pleas and they may be raised at the stage of the reply or the hearing (judgment of 8 November 2018, "*Pro NGO*!" v *Commission*, T-454/17, EU:T:2018:755, paragraph 70).

77 In the present case, contrary to what is contended by the Commission, the argument developed by the applicant in the reply does not constitute a new plea but is closely connected to the allegation of infringement of the first subparagraph of Article 4(3) of Regulation No 1049/2001 which was already contained in the statement of modification in Case T-371/20 and in the application in Case T-554/20.

78 In the statement of modification in Case T-371/20 and in the application in Case T-554/20, the applicant claimed that the application of the first subparagraph of Article 4(3) of Regulation No 1049/2001 '[was] not justified'. Furthermore, in those pleadings, the applicant added, admittedly in general terms, that 'the Commission [had] failed to explain how access to the requested documents would specifically and actually undermine the decision-making process'. In the reply, the applicant explained why, in its view, the Commission '[had not demonstrated] that there would be a concrete and actual risk for the ongoing decision-making process, if disclosure of the documents requested had been authorised' and, more specifically, why the reasons given in the contested decisions did not '[correctly demonstrate] that there was a concrete, actual and serious risk for the ongoing decision-making process'. The arguments set out in the reply in each case therefore seek to develop directly the complaint contained in the documents instituting the proceedings relating to the lack of adequate justification for applying the exception provided for in the first subparagraph of Article 4(3) of Regulation No 1049/2001.

79 Consequently, since, in the present case, the arguments put forward in the reply in each case concerning infringement of the first subparagraph of Article 4(3) of Regulation No 1049/2001 amplify the plea set out in the statement of modification in Case T-371/20 and in the application in Case T-554/20 concerning that same provision, they must be held to be admissible.

80 Moreover, it must be observed that those arguments, in so far as they relate to the grounds put forward in the contested decisions, coincide, in essence, with the arguments developed – albeit sometimes, regrettably, imprecisely as regards the provisions alleged to have been infringed – in the statement of modification in Case T-371/20 and in the application in Case T-554/20 in relation to the actual content of the contested decisions (see paragraphs 31 and 74 above).

81 It is therefore necessary to examine the arguments put forward by the applicant in the reply which put in issue the grounds, recalled in paragraph 63 above, which were relied on by the Commission in the contested decisions.

(b) On the merits of applicant's arguments

82 The applicant submits, first, that the Standard Rules of Procedure for Committees (OJ 2011 C 206, p. 11) ('the Standard Rules of Procedure') cannot prevail over Regulation No 1049/2001 and, second, that the Commission has not explained how disclosure of the requested documents would have given rise to specific and actual risks for the ongoing decision-making process. First, the Commission does not show how the effect on mutual trust between the Member States and the Commission would seriously undermine the decision-making process. The fact that the 2013 guidance document on bees was discussed for more than seven years or was under review is irrelevant in that regard. Second, the external pressures invoked by the Commission also do not prove that disclosure would seriously undermine the decision-making process. Those pressures should not even be taken into consideration because they are not the direct consequence of the disclosure of the documents and it is for the institutions to take the necessary measures to avoid them. In the present case, the Commission not only failed to establish the reality of the alleged pressure, but failed to explain why that pressure posed a 'serious risk' to the decision-making process. Third, the Commission should have demonstrated the existence of a specific risk in relation to each of the requested documents.

83 The Commission contends that the applicant's arguments are unfounded. First, the applicant fails to have regard to the relevant legal framework, in particular the Standard Rules of Procedure. Second, the applicant appears to dispute for the first time, and inconsistently with its previous

line of argument, the fact that the Commission was subject to external pressure. The evidence establishing the existence of risk for the decision-making process should not be considered in isolation but as part of a body of consistent evidence. Furthermore, the Commission states that it did not apply a general presumption, but specifically assessed the content of all the requested documents.

84 At the outset, the applicant's arguments must be rejected as unfounded in so far as they may be understood to be alleging a failure to state reasons or an inadequate statement of reasons in the contested decisions. As is apparent from paragraph 63 above, the contested decisions set out the reasons which led the Commission to refuse access to the requested documents. By contrast, the question whether the grounds put forward by the Commission provide valid justification for that refusal relates to the merits of the contested decisions, and not to lack or inadequacy of the statement of reasons for them. It is therefore necessary to turn to the examination of those grounds.

(1) The individual position of the Member States in the comitology procedures

85 In the contested decisions, the Commission stated that comitology procedures preserve the confidentiality of the individual positions of the Member States and that this is reflected in certain provisions of the Standard Rules of Procedure, adopted by the Commission under Article 9(1) of Regulation No 182/2001, provisions which, according to the Commission, 'explicitly exclude the positions of individual Member States from public access'.

86 The applicant submits that the Standard Rules of Procedure cannot prevail over Regulation No 1049/2001.

87 The Commission contends that the applicant fails to take account of the relevant legal framework.

88 As a preliminary point, it should be noted that the present dispute does not relate, generally, to the rules governing the work of the comitology committees, or to direct access to those works, but only to access, following a request for access made under Regulation No 1049/2001 by the applicant, to certain documents exchanged within the SCoPAFF in the context of the examination of the 2013 guidance document on bees, those documents being emails containing, in essence, the individual position of certain Member States on that guidance document or on the draft amendment to the uniform principles intended to implement it (see paragraphs 5, 11 and 14 above).

89 In the first place, in the present case, it should be observed that, in the contested decisions, in order to support the ground that the individual position of the Member States should be protected in comitology procedures and should therefore be excluded from public access, the Commission relied solely on the content of two provisions of the Standard Rules of Procedure, namely Article 10(2) and Article 13(2) thereof: the first of those provisions states that the 'the summary record shall not mention the individual position of the members in the committee's discussions' and the second that the 'the committee's discussions shall be confidential'.

90 In other words, in the contested decisions, the Commission did not rely on provisions of Regulation No 1049/2001, or even of Regulation No 182/2011, or on the content of an internal regulation which the SCoPAFF had actually adopted.

91 Moreover, in that respect, when asked by means of a measure of organisation of procedure whether the SCoPAFF had adopted rules of procedure, the Commission, in its reply lodged at the Court Registry on 15 March 2022, stated that that committee had not adopted rules of procedure but that it organised its work in accordance with the Standard Rules of Procedure. However, the Commission has not produced any evidence in support of that assertion. When questioned at the hearing on the basis of that approach of the SCoPAFF, the Commission did not refer to any particular basis, but stated, in essence, that while the SCoPAFF had not reproduced the Standard Rules of Procedure in an internal regulation, it referred to them 'in practice' in order to organise its work.

92 It must therefore be held that, unlike the situation taken into account by the Court in paragraph 86 of the judgment of 28 May 2020, *ViaSat* v *Commission* (T-649/17, not published, EU:T:2020:235), which related to certain activities of another comitology committee, in the present case there is nothing in the file to suggest that the SCoPAFF has adopted rules of procedure corresponding to the provisions of the Standard Rules of Procedure invoked by the Commission in the contested decisions and which would underline the importance that that committee attached to the confidentiality of certain information exchanged within it and its discussions.

93 In the second place, in any event, even if the SCoPAFF had adopted or followed 'in practice' the rules in the Standard Rules of Procedure, including the provisions relied on by the Commission in the contested decisions, that fact would not permit the inference that those provisions – even if it were to be interpreted as emphasising the confidential nature of the discussions within the SCoPAFF and the positions expressed by the Member States in that context – could exclude, as a matter of principle, certain documents from the scope of Regulation No 1049/2001.

94 It should be noted that recital 19 of Regulation No 182/2011 states that public access to information on committee proceedings should be ensured in accordance with Regulation No 1049/2001. To that end, Article 9(2) of Regulation No 182/2011 provides that the principles and conditions concerning public access to documents applicable to the Commission are to apply to committees (an identical provision was, moreover, contained in Article 7(2) of Decision 1999/468). Regulation No 182/2011 thus recalls that committees are subject to the same rules as the Commission as regards public access to documents, namely those laid down in Regulation No 1049/2001, and does not contain any specific rule on public access to documents as regards the work of committees.

95 It is true that Article 9(1) of Regulation No 182/2011 provides that each committee is to adopt its own rules of procedure on the basis of standard rules to be drawn up by the Commission following consultation with the Member States, and published in the *Official Journal of the European Union*.

96 However, the provisions of the rules of procedure of a committee, or even those of the Standard Rules of Procedure, whether or not they have been adopted by the committee as its own rules of procedure, cannot, in response to a request for public access, make it possible for protection to be granted to documents which goes beyond what is provided for by Regulation No 1049/2001.

97 Thus, the Standard Rules of Procedure relied on by the Commission in the contested decisions cannot permit a protection of the individual positions expressed by the Member States that goes beyond that laid down in the first subparagraph of Article 4(3) of Regulation No 1049/2001 (see, by analogy, judgment of 18 December 2008, *Muñiz* v *Commission*, T-144/05, not published, EU:T:2008:596, paragraph 92).

98 Furthermore, it follows from the case-law that the EU legislation on access to documents cannot justify an institution's refusal, as a matter of principle, to grant access to documents pertaining to its deliberations on the basis that they contain information relating to positions taken by representatives of the Member States (see, to that effect, judgment of 10 October 2001, *British American Tobacco International (Investments)* v *Commission*, T-111/00, EU:T:2001:250, paragraph 52 and the case-law cited).

99 It follows that, as regards public access to the documents inherent in the work of comitology committees, the Commission cannot take the view that the relevant legal framework excludes, as a matter of principle, public access to the individual positions of the Member States.

100 In the third place, moreover, it must be observed that the provisions of the Standard Rules of Procedure relied on by the Commission in the contested decisions cannot be interpreted as precluding public access, on request, to the individual positions of the Member States.

101 First, Article 10(2) of the Standard Rules of Procedure relates to the content of the 'summary record' of the work of committees. As is apparent from Article 10(1)(c) of Regulation No 182/2011, the summary record is one of the documents that form part of the register of committee proceedings held by the Commission pursuant to the latter provision, documents whose references are published in that register in accordance with paragraph 5 of that provision. It is true that Article 10(2) of the Standard Rules of Procedure adds that, although the summary record describes the agenda items and the voting results, it 'shall not mention the individual position of the members in the committee's discussions'. However, the latter provision does not relate to public access to the documents of committees, but to the content of the register of committee proceedings, in particular the content of one of the documents of which it is composed, the summary record. The fact that the summary record does not mention the individual position of the Member States has no bearing on access to documents and cannot therefore prejudice public access, upon application, to documents showing those individual positions. Furthermore, contrary to what was argued by the Commission at the hearing, that provision cannot be interpreted as meaning that the individual position of the Member States should not be recorded in any document, since that provision concerns only the content of the summary record.

102 Furthermore, in so far as, before the Court, the Commission also relied on Article 10(1) of Regulation No 182/2011 in support of the argument that the individual positions of the Member States should be protected, since only the results of votes appear in the register of committee proceedings, that argument must also be rejected for the same reasons. That provision concerns only the content of the register of the committee proceedings, and not public access to documents, which, as follows from Article 9(2) of Regulation No 182/2011, may be granted pursuant to Regulation No 1049/2001.

103 Second, Article 13(2) of the Standard Rules of Procedure does indeed state that 'the committee's discussions shall be confidential'.

104 However, first, that provision merely refers to the confidential nature of the 'committee's discussions', and not the entire procedure at the end of which those committees are to hold their discussions (see, by analogy, judgment of 13 July 2017, *Saint-Gobain Glass Deutschland* v *Commission*, C-60/15 P, EU:C:2017:540, paragraph 81). Second, without there being any need to define the concept of 'the committee's discussions' within the meaning of that provision, it is sufficient to note that the scope of that provision appears to be qualified by the whole of

Article 13 of the Standard Rules of Procedure. Paragraph 1 thereof states that applications for access to the committee's documents are to be handled by the Commission in accordance with Regulation No 1049/2001 and paragraph 3 adds that 'documents submitted to members of the committee, experts and representatives of third parties shall be confidential …, unless access is granted to those documents pursuant to paragraph 1 or they are otherwise made public by the Commission'.

105 Thus, Article 13(1) and (3) of the Standard Rules of Procedure provides for the possibility that, in accordance with Regulation No 1049/2001, access may be granted inter alia to documents transmitted by a member of the committee to other members of the committee and that, in that case, those documents are not confidential, or lose their confidentiality. Those provisions do not in any way exclude documents, such as emails, which contain the observations or the proposals of a committee member on a draft measure, except to reduce unduly the scope of that paragraph 3 as regards access to documents.

106 Moreover, contrary to the Commission's submission at the hearing, there is nothing to support the interpretation that, in view of the alleged confidentiality arising from Article 13(2) of the Standard Rules of Procedure, a committee's discussions are in principle sensitive.

107 It follows from the foregoing that, contrary to what the Commission maintained in the contested decisions, the comitology procedures, and in particular the Standard Rules of Procedure, do not in themselves require access to documents showing the individual position of the Member States within the SCoPAFF to be refused in order to protect the decision-making process of that committee, within the meaning of the first subparagraph of Article 4(3) of Regulation No 1049/2001, which, however, does not in any way prevent the Commission, in duly justified cases, from refusing access to documents which show the individual position of the Member States within that committee where their disclosure would be likely specifically to undermine the interests protected by the exceptions provided for in Article 4 of Regulation No 1049/2001.

(2) Cooperation and mutual confidence and the complexity and sensitivity of the decision-making process

108 In the contested decisions, the Commission stated that disclosure of the individual position of the Member States, expressed in a context of confidentiality, would negatively affect their cooperation 'in comitology procedures' and would affect the mutual trust between the Member States and the Commission. The Commission added, in essence, that the fact that the 2013 guidance document on bees had been the subject of discussion for more than six years, the fact that an agreement had not been reached between the Member States during that period and the fact that that guidance document was the subject of revision constituted solid evidence of the complexity and sensitivity of the decision-making process which had to be protected in the present case. In addition, in the second contested decision, the Commission referred to the politically sensitive nature of the 2013 guidance document on bees, which was demonstrated by the duration of the discussions relating to it.

109 The applicant claims that the Commission did not explain how the effect on mutual trust would seriously undermine the decision-making process and that the circumstances invoked in the contested decisions are irrelevant, whereas it is rather the lack of transparency that hinders the decision-making process.

110 The Commission replies, in essence, that the factors relied on in the contested decisions must not be considered individually, but taken as a whole.

111 In the first place, in so far as, in the contested decisions, the Commission referred to the need to protect cooperation between the Member States, it is sufficient to note that, in that regard, the Commission relied on abstract reasoning relating to the preservation of that cooperation in comitology procedures in general. Similarly, in so far as, in the contested decisions, the Commission referred to the need to protect the mutual trust between the Commission and the Member States, since the individual positions of the latter were exchanged 'in a context of confidentiality', it must be stated that the Commission also relied on reasons of a general nature. Those justifications are based on the premiss that the comitology procedures protect, with regard to a request for access to documents, the confidentiality of the individual positions of the Member States expressed within the committees, a premiss which, however, has already been rejected in paragraph 107 above. They are therefore justifications which have no concrete connection with the specific circumstances of the decision-making process at issue in the present case.

112 Consequently, as the applicant points out, the explanations contained in the contested decisions are not capable of demonstrating how cooperation and mutual trust in the decision-making process in question would be affected in the event that the requested documents were disclosed.

113 Moreover, it should be recalled that the Member States are bound by a duty of sincere cooperation between themselves and with the EU institutions under Article 4 TEU, with the result that disclosure of the requested documents cannot, in any event, give rise to the concern that that obligation would not be respected or that the duties of the Member States might be weakened in that respect.

114 In the second place, in so far as, in the contested decisions, the Commission relied on certain factual circumstances in order to support its assertion that the decision-making process to be protected in the present case is complex and sensitive, or even that the 2013 guidance document on bees is politically sensitive, it must be observed that the Commission did not refer to the content of the requested documents, but rather, in a general way, to the decision-making process at issue as a whole or to the 2013 guidance document on bees.

115 In that regard, first of all, it should be noted that, in the contested decisions, the Commission did not therefore claim, still less demonstrate, that the requested documents were of a sensitive nature or that they were sensitive documents within the meaning of Article 9 of Regulation No 1049/2001, that provision not being at issue in the present case. Nor has the Commission submitted that any Member State would have requested it, in accordance with Article 4(5) of Regulation No 1049/2001, not to disclose, without its agreement, its position on the 2013 guidance document on bees.

116 Next, it is clear from the case-law that the alleged complexity of the decision-making process does not, in itself, constitute a particular reason to fear that disclosure of the requested documents would seriously undermine that process (see, to that effect and by analogy, judgment of 7 June 2011, *Toland* v *Parliament*, T-471/08, EU:T:2011:252, paragraph 81). Similarly, the fact that a subject is sensitive also cannot, in itself, constitute an objective reason sufficient to justify the concern that the decision-making process would be seriously undermined if the requested documents were disclosed (see, to that effect, judgments of 7 June 2011, *Toland* v *Parliament*, T-471/08, EU:T:2011:252, paragraph 80, and of 20 September 2016, *PAN Europe* v *Commission*,

T-51/15, not published, EU:T:2016:519, paragraph 34). An allegedly sensitive subject matter cannot be confused with a sensitive document (judgment of 21 April 2021, *Pech* v *Council*, T-252/19, not published, under appeal, EU:T:2021:203, paragraph 57).

117 Thus, the Court has already held that the complexity of the discussions, divergent views as between the participants or the sensitive nature of a debate do not justify, in themselves, the application of the exception provided for in the first subparagraph of Article 4(3) of Regulation No 1049/2001 (see, to that effect, judgment of 21 April 2021, *Pech* v *Council*, T-252/19, not published, under appeal, EU:T:2021:203, paragraph 56).

118 Lastly, it should be noted that the circumstances relied on by the Commission in the contested decisions do not give grounds for concerns that the decision-making process would be seriously undermined if the requested documents were disclosed.

119 First, the facts that the 2013 guidance document on bees was discussed for several years and that, during that period, an agreement was not reached between the Member States do not corroborate a need to protect the requested documents as relied on by the Commission but, on the contrary in the circumstances of the present case, tend to contradict it. The decision-making process at issue did not result in the adoption of the 2013 guidance document on bees, although it is common ground that that process took place without the public having had access to the individual position of the Member States in that regard. Thus, on the one hand, the failure of the process is unconnected with any form of information or transparency vis-à-vis the public and, on the other hand, it has not been established that the lack of access to the requested documents would enable that process to achieve that result. The disclosure of those documents does not therefore appear to be capable of undermining the decision-making process in question in any way.

120 Second, the fact that the 2013 guidance document on bees is the subject of a review by the EFSA also does not support the need for protection invoked by the Commission. The disclosure of the requested documents has no impact on that review, which is carried out by the EFSA, and not by the Commission.

121 It follows from the foregoing that the reason given in the contested decisions relating to cooperation and mutual trust and the complexity and sensitivity of the decision-making process is not such as to demonstrate, in the circumstances of the present cases, a risk that the decision-making process in question would be seriously undermined.

(3) External pressure, margin of manoeuvre and flexibility

122 In the contested decisions, the Commission stated that it had been, and continued to be, the target of external pressure from several interested parties, sometimes representing conflicting interests. It added that the Member States and the Commission itself must be free to explore all options in ‘standing committees’ and be free from external pressure. To disclose the requested documents would expose a long and difficult decision-making process to greater external pressure. Thus, according to the Commission, disclosure of the requested documents would reduce the Member States’ margin of manoeuvre as well as their flexibility when voting by seriously undermining the decision-making process that will recommence within the Commission.

123 The applicant claims that external pressure should not be taken into account and that, in any event, such pressure is not the consequence of the disclosure of the requested documents.

124 The Commission replies that the applicant itself admitted the existence of such pressure.

125 In the first place, as regards the external pressure relied on in the contested decisions, it is clear from the case-law that the protection of the decision-making process from targeted external pressure may constitute a legitimate ground for restricting access to documents relating to the decision-making process. Nevertheless, the reality of such external pressure must be established with certainty, and evidence must be adduced to show that there was a reasonably foreseeable risk that the ongoing decision-making process would be substantially affected owing to that external pressure (see, to that effect, judgment of 18 December 2008, *Muñiz* v *Commission*, T-144/05, not published, EU:T:2008:596, paragraph 86).

126 It must be observed that, in the contested decisions, the reason relating to the existence of external pressure was put forward by the Commission in a general and vague manner.

127 First of all, although the Commission stated that it had been, and continued to be, the target of external pressure from several stakeholders, it should be noted that that pressure was simply alleged, and its factual reality not been demonstrated in the contested decisions. Furthermore, the Commission referred to that pressure in such an abstract manner ('the Commission has been, and is still, the target of external pressure from various stakeholders, representing sometimes conflicting interests') that it would be possible to use that justification in any decision-making process in any area whatsoever.

128 It is true that, as the Commission submits, in the statement of modification of the application in Case T-371/20, the applicant stated that it '[acknowledged] that, in [that] process, the Commission [had] been the target of external pressure'. However, besides the fact that the Court's review of legality relates to the contested decisions and that that statement by the applicant does not counteract the lack of information in the contested decisions, that statement is equally as vague and general as that of the Commission. Although the applicant refers to '[that] process', it does not specify the external pressure it concerns, with the result that it cannot be concluded that the 'reality' of that pressure was established 'with certainty' within the meaning of the case-law referred to in paragraph 125 above.

129 Next, in any event, as the applicant points out, in essence, the justification put forward in the contested decisions relates solely to external pressures of which the Commission itself was the target. By contrast, the contested decisions do not refer to any external pressure to which the Member States were exposed. Furthermore, the contested decisions do not provide any evidence allowing a link to be established between the external pressure brought to bear on the Commission, assuming it were proven, and the harm which would result from disclosure of the requested documents relating to the individual positions of the Member States.

130 Furthermore, it should be borne in mind that, in the contested decisions, the Commission did not claim that the failure of the decision-making process to achieve the intended outcome was the result of external pressures, but expressly stated that it resulted from the disagreement between the Member States, which has no connection with the pressure to which the Commission is alleged to have been exposed.

131 Lastly, although the Commission stated that the Member States and the Commission had to be free from external pressures in order to explore any options in 'standing committees', it suffices to note that it did not refer to the decision-making process at issue within the SCoPAFF, but referred expressly, in general terms, to 'standing committees' as a whole.

132 In the second place, as regards the margin for manoeuvre and flexibility referred to in the contested decisions, first of all, it should be noted that the Commission merely made general assertions, which do not make it possible to establish that disclosure of the requested documents would lead to a reduction in the margin of manoeuvre or flexibility of the Member States within the SCoPAFF.

133 The Commission did not refer to any concrete evidence capable of demonstrating any deterioration in the position of the Member States in the event of disclosure of the requested documents. On the contrary, as observed in paragraph 131 above, when it stated that the Member States should be able to explore all the options, it did not refer to the situation within the SCoPAFF in the context of the decision-making process at issue, but to their position within 'standing committees' in general.

134 Next, in so far as the contested decisions must be understood as seeking to establish a link between the reduction in the Member States' margin for manoeuvre and the external pressure exerted by the Commission, it should be borne in mind that the Commission has not provided any evidence to support the conclusion that the pressure that it would suffer would have an impact on the position of the Member States and that, therefore, disclosure of the requested documents would reduce their margin for manoeuvre or their flexibility.

135 Finally, it should be borne in mind that it is apparent from the case-law that the fact that the margin of manoeuvre and the capacity to reach a compromise between the Member States are reduced cannot establish that there is a sufficiently serious and reasonably foreseeable risk justifying the application of the exception provided for in the first subparagraph of Article 4(3) of Regulation No 1049/2001 (see, to that effect, judgment of 20 September 2016, *PAN Europe* v *Commission*, T-51/15, not published, EU:T:2016:519, paragraph 36).

136 It follows from the foregoing that the reason given in the contested decisions relating to external pressure, margin for manoeuvre and flexibility is not capable of demonstrating, in the circumstances of the present cases, a risk that the decision-making process in question would be seriously undermined.

137 It follows that the reasons put forward by the Commission in the contested decisions cannot justify, in the circumstances of the present cases, the application of the exception laid down in the first subparagraph of Article 4(3) of Regulation No 1049/2001, even on the hypothesis, as set out in paragraph 62 above, that that provision is applicable in the present case.

138 It is necessary therefore also to uphold the second complaint in the second part of the first plea in law and, on that basis also, to annul the contested decisions in so far as they refuse to grant access to the requested documents on the basis of the first subparagraph of Article 4(3) of Regulation No 1049/2001.

4. Conclusion as regards the first plea

139 It follows from all the foregoing that, in the contested decisions, the Commission infringed the first subparagraph of Article 4(3) of Regulation No 1049/2001 by refusing to disclose the requested documents on the ground that to do so would seriously undermine an ongoing decision-making process.

140 Consequently, there is no need to examine whether there is an overriding public interest in the disclosure of the requested documents having regard to their legislative and environmental nature, which is the issue raised by the second and third pleas.

141 It is necessary, however, to examine the fourth plea in law.

C. The fourth plea in law, alleging the misapplication of Article 4(1)(b) and Article 4(6) of Regulation No 1049/2001

142 The applicant claims that the contested decisions cannot be based on the need to protect privacy and the integrity of the individual as regards personal data contained in the requested documents, since, if such information appears in those documents, the Commission should anonymise them and disclose the other parts of the documents.

143 The applicant adds that it is not bound by the content of the contested decisions and that it maintains that the Commission could have disclosed the requested documents after having anonymised the information on personal data: although the Commission did so in respect of document 2 referred to in the first contested decision and in respect of documents 3, 10, 12 and 33 covered by the second contested decision, the remaining documents have not yet been published.

144 The Commission contends that the fourth ground of appeal is factually incorrect and ineffective.

145 As a preliminary point, it should be recalled that, in the contested decisions, the Commission granted partial access pursuant to Article 4(6) of Regulation No 1049/2001 to certain requested documents, namely document 2 referred to in the first contested decision and documents 3, 10, 12 and 33 referred to in the second contested decision (see paragraphs 9 and 14 above). Thus, while granting access to certain parts of those documents, the Commission refused access to other parts of those documents. To that end, the Commission relied on the exceptions designed to protect, first, an ongoing decision-making process under the first subparagraph of Article 4(3) of Regulation No 1049/2001 and, second, the privacy and integrity of the individual, pursuant to Article 4(1)(b) of that regulation. It was in relation to those documents to which the applicant had had partial access that the Commission therefore applied Article 4(1)(b) of Regulation No 1049/2001 in the contested decisions in order to protect the personal data of certain individuals.

146 As is apparent from the argument put forward by the applicant in the fourth plea, and as the applicant confirmed at the hearing, by that plea it does not seek to claim that, as regards the documents to which it has had partial access, the Commission infringed Article 4(1)(b) of Regulation No 1049/2001 by not granting it access to the personal data to which it was refused access under that provision. In other words, while disputing the contested decisions in so far as they granted partial access to some of the requested documents, the applicant does not request access to the personal data protected by the Commission contained in those documents and, moreover, it has not put forward any argument calling into question the Commission's application of that exception in that regard. The applicant submits however, in essence, that the Commission should have followed the same approach for the other requested documents, in the sense that it should also have granted it partial access to those other documents by confining itself to protecting only the personal data that they may contain. The applicant's argument is therefore, in essence, that the Commission unduly applied the first subparagraph of Article 4(3) of Regulation No 1049/2001.

147 In those circumstances, as the Commission contends, it must be held that the fourth plea is ineffective, since, first, it cannot call into question the Commission's application of Article 4(1)(b) of Regulation No 1049/2001 in the present case and, second, the application of that provision has no impact on the application of the first subparagraph of Article 4(3) of that regulation. Any infringement of the first provision, even if it were established, could not, of itself, lead to the disclosure of the documents or parts of requested documents to which access was refused under the second provision.

148 The fourth plea in law must therefore be dismissed.

149 As both the first and second complaints raised in the second part of the first plea have been upheld (see paragraphs 61 and 62 and paragraphs 137 and 138 above respectively), and as the upholding of each of those complaints must, in itself, lead to the annulment of the contested decisions, those decisions must be annulled.

IV. Costs

150 The applicant claims that the Commission should be ordered, in each of the present cases, to pay it the sum of EUR 3 000 by way of costs.

151 In that regard, it must be recalled that, in the decision ending the proceedings, the Court determines exclusively how the costs are to be allocated between the parties, without ruling on the amount of the costs. In the event of a dispute, the amount of the recoverable costs may be the subject of a separate action, governed under Article 170 of the Rules of Procedure, distinct from the decision on the allocation of the costs. Thus, taxation of costs may only take place following the judgment or the order ending the proceedings (judgment of 6 February 2019, *Karp* v *Parliament*, T-580/17, not published, EU:T:2019:62, paragraph 100).

152 Consequently, the part of the applicant's head of claim relating to costs in which it asks the Court to fix at EUR 3 000 the amount which the Commission should pay to it in respect of costs in each of the present cases must be rejected as inadmissible.

153 The fact remains that the applicant has sought an order that the Commission should pay the costs.

154 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

155 Since the Commission has been largely unsuccessful, it must be ordered to bear its own costs as well as those incurred by the applicant, in accordance with the form of order sought by the latter.

On those grounds,

THE GENERAL COURT (Sixth Chamber, Extended Composition)

hereby:

1. **Annuls the decisions of the European Commission C(2020) 4231 final of 19 June 2020 and C(2020) 5120 final of 21 July 2020, in that they refuse to grant access to the requested documents on the basis of the first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents;**

2. **Orders the Commission to pay the costs.**

Marcoulli Frimodt Nielsen Schwarcz

Iliopoulos Norkus

Delivered in open court in Luxembourg on 14 September 2022.

E. Coulon
Registrar

A. Marcoulli
President