JUDGMENT OF THE GENERAL COURT (Fifth Chamber)
28 March 2012 (*)
(Access to documents – Regulation (EC) No 1049/2001 – Registers of assistants to former members of the European Parliament – Refusal of access – Exception relating to the protection of privacy and the integrity of the individual – Protection of individuals with regard to the processing of personal data – Regulation (EC) No 45/2001)

In Case T–190/10,

Kathleen Egan and **Margaret Hackett,** respectively residing in Athboy (Ireland) and in Borris-in-Ossory (Ireland), represented by K. Neary, Solicitor, C. MacEochaidh, SC, and J. Goode, Barrister,

applicants,

supported by

European Data Protection Supervisor (EDPS), represented initially by H. Kranenborg and H. Hijmans, and subsequently by H. Kranenborg and I. Chatelier, acting as Agents,

intervener,

v

European Parliament, represented by N. Lorenz, N. Görlitz and D. Moore, acting as Agents,

defendant,

APPLICATION for annulment of the European Parliament's decision of 12 February 2010 in so far as it refuses to grant the applicants the access sought to the public registers of assistants to former members of the European Parliament,

THE GENERAL COURT (Fifth Chamber),

composed of S. Papasavvas, President, V. Vadapalas (Rapporteur) and K. O'Higgins, Judges,
Registrar: N. Rosner, Administrator,
having regard to the written procedure and further to the hearing on 9 November 2011,
having regard to the change in the composition of the Chambers of the General Court,
gives the following

Judgment

Background to the dispute

Kathleen Egan and Margaret Hackett, the applicants, claim to have worked as assistants to former members of the European Parliament, namely, respectively, James (Jim) Fitzsimons from June 1984 to June 2004, and Liam Hyland from June 1994 to June 2004, with an interruption of employment between June 1997 and July 1998. Upon ceasing their employment, the applicants claim to have discovered that they would receive no pension.

Between 2005 and 2009 there was extensive correspondence between the applicants and the Parliament. A letter from the Parliament of 11 May 2006 informed the applicants of the existence of two documents relating to applications for Parliamentary Assistance Allowance, submitted by Mr Fitzsimons and Mr Hyland for two persons other than the applicants. That letter stated, however, that the applicants could not have access to those documents, pursuant to Article 4(1)(b) 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).

On 16 December 2009 the applicants wrote a letter to the Parliament requesting access to certain documentation ('the initial application') in the following terms:

'First, we require a copy of the Rules Governing the Payment of Expenses and Allowances to Members as they are now, as they were from the 1st January, 1984, and any amendments which have been made to same in the interim …

Second, we require any guidance documentation which accompany and/or supplement said Rules, in their current form, or in any of their previous incarnations and in particular any documentation issued by the College of Quaestors in relation [to] these Rules Governing the Payment of Expenses and Allowances to Members.

Third, we require a copy of the legal basis(es) upon which said Rules/guidance documentation are, or have been, adopted.

For the avoidance of doubt, in relation to the above three requests, we require a complete set of all European Parliament documentation, which was in force since the 1st January, 1984, which regulates the payments of expenses and allowances to MEPs.

Fourth, we refer to our previous requests, and your previous refusal to supply us with the names of the service providers engaged by Liam Hyland between the 19th of August, 1994 and the 31st of December, 2000, and by Jim Fitzsimons between the 27th August, 1984 and the 31st December, 2000. We reiterate our request for said names.

For the avoidance of all doubt, we require such information for the specified, explicit and legitimate purposes of, inter alia, (i) enabling us to finalise legal proceedings against the aforementioned MEPs and against the European Union under Article 340(1) TFEU (ii) enabling us to finalise legal proceedings against the European Union under Article 340(2) TFEU (iii) enabling us to confirm whom the said MEPs registered as MEP assistants with the European Parliament, so that decisions may be taken on whether to join such persons to the said litigation.

Fifth, having regard to paragraph 9 of the Communication dated the 20th of November, 2000, of the European Parliament, College of Quaestors, we require all lists of names of MEP assistants which are, or ought to be, open to the public for inspection.

Sixth, having regard to footnote 22 of the Rules Governing the Payment of Expenses and Allowances to Members (Updated 2003), referring to the Rules governing the accreditation of assistants adopted by the Bureau on the 26th September, 1988, we require all lists of said "accredited assistants" and in particular any accredited assistant associated with former MEPs, Liam Hyland and Jim Fitzsimons.

Seventh, we require all public lists of assistants which were, or which ought to have been, open for public inspection since, and during, the 1st January, 1984.

Eighth, we require a copy of the Rules governing the accreditation of assistants, adopted by the Bureau on the 26th September, 1988.

Ninth, having regard to paragraph (e) 4 of the Communication of the European Parliament, College of Quaestors of 1996, we require a copy of all public registers of MEP assistants' financial interests which were, or which ought to have been, open for public inspection since, and during, the 1st January, 1984 ...'

On 20 January 2010 the Parliament informed the applicants, by fax and email, that the time-limit for replying to their application had been extended to 12 February 2010, in view of the various legal questions raised in the initial application and the large number of documents involved, most of which had to be retrieved from its archives. Due to technical problems, the fax and email had to be resent the following day.

On 28 January 2010 the applicants, considering that they had not received a reply to their initial application, wrote a further letter to the Parliament complaining that it was in breach of its obligations, including the time-limits set down in Article 7 of Regulation No 1049/2001, and asked it to consider that letter of 28 January 2010 as a confirmatory application under Article 8 of that regulation ('the application of 28 January 2010').

By letter of 10 February 2010, the Parliament responded to some of the points set out in the initial application and stated that '[c]oncerning your other queries, the Secretary General of the European Parliament will be sending you a comprehensive reply within the coming days'.

By letter of 12 February 2010 ('the contested decision'), the Secretary General of the Parliament provided replies to other points raised in the initial application.

The fourth paragraph of the contested decision states that '[c]oncerning the names of the natural persons engaged by Liam Hyland between the 19th of August 1994 and the 31st of December 2000, and by Jim Fitzsimons between the 27th of August 1984 and the 31st of December 2000…, as explained to you on various occasions, these names constitute personal data, disclosure of which would infringe the privacy interests of the individuals concerned, under the terms of Regulation (EC) No 45/2001 and Article 4(1)(b) of Regulation (EC) No 1049/2001'.

The fifth paragraph of the contested decision states that '[a]s to the issue of potential public access to the lists of names of MEPs' assistants, whether accredited or local…, the information that these assistants were working for a specific MEP concerns "personal data" in the sense of Regulation (EC) No 45/2001 and Article 4(1)(b) of Regulation (EC) No 1049/2001'. Having reiterated that '[d]isclosure of this data is, in principle, not allowed', it states that '[h]owever, by way of exception, lists of names of assistants are open to the public for inspection during the period of their professional activity with an MEP' and that '[t]his exception is justified by the consideration that the public should be informed of who may exercise an influence on a given Member'. It adds that '[o]nce the person is no longer assistant to the Member, the specific public interest in disclosure declines' and that '[c]ontrary to MEPs, assistants are not persons of interest to the public'. It concludes that '[i]n consequence, the relevant personal data can no longer be processed for the purpose of public disclosure, under the terms of Article 4 of Regulation (EC) No 45/2001 and Article 4(1)(b) of Regulation (EC) No 1049/2001'.

The sixth paragraph of the contested decision states that '[r]egarding the registers of MEP assistants' financial interests …, by virtue of Regulations (EC) No 45/2001 and (EC) No 1049/2001, documents containing personal data of former MEP assistants are not subject to public disclosure'.

Procedure and forms of order sought

By application lodged at the Registry of the Court on 22 April 2010, the applicants brought the present action.

By document lodged at the Registry of the Court on 27 July 2010, the European Data Protection Supervisor (EDPS) requested leave to intervene in the proceedings in support of the form of order

sought by the applicants. On 10 August 2010, the Parliament lodged its observations on the EDPS's application for leave to intervene.

By document lodged at the Registry of the Court on 10 August 2010, the Kingdom of Denmark requested leave to intervene in support of the form of order sought by the applicants. On 2 September 2010, the Parliament lodged its observations on the Kingdom of Denmark's application for leave to intervene.

By documents lodged at the Registry of the Court on 26 August 2010, the applicants applied for legal aid.

By order of 10 September 2010 the President of the Sixth Chamber of the Court granted the EDPS leave to intervene in support of the form of order sought by the applicants. The EDPS lodged its statement in intervention within the prescribed period.

By order of 13 September 2010, the President of the Sixth Chamber of the Court granted the Kingdom of Denmark leave to intervene in support of the form of order sought by the applicants.

Following a change in the composition of the Chambers of the Court, the Judge Rapporteur initially appointed was assigned to the Fifth Chamber, to which the present case was, accordingly, assigned.

By document lodged at the Registry of the Court on 27 January 2011, the Kingdom of Denmark informed the Court of its intention to withdraw its intervention.

By order of the President of the Fifth Chamber of the Court of 3 March 2011, the Kingdom of Denmark was removed from the case as an intervener.

By orders of the President of the Fifth Chamber of the Court of 10 May 2011, Mrs Egan's application for legal aid was granted and Mrs Hackett's application for legal aid was rejected.

Following the report of the Judge-Rapporteur, the Court (Fifth Chamber) decided to open the oral procedure. The parties presented oral argument and replied to the Court's questions at the hearing on 9 November 2011.

The applicants claim that the Court should:

declare the application admissible;

annul the contested decision in so far as it refuses to grant the applicants the access sought to the public registers of assistants to former members of the European Parliament;

order the Parliament to pay the costs.

The EDPS, which has intervened in support of the applicants, claims that the Court should annul the contested decision.

The Parliament contends that the Court should:

dismiss the action for annulment of the contested decision as inadmissible;

declare that there is no need to adjudicate on the application for annulment of the contested decision;

dismiss the action for annulment of the contested decision as unfounded;

order the applicants to pay the costs.

Law

Admissibility

It must be stated at the outset that it follows from Article 116(4) of the Rules of Procedure of the General Court that an intervener may not go beyond the form of order sought by the party in support of which it is intervening (Joined Cases T–186/97, T–187/97, T–190/97 to T–192/97, T–210/97, T–211/97, T–216/97 to T–218/97, T–279/97, T–280/97, T–293/97 and T–147/99 *Kaufring and Others* v *Commission* [2001] ECR II–1337, paragraph 137.

However, although the form of order sought by the applicants seeks annulment of the contested decision 'in so far as it refuses to grant the applicants the access sought to the public registers of assistants to former MEPs', whereas the form of order sought by the EPDS seeks annulment of the contested decision without specifying any limits, the latter does not in actual fact go beyond the ambit of the dispute as defined by the applicants. The form of order sought by the applicants, like that of the EDPS, seeks annulment of the contested decision refusing to grant access to the requested registers.

Therefore, the form of order sought by the EDPS is admissible in its entirety.

In addition, although not raising an objection of inadmissibility by separate document, in accordance with Article 114(1) of the Rules of Procedure, the Parliament claims that the action brought against the contested decision is inadmissible for three reasons.

First, the Parliament argues that the application is manifestly inadmissible in its entirety because the applicants failed to comply with Articles 7 and 8 of Regulation No 1049/2001 on pre-litigation procedures.

It contends that the application of 28 January 2010 cannot be regarded as a confirmatory application within the meaning of Article 8 of Regulation No 1049/2001 because the Parliament, pursuant to Article 7(3) of that regulation, duly extended its deadline for responding to the initial application by 15 working days by its fax and email of 20 January 2010. Since the initial application was received by the Parliament only on 22 December 2009 and, moreover, the Parliament's offices were closed from 24 December 2009 to 4 January 2010, the 15-working-days deadline within which the Parliament had to respond to the initial application did not expire until 21 January 2010, pursuant to Article 7(1) of Regulation No 1049/2001.

The Parliament states that the reason for the extension of the deadline, in the fax and email of 20 January 2010, was: '[i]n view of the different legal questions raised in the request and the large number of old documents involved, most of which had to be retrieved from the Parliament's

archives ...'. The Parliament explains that because of a power failure in Ireland, it had to resend the fax and email the following day, 21 January 2010.

Thus, it submits, the letters from the Parliament dated 10 and 12 February 2010 were a response to the initial application. The application of 28 January 2010 cannot be regarded as a confirmatory application since, contrary to the contention in that letter, it was sent prematurely, that is, before the end of the extended deadline expiring on 12 February 2010.

In its rejoinder, the Parliament points out that it used 22 December 2009 as the date from which the period for processing the initial application began to run, even though the relevant department for processing that application – the Parliament's Public Register – registered that request only on 4 January 2010, a date which would be even more favourable to the Parliament. The Parliament adds that 23 December 2009 was exceptionally a holiday for it, with the result that the period for responding to the initial application expired on 12 February 2010.

Secondly, and in the alternative, the Parliament considers that the application must be declared inadmissible in so far as it relates purely to access to 'information' and not to access to precisely identified 'documents' and the information contained therein, because the applicants wish to discover the identity of the two persons for whom Mr Fitzsimons and Mr Hyland had submitted applications for Parliamentary Assistance Allowance in order to finalise legal proceedings against those MEPs, as stated in the fourth point of the initial application. However, access to documents alone comes within the scope of Regulation No 1049/2001.

Moreover, the present action does not seek to defend the public interest in access to the Parliament's documents. Therefore, no public interest is at stake when the applicants ask for access to any document held by the European Parliament. The applicants' individual interest in using the requested documents in legal proceedings implies that the interest which the applicants invoke is not a general, but rather a private interest.

The Parliament further adds that, according to case-law, access to information may be granted only if that information is contained within documents, which presupposes that such documents exist.

Thirdly, the Parliament submits that the application must be declared inadmissible because of the manifest inconsistency between the grounds pleaded and the form of order sought. That inconsistency carries the risk that the Court might rule *ultra petita* or fail to rule on a complaint.

The Parliament thus claims, in essence, that the form of order sought in the application refers to the annulment of 'the European Parliament's decision of 12 February 2010 in so far as it refuses to grant the applicants the access sought to the public registers of assistants to MEPs', whereas the pleas in the application refer to points 4, 5, 6, 7 and 9 of the initial application, none of which expressly concerns that right of access. The Parliament also states that points 5, 6 and 7 of the initial application refer to 'lists' and not, like the application, to 'registers'. It states, furthermore, that points 5, 6, 7 and 9 of the initial request concern not only assistants to former members of the Parliament, but also the assistants to current members, in contrast to the present application.

Furthermore, the form of order sought in the application differs from the initial application in so far as it does not clearly cover all of those points.

The applicants dispute those arguments.

The EDPS considers that it is outside its competence to take part in the discussion on inadmissibility.

As regards the first plea of inadmissibility raised by the Parliament, it should be recalled that the procedure for gaining access to Parliament documents, which is governed by Articles 6 to 8 of Regulation No 1049/2001 and by Article 97 of the Parliament's Rules of Procedure, takes place in two stages. Firstly the applicant must send the Parliament an initial request for access to documents. In principle, the Parliament must reply to the initial request within 15 working days from registration of the application. Secondly, in the event of a total or partial refusal, the applicant may, within 15 working days following receipt of the Parliament's initial reply, make a confirmatory application to the Parliament, to which the latter must in principle reply within 15 working days from the registration of that application. In the event of a total or partial refusal, the applicant may institute judicial proceedings against the Parliament or make a complaint to the European Ombudsman, in accordance with the conditions laid down in Articles 263 TFEU and 228 TFEU respectively (see, by analogy, Case T-437/05 *Brink's Security Luxembourg* v *Commission* [2009] ECR II-3233, paragraph 69).

It is clear from Article 97(4) of the Parliament's Rules of Procedure, relating to public access to documents, read in conjunction with Article 8 of Regulation No 1049/2001, that the response to the initial application is only a first statement of position, conferring on the applicant the right to request the institution concerned to reconsider that position (see, by analogy, *Brink's Security Luxembourg* v *Commission*, paragraph 70 and the case-law cited).

Consequently, only the measure adopted following that re-examination, which alone is a decision and which entirely replaces the previous statement of position, is capable of producing legal consequences affecting the interests of the applicant and, consequently, capable of being the subject of an action for annulment under Article 263 TFEU (see, by analogy, *Brink's Security Luxembourg* v *Commission,* paragraph 71 and the case-law cited).

In the present case, however, on the assumption that the Parliament did indeed extend the deadline for responding to the initial application by 15 working days by means of its fax and email of 20 January 2010, which were resent the following day, it must be noted that the responses contained in the letter of 10 February 2010 and in the contested decision of 12 February 2010, which are the Parliament's

initial responses, are tainted by a procedural defect. The Parliament failed in those responses to inform the applicants of their right to make a confirmatory application, as it is required to do by Article 7(1) of Regulation No 1049/2001.

While, in principle, only the definitive decision is amenable to judicial review, that irregularity has the consequence of rendering admissible, exceptionally, an action for the annulment of the response to the initial application. If the position were otherwise, the Parliament could avoid review by the European Union Courts by reason of a procedural defect attributable to it. As the European Union is a union based on the rule of law in which the institutions are subject to judicial review of the compatibility of their acts with the Treaty, the procedural rules governing actions brought before the European Union Courts must be interpreted in such a way as to ensure, as far as possible, that those rules are implemented so as to contribute to the objective of ensuring effective judicial protection of an individual's rights under European Union law. The requirement of judicial review reflects a general principle of European Union law which flows from the constitutional traditions common to the Member States and which is laid down in Articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950. The right to an effective remedy has, furthermore, been reaffirmed by Article 47 of the Charter of Fundamental Rights of the European Union (OJ 2007 C 303, p. 1) (see, by analogy, *Brink's Security Luxembourg* v *Commission,* paragraph 71 and the case–law cited).

Therefore, the first plea of inadmissibility raised by the Parliament, alleging failure to comply with Articles 7 and 8 of Regulation No 1049/2001, must be rejected.

The second plea of inadmissibility raised by the Parliament, according to which, in particular, the application must be declared inadmissible in so far as it relates purely to access to 'information', and not to 'documents', is a question of substance, requiring an analysis of the subject-matter of the applicants' request, and is not a question of admissibility. That question will therefore be examined later in that context.

As regards the third plea of inadmissibility raised by the Parliament, alleging inconsistency between the grounds pleaded and the form of order sought in the application, by virtue of the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union, which is applicable to the procedure before the General Court pursuant to the first paragraph of Article 53 of that statute, and Article 44(1)(c) of the Rules of Procedure, every application initiating proceedings must state the subject-matter of the proceedings and contain a summary of the pleas in law on which it is based (Case T–369/08 *EWRIA and Others* v *Commission* [2010] ECR II–0000, paragraph 48). Moreover, according to the case-law, the form of order sought must be set out precisely and in a non–equivocal manner, since, otherwise, the Court risks giving judgment *ultra petita* and the rights of the defendant risk being disregarded (see, by analogy, Joined Cases 46/59 and 47/59 *Meroni* v *High Authority* [1962] ECR 411, 419).

In that regard, the application states that the action seeks the annulment of the contested decision 'in so far as it refuses to grant the applicants the access sought to the public registers of assistants to former MEPs'.

First, it should be noted that it does not follow from the wording of Articles 7 and 8 of Regulation No 1049/2001 that the form of order sought in the proceedings before the Court must cover all the requests for documents made in the initial application.

Therefore, there is nothing to prevent the applicants from abandoning certain requests at the stage of the proceedings before the Court, especially as some of those requests had been complied with by the Parliament by its letter of 10 February 2010 and by the contested decision.

Secondly, it is necessary to determine whether access to those registers was in fact requested in the initial application.

The form of order sought in the application relates to documents mentioned in point 9 of the initial application, requesting, much more broadly, access to 'a copy of all public registers of MEP assistants' financial interests which were, or which ought to have been, open for public inspection since, and during, the 1st January, 1984'.

Finally, it should be noted that the applicants repeated the different points of their initial application, not in the summary of the 'pleas', but in the part of the application entitled 'summary of the facts'.

Therefore, the statement of the applicants' arguments contained in the application is such as to enable the Parliament to prepare its defence and the Court to conduct its review.

The third plea of inadmissibility raised by the Parliament, alleging inconsistency between the grounds pleaded and the form of order sought in the application, must therefore be dismissed.

It follows that the allegation of inadmissibility raised by the Parliament must be rejected.

In addition, at the hearing, in response to questions asked by the Court, the applicants appeared also to be seeking the annulment of the contested decision in so far as that decision refused them access to the two documents mentioned in the letter of 11 May 2006 (see paragraph 2 above).

The Parliament took the view that such a request is inadmissible.

In that regard, it should be recalled that, pursuant to Article 44(1)(c) of the Rules of Procedure, an applicant must state the subject-matter of the dispute in the application and cannot seek a new form of order during the proceedings, and thereby alter the subject-matter of the action.

Moreover, in any event, following that letter of 11 May 2006, by which the Parliament informed the applicants of the existence of two documents relating to persons whose identity they seek to establish,

but refused them access to them, the applicants, by letter of 8 August 2006, lodged a confirmatory application against that refusal. They did not, however, bring an action against the letter of the Parliament of 7 September 2006 repeating the Parliament's refusal to grant them access to those two documents within the time-limits prescribed for an action for annulment.

Therefore, such an application for the annulment of the contested decision for refusing access to the two documents in question would be inadmissible even if it had been made.

Substance

In support of their application, the applicants raise five pleas alleging, first, that Regulation No 1049/2001 and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1) ought not to have been relied on to refuse access to documentation already in the public domain, secondly, or in the alternative, breach of the duty to state reasons, thirdly, or in the alternative, breach of Article 4(1)(b) of Regulation No 1049/2001, fourthly, or in the alternative, infringement of the principles of democracy, transparency, proportionality, equality and non-discrimination, and fifthly, or in the alternative, infringement of essential procedural requirements.

It should be noted at the outset that the Parliament, in its defence, outlines the gradual opening up of the registers of MEP assistants for the period concerned by the applicants' application, that is, between June 1984 and June 2004.

It is apparent from that history that it was only in June 1993 that a register open to the public for consultation of the financial interests of assistants to Members of the Parliament, whether accredited or not, and having links with any outside body, was created. The Parliament still holds the documents included in that register in its Archive and Documentation Centre in Luxembourg. However, the Parliament states that the two natural persons, former assistants to Mr Fitzsimons and Mr Hyland, did not make declarations necessary for inclusion in that register, with the result that no such declaration by either of those two former assistants is contained in the register for the period concerned. At the hearing, the Parliament explained that the former assistants whose identity the applicants have sought to establish were unlikely to have had links with outside bodies and that therefore they probably had not had to make such a declaration. That, the Parliament suggests, explains why their names do not appear in the register in question.

In December 1997 a second register was created, which was also open to the public, in which declarations of accredited assistants about their professional activities, as well as about any other remunerated activity or function were recorded. This second register still exists. According to the Parliament, Mr Fitzsimons alone applied for an assistant to be accredited, and only for the period between July 1999 and December 2000. The Parliament states that it still holds this second register for the period concerned, namely the parliamentary term July 1999 to July 2004, in its offices in Brussels. It states, however, that none of the written declarations included in that second register relates to assistants accredited by Mr Fitzsimons or Mr Hyland. At the hearing, the Parliament explained that only accredited assistants who work in its offices are obliged to make that declaration in order to receive a badge allowing access to the Parliament's offices. The former assistants whose identity the applicants seek to establish would not, however, have been accredited assistants. In that regard, the person for whom Mr Fitzsimons sought accreditation was ultimately not accredited.

Since February 2003 the list of accredited assistants, specifying the name of the MEP employing the assistant, has been published on the Parliament's website. Assistants may object to such publication, on an exceptional basis and giving reasons for their request. The Parliament states that, as neither Mr Fitzsimons nor Mr Hyland has applied for an assistant to be accredited since that date, no names of accredited assistants for either of those two former MEPs have been published on its website.

Consequently, according to the Parliament, the Court must declare the application to be unfounded.

The Court considers it appropriate to examine firstly the first plea, concerning the applicability in the present case of Regulations No 1049/2001 and No 45/2001, and then the third plea, concerning an alleged breach of Article 4(1)(b) of Regulation No 1049/2001.

The first plea, alleging inappropriate reliance on Regulations No 1049/2001 and No 45/2001 as a basis for refusing access to documentation already in the public domain

The applicants submit that Regulations No 1049/2001 and No 45/2001, which aim to prevent the release of sensitive personal data into the public domain, cannot be relied on in relation to documents which have been previously released into that domain. Moreover, they submit, the use of the term 'disclosure' used in Article 4(1) of Regulation No 1049/2001 necessarily means that the document concerned has not previously been made public.

The EDPS, although intervening in support of the form of order sought by the applicants, does not share their position on that point.

The Parliament argues that there is no basis for that plea in the express wording of the provisions of those two regulations.

In that regard, it should be noted that neither Article 2(3) of Regulation No 1049/2001, which states that that '[r]egulation shall apply to all documents held by an institution, that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union', nor Article 3(2) of Regulation No 45/2001, under which that '[r]egulation shall apply to the processing of personal data wholly or partly by automatic means, and to the processing otherwise than by automatic

means of personal data which form part of a filing system or are intended to form part of a filing system', contains any restriction such as to exclude from their respective scopes documents which were, but are no longer, available. No other provision of those regulations provides for such an exclusion.

Thus, in the absence of any provision laying down such a restriction, the term 'disclosure' used in Article 4(1)(b) of Regulation No 1049/2001 cannot be given the strict interpretation which the applicants give to it. That term means 'to make accessible a document which is not accessible'. It must, however, be stated that it is precisely because they did not have access to the documents in which they were interested that the applicants made the request.

Therefore, Regulations No 1049/2001 and No 45/2001 are applicable to documents which were, but are no longer, accessible to the public.

The first plea must therefore be rejected.

The third plea, alleging a breach of Article 4(1)(b) of Regulation No 1049/2001

In the alternative, the applicants submit that the Parliament made a manifest error of assessment in deciding that the disclosure of documents containing the names of the relevant individuals would infringe the privacy interests of those individuals under the terms of Article 4(1)(b) of Regulation No 1049/2001. The applicants contend that the exception to access to documents of the institutions, laid down by that provision, should be interpreted strictly. The Parliament, however, fails to explain how disclosure of documents containing the names of assistants to former MEPs would actually and specifically undermine the protection of their privacy, even though the applicants seek access to documentation which was compiled in the context of professional life and in the public interest. Moreover, the applicants point out that they seek access to public registers which have previously been made available to the public.

The applicants add that, given that, according to the Parliament, lists of names of assistants are open to the public, exceptionally, during the period of their professional activity with an MEP, no statutory provision designed to protect privacy prevents it from compiling public registers of parliamentary assistants after that period. The Parliament has not shown how access to a document which was previously accessible to the public would affect the individuals concerned.

Finally, the applicants, who consider that they were the only persons employed by Mr Hyland and Mr Fitzsimons, submit that, because of serious doubts as to the legality of the use of public funds in this case, there is an undeniable public interest in allowing them to have access to the public registers of parliamentary assistants.

The EDPS, in its intervention in support of the form of order sought by the applicants, claims, first, that the Parliament should have carried out a concrete and individual assessment in order to determine whether the requested documents came within the exception set out in Article 4(1)(b) of Regulation No 1049/2001 and should not have applied that exception automatically.

Secondly, according to the EDPS, the Parliament ignored the possibilities of disclosure of the data to the applicants under Article 8(b) of Regulation No 45/2001, which provides for the transfer of personal data to a recipient who 'establishes the necessity of having the data transferred' and 'if there is no reason to assume that the data subject's legitimate interests might be prejudiced'.

The Parliament states that professional data are personal data within the meaning of data protection rules, namely Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Article 16 TFEU, Regulation No 45/2001 and Article 4(1)(b) of Regulation No 1049/2001.

As regards the applicants' argument that data relating to former MEP assistants were previously available, the Parliament argues that the information that a given person worked for an MEP discloses data, which, revealing the political opinions of that person, are sensitive data within the meaning of Article 10 of Regulation No 45/2001. Whilst, by way of exception, lists of names of assistants are open to the public for inspection during the period of their professional activity with an MEP (an exception justified on the ground that the public should be informed as to who is liable to exercise influence over a given MEP), the public interest ceases when the activity as assistant comes to an end.

Moreover, the applicants do not seek access to names in any public interest but for their own private interest, in order to prepare legal proceedings.

Furthermore, the Parliament takes the view that the contested decision is sufficiently reasoned, as it is one more reply in a long series of exchanges of letters which began in 2005. The Parliament adds that it is stated in the contested decision that the processing of assistants' personal data is only exceptionally permitted, that is to say, for the period during which the person concerned works for the MEP.

In its observations on the EDPS's statement in intervention, the Parliament argues in particular, in relation to the reference to Article 8(b) of Regulation No 45/2001, that it is not open to an intervener to raise a new argument, especially because the applicants ruled out the applicability of that regulation in their first plea. Moreover, it is not clear from that statement in intervention whether the EDPS is arguing that Article 8(b) of Regulation No 45/2001 can be applied separately or whether it must be interpreted with reference also to Article 4(1)(b) of Regulation No 1049/2001. Finally, the conditions laid down in that provision for the transfer of personal data are not met.

It should be recalled that, according to settled case-law, the exceptions to access to documents must be interpreted and applied strictly so as not to frustrate application of the general principle that the public should be given the widest possible access to documents held by the institutions (Case C-64/05 P

Sweden v *Commission* [2007] ECR I–11389, paragraph 66; Joined Cases C–39/05 P and C–52/05 P *Sweden and Turco* v *Council* [2008] ECR I–4723, paragraph 36; and Joined Cases T–391/03 and T–70/04 *Franchet and Byk* v *Commission* [2006] ECR II–2023, paragraph 84). Furthermore, the principle of proportionality requires that derogations remain within the limits of what is appropriate and necessary for achieving the aim in view (Case T–471/08 *Toland* v *Parliament* [2011] ECR II–0000, paragraph 28).

Moreover, the examination required for the processing of a request for access to documents must be specific in nature. First, the mere fact that a document concerns an interest protected by an exception is not of itself sufficient to justify application of that exception. In principle, such an application can be justified only if the institution has previously determined that access to the document would specifically and actually undermine the protected interest. Second, the risk of the protected interest being undermined must be reasonably foreseeable and not purely hypothetical (*Toland* v *Parliament*, paragraph 29). That examination must be apparent from the reasons for the decision (Case T-2/03 *Verein für Konsumenteninformation* v *Commission* [2005] ECR II-1121, paragraph 69; *Franchet and Byk* v *Commission*, paragraph 115; and *Toland* v *Parliament*, paragraph 29).

Therefore, if the Parliament decides to refuse access to a document which it has been asked to disclose, it must explain how access to that document could specifically and effectively undermine the interest protected by an exception laid down in Article 4(1)(b) of Regulation No 1049/2001 (see, to that effect, *Sweden and Turco* v *Council*, paragraph 49).

Such an explanation cannot therefore consist of a mere assertion that access to certain documents would undermine privacy within the meaning of Article 4(1)(b) of Regulation No 1049/2001.

In the present case, it must be noted that in the fourth, fifth and sixth paragraphs of the contested decision, the Parliament justifies its refusal to grant the applicants access to the documents containing the names of the persons whose identity they seek to establish only in very general terms. In particular, the Parliament does not explain why, as it states in the fourth paragraph, the names that the applicants seek 'constitute personal data, disclosure of which would infringe the privacy interests of the individuals concerned, under the terms of Regulation … No 45/2001 and Article 4(1)(b) of Regulation … No 1049/2001', or why '[r]egarding the registers of … assistants' financial interests …, by virtue of Regulations … No 45/2001 and … No 1049/2001, documents containing personal data of former MEP assistants are not subject to public disclosure'.

In this way, the Parliament systematically took the view that the public should not have access to documents revealing the identity of former MEP assistants and it did not carry out an examination to show that that access would specifically and effectively undermine their privacy within the meaning of the provisions in question, nor did it verify whether the risk of the protected interest being undermined was reasonably foreseeable and not purely hypothetical.

Likewise, by simply relying on the provisions and rules mentioned at paragraph 83 above, the Parliament fails to show to what extent the disclosure of documents containing the names of former MEP assistants would specifically and effectively undermine their right to privacy.

In that regard, it is appropriate to bear in mind that the Parliament claims that the application is inadmissible in that the applicants seek access to information and not to documents (see paragraph 34 above).

It is true that the public's right of access to the documents of the institutions covers only documents and not information in the wider meaning of the word. It does not imply a duty on the part of the institutions to reply to any request for information from an individual (Joined Cases T–109/05 and T–444/05 *NLG* v *Commission* [2011] ECR II–0000, paragraph 129).

However, in seeking the annulment of the contested decision 'in so far as it refuses to grant [them] the access sought to the public registers of assistants to former MEPs', the applicants are in actual fact seeking access to documents, and not to information. Public registers are indeed documents.

Therefore, the Parliament's argument that the applicants are seeking access to 'information', and not to 'documents', cannot be accepted.

Moreover, the fact that the applicants, in point 4 of the initial application, gave the reason why they wish to have access to certain documents is irrelevant, contrary to the contention of the Parliament, because a person requesting access is not, under Article 6(1) of Regulation No 1049/2001, required to justify his request and therefore does not have to demonstrate any interest in having access to the documents requested (*Franchet and Byk* v *Commission*, paragraph 82).

Therefore, the Parliament's argument that the applicants' request is based on a private interest, and not a public interest, cannot be accepted either.

Furthermore, in response to the applicants' argument that data concerning former MEP assistants were previously accessible, the Parliament argued, in its defence, that it cannot release such data, as they would reveal the assistants' political opinions and would therefore be sensitive data within the meaning of Article 10 of Regulation No 45/2001 (see paragraph 84). However, that argument, which, moreover, is not in any way substantiated, cannot, in any event, make up for the fact that the contested decision failed to show why disclosure of those data would specifically and effectively undermine their right to privacy within the meaning of Article 4(1)(b) of Regulation No 1049/2001. 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 (Joined Cases T–110/03,

T–150/03 and T–405/03 *Sison* v *Council* [2005] ECR II–1429, paragraph 60) and not put forward arguments justifying that refusal at the stage of the statement in defence. Therefore, that argument cannot be upheld either.

Finally, the Parliament states that, in any event, there are no registers featuring the names of Mr Fitzsimons' and Mr Hyland's assistants, because, as the Parliament explained in its defence and at the hearing (see paragraphs 36, 66 and 67 above), those persons made no declaration. Notwithstanding the fact that in point 9 of the initial application the applicants specifically requested 'all public registers of MEP assistants' financial interests which were, or which ought to have been, open for public inspection since, and during, the 1st January, 1984', that reason was not set out in the contested decision nor is it the reason for the adoption of the contested decision.

It follows that the Court cannot grant the Parliament's request to substitute definitively the grounds on which the contested decision is based (see, to that effect, Case T–10/04 *Leite Mateus* v *Commission* [2006] ECR–SC I–A–2–59 and II–A–2–249, paragraph 45).

It follows from the foregoing that, in the contested decision, the Parliament failed to set out, to the requisite legal standard, the reasons for which it refused access to the documents requested.

Consequently, the third plea alleging breach of Article 4(1)(b) of Regulation No 1049/2001 must be upheld.

Therefore, without it being necessary to examine the argument raised by the EDPS concerning Article 8 (b) of Regulation No 1049/2001 or the second, fourth and fifth pleas, the contested decision must be annulled in so far as it refuses to grant the applicants the access requested to the public registers of assistants to former members of the European Parliament.

Costs

Under Article 87(2) 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. As the Parliament has been unsuccessful, it must be ordered to pay the applicants' costs, in accordance with the form of order sought by the latter.

In accordance with Article 97(3) of the Rules of Procedure, Mrs Egan having been granted legal aid and the Court having ordered the Parliament to pay the costs incurred by the applicants, the Parliament will be required to refund to the Court cashier the sums advanced by way of legal aid.

Under the third subparagraph of Article 87(4) of the Rules of Procedure, the Court may order an intervener to bear its own costs. In the present case, the intervener in support of the applicant is ordered to bear its own costs.

On those grounds,

THE GENERAL COURT (Fifth Chamber)

hereby:

Annuls the decision of the European Parliament of 12 February 2010 in so far as it refuses to grant Kathleen Egan and Margaret Hackett the access requested to the public registers of assistants to former members of the European Parliament;

Orders the Parliament to pay the costs incurred by Mrs Egan and Mrs Hackett and to refund to the Court cashier the sums advanced by way of legal aid granted to Mrs Egan;

Orders the European Data Protection Supervisor (EDPS) to bear its own costs.

Papasavvas Vadapalas O'Higgins

Delivered in open court in Luxembourg on 28 March 2012.

[Signatures]

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* Language of the case: English.