JUDGMENT OF THE COURT (Second Chamber)

16 July 2015 (*)

(Appeal — Access to documents of the institutions of the European Union — Regulation (EC) No 1049/2001 — Article 4(1)(b) — Regulation (EC) No 45/2001 — Article 8 — Exception to right of access — Protection of personal data — Concept of 'Personal data' — Conditions for transfer of personal data — Names of authors of each comment on European Food Safety Authority (EFSA) draft guidance relating to scientific documents to be included in applications for authorisation to place plant protection products on the market — Refusal of access)

In Case C−615/13 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 27 November 2013,

ClientEarth, established in London (United Kingdom),

Pesticide Action Network Europe (PAN Europe), established in Brussels (Belgium),

represented by P. Kirch, avocat,

appellants,

the other parties to the proceedings being:

European Food Safety Authority (EFSA), represented by D. Detken and C. Pintado, acting as Agents, and by R. Van der Hout, advocaat,

defendant at first instance,

European Commission, represented by B. Martenczuk and L. Pignataro-Nolin, acting as Agents, with an address for service in Luxembourg,

intervener at first instance,

supported by:

European Data Protection Supervisor (EDPS), represented by A. Buchta and M. Pérez Asinari, acting as Agents,

intervener in the appeal,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, K. Lenaerts (Rapporteur), Vice-President of the Court, A. Arabadjiev, J.L. da Cruz Vilaça and C. Lycourgos, Judges,

Advocate General: P. Cruz Villalón,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 22 January 2015,

after hearing the Opinion of the Advocate General at the sitting on 14 April 2015,

gives the following

Judgment

1 By their appeal, ClientEarth and Pesticide Action Network Europe (PAN Europe) ('PAN Europe') ask the Court to set aside the judgment of the General Court of the European Union in *ClientEarth and PAN Europe* v *EFSA* (T−214/11, EU:T:2013:483; 'the judgment under appeal'), whereby the General Court dismissed their action for, initially, the annulment of the decision of the European Food Safety Authority (EFSA) of 10 February 2011 refusing an application for access to certain working documents relating to a guidance document, prepared by EFSA, for the benefit of applicants for authorisation to place plant protection products on the market ('the guidance document') and, subsequently, for annulment of EFSA's decision of 12 December 2011 withdrawing the earlier decision and granting the appellants access to all the information requested, except for the names of the external experts who made certain comments on the draft of that guidance document ('the draft guidance document').

Legal context

2 Article 2 of 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) provides:

'For the purposes of this Regulation:

(a) "personal data" shall mean any information relating to an identified or identifiable natural person hereinafter referred to as "data subject"; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity;

...'

3 Article 8 of that regulation, headed 'Transfer of personal data to recipients, other than Community institutions and bodies, subject to Directive 95/46/EC', is worded as follows:

'Without prejudice to Articles 4, 5, 6 and 10, personal data shall only be transferred to recipients subject to the national law adopted for the implementation of Directive 95/46/EC:

...

(b) if the recipient 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.'

4 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) lays down the principles, conditions and limits of the right of access to documents of those institutions.

5 Article 4(1) of that regulation, that article being headed 'Exceptions', provides:

'The institutions shall refuse access to a document where disclosure would undermine the protection of:

...

(b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data;'

Background to the dispute

6 Article 8(5) 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), provides that '[s]cientific peer-reviewed open literature, as determined by the [EFSA], on the active substance and its relevant metabolites dealing with side-effects on health, the environment and non-target species …, shall be added by the applicant [for authorisation to place a plant protection product on the market] to the dossier'.

7 On 25 September 2009 EFSA requested that its Assessment Methodology Unit develop guidance as to how to implement that provision. That unit established a working group for that purpose ('the working group').

8 The working group submitted a draft guidance document to two EFSA bodies, some of whose members were external scientific experts, namely the Plant Protection Products and their Residues Panel ('the PPR') and the Pesticide Steering Committee ('the PSC'). Those external experts were invited to submit comments on the draft guidance document.

9 As a result of those comments, the working group incorporated changes into the draft guidance document. That document was then subject to public consultation between 23 July and 15 October 2010. Several persons and associations, including PAN Europe, submitted comments on the draft.

10 On 10 November 2010 ClientEarth and PAN Europe jointly submitted to EFSA an application requesting access to documents under, inter alia, Regulation No 1049/2001. That application concerned several documents or sets of documents related to the preparation of the draft guidance document, including the comments of the external experts on the PPR and the PSC.

11 By letter of 1 December 2010 EFSA granted the applicants partial access to the documents requested. However, it refused, pursuant to the exception to the right of access to documents provided for in the second subparagraph of Article 4(3) of Regulation No 1049/2001, concerning the protection of the decision-making process of institutions, to disclose two sets of documents, namely (i) various working versions of the draft guidance document; and (ii) comments of the PPR and PSC experts on that draft.

12 On 23 December 2010 ClientEarth and PAN Europe submitted an application asking EFSA to reconsider its position as stated in its letter of 1 December 2010.

13 By decision of 10 February 2011, EFSA confirmed that access to the withheld documents was to be refused under the second subparagraph of Article 4(3) of Regulation No 1049/2001.

14 The guidance document was adopted on 28 February 2011. It was published on the same day in the *EFSA Journal*.

15 On 12 December 2011 EFSA adopted and informed ClientEarth and PAN Europe of a further decision on the application which they had submitted on 23 December 2010. EFSA stated that it had decided to 'withdraw', 'annul' and 'replace' its decision of 10 February 2011. In that further decision, EFSA granted ClientEarth and PAN Europe access to, inter alia, the individual comments of the PPR and PSC external experts on the draft guidance document. EFSA stated however that it had redacted the names of those experts, pursuant to Article 4(1)(b) of Regulation No 1049/2001 and EU legislation on the protection of personal data, in particular Regulation No 45/2001. EFSA stated in that regard that the disclosure of the names of those experts was a transfer of personal data, within the meaning of Article 8 of Regulation No 45/2001, and that the conditions for such a personal data transfer laid down in that article were not fulfilled in this case.

The procedure before the General Court and the judgment under appeal

16 On 11 April 2011 ClientEarth and PAN Europe brought an action for the annulment of the EFSA decision of 10 February 2011. Subsequently, the subject-matter of the action was held to extend to the annulment of the EFSA decision of 12 December 2011, in that, by the latter decision, EFSA refused to disclose to ClientEarth and PAN Europe the names of the external experts who had submitted comments on the draft guidance document.

17 In support of their action, ClientEarth and PAN Europe relied on three pleas in law.

18 The General Court held that the three pleas in law were unfounded and consequently dismissed the action.

Procedure before the Court and the forms of order sought

19 ClientEarth and PAN Europe claim that the Court should set aside the judgment under appeal and order EFSA to pay the costs.

20 EFSA and the European Commission contend that the Court should dismiss the appeal and order ClientEarth and PAN Europe to pay the costs.

21 By order of the President of the Court of 18 June 2014, the European Data Protection Supervisor (EDPS) was granted leave to intervene in support of the forms of order sought by EFSA and the Commission.

The appeal

22 ClientEarth and PAN Europe rely on three grounds in support of their appeal.

The first ground of appeal

Arguments of the parties

23 By the first ground of appeal, claiming a misapplication of the concept of 'personal data', within the meaning of Article 2(a) of Regulation No 45/2001, ClientEarth and PAN Europe criticise the finding made by the General Court, in particular in paragraph 46 of the judgment under appeal, that the information which would have enabled them to identify, with respect to each of the comments, which of the external experts was its author ('the information at issue') falls within the scope of that concept.

24 ClientEarth and PAN Europe do not accept that that concept can cover the combination of data included in scientific opinions submitted by experts in the course of their participation in a committee having a public function in the interest of citizens. They add that the names of the experts concerned, together with the opinions expressed by them on the draft guidance document, are accessible to the public on the EFSA website and that, accordingly, the information at issue must also be regarded as being in the public domain. They state that there is no evidence that EFSA sought to determine whether those experts objected to the disclosure of that information.

25 The appellants further claim that the fact that an expert issues, in a professional capacity, a scientific opinion is not covered by the concept of privacy.

26 EFSA and the Commission, supported by EDPS, deny that those arguments are well founded.

Findings of the Court

27 Article 2(a) of Regulation No 45/2001 defines 'personal data', for the purposes of that regulation, as meaning 'any information relating to an identified or identifiable natural person'.

28 In this case, as is stated in paragraph 43 of the judgment under appeal, what ClientEarth and PAN Europe want, in requesting disclosure of the information at issue, is to know, with respect to each of the comments made by the external experts, which of those experts is the author.

29 In so far as that information would make it possible to connect to one particular expert or another a particular comment, it concerns identified natural persons and, accordingly, constitutes a set of personal data, within the meaning of Article 2(a) of Regulation No 45/2001.

30 As the General Court correctly held, in paragraphs 44 to 46 of the judgment under appeal, the fact that information is provided as part of a professional activity does not mean that it cannot be characterised as a set of personal data (see, to that effect, the judgments in *Österreichischer Rundfunk and Others*, C−465/00, C−138/01 and C−139/01, EU:C:2003:294, paragraph 64; *Commission* v *Bavarian Lager*, C−28/08 P, EU:C:2010:378, paragraphs 66 to 70; and *Worten*, C−342/12, EU:C:2013:355, paragraphs 19 and 22).

31 Likewise, the fact that both the identity of the experts concerned and the comments submitted on the draft guidance document were made public on the EFSA website does not mean that the information at issue could no longer be so characterised (see, to that effect, the judgment in *Satakunnan Markkinapörssi and Satamedia*, C−73/07, EU:C:2008:727, paragraph 49).

32 Further, as contended by EFSA, the Commission and EDPS, the concepts of 'personal data', within the meaning of Article 2(a) of Regulation No 45/2001, and of 'data relating to private life' are not to be confused. Consequently, the claim made by ClientEarth and PAN

Europe in this case that the information at issue does not fall within the scope of the private life of the experts concerned is ineffective.

33 Last, since the question of whether the person concerned objects to the disclosure of the information at issue is not a constituent part of the concept of 'personal data', within the meaning of Article 2(a) of Regulation No 45/2001, the General Court was correct to hold, in paragraph 58 of the judgment under appeal, that the characterisation of an item of information relating to a person as being personal data does not depend on whether there is such an objection.

34 In the light of the foregoing analysis, the General Court was correct to conclude, in paragraph 60 of the judgment under appeal, that EFSA was justified in holding that the information at issue constituted a set of personal data.

35 The first ground of appeal must therefore be rejected.

36 The Court must now examine together the second and third grounds of appeal.

The second and third grounds of appeal

Arguments of the parties

37 In their second ground of appeal, claiming a misapplication of Article 4(1)(b) of Regulation No 1049/2001 and Article 8(b) of Regulation No 45/2001, ClientEarth and PAN Europe maintain that neither the General Court nor EFSA weighed all the interests protected by those two provisions, those interests being, on the one hand, the 'right of transparency', and on the other, the right to protection of privacy and personal data.

38 They are critical, in particular, of the fact that the General Court confined itself to an examination of whether they had demonstrated that the disclosure of the information at issue was necessary, and failed to undertake any weighing of the interests at stake.

39 In their third ground of appeal, claiming an infringement of Article 5 TEU, ClientEarth and PAN Europe maintain that the General Court's rejection of the various arguments relied on by them in order to establish the necessity of disclosure of the information at issue was in breach of the principle of proportionality.

40 EFSA and the Commission, supported by EDPS, deny that the arguments set out by ClientEarth and PAN Europe in their second ground of appeal are well founded.

41 As regards the third ground of appeal, EFSA doubts, first, the admissibility of that ground. The third ground of appeal does not indicate with sufficient detail which parts of the judgment under appeal are contested. Further, it does no more than reproduce arguments previously presented before the General Court against the EFSA decision of 12 December 2011 and thereby seeks a re-examination of the application submitted at first instance, which the Court of Justice does not have jurisdiction to undertake in an appeal.

42 Next, EFSA contends, as does the Commission, that the third ground of appeal is manifestly unfounded, given that the General Court merely required, in accordance with Regulation No 45/2001 and the Court's case-law, that the appellants establish their legitimate interest in obtaining access to the information at issue. Such a requirement is not disproportionate, and fully guarantees the equilibrium there must be between the competing interests.

Findings of the Court

– Admissibility

43 Contrary to what is suggested by EFSA, the passages in the appeal devoted to the third ground of appeal make it possible to identify the part of the judgment under appeal which is contested by that ground. Further, in that ground of appeal, ClientEarth and PAN Europe do not confine themselves to repeating the arguments which they had earlier presented to the General Court against the EFSA decision of 12 December 2011, but challenge the error in law which they claim the General Court committed in its application of Article 8(b) of Regulation No 45/2001. That ground of appeal is therefore admissible.

– Substance

44 Where an application is made seeking access to personal data, within the meaning of Article 2(a) of Regulation No 45/2001, the provisions of that regulation, and in particular Article 8(b) thereof, become applicable in their entirety (see the judgments in *Commission* v *Bavarian Lager*, C−28/08 P, EU:C:2010:378, paragraph 63, and *Strack* v *Commission*, C−127/13 P, EU:C:2014:2250, paragraph 101).

45 Under Article 8(b) of Regulation No 45/2001, personal data may, as a general rule, be transferred only if the recipient establishes the necessity of having the data transferred and if there is no reason to assume that that transfer might prejudice the legitimate interests of the data subject.

46 It follows from the very wording of that provision that, as the General Court correctly held in paragraph 83 of the judgment under appeal, under that provision transfer of personal data is subject to two cumulative conditions being satisfied.

47 In that context, whoever requests such a transfer must first establish that it is necessary. If it is demonstrated to be necessary, it is then for the institution concerned to determine that there is no reason to assume that that transfer might prejudice the legitimate interests of the data subject. If there is no such reason, the transfer requested must be made, whereas, if there is such a reason, the institution concerned must weigh the various competing interests in order to decide on the request for access (see, to that effect, the judgments in *Commission* v *Bavarian Lager*, C−28/08 P, EU:C:2010:378, paragraphs 77 and 78, and *Strack* v *Commission*, C−127/13 P, EU:C:2014:2250, paragraphs 107 and 108; see also, to the same effect, the judgment in *Volker und Markus Schecke and Eifert*, C−92/09 and C−93/09, EU:C:2010:662, paragraph 85).

48 It follows that, contrary to what is claimed by ClientEarth and PAN Europe in their second ground of appeal, the General Court was correct to begin by examining whether the arguments put forward by them established the necessity of the information at issue being transferred, within the meaning of Article 8(b) of Regulation No 45/2001.

49 It must however be determined whether, as maintained by ClientEarth and PAN Europe in their third ground of appeal, the General Court, in undertaking that examination, misapplied the condition relating to such necessity.

50 The first argument raised by the appellants before the General Court and stated in paragraph 75 of the judgment under appeal was based on the existence of a general requirement of transparency, stemming from Article 1 TEU, Article 11(2) TEU and Article 15 TFEU.

51 In that regard, the Court has however held that, in general, no automatic priority can be conferred on the objective of transparency over the right to protection of personal data

(judgment in *Volker und Markus Schecke and Eifert*, C−92/09 and C−93/09, EU:C:2010:662, paragraph 85).

52 Consequently the General Court was correct to hold, in paragraph 78 of the judgment under appeal, that the appellants had not established, by that first argument, the necessity of the information at issue being disclosed.

53 The second argument, stated in paragraph 79 of the judgment under appeal, was based on the existence of a climate of suspicion of EFSA, often accused of partiality because of its use of experts with vested interests due to their links with industrial lobbies, and on the necessity of ensuring the transparency of EFSA's decision-making process.

54 In that regard, it must, first, be stated that the information at issue concerns persons who took part, as remunerated experts, in the process of EFSA's producing a guidance document intended for operators who wanted to submit applications for authorisation to place plant protection products on the market.

55 As argued by ClientEarth and PAN Europe, the disclosure of that information was, in that context, necessary to ensure the transparency of the process of adoption of a measure likely to have an impact on the activities of economic operators, in particular, in order to appreciate how the form of participation by each expert in that process might, through that expert's own scientific opinion, have influenced the content of that measure.

56 The transparency of the process followed by a public authority for the adoption of a measure of that nature contributes to that authority acquiring greater legitimacy in the eyes of the persons to whom that measure is addressed and increasing their confidence in that authority (see, to that effect, the judgments in *Sweden and Turco* v *Council*, C−39/05 P and C−52/05 P, EU:C:2008:374, paragraph 59, and *Sweden* v *MyTravel and Commission*, C−506/08 P, EU:C:2011:496, paragraph 113), and to ensuring that the authority is more accountable to citizens in a democratic system (see, to that effect, the judgments in *Sweden and Turco* v *Council*, C−39/05 P and C−52/05 P, EU:C:2008:374, paragraph 45; *Council* v *Access Info Europe*, C−280/11 P, EU:C:2013:671, paragraph 32; and *Council* v *in 't Veld*, C−350/12 P, EU:C:2014:2039, paragraphs 53, 106 and 107).

57 Second, it must be pointed out that the argument referred to in paragraph 53 of this judgment, far from being limited to considerations of a general and abstract nature, was supported, as stated in paragraph 79 of the judgment under appeal, by a study which identified the links between a majority of the expert members of an EFSA working group and industrial lobbies.

58 While it is true that ClientEarth and PAN Europe obtained disclosure to them, as stated in paragraph 80 of the judgment under appeal, of the names, biographies and declarations of interests of the experts who submitted comments on the draft guidance document, it remains the case that obtaining the information at issue was necessary so that the impartiality of each of those experts in carrying out their tasks as scientists in the service of EFSA could be specifically ascertained.

59 It follows that the General Court was wrong to hold, in paragraph 80 of the judgment under appeal, that the argument of ClientEarth and PAN Europe, stated in paragraph 79 of this judgment, was not sufficient to establish that the transfer of the information at issue was necessary.

60 To argue, as the General Court did in paragraph 80 of the judgment under appeal, that ClientEarth and PAN Europe failed to challenge the independence of any of the experts

concerned is to misapply the condition of necessity of transfer, laid down in Article 8(b) of Regulation No 45/2001. Moreover, it is, to a great extent, a prerequisite of such a challenge that ClientEarth and PAN Europe should first know, with respect to each comment made, the identity of the expert who was the author of that comment.

61 Consequently, the third ground of appeal is well founded and the judgment under appeal must be set aside.

The action before the General Court

62 Pursuant to the second sentence of the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, if a judgment under appeal is set aside the Court of Justice may give final judgment in the matter where the state of the proceedings so permits.

63 In this case, the Court considers that the state of the action of ClientEarth and PAN Europe for the annulment of the EFSA decision of 12 December 2011 permits judgment and that the Court should therefore give final judgment on that action.

64 In that action, the second plea in law relied on by ClientEarth and PAN Europe is to the effect that a public interest justified the disclosure of the information at issue, in accordance with Article 8(a) and (b) of Regulation No 45/2001.

65 In that regard, with respect to Article 8(b) of Regulation No 45/2001, it is clear from the analysis in paragraphs 53 to 61 of this judgment that the detailed allegations of ClientEarth and PAN Europe concerning the accusations of partiality made against EFSA in relation to its choice of experts, and the need to ensure the transparency of the decision-making process of that public authority, establish to the requisite legal standard that the transfer of the information at issue was necessary, within the meaning of that provision.

66 Given that the two conditions laid down by that provision are cumulative, the Court must also examine, in order to assess the legality of the EFSA decision of 12 December 2011, whether or not there was any reason to assume that that transfer might have prejudiced the legitimate interests of the data subjects.

67 In that regard, as is clear from the answer given by EFSA to written questions from the General Court, EFSA claimed that there was such a reason, and stated that the disclosure of the information at issue, if it had taken place, could have been used in a way that would have been prejudicial to the integrity and privacy of the experts concerned. EFSA relied, to that end, on examples of individual attacks to which experts whose assistance it had requested were exposed.

68 It must however be observed that those examples were drawn from documents which ClientEarth and PAN Europe themselves produced in order to support their allegations as to the links between a certain number of experts chosen by EFSA and industrial lobbies, links which are precisely the cause of the accusations of partiality made against EFSA and its experts. Those examples do not, however, in any way prove that the disclosure of the information at issue would have been such as to create a risk that the privacy or the integrity of the experts concerned would be undermined.

69 It follows that, while the authority concerned must assess whether the disclosure requested might have a specific and actual adverse effect on the interest protected (see, to that effect, the judgment in *Sweden and Turco* v *Council*, C−39/05 P and C−52/05 P, EU:C:2008:374, paragraph 49), EFSA's allegation that the disclosure of the information at issue would have

been likely to undermine the privacy and integrity of the experts concerned is a consideration of a general nature which is not otherwise supported by any factor which is specific to this case. On the contrary, such disclosure would, by itself, have made it possible for the suspicions of partiality in question to be dispelled or would have provided to experts who might be concerned with the opportunity to dispute, if necessary by available legal remedies, the merits of those allegations of partiality.

70 If such a claim as that made by EFSA, unsupported by evidence, were to be accepted, it could be applied, generally, to any situation where an authority of the European Union obtains the opinions of experts prior to the adoption of a measure which has effects on the activities of economic operators in the sector concerned by such a measure, regardless of which sector. Such an outcome would be contrary to the requirement that exceptions to the right of access to documents held by the institutions must be interpreted strictly, a requirement which entails that it must be established that there is a risk of a specific and actual adverse effect on the interest protected.

71 It follows from the foregoing considerations that, contrary to the view taken by EFSA in its decision of 12 December 2011, the conditions required by Article 8(b) of Regulation No 45/2001 to permit the transfer of the information at issue were satisfied in this case.

72 The second plea in law must therefore be upheld.

73 The action must therefore be upheld and the EFSA decision of 12 December 2011 must be annulled.

Costs

74 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to costs. Under Article 138(1) of those rules, applicable to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under Article 140(1) of the Rules of Procedure, the institutions which have intervened in the proceedings must bear their own costs, while under Article 140(3) of those rules the Court may order an intervener other than those mentioned in the preceding paragraphs to bear its own costs.

75 Since the appeal brought by ClientEarth and PAN Europe and the action brought by them before the General Court have been upheld, EFSA must be ordered to bear its own costs and to pay the costs incurred by ClientEarth and PAN Europe in the appeal proceedings and in the proceedings at first instance, as applied for by them. The Commission shall bear its own costs with respect to both those proceedings. EDPS shall bear its own costs in the appeal proceedings.

On those grounds, the Court (Second Chamber) hereby:

1. **Sets aside the judgment of the General Court of the European Union in *ClientEarth and PAN Europe* v *EFSA* (T−214/11, EU:T:2013:483);**

2. **Annuls the decision of the European Food Safety Authority (EFSA) of 12 December 2011;**

3. **Orders the European Food Safety Authority (EFSA) to bear its own costs and to pay the costs incurred by ClientEarth and Pesticide Action Network Europe (PAN Europe) in the appeal and in the proceedings at first instance;**

4. **Orders the European Commission to bear its own costs relating to the appeal and the proceedings at first instance;**

5. **Orders the European Data Protection Supervisor (EDPS) to bear its own costs relating to the appeal proceedings.**

[Signatures]

---

* Language of the case: English.