JUDGMENT OF THE GENERAL COURT (Sixth Chamber)
13 September 2013 (*)

(Access to documents – Regulation (EC) No 1049/2001 – Names of experts who submitted comments on a guidance document relating to the scientific documents to be included in applications for authorisation to place plant protection products and the active substances contained in those products on the market – Refusal of access – Exception concerning protection of privacy and the integrity of the individual – Protection of personal data – Regulation (EC) No 45/2001 – Obligation to state reasons)

In Case T-214/11,

ClientEarth, established in London (United Kingdom),

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

represented by P. Kirch, lawyer,

applicants,

v

European Food Safety Authority (EFSA), represented by D. Detken, acting as Agent,

defendant,

supported by

European Commission, represented initially by P. Oliver, P. Ondrůšek and C. ten Dam, and subsequently by P. Oliver, P. Ondrůšek and B. Martenczuk, acting as Agents,

intervener,

APPLICATION, initially, for annulment of the decision of the European Food Safety Authority (EFSA) of 10 February 2011 refusing an application for access, under Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43), to 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 and, subsequently, for annulment of EFSA's decision of 12 December 2011 withdrawing the earlier decision and granting the applicants access to all the information requested, except for the names of the external experts who made certain comments on the draft guidance document,

THE GENERAL COURT (Sixth Chamber),

composed of H. Kanninen (Rapporteur), President, S. Soldevila Fragoso and G. Berardis, Judges,

Registrar: N. Rosner, Administrator,

having regard to the written procedure and further to the hearing on 10 April 2013,

gives the following

Judgment

Background to the dispute

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 [European Food Safety] Authority, 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'.

On 25 September 2009 the European Food Safety Authority (EFSA) requested that its Assessment Methodology Unit develop a guidance document for the benefit of the applicants referred to in the provision cited in paragraph 1 above, with information on how to implement that provision ('the guidance document'). That unit established a working group for that purpose ('the working group').

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. As a result of those comments, the working group incorporated changes into the draft guidance document, which was then subject to public consultation between 23 July and 15 October 2010.

Several bodies, including the environmental organisation Pesticides Action Network Europe (PAN Europe), submitted comments on the draft guidance document.

On 10 November 2010 the applicants, PAN Europe and ClientEarth, a company limited by guarantee under English law one of whose objects is protection of the environment, jointly submitted to EFSA an application requesting access to documents under Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43) 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 decision-making and access to justice in environmental matters to Community institutions and bodies (OJ 2006 L 264, p. 13). That application ('the initial 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, and the name of the author of each comment.

By email of 16 November 2010 EFSA acknowledged receipt of the initial application.

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. The documents concerned were (i) various working versions of the draft guidance document; and (ii) comments of the PPR and PSC experts on the draft guidance document.

On 23 December 2010 the applicants submitted, pursuant to Article 7(2) of Regulation No 1049/2001, a confirmatory application ('the confirmatory application') asking EFSA to reconsider its position.

By letter of 20 January 2011 EFSA informed the applicants that, pursuant to Article 8(2) of Regulation No 1049/2001, the time-limit for replying to the confirmatory application was to be extended by 15 working days.

On 10 February 2011 EFSA adopted a decision on the confirmatory application ('the first confirmatory decision'). EFSA confirmed that access to the withheld documents, described in paragraph 7 above, was to be refused on the basis of the exception provided for in the second subparagraph of Article 4(3) of Regulation No 1049/2001.

The guidance document was adopted and published on 28 February 2011 in the *EFSA Journal*.

By application lodged at the Registry of the General Court on 11 April 2011, the applicants brought this action and sought the annulment of the first confirmatory decision.

On 12 December 2011 EFSA adopted a new decision on the confirmatory application, of which the applicants were notified that same day. EFSA stated that it had decided to 'withdraw', 'annul' and 'replace' the first confirmatory decision. In that new decision, which it described as the 'new confirmatory reply', EFSA granted the applicants access to all the documents or sets of documents covered by the initial application, except for a number of documents which it stated did not exist. So far as concerns the comments of the PPR and PSC external experts on the draft guidance document, which were sent to the applicants, EFSA stated however that it had redacted the names of those experts, pursuant to Article 4(1)(b) of Regulation No 1049/2001 and European Union law on the protection of personal data, in particular 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). EFSA stated that the disclosure of the names of those experts was to be considered as a transfer of personal data within the meaning of Article 8 of Regulation No 45/2001 and that 'the conditions for the personal data transfer laid down in [the aforementioned provisions were] not fulfilled'.

Procedure and forms of order sought

As stated in paragraph 12 above, the applicants brought the present action by application lodged at the Registry of the General Court on 11 April 2011, and sought the annulment of the first confirmatory decision.

By documents lodged at the Court Registry on 14 and 19 July 2011, the Kingdom of Denmark and the European Commission sought leave to intervene in the proceedings in support, respectively, of the forms of order sought by the applicants and those sought by EFSA. Leave was granted by order of the President of the Eighth Chamber of the Court of 23 September 2011.

When the composition of the chambers of the Court was altered, the Judge-Rapporteur was assigned to the Sixth Chamber, to which this case was, consequently, allocated.

On 30 January 2012 EFSA lodged its rejoinder at the Court Registry. It claimed that, following the adoption of the decision of 12 December 2011, the action had become devoid of purpose, since the applicants had no further interest in securing the annulment of the first confirmatory decision. EFSA invited the Court to declare that there was no longer any need to adjudicate.

On 14 March 2012 the applicants submitted observations on the application, in the rejoinder, for a declaration that there was no need to adjudicate. They submitted a request to adapt their claims and pleas in law following the adoption of the decision of 12 December 2011 so that their action should be regarded as now directed against that latter decision, by which EFSA refused to disclose the names of the authors of the comments on the draft guidance document. In their observations, the applicants submitted a number of arguments whereby they sought to demonstrate that that refusal was unlawful.

On 13 August 2012, by way of measures of organisation of procedure under Article 64 of its Rules of Procedure, the Court invited EFSA, the Commission and the Kingdom of Denmark to submit observations on the applicants' request to adapt their claims and pleas in law and on the arguments submitted by the applicants in support of their application for the annulment of the decision of 12 December 2011.

EFSA, the Commission and the Kingdom of Denmark complied with that request by letters of 14 September 2012. EFSA and the Commission submit that the applicants' request to adapt their claims and pleas in law should be granted in so far as they seek the annulment of the decision of 12 December 2011, but that there is no longer any need to adjudicate on the claims and pleas in law submitted in support of the application for annulment of the first confirmatory decision. The Kingdom of Denmark submitted that the applicants' request should be granted.

By letter received at the Court Registry on 12 March 2013 the Kingdom of Denmark informed the Court that it was withdrawing its application for leave to intervene in support of the forms of order sought by the applicants in this case. By order of the President of the Sixth Chamber of 9 April 2013, the name of the Kingdom of Denmark as an intervener was removed from the Court's register.

Upon hearing the report of the Judge-Rapporteur, the Court (Sixth Chamber) decided to open the oral procedure. The parties presented oral argument and their answers to the questions put by the Court at the hearing on 10 April 2013.

In its application, the applicants claim that the Court should:

declare that EFSA infringed Article 4(1), (2) and (4) of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, signed at Aarhus on 25 June 1998 ('the Aarhus Convention');

declare that EFSA infringed Article 6(1) of Regulation No 1367/2006;

declare that EFSA infringed Article 8(2) and the second subparagraph of Article 4(3) of Regulation No 1049/2001;

annul the first confirmatory decision;

order EFSA to pay the costs, including those of the interveners.

In the reply, the applicants also claim that the Court should declare that EFSA infringed Article 4(3) of the Aarhus Convention.

In their observations of 14 March 2012 on the rejoinder, the applicants seek leave to adapt their claims and pleas in law following the decision of 12 December 2011 and claim that the Court should:

annul the 'negative reply by which EFSA withheld part of the contents of the requested documents';

order EFSA to pay the costs, including those of the interveners.

In its defence, EFSA contends that the Court should:

dismiss the action;

reject the plea of illegality raised by the applicants in respect of Regulation No 1367/2006;

order the applicants to pay the costs.

In the rejoinder, EFSA contends that the Court should declare that the action has become devoid of purpose and that there is no longer any need to adjudicate.

In its letter of 14 September 2012, EFSA contends that the Court should:

dismiss the applicant's application 'for annulment of the EFSA decision of confirmatory reply';

reject 'the modification of the pleas in law and forms of order sought, as well as the new claim for annulment of the … decision of 12 December

2011';

declare, in the light of the decision of 12 December 2011, that 'the case has become devoid of purpose as regards the initial pleas in law and that there is no need to adjudicate thereon';

order the applicants to pay the costs.

In its letter of 14 September 2012, the Commission contends that the Court should:

dismiss the action, in so far as it is directed against the first confirmatory decision, as being devoid of purpose;

dismiss the action, in so far as it is directed against the decision of 12 December 2011, as being unfounded;

order the applicants to pay the costs.

At the hearing, the applicants confirmed that their action for annulment was now directed against the decision of 12 December 2011. Further, they stated that the pleas in law on which they relied in support of that action were, first, the inapplicability in the present case of Article 4(1)(b) of Regulation No 1049/2001 and of Regulation No 45/2001, secondly, the existence of a public interest justifying disclosure of the information at issue, in accordance with Article 8(a) and (b) of Regulation No 45/2001, and, thirdly, an infringement of the obligation to state reasons.

Law

Preliminary observations

Article 41(1) of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002 L 31, p. 1), as amended by Regulation (EC) No 1642/2003 of the European Parliament and of the Council of 22 July 2003 (OJ 2003 L 245, p. 4), provides that Regulation No 1049/2001 is to apply to applications for access to documents held by EFSA. Under Article 41(3) of Regulation No 178/2002, as amended, decisions taken by EFSA, pursuant to Article 8 of Regulation No 1049/2001, on confirmatory applications, may form the subject of an action before the General Court, under the conditions laid down in Article 228 TFEU and Article 263 TFEU respectively.

Whether the pleas in law and claims of the applicants may be adapted

As stated above, the first confirmatory decision, which was initially the object of the application for annulment in the action brought by the applicants, was, after the lodging of the action, replaced by the EFSA decision of 12 December 2011. That change led the applicants to adapt their initial claims and the pleas in law submitted in support of those claims. The other parties have not opposed that adaptation.

In that regard, it must be recalled that, in accordance with settled case-law, heads of claim initially directed against a measure which is replaced during the course of proceedings may be regarded as being directed against the replacement measure because the latter constitutes a new factor which entitles the applicant to adapt its heads of claim and pleas in law. In such circumstances, it would be contrary to the principle of the sound administration of justice and to the requirements of procedural economy to oblige the applicant to make a fresh application to the Court (see Case T-111/00 *British American Tobacco International (Investments)* v *Commission* [2001] ECR II-2997, paragraph 22 and case-law cited). The adaptation of the claims and pleas in law should therefore be allowed and the action should be considered as now directed to the annulment of the EFSA decision of 12 December 2011.

The application for a declaration that there is no need to adjudicate

EFSA and the Commission submit that, in paragraph 9 of their observations on the rejoinder, the applicants stated that their pleas in law 'as initially lodged … remain relevant but have been modified … to take into account the New Contested Decision'. EFSA and the Commission contend that those pleas in law, as initially lodged, were directed against the first confirmatory decision, which was based on the exception to the right of access to documents relating to the protection of EFSA's decision-making process. Those pleas became devoid of purpose following the adoption of the decision of 12 December 2011, which was based on another exception. The Court ought therefore to hold that there is no longer any need to adjudicate on those pleas in law. EFSA and the Commission also contend that, following the decision of 12 December 2011, which, inter alia, withdrew the first confirmatory decision, the claims of the applicants seeking the annulment of that decision have become devoid of purpose.

It is clear from the observations of the applicants on the rejoinder, and from the arguments which they presented at the hearing, that they seek, in the latter stage of proceedings, only the annulment of the decision of 12 December 2011, on the basis solely of the arguments presented in those observations, as represented in the three pleas in law mentioned in paragraph 30 above. Consequently, there is no need to examine the applications submitted by EFSA and the Commission for a declaration that there is no need to adjudicate.

The pleas in law submitted in support of the application for the partial annulment of the decision of 12 December 2011

Following the adaptation of their pleas in law and claims, the applicants rely, in essence, on three pleas in support of their application for annulment. Those pleas involve the claims, first, that Article 4(1)(b) of Regulation No 1049/2001 and Regulation No 45/2001 are not applicable to

this case, secondly, that there are public interest grounds justifying the disclosure of the names of the experts, members of the PPR and the PSC, who submitted each comment on the draft guidance document ('the information at issue'), in accordance with Article 8(a) and (b) of Regulation No 45/2001, and, thirdly, that the obligation to state reasons was infringed.

In its letter of 14 September 2012 EFSA contended, in essence, that the latter two pleas in law were inadmissible, since the applicants were presenting arguments which ought to have appeared in the confirmatory application. However, at the hearing, EFSA did not insist on its objection that those pleas were inadmissible. The Commission, for its part, stated, at the hearing, that those pleas ought not to be declared inadmissible, even though they had not been submitted to EFSA in the confirmatory application.

It is appropriate, first, to examine the first plea in law, then the third plea in law and, finally, the second plea in law.

The first plea in law: the inapplicability to this case of Article 4(1)(b) of Regulation No 1049/2001 and of Regulation No 45/2001

Article 4(1)(b) of Regulation No 1049/2001, on which EFSA particularly based its refusal of access to the information at issue in the decision of 12 December 2011, provides that '[t]he institutions shall refuse access to a document where disclosure would undermine the protection of … privacy and the integrity of the individual, in particular in accordance with [European Union] legislation regarding the protection of personal data'. According to the case-law, that is an indivisible provision which requires that any undermining of privacy and the integrity of the individual must always be examined and assessed in conformity with European Union legislation concerning the protection of personal data, and in particular with Regulation No 45/2001. That provision thus establishes a specific and reinforced system of protection of a person whose personal data could, in certain cases, be communicated to the public (Case C-28/08 P *Commission* v *Bavarian Lager* [2010] ECR I-6055, paragraphs 59 and 60, and judgment of 7 July 2011 in Case T-161/04 *Valero Jordana* v *Commission*, not published in the ECR, paragraph 87).

It follows that, where an application based on Regulation No 1049/2001 seeks to obtain access to documents containing personal data, the provisions of Regulation No 45/2001 become applicable in their entirety (*Commission* v *Bavarian Lager*, paragraph 39 above, paragraph 63, and *Valero Jordana* v *Commission*, paragraph 39 above, paragraph 88).

The Court must therefore examine whether the information at issue constitutes a set of personal data, which is disputed by the applicants on the basis of a number of arguments.

Any information relating to an identified or identifiable natural person may be regarded, under Article 2(a) of Regulation No 45/2001, as 'personal data'. According to recital 7 in the preamble to that regulation, the persons to be protected are those whose personal data are processed by European Union institutions or bodies in any context whatsoever, for example because they are employed by those institutions or bodies.

In this case, EFSA disclosed to the applicants all the comments on the draft guidance document that were submitted by the expert members of the PPR and the PSC. The applicants also know the names of those experts. It is clear from the Court file that the names, biographies and declarations of interests in respect of each of the experts concerned were disclosed on EFSA's website. The only information relating to the comments at issue which has not been made available to the applicants is the link between each comment and its author, as the applicants confirmed at the hearing. They want EFSA to enable them to make that link, in other words know the names of the authors of each comment.

In that regard, first, it must be observed that it is clear from the case-law that the name of an individual may be considered to be personal data even in situations where the individual concerned is employed by the institution concerned (see, to that effect, *Commission* v *Bavarian Lager*, paragraph 39 above, paragraph 68, and *Valero Jordana* v *Commission*, paragraph 39 above, paragraph 91).

Secondly, the Court of Justice has held that the list of participants in a meeting organised by the Commission, which had been attended by representatives of a business organisation, appearing in the minutes of that meeting, contained personal data within the meaning of Article 2(a) of Regulation No 45/2001, since those participants could be identified (see, to that effect, *Commission* v *Bavarian Lager*, paragraph 39 above, paragraph 70).

It must therefore be held that the information at issue, which makes possible the personal identification of the authors of some comments and which is comparable in nature to the information requested in the case which gave rise to the judgment in *Commission* v *Bavarian Lager*, paragraph 39 above, is a set of personal data, within the meaning of Article 2(a) of Regulation No 45/2001, even if that information is held by EFSA in an employment context.

The examination and assessment of the request for access submitted by the applicants was therefore subject, as regards the information at issue, to the provisions of Regulation No 45/2001 (see, to that effect, *Valero Jordana* v *Commission*, paragraph 39 above, paragraph 92).

That conclusion cannot be invalidated by any of the arguments put forward by the applicant.

In that regard, first, the applicants claim that, as stated in paragraph 43 above, EFSA disclosed names, biographies and declarations of interest in respect of each of the experts concerned. According to the applicants, it follows that the names of those experts cannot be considered to be personal

data.

However, the circumstance that those experts may be listed on a publicly accessible website does not necessarily imply that their names can no longer be characterised as personal data, within the meaning of Article 2(a) of Regulation No 45/2001.

Further, as EFSA correctly points out, in its judgment of 23 November 2011 in Case T-82/09 *Dennekamp* v *Parliament*, not published in the ECR, paragraphs 42 to 46, the Court held that the names of Members of the European Parliament affiliated to a specific pension scheme constituted personal data within the meaning of Regulation No 45/2001 even though the names of all Members of the Parliament were published.

The Court must therefore reject the applicants' first argument whereby they seek to establish that the information at issue does not contain personal data.

Next, the applicants claim that the Court held, in its judgment of 11 March 2009 in Case T-121/05 *Borax Europe* v *Commission*, paragraph 70, that expert opinions have to be made public even if they might give rise to controversy or deter those who expressed them from making their contribution to an institution's decision-making process.

First, it must be observed that *Borax Europe* v *Commission*, paragraph 53 above, precedes *Commission* v *Bavarian Lager*, paragraph 39 above. The latter judgment is where the Court of Justice stated the rules to be followed when the institutions of the European Union have to examine applications for access to documents containing personal data.

Secondly, it does not follow from *Borax Europe* v *Commission*, paragraph 53 above, that the name of any expert who has commented on a European Union measure cannot be considered to be personal data. The General Court did not, in that judgment, rule on whether the names of the experts concerned were to be considered to be personal data. The General Court held solely that the Commission had failed, in the case which gave rise to that judgment, to explain, in sufficiently specific terms, why disclosure of the identity of those experts could undermine their integrity (*Borax Europe* v *Commission*, paragraph 53 above, paragraphs 40 and 41).

The Court must therefore reject the applicants' second argument whereby they seek to establish that the information at issue does not contain personal data.

Lastly, the applicants claim that EFSA did not mention at any stage of the procedure that the experts concerned had objected to the disclosure of their names.

However, no provision in Regulation No 45/2001 states that it is a prerequisite of information relating to an individual being considered to be personal data that the individual concerned must first have objected to its disclosure.

The third argument must therefore also be rejected.

In the light of the foregoing, it must be concluded that EFSA did not err in holding that the information at issue constituted a set of personal data. Accordingly, EFSA was entitled to examine the confirmatory application having regard to Article 4(1)(b) of Regulation No 1049/2001 and Regulation No 45/2001.

This plea in law must therefore be rejected.

The third plea in law: breach of the obligation to state reasons

According to settled case-law, the statement of reasons required under Article 296 TFEU must be appropriate to the measure in question and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted that measure, in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to carry out its review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons for a measure meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see *Valero Jordana* v *Commission*, paragraph 39 above, paragraph 48 and case-law cited).

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 (see *Valero Jordana* v *Commission*, paragraph 39 above, paragraph 49 and case-law cited).

As regards decisions whereby an institution refuses an application for access to information containing personal data on the ground that that information is covered by the exception specified in Article 4(1)(b) of Regulation No 1049/2001, namely the protection of the privacy and integrity of the individual, it must be observed, first, that that data may be transferred only 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, pursuant to Article 8(b) of Regulation No 45/2001, which the institutions are obliged to comply with when they receive an application for access to documents containing personal data (*Commission* v *Bavarian Lager*, paragraph 39 above, paragraph 63, and *Valero Jordana* v *Commission*, paragraph 39 above, paragraph 88). Secondly, where the recipient does not provide any express and legitimate justification or any convincing argument in order to demonstrate the necessity for that personal data to be transferred, the institution which has received the application is not able either to weigh up the various interests of the parties concerned or to verify that there is no reason to assume that the data subjects' legitimate interests might be prejudiced by the transfer of data and is entitled therefore to refuse the particular application for access (see, to that effect, *Commission* v *Bavarian Lager*, paragraph 39 above, paragraphs 78 and 79).

In this case, the applicants complain that EFSA failed to state the specific reasons why the disclosure of the information at issue carried a risk that protection of the privacy of the experts concerned would be undermined. Since such reasons were not given, it was impossible to determine whether EFSA was seeking to protect the names of the experts, which were already public information, or the link between each name and each comment on the draft guidance document, which is not personal data. Further, the subject of the dispute is environmental information. Under Article 6(1) of Regulation No 1367/2006, which is applicable to requests for such information, the grounds for refusal laid down in Article 4(1) of Regulation No 1049/2001 are to be 'interpreted in a restrictive way taking into account the public interest served by disclosure'. By not providing any reasons demonstrating why the names of the experts should not be disclosed, EFSA did not meet that test.

EFSA disputes the applicants' arguments.

As stated in paragraph 13 above, EFSA indicated, in the decision of 12 December 2011, that the information at issue had to be regarded as a set of personal data within the meaning of Article 4(1)(b) of Regulation No 1049/2001 and Regulation No 45/2001. EFSA stated that the disclosure of the names of individuals had to be regarded as a transfer of personal data within the meaning of Article 8 of Regulation No 45/2001. Lastly, EFSA held that the conditions for the transfer of personal data were not fulfilled.

The applicants did not provide any justification, before the adoption of the decision of 12 December 2011, capable of demonstrating that the transfer of the personal data which they requested was necessary. EFSA was therefore not in a position either to weigh up the various interests of the parties concerned or to verify that there was no reason to assume that the data subjects' legitimate interests might be prejudiced by the transfer. Accordingly, EFSA could not state reasons in that regard in the decision concerned.

In the light of the foregoing, it must be held that the statement of reasons in the decision of 12 December 2011 is sufficient and, accordingly, this plea must be rejected.

The second plea in law: the existence of a public interest justifying disclosure of the information at issue, in accordance with Article 8(a) and (b) of Regulation No 45/2001

As stated in paragraph 64 above, where the institutions receive a request for access to documents which contain personal data, those documents may be transferred to requesting parties such as the applicants only if those requesting parties demonstrate that the transfer is necessary and that there is no reason to assume that the data subjects' legitimate interests might be prejudiced by the transfer, in accordance with Article 8(b) of Regulation No 45/2001.

The applicants submit three arguments which they claim demonstrate that the disclosure of the information at issue was justified on public interest grounds and, therefore, that the transfer of that information was necessary. EFSA and the Commission do not accept those arguments.

The three arguments referred to in paragraph 71 above were submitted by the applicants for the first time before the Court. In that regard, it is clear from the Court file that, in the decision of 1 December 2010 and in the first confirmatory decision, EFSA relied solely on the second subparagraph of Article 4(3) of Regulation No 1049/2001 as the basis for refusal of access to the documents requested. Only in the decision of 12 December 2011, taken after the action had been brought, did EFSA rely, for the first time, on Article 4(1)(b) of Regulation No 1049/2001 and on Article 8 of Regulation No 45/2001. It must also be borne in mind that EFSA substituted the decision of 12 December 2011 for the confirmatory decision. Following that further decision, the scope of the action was limited to disclosure of the information at issue.

The parties debated the second plea in law before the General Court, and, at the hearing, EFSA and the Commission were of the view that the General Court was entitled to examine that plea.

Having regard to the circumstances of this case, as described in paragraphs 72 and 73 above, it is necessary to examine the arguments submitted in relation to the second plea.

First, the applicants claim that there is a general requirement of transparency, as stated in Articles 1 and 11(2) TEU and Article 15 TFEU. They submit that the Court of Justice insists that decisions taken by public authorities should not be hidden and has stated that a lack of information and

debate is capable of giving rise to doubts in the minds of citizens both as regards the lawfulness of an isolated act and the legitimacy of the decision-making process.

However, the application of Article 4(1)(b) of Regulation No 1049/2001 and Article 8 of Regulation No 45/2001 cannot be waived on the basis of general provisions in the Treaties.

The second subparagraph of Article 15(3) TFEU provides that the general principles and limits, which, on grounds of public or private interest, are to govern the exercise by citizens of the right of access to documents, are to be determined by means of regulations by the European Parliament and the Council of the European Union, in accordance with the ordinary legislative procedure. Accordingly, Regulation No 1049/2001, adopted on the basis of the second subparagraph of Article 15(3) TFEU, determines those general principles and limits in relation to the right of access to documents held by EFSA. One of those limits is the exception specified in Article 4(1)(b) of Regulation No 1049/2001, namely the protection of the privacy and integrity of the individual. That provision refers to European Union legislation on the protection of personal data and, therefore, in particular to Regulation No 45/2001, adopted on the basis of Article 16 TFEU.

The Court must therefore reject the applicants' first argument whereby they seek to establish that disclosure of the information at issue was justified.

Secondly, the applicants claim that the confidentiality of the identity of the experts concerned is partly responsible for suspicion of EFSA, which is often accused of partiality and of appointing to its panels members who have vested interests. A recent study by PAN Europe found that 8 out of 13 members of an EFSA working group were linked to industry lobbies. Disclosure of the identity of the experts was therefore necessary. The identity of experts advising the institutions and their opinions should, in fact, be systematically treated as public data in order to ensure the transparency of the decision-making process.

In that regard, it is clear that the applicants, as they have stated on several occasions in their written pleadings and at the hearing, were informed of the names of the experts concerned and obtained their declarations of interests. Further, the applicants have not challenged the independence of any of those experts. In those circumstances, without having to examine whether a challenge to the independence of an expert who has submitted comments on a proposal for legislation or a decision might in itself justify a transfer of personal data in relation to that expert, it cannot be held that the applicants have established that the transfer of the data which they request was necessary.

The second argument submitted by the applicants must therefore be rejected.

Thirdly, the applicants claim that the only legitimate interests of the experts concerned, who have already accepted that EFSA should disclose their names and biographies on its website, are that their identity is not misused, their reputation is not prejudiced and their opinions are not distorted. Any other interest is a vested interest which should not be protected. Lastly, according to the case-law, an opinion should be disclosed even if that might bring external pressure to bear on the person expressing it.

In that regard, suffice it to observe that it is clear from a reading of Article 8(b) of Regulation No 45/2001 that the conditions referred to in that provision which must be satisfied before an institution is entitled to transfer personal data, namely that the recipient establishes that it is necessary that the data is transferred and that there is no reason to assume that the data subject's legitimate interests might be prejudiced, are cumulative. Since the applicants have not established in this case that the transfer of the personal data which they requested was necessary, there is no need to determine whether there are legitimate interests of the data subjects which must not be prejudiced by the transfer if it is to be permitted.

The third argument on which the applicants rely in order to demonstrate that disclosure of the information at issue was justified is, therefore, ineffective.

In the light of all the foregoing, this plea must be rejected.

The action must therefore be dismissed in its entirety.

Costs

Under Article 87(3) of the Rules of Procedure, the Court may order the costs to be shared or the parties to bear their own costs if each party succeeds on some and fails on other heads, or where the circumstances are exceptional.

In this case, EFSA, in the course of proceedings, gave access to all the documents which the applicants had requested in the confirmatory application and the refusal of access to which had caused this action to be brought, with the exception of the information at issue. In the light of those exceptional circumstances, the applicants and EFSA shall be ordered to bear their own costs.

Under the first subparagraph of Article 87(4) of the Rules of Procedure, institutions which intervene in the proceedings are to bear their own costs. Consequently, the Commission shall bear its own costs.

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby:

Dismisses the action;

Orders ClientEarth and Pesticide Action Network Europe (PAN Europe), the European Food Safety Authority (EFSA) and the European Commission each to bear their own costs.

Kanninen Soldevila Fragoso Berardis

Delivered in open court in Luxembourg on 13 September 2013.

[Signatures]

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* Language of the case: English.