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 — Third indent of Article 4(2) — Environmental information — Aarhus Convention — Article 4(1) and (4) — Exception to right of access — Protection of the purpose of investigations — Studies carried out by an undertaking, at the request of the European Commission, concerning the transposition of directives on the environment — Partial refusal of access)

In Case C−612/13 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 25 November 2013,

ClientEarth, established in London (United Kingdom), represented by P. Kirch, avocat,

appellant,

the other parties to the proceedings being:

European Commission, represented by L. Pignataro-Nolin, P. Costa de Oliveira and M. Konstantinidis, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

supported by:

European Parliament, represented by J. Rodrigues and L. Visaggio, acting as Agents,

Council of the European Union, represented by M. Moore, M. Simm and A. Jensen, acting as Agents,

interveners 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, J.-C. Bonichot, A. Arabadjiev and J.L. da Cruz Vilaça, Judges,

Advocate General: P. Cruz Villalón,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 15 January 2015,

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

gives the following

Judgment

1 By its appeal, ClientEarth asks the Court to set aside the judgment of the General Court of the European Union in *ClientEarth* v *Commission* (T−111/11, EU:T:2013:482; 'the judgment under appeal'), whereby the General Court dismissed its action seeking, initially, annulment of the European Commission's implied decision refusing to grant ClientEarth access to certain documents on the conformity of the legislation of various Member States with European Union environmental law and, then, annulment of the Commission's subsequent express decision of 30 May 2011 refusing ClientEarth in part access to those documents.

Legal context

International law

2 Article 2 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 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1) ('the Aarhus Convention'), provides:

'For the purposes of this Convention:

…

2. "Public authority" means:

…

(d) the institutions of any regional economic integration organisation referred to in Article 17 which is a Party to this Convention.

…'

3 Under Article 4(1) and (4) of the Aarhus Convention:

'1. Each Party shall ensure that, subject to the following paragraphs of this article, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation, including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information:

(a) without an interest having to be stated;

(b) in the form requested unless:

(i) it is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form; or

(ii) the information is already publicly available in another form.

…

4. A request for environmental information may be refused if the disclosure would adversely affect:

…

(c) the course of justice, the ability of any person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;

…

The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment.'

EU law

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(2) of that regulation, the article being headed 'Exceptions', provides:

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

– …

– …

– the purpose of inspections, investigations and audits,

unless there is an overriding public interest in disclosure.'

6 Article 6(1) of Regulation (EC) No 1367/2006 of the European Parliament and of the Council on the application of the provision 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) provides:

'As regards Article 4(2), first and third indents, of Regulation (EC) No 1049/2001, with the exception of investigations, in particular those concerning possible infringements of Community law, an overriding public interest in disclosure shall be deemed to exist where the information requested relates to emissions into the environment. As regards the other exceptions set out in Article 4 of Regulation (EC) No 1049/2001, the grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and whether the information requested relates to emissions into the environment.'

Background to the dispute

7 On 8 September 2010 ClientEarth, a company limited by guarantee under English law one of whose objects is protection of the environment, submitted to the Commission's Directorate General (DG) for the Environment an application for access to documents under Regulation No 1049/2001 and Regulation No 1367/2006. That application concerned several documents mentioned in the 'Management Plan 2010' of DG Environment.

8 By letter of 29 October 2010, the Commission granted that request, but only in part. The Commission sent to ClientEarth one of the documents requested but stated that the others were covered by, inter alia, the exception provided for in the third indent of Article 4(2) of Regulation No 1049/2001.

9 On 10 November 2010 ClientEarth submitted to the Commission an application asking it to reconsider its position as regards a number of documents to which access had been refused.

10 On 30 May 2011 the Commission adopted and notified ClientEarth of an express decision on the latter application, in the light of Regulations No 1049/2001 and No 1367/2006 ('the express decision').

11 By that decision, the Commission granted to ClientEarth partial access to 41 studies relating to the conformity of the legislation of various Member States with European Union environmental law, carried out by an undertaking at the request of and on behalf of the Commission and received by it in 2009 ('the contested studies'). Specifically, the Commission sent to ClientEarth, in respect of each of those studies, the cover page, the table of contents, the list of abbreviations used, an annex containing the legislation examined and the sections headed: 'Introduction'; 'Overview of the Legal Framework of the Member State'; and 'Framework for Transposition and Implementation'. On the other hand, the Commission refused to grant ClientEarth access, in respect of each of those studies, to the sections headed 'Summary Datasheet', 'Legal Analysis of the Transposing Measures' and 'Conclusions', and an annex containing a table of concordance between the legislation of the Member State concerned and the relevant EU law.

12 The Commission divided the contested studies into two categories. The first category comprised one study the assessment of which, made through dialogue with the Member State concerned, had started shortly before the adoption of the express decision. The second category comprised the other 40 studies on each of which dialogue with the Member States concerned had made greater progress.

13 In support of its decision, the Commission stated that the withheld parts of the contested studies were covered by, inter alia, the exception relating to the protection of the purpose of investigations provided for in the third indent of Article 4(2) of Regulation No 1049/2001.

14 In that regard, the Commission stated that those studies had been carried out so that it should be in a position to monitor the transposition of several directives by the Member States and, if necessary, to bring proceedings for failure to fulfil obligations under Article 258 TFEU against the Member States.

15 As regards the study placed in the first category mentioned in paragraph 12 of this judgment, the Commission stated that it had not yet reached a conclusion on the transposition by the Member State concerned of the directive which was the subject of that study and that disclosure of the data and conclusions contained within that study, which had not yet been verified and on which the Member State in question had not had the opportunity to respond, might have exposed that Member State to criticism, possibly unjustified, and would have undermined the climate of mutual trust required to assess the implementation of that directive.

16 As regards the studies at issue in the second category mentioned in paragraph 12 of this judgment, the Commission stated that, in some cases, it had decided to initiate the pre-litigation stage of infringement proceedings against the Members States concerned but that, in other cases, it had not yet decided on its position. The Commission stated that disclosure of those studies, if authorised, would have undermined the climate of mutual trust necessary

to resolve disputes between the Commission and the Member States concerned without having to resort to the judicial stage of infringement proceedings.

17 The Commission further stated that Article 6(1) of Regulation No 1367/2006 was not such as to call into question the examination that it had carried out in the light of Regulation No 1049/2001.

The procedure before the General Court and the judgment under appeal

18 On 21 February 2011 ClientEarth brought an action seeking the annulment of the implied decision to reject its application of 10 November 2010. Following the Commission's adoption of the express decision refusing ClientEarth full access to the contested studies, the subject matter of the action was then held to be the annulment of the express decision.

19 In support of its action, ClientEarth relied on seven pleas in law.

20 The General Court rejected those seven pleas in law, and consequently dismissed the action.

Procedure before the Court and forms of order sought

21 ClientEarth claims that the Court should set aside the judgment under appeal and order the Commission to pay the costs.

22 The Commission contends that the Court should dismiss the appeal and order ClientEarth to pay the costs.

23 The European Parliament and the Council of the European Union were granted leave to intervene in support of the forms of order sought by the Commission.

The appeal

24 ClientEarth relies on three grounds in support of its appeal.

The second ground of appeal

25 The Court will first examine the second ground of appeal, the essence of which is that the General Court erred in law by ruling that the third indent of Article 4(2) of Regulation No 1049/2001 was compatible with Article 4(1) and (4) of the Aarhus Convention.

Arguments of the parties

26 In this ground of appeal, ClientEarth challenges the reasoning of the General Court in paragraphs 91 to 99 of the judgment under appeal.

27 First, ClientEarth claims, relying on the judgments in *Fediol* v *Commission* (70/87, EU:C:1989:254) and *Nakajima* v *Council* (C−69/89, EU:C:1991:186), that the General Court was wrong to have determined whether Article 4 of the Aarhus Convention was directly applicable, whereas such a determination was not required in order to review the compatibility of the third indent of Article 4(2) of Regulation No 1049/2001 with the Aarhus Convention.

28 Second, ClientEarth claims that, in any event, the General Court was wrong to hold that Article 4(1) and (4)(c) of the Aarhus Convention are not directly applicable to the institutions of the European Union. In particular, the General Court erred in law in accepting that the specific features of the European Union may justify a derogation from the direct application of that convention.

29 Third, ClientEarth maintains that the General Court disregarded the obligation to interpret Article 4(4)(c) of the Aarhus Convention strictly, in accordance with the second subparagraph of Article 4(4) of that convention.

30 Fourth, ClientEarth claims that the General Court's interpretation of the Aarhus Convention was not compatible with the principles enshrined in Articles 26 and 31 of the Vienna Convention on the Law of Treaties of 23 May 1969 (United Nations Treaty Series, vol. 1155, p. 331; 'the Vienna Convention'). By extending the scope of the exception relating to the protection of the purpose of investigations to the contested studies, the General Court disregarded those articles of the Vienna Convention and produced an interpretation of Article 4(4) of the Aarhus Convention contrary to the letter, object and purpose of that provision.

31 The Commission, supported by the Parliament and the Council, contends, in general terms, that the General Court's reasoning in paragraphs 91 to 99 of the judgment under appeal is not vitiated by any error in law. That reasoning is, in all respects, consistent with the case-law of the Court.

Findings of the Court

32 First, it must be made clear that this ground of appeal relates to the compatibility with Article 4(1) and (4) of the Aarhus Convention of the third indent of Article 4(2) of Regulation No 1049/2001, but not of Article 6(1) of Regulation No 1367/2006.

33 That preliminary comment having been made, it must be recalled that, under Article 216(2) TFEU, international agreements concluded by the Union are binding upon the institutions of the Union and consequently prevail over the acts laid down by those institutions (judgments in *Council and Others* v *Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht*, C−401/12 P to C−403/12 P, EU:C:2015:4, paragraph 52 and case-law cited, and *Council and Commission* v *Stichting Natuur en Milieu and Pesticide Action Network Europe*, C−404/12 P and C−405/12 P, EU:C:2015:5, paragraph 44 and case-law cited).

34 It follows that the validity of an act of the Union may be affected by the incompatibility of that act with such rules of international law (judgment in *Air Transport Association of America and Others*, C−366/10, EU:C:2011:864, paragraph 51).

35 As stated by the General Court in paragraph 91 of the judgment under appeal, it is however clear from the Court's settled case-law that the Courts of the European Union can undertake an examination of the alleged incompatibility of an act of the European Union with the provisions of an international agreement to which the Union is a party only where (i) the nature and the broad logic of that agreement do not preclude it and (ii) those provisions appear, as regards their content, to be unconditional and sufficiently precise (see the judgments in *IATA and ELFAA*, C−344/04, EU:C:2006:10, paragraph 39; *Intertanko and Others*, C−308/06, EU:C:2008:312, paragraph 45; and *Air Transport Association of America and Others*, C−366/10, EU:C:2011:864, paragraph 54).

36 It is admittedly true that the Court has also held that, where the European Union intends to implement a particular obligation assumed under the agreements concluded in the context of

the World Trade Organisation (WTO) or where the European Union legal measure refers expressly to specific provisions of those agreements, it is for the Court, when appropriate, to review the legality of the Union measure at issue in the light of the WTO rules (see, to that effect, the judgments in *Fediol* v *Commission*, 70/87, EU:C:1989:254, paragraphs 19 to 22, and *Nakajima* v *Council*, C−69/89, EU:C:1991:186, paragraphs 29 to 32; see, also, the judgment in *LVP*, C−306/13, EU:C:2014:2465, paragraph 47 and case-law cited).

37 However, there is no need to give a ruling on whether the case-law cited in the preceding paragraph is applicable in this case, since it is sufficient to find that Regulation No 1049/2001, in particular the third indent of Article 4(2) thereof, makes no express reference to the Aarhus Convention and does not implement a particular obligation stemming from that convention. Consequently, that case-law is not, in any event, of relevance to this case.

38 It follows that the General Court was correct, first, not to have taken into consideration the case-law stemming from the judgments in *Fediol* v *Commission* (70/87, EU:C:1989:254) and *Nakajima* v *Council* (C−69/89, EU:C:1991:186), and, second, to have determined whether the provisions in Article 4(1) and (4)(c) of the Aarhus Convention are, as regards their content, unconditional and sufficiently precise.

39 That being the case, it is necessary to examine ClientEarth's arguments that the General Court erred in its analysis that those provisions cannot be so described and consequently cannot be relied on for the purposes of the assessment of the legality of the third indent of Article 4(2) of Regulation No 1049/2001.

40 In that regard, as correctly stated by the General Court in paragraph 96 of the judgment under appeal, the reference, in Article 4(1) of the Aarhus Convention, to national legislation indicates that that convention was manifestly designed with the national legal orders in mind, and not the specific legal features of institutions of regional economic integration, such as the European Union, even where those institutions can sign and accede to the Aarhus Convention, under Articles 17 and 19 thereof.

41 It is for that reason that, as the Commission and the Parliament have stated, the Community, when approving the Aarhus Convention, reiterated, in a declaration lodged in accordance with Article 19 of that convention, the declaration which it had made upon signing that convention and which it annexed to Decision 2005/370, namely that 'the Community institutions will apply the Convention within the framework of their existing and future rules on access to documents and other relevant rules of Community law in the field covered by the Convention'.

42 That being the case, neither the reference, in Article 4(4)(c) of the Aarhus Convention, to enquiries 'of a criminal or disciplinary nature', nor the obligation, laid down in the second paragraph of Article 4(4) of that convention, to interpret in a restrictive way the grounds for refusal of access mentioned in Article 4(4)(c), can be understood as imposing a precise obligation on the EU legislature. *A fortiori*, a prohibition on giving to the concept of 'enquiry' [enquête] a meaning which takes account of the specific features of the Union, and in particular the task incumbent on the Commission to investigate [enquêter] any failures of Member States to fulfil their obligations which might adversely affect the correct application of the Treaties and the EU rules adopted pursuant to the Treaties, cannot be inferred from those provisions.

43 It follows from the foregoing considerations that the General Court was correct to rule out the possibility of relying on Article 4(1) and (4) of the Aarhus Convention in order to assess the legality of the third indent of Article 4(2) of Regulation No 1049/2001. Accordingly, the

General Court did not err in law in rejecting ClientEarth's arguments that that provision was incompatible with the Aarhus Convention.

44 It also follows from those considerations that ClientEarth's arguments that the General Court disregarded the principles of performance in good faith and interpretation of treaties laid down in Articles 26 and 31 of the Vienna Convention must be rejected.

45 The second ground of appeal must therefore be rejected.

The first ground of appeal

Arguments of the parties

46 The first ground of appeal, to the effect that the General Court erred in law in its interpretation of the third indent of Article 4(2) of Regulation No 1049/2001, can be divided into two parts.

47 The first part concerns an erroneous interpretation of the concept of 'investigations' [activités d'enquête], within the meaning of that provision, and is directed at, inter alia, paragraphs 49, 50, 58 to 61 and 70 of the judgment under appeal.

48 In this part, ClientEarth maintains that that concept presupposes the existence of a formal decision of the Commission as a college. ClientEarth refers, in that regard, to the judgments in *Commission* v *Technische Glaswerke Ilmenau* (C−139/07 P, EU:C:2010:376); *Commission* v *Éditions Odile Jacob* (C−404/10 P, EU:C:2012:393); *LPN and Finland* v *Commission* (C−514/11 P and C−605/11 P, EU:C:2013:738); *WWF UK* v *Commission* (T−105/95, EU:T:1997:26); *Bavarian Lager* v *Commission* (T−309/97, EU:T:1999:257); *Petrie and Others* v *Commission* (T−191/99, EU:T:2001:284); and *API* v *Commission* (T−36/04, EU:T:2007:258).

49 ClientEarth claims that in this case the contested studies were the result of an administrative decision made by the Commission's staff, and not of a formal decision of the college of Commissioners to initiate infringement proceedings against Member States.

50 Relying on the judgment in *Mecklenburg* (C−321/96, EU:C:1998:300, paragraphs 27 and 30), ClientEarth adds that, even if it were accepted that the contested studies are part of the preliminary stage of formal infringement proceedings, the exception provided for in the third indent of Article 4(2) of Regulation No 1049/2001 can justify a refusal to disclose only in the event that the existence of the document requested immediately precedes the opening of a contentious or quasi-contentious procedure and arises from the need to obtain proof or to investigate a matter prior to the opening of the actual procedure. Yet in this case, the contested studies did not immediately precede a decision to initiate, following an investigation, infringement proceedings under Article 258 TFEU.

51 The second part of the first ground of appeal concerns an erroneous interpretation of the concept of 'undermining the protection of the purpose of investigations', within the meaning of the third indent of Article 4(2), of Regulation No 1049/2001, and is directed at, inter alia, paragraphs 53 and 68 to 80 of the judgment under appeal.

52 In this second part, ClientEarth claims, first, that it applied for access to specific documents, not to a whole administrative file relating to infringement proceedings, nor even to a set of documents described in general terms. Further, its application concerned, not one category of documents to which similar general considerations applied, but studies in two distinct

categories, namely (i) those relating to infringement proceedings which had been commenced and (ii) those not connected with any such proceedings.

53 ClientEarth maintains, next, that the disclosure of the contested studies would have in no way jeopardised the realisation of the purpose of infringement proceedings, which is to encourage the Member States concerned to bring their national law into conformity with EU law.

54 ClientEarth further claims that, for as long as formal proceedings have not been undertaken by the Commission against the Member State concerned, it cannot be held that the disclosure of the contested studies might undermine a climate of mutual trust. The mere fact that those studies existed did not suffice to create between each Member State concerned and the Commission a bilateral relationship which merited protection to the detriment of transparency.

55 The Commission contends that the arguments put forward by ClientEarth in the first part of the first ground of appeal have no legal basis. The Commission maintains, in essence, that any document, such as a study on conformity, which is intended to enable it to verify, under Article 17 TEU, that the Member States are complying with EU law, must be regarded as relating to an investigation, within the meaning of the third indent of Article 4(2) of Regulation No 1049/2001.

56 As regards the second part of the first ground of appeal, the Commission maintains that, in the light of the findings made in paragraph 53 of the judgment under appeal, the reasoning of the General Court, set out in paragraphs 68 to 80 of that judgment, is not vitiated by any error in law. That reasoning is, in all respects, consistent with the case-law of the Court.

Findings of the Court

57 The aim of Regulation No 1049/2001 is to give the public a right of access to documents of the institutions of the European Union which is as wide as possible. It is also apparent from that regulation, in particular from Article 4 thereof, which lays down a system of exceptions in that regard, that that right is, nevertheless, subject to certain limits based on reasons of public or private interest (see judgments in *LPN and Finland* v *Commission*, C−514/11 P and C−605/11 P, EU:C:2013:738, paragraph 40 and case-law cited, and *Commission* v *EnBW*, C−365/12 P, EU:C:2014:112, paragraph 61 and case-law cited).

58 Under the exception relied upon by the Commission in this case, namely that in the third indent of Article 4(2) of Regulation No 1049/2001, the institutions of the European Union must refuse access to a document where its disclosure would undermine the protection of the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure of the document concerned.

59 In this case, it is necessary, first, to examine whether, as claimed by ClientEarth in the first part of the first ground of appeal, the General Court erred in law in holding that the contested studies fell within the scope of an investigation, within the meaning of that provision.

60 In that regard, it must be stated first that there is nothing in the case-law referred to by ClientEarth and cited in paragraph 48 of this judgment to indicate that an ‘investigation’, within the meaning of that provision, is dependent on the existence of a formal decision adopted by the Commission as a college.

61 That said, it must be observed that the contested studies were carried out at the request of and on behalf of the Commission, after the expiry of the period for transposition of a set of directives of the European Union concerning environmental protection, with the specific aim of determining what progress had been made in transposing the directives in a certain number of Member States. As is clear from what is stated in paragraphs 13 and 49 of the judgment under appeal, each of those studies, relating to a single Member State and a single directive, contains a comparison of the national law under consideration and the relevant EU law, accompanied by a legal analysis and conclusions concerning the transposition measures adopted by the Member State concerned.

62 As the General Court correctly held in paragraph 49 of the judgment under appeal, such studies are among the instruments available to the Commission, in the context of the obligation imposed on it, under Article 17(1) TEU, to oversee, under the control of the Court, the application of EU law, in order to uncover any failures by Member States to fulfil their obligation to transpose the directives concerned and in order to decide, when necessary, to initiate infringement proceedings against those Member States which it considers to be in breach of EU law. The studies fall, consequently, within the scope of the concept of 'investigations', within the meaning of the third indent of Article 4(2) of Regulation No 1049/2001.

63 The fact, emphasised by ClientEarth, that the task of carrying out the contested studies was entrusted by the Commission to an external service provider rather than being performed by its own staff, and that those studies neither reflect the position of that institution nor cause it to incur any liability, does not mean that the Commission, by instructing that such studies should be carried out, pursued an objective other than that of ensuring that it had available to it, by means of those investigations, in-depth information on the conformity of the legislation of a certain number of Member States with European Union environmental law, so that it was able to detect the existence of possible infringements of that law and to initiate, when necessary, infringement proceedings against the Member State in breach.

64 As regards ClientEarth's argument based on the judgment in *Mecklenburg* (C−321/96, EU:C:1998:300), the interpretation offered in that judgment in paragraphs 27 and 30 thereof has no relevance to this case. That judgment related to the concept of 'preliminary investigation proceedings' [instruction préliminaire], within the meaning of the third indent of Article 3(2) of Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment (OJ 1990 L 158, p. 56), and not to the concept of 'enquiry' [enquête], which was also referred to in the same provision.

65 It follows from the foregoing considerations that the General Court was correct to hold, in paragraph 50 of the judgment under appeal, that the contested studies are part of an investigation conducted by the Commission, within the meaning of the third indent of Article 4(2) of Regulation No 1049/2001.

66 The first part of the first ground of appeal must, accordingly, be rejected.

67 The Court must then examine whether, as ClientEarth maintains in the second part of its first ground of appeal, the General Court erred in law in holding that the Commission was justified in taking the view that, on the basis of general considerations, the full disclosure of those studies would have undermined the protection of the purpose of investigations, within the meaning of the third indent of Article 4(2) of Regulation No 1049/2001.

68 In that regard, in accordance with well-established case-law, in order to justify refusal of access to a document the disclosure of which has been requested, it is not sufficient, in principle, for that document to be covered by an activity mentioned in Article 4(2) and (3) of

Regulation No 1049/2001. The institution concerned must also provide explanations as to how access to that document could specifically and actually undermine the interest protected by an exception laid down in that article (judgment in *Commission* v *EnBW*, C−365/12 P, EU:C:2014:112, paragraph 64 and case-law cited).

69 It is however open to the EU institution concerned to base its decisions in that regard on general presumptions which apply to certain categories of documents, as considerations of a generally similar kind are likely to apply to requests for disclosure relating to documents of the same nature (judgment in *Commission* v *EnBW*, C−365/12 P, EU:C:2014:112, paragraph 65 and case-law cited).

70 In this case, it is plain from paragraph 66 of the judgment under appeal that the Commission relied on such general considerations in order to refuse ClientEarth full access to the contested studies. As is apparent from, inter alia, paragraphs 60 and 70 of that judgment, the General Court held that the Commission was entitled to take the view that those studies all fell within the same category of documents and to rely on the general considerations that their full disclosure would have undermined the protection of the purpose pursued by its investigations, given that that disclosure, if it had been authorised, would have been detrimental to the climate of trust which has to exist between the Commission and each Member State concerned and would have impeded, in the event that infringements of European law were identified, the achievement, free from external pressure, of a consensual solution.

71 In that regard, it is apparent from what is stated in paragraph 17 of the judgment under appeal that, when the Commission adopted the express decision, some of the contested studies had already led to the opening of the pre-litigation stage of infringement proceedings under Article 258 TFEU.

72 For reasons comparable to those set out in detail by the Court in the judgment in *LPN and Finland* v *Commission* (C−514/11 P and C−605/11 P, EU:C:2013:738, paragraphs 52 to 65), the Commission was entitled to consider that the full disclosure of the contested studies which, when the express decision was adopted, had already led it to send a letter of formal notice to a Member State, under the first paragraph of Article 258 TFEU, and had, consequently, been placed in a file relating to the pre-litigation stage of infringement proceedings, would have been likely to disturb the nature and progress of that stage of proceedings, by making more difficult both the process of negotiation between the Commission and the Member State and the pursuit of an amicable agreement whereby the alleged infringement could be brought to an end, without it being necessary to resort to the judicial stage of those proceedings. The Commission was, consequently, justified in considering that such full disclosure would have undermined the protection of the purpose of investigations, within the meaning of the third indent of Article 4(2) of Regulation No 1049/2001.

73 The fact, relied on by ClientEarth, that the contested studies were carried out by an external undertaking and do not reflect the Commission's position is not such as to invalidate the foregoing analysis.

74 First, the documents in a file relating to the pre-litigation stage of infringement proceedings constitute, as regards protection of the purpose of investigations, a single category of documents, and no distinction should be made on the basis of the type of document forming part of the file or of the author of the documents in question (see, to that effect, judgment in *LPN and Finland* v *Commission*, C−514/11 P and C−605/11 P, EU:C:2013:738, paragraph 64).

75 Second, in the light of the legal analysis and the conclusions contained in the contested studies the pre-litigation stage of infringement proceedings was opened by the Commission against some Member States. That analysis and those conclusions therefore constituted the basis for negotiations commenced by the Commission with each of the Member States concerned in order to arrive at an amicable solution to the alleged infringements of EU law. That being the case, full disclosure of those studies would have been likely, in particular, to create external pressures which might have placed in jeopardy the possibility of those negotiations being conducted in a climate of mutual trust and, consequently, to undermine the protection of the purpose pursued by the Commission's investigations.

76 It follows that the General Court was correct to hold that the Commission was entitled to consider, in general terms, that full disclosure of the contested studies which, when the express decision was adopted, had already been placed in a file relating to the pre-litigation stage of infringement proceedings opened with the sending of a letter of formal notice to the Member State concerned, under the first paragraph of Article 258 TFEU, would have undermined the protection of that purpose.

77 As regards, on the other hand, the contested studies other than those referred to in paragraphs 71 to 76 of this judgment, it must, first, be observed that, as the law stands, the Court has recognised five types of documents which enjoy a general presumption of confidentiality: the documents in an administrative file relating to a procedure for reviewing State aid (the judgment in *Commission* v *Technische Glaswerke Ilmenau*, C−139/07 P, EU:C:2010:376); the pleadings lodged by an institution in court proceedings (the judgment in *Sweden and Others* v *API and Commission*, C−514/07 P, C−528/07 P and C−532/07 P, EU:C:2010:541, paragraph 94); the documents exchanged between the Commission and notifying parties or third parties in the course of merger control proceedings (the judgment in *Commission* v *Éditions Odile Jacob* C−404/10 P, EU:C:2012:393, paragraph 123); the documents concerning an infringement procedure during its pre-litigation stage (the judgment in *LPN and Finland* v *Commission*, C−514/11 P and C−605/11 P, EU:C:2013:738, paragraph 65); and the documents relating to a proceeding under Article 101 TFEU (the judgment in *Commission* v *EnBW*, C−365/12 P, EU:C:2014:112, paragraph 93).

78 In all the cases which gave rise to the judgments cited in the preceding paragraph, the refusal of access in question related to a set of documents which were clearly defined by the fact that they all belonged to a file relating to ongoing administrative or judicial proceedings (see, to that effect, the judgments in *Commission* v *Technische Glaswerke Ilmenau*, C−139/07 P, EU:C:2010:376, paragraphs 12 to 22; *Sweden and Others* v *API and Commission*, C−514/07 P, C−528/07 P and C−532/07 P, EU:C:2010:541, paragraph 75; *Commission* v *Éditions Odile Jacob*, C−404/10 P, EU:C:2012:393, paragraph 128; *LPN and Finland* v *Commission*, C−514/11 P and C−605/11 P, EU:C:2013:738, paragraphs 49 and 50; and *Commission* v *EnBW*, C−365/12 P, EU:C:2014:112, paragraphs 69 and 70). That cannot however be said of the contested studies other than those referred to in paragraphs 71 to 76 of this judgment.

79 Second, while, as stated in paragraph 72 of this judgment, the Commission could justifiably take the view, in general terms, that the disclosure of documents relating to the pre-litigation stage of infringement proceedings would have jeopardised the proper progress of that stage and the pursuit, in a climate of mutual trust, of an amicable resolution to the dispute between the Commission and the Member State under investigation, such a general presumption could not, on the other hand, prevail with respect to those of the contested studies which, when the express decision was adopted, had not led to the sending by the Commission of a letter of formal notice to the Member State concerned, under the first paragraph of Article 258 TFEU, and where, consequently, it remained uncertain, at that time, that the

outcome of those studies would be the opening of the pre-litigation stage of infringement proceedings against that Member State. It must, in that regard, be recalled that the Commission, when it considers that a Member State has failed to fulfil its obligations, remains free to assess whether it is appropriate to bring legal proceedings for infringement and to decide when it will initiate infringement proceedings against that Member State (see, to that effect, the judgment in *LPN and Finland* v *Commission*, C−514/11 P and C−605/11 P, EU:C:2013:738, paragraph 61).

80 That being the case, by accepting, in the judgment under appeal, that the Commission could lawfully extend the scope of the presumption of confidentiality to the contested studies referred to in the preceding paragraph of this judgment, the General Court erred in law.

81 Such reasoning is incompatible with the requirement that such a presumption must be interpreted and applied strictly, since that presumption is an exception to the rule that the institution concerned is obliged to make a specific and individual examination of every document which is the subject of an application for access (see, to that effect, the judgment in *LPN and Finland* v *Commission*, C−514/11 P and C−605/11 P, EU:C:2013:738, paragraph 44 and case-law cited) and, more generally, to the principle that the public should have the widest possible access to the documents held by the institutions of the European Union (see, to that effect, judgments in *Sweden* v *MyTravel and Commission*, C−506/08 P, EU:C:2011:496, paragraph 48, and *Council* v *in 't Veld*, C−350/12 P, EU:C:2014:2039, paragraph 48).

82 It follows that, since the presumption could not be applied to the contested studies referred to in paragraph 79 of this judgment, it was the duty of the Commission to examine on a case-by-case basis whether those studies could be fully disclosed to ClientEarth.

83 The second part of the first ground of appeal must consequently be partly upheld, in so far as it relates to the contested studies which, when the Commission adopted the express decision, had not led to the sending of a letter of formal notice to the Member State concerned, under the first paragraph of Article 258 TFEU, and had therefore not been placed in a file relating to the pre-litigation stage of infringement proceedings.

84 This part of the first ground of appeal must be rejected for the remainder.

The third ground of appeal

Arguments of the parties

85 In its third ground of appeal, to the effect that the General Court erred in its interpretation of the concept of 'overriding public interest', within the meaning of the last clause of Article 4 (2) of Regulation No 1049/2001, ClientEarth claims that the findings of the General Court in paragraphs 107 to 109 of the judgment under appeal amount to its being required to bear the burden of proof rather than the Commission, which is contrary both to that provision and to the case-law of the Court which requires the institution concerned to undertake, subject to review by the Courts of the European Union, a weighing of the competing interests, starting with a presumption that an overriding public interest exists (see, to that effect, judgment in *Sweden and Turco* v *Council*, C−39/05 P and C−52/05 P, EU:C:2008:374, paragraphs 44 and 45).

86 Stating that it is of fundamental importance, to the citizens of the Union, that European Union environmental law is correctly implemented by the Member States, ClientEarth claims that the provision to the public of information relating to the conformity with that law

of national legislation constitutes an overriding public interest of particularly pressing concern.

87 The Commission contends that the analysis in paragraphs 107 to 109 of the judgment under appeal is entirely consistent with the case-law of the Court.

Findings of the Court

88 In the light of the conclusion reached in paragraphs 83 and 84 of this judgment, the examination of this third ground of appeal concerns solely the withheld parts of the only contested studies which are covered by the general presumption of confidentiality, for the reason that, when the express decision was adopted, those studies had already been placed in a file relating to the pre-litigation stage of infringement proceedings due to the sending by the Commission of a letter of formal notice to the Member State concerned, under the first paragraph of Article 258 TFEU.

89 In that regard, it must be recalled that such a general presumption does not rule out the possibility of demonstrating that there exists, under the last clause of Article 4(2) of Regulation No 1049/2001, an overriding public interest justifying the disclosure of the document concerned (see, to that effect, judgment in *Commission* v *EnBW*, C−365/12 P, EU:C:2014:112, paragraph 100 and case-law cited).

90 It is however for the party requesting access to refer to specific circumstances to establish an overriding public interest which justifies the disclosure of the documents concerned (judgment in *Strack* v *Commission*, C−127/13 P, EU:C:2014:2250, paragraph 128 and case-law cited).

91 In this case, in the procedure before the General Court and in this appeal, ClientEarth claimed that the principles of transparency and democracy entail that citizens have the right to be informed of the extent to which national law is compatible with European Union environmental law and to participate in the decision-making process.

92 In that regard, it is true that the overriding public interest which may justify the disclosure of a document need not necessarily be distinct from the principles which underlie Regulation No 1049/2001 (see, to that effect, judgments in *Sweden and Turco* v *Council*, C−39/05 P and C−52/05 P, EU:C:2008:374, paragraph 74, and *Strack* v *Commission*, C−127/13 P, EU:C:2014:2250, paragraph 130).

93 However, as the General Court correctly held in paragraph 109 of the judgment under appeal, considerations as general as those relied on by ClientEarth are not capable of demonstrating that the principles of transparency and democracy raised in this case issues of particularly pressing concern which could have prevailed over the reasons justifying the refusal to disclose in their entirety the contested studies placed in a file relating to the pre-litigation phase of infringement proceedings (see, to that effect, judgments in *LPN and Finland* v *Commission*, C−514/11 P and C−605/11 P, EU:C:2013:738, paragraphs 93 and 95, and *Strack* v *Commission*, C−127/13 P, EU:C:2014:2250, paragraph 131).

94 It follows that the third ground of appeal must be rejected.

95 In the light of all the foregoing considerations, ClientEarth's appeal must be upheld as to the second part of its first ground of appeal. Consequently, the judgment under appeal must be set aside in so far as the General Court therein accepted that the Commission could, by the express decision, refuse to ClientEarth, on the basis of a general presumption, full access to those of the contested studies which, when that decision was adopted, had not led to the

sending of a letter of formal notice to the Member State concerned, under the first paragraph of Article 258 TFEU, and had not therefore been placed in a file relating to the pre-litigation phase of infringement proceedings.

96 The appeal must be dismissed as to the remainder.

The action before the General Court

97 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.

98 In the present case, the Court considers that the action brought by ClientEarth seeking the annulment of the express decision is in a state which permits judgment and that it should, therefore, give final judgment on the action.

99 In that action, the fourth plea in law relied on by ClientEarth is to the effect that there was an infringement of the third indent of Article 4(2) of Regulation No 1049/2001 in that the Commission disregarded the limits placed on the exception laid down in that provision.

100 In the light of the conclusion reached in paragraphs 95 and 96 of this judgment, that plea in law must be examined solely to the extent that it concerns the Commission's refusal, in the express decision, to give ClientEarth full access to those of the contested studies which, when that decision was adopted, had not led to the sending of a letter of formal notice to the Member State concerned, under the first paragraph of Article 258 TFEU, and had not therefore been placed in a file relating to the pre-litigation phase of infringement proceedings.

101 In that regard, it follows from the considerations set out in paragraphs 77 to 83 of this judgment that the Commission was not entitled to rely, as it did in this case, on the general presumption that the full disclosure of those studies would have undermined the protection of the purpose pursued by its investigations. With respect to each of those studies, the Commission ought, on the contrary, to have examined and explained how such full disclosure would have actually and specifically undermined the interest protected by the exception laid down in the third indent of Article 4(2) of Regulation No 1049/2001 (see, to that effect, judgment in *LPN and Finland* v *Commission*, C−514/11 P and C−605/11 P, EU:C:2013:738, paragraph 44 and case-law cited).

102 Consequently, the Court must uphold the fourth plea in law and, therefore, the action to the extent stated in paragraph 100 of this judgment, and must annul the express decision in so far as the Commission thereby refused to give ClientEarth full access to those of the contested studies which, when that decision was adopted, had not led to the sending of a letter of formal notice to the Member State concerned, under the first paragraph of Article 258 TFEU, and had not therefore been placed in a file pertaining to the pre-litigation phase of infringement proceedings.

Costs

103 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(3) of the Rules of Procedure, applicable to appeal proceedings by virtue of Article 184(1) of those rules, where each party succeeds on some

heads and fails on others, the parties are to bear their own costs. Article 140(1) of those rules provides that the institutions which have intervened in the proceedings are to bear their own costs.

104 Since ClientEarth's appeal and its action before the General Court have been only partly upheld, it must be held that ClientEarth and the Commission should bear their own costs relating to the appeal and to the procedure at first instance. The Parliament and the Council shall bear their own costs relating to the appeal.

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

1. **Sets aside the judgment of the General Court of the European Union in *ClientEarth* v *Commission* (T−111/11, EU:T:2013:482) in so far as the General Court of the European Union thereby accepted that the European Commission could, by its decision of 30 May 2011, refuse to ClientEarth, on the basis of a general presumption, full access to those of the studies relating to the compatibility of the legislation of various Member States with European Union environmental law which, on the date when that decision was adopted, had not led the European Commission to send a letter of formal notice to the Member State concerned, under the first paragraph of Article 258 TFEU, and had not therefore been placed in a file pertaining to the pre-litigation stage of infringement proceedings;**

2. **Dismisses the appeal for the remainder;**

3. **Annuls the decision of the Commission of 30 May 2011 in so far as the European Commission thereby refused to give to ClientEarth full access to the studies referred to in point 1 of the operative part of this judgment;**

4. **Orders ClientEarth and the European Commission to bear their own costs relating to the appeal and to the procedure at first instance;**

5. **Orders the European Parliament and the Council of the European Union to bear their own costs relating to the appeal.**

[Signatures]

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* Language of the case: English.