

Martijn Frederik Nouwen

v

Council of the European Union

Judgment of the General Court (Eighth Chamber) of 10 September 2025

(Access to documents – Regulation (EC) No 1049/2001 – Documents concerning the work of the Code of Conduct Group (Business Taxation) established by the Council – Partial refusal of access – Article 4(1)(a) of Regulation No 1049/2001 – Exceptions relating to the protection of the public interest as regards international relations and the financial, monetary or economic policy of the Union or of a Member State – General presumption of confidentiality – Obligation to state reasons)

1. EU institutions – Right of public access to documents – Regulation No 1049/2001 – Refusal of access to a document on the ground that it does not exist or is not held by the institution concerned – Presumption of non-existence based on the statement to that effect by the institution concerned – Simple presumption rebuttable on the basis of relevant and consistent evidence

(European Parliament and Council Regulation No 1049/2001, recital 13 and Arts 2(3), 7 and 8)

(see paragraphs 25-29, 32-34)

2. EU institutions – Right of public access to documents – Regulation No 1049/2001 – Refusal of access to a document on the ground that it does not exist or is not held by the institution concerned – Obligation to state reasons – Scope

(Art. 296 TFEU; European Parliament and Council Regulation No 1049/2001)

(see paragraphs 47-49, 54)

3. EU institutions – Right of public access to documents – Regulation No 1049/2001 – Exceptions to the right of access to documents – Documents originating from a Member State – Power of the Member State to request the institution not to disclose documents – Procedural implications – Obligation on the Member State and the EU institution to state reasons for the decision refusing access – Scope

(Arts 1, second para., and 10(3) TEU; Arts 15(1) and 298 TFEU; Charter of Fundamental Rights of the European Union, Art. 42; European Parliament and Council Regulation No 1049/2001, recital 1 and Arts 1 and 4)

(see paragraphs 70-76)

4. EU institutions – Right of public access to documents – Regulation No 1049/2001 – Exceptions to the right of access to documents – Strict interpretation and application – Requirement that the institution should examine the documents specifically and individually – Scope – Exclusion from the obligation – Possibility to base reasoning on general presumptions applying to certain categories of documents – Limits

(Arts 1, second para., and 10(3) TEU; Arts 15(1) and 298 TFEU; Charter of Fundamental Rights of the European Union, Art. 42; European Parliament and Council Regulation No 1049/2001, recital 1 and Arts 1 and 4)

(see paragraphs 87-99, 103)

5. *EU institutions – Right of public access to documents – Regulation No 1049/2001 – Exceptions to the right of access to documents – Documents originating from a Member State – Power of the Member State to request the institution not to disclose documents – Jurisdiction of the EU judicature to review the merit of the refusal of the institution concerned – Scope*

(European Parliament and Council Regulation No 1049/2001, Art. 4(1) to (3) and (5))

(see paragraphs 112, 113)

6. *EU institutions – Right of public access to documents – Regulation No 1049/2001 – Exceptions to the right of access to documents – Protection of the public interest – International relations – Financial, monetary or economic policy of the Union or Member State – Judicial review – Scope – Limits*

(European Parliament and Council Regulation No 1049/2001, Art. 4(1)(a), third and fourth indents)

(see paragraphs 114-119, 128)

7. *EU institutions – Right of public access to documents – Regulation No 1049/2001 – Exceptions to the right of access to documents – Obligation to grant partial access to data not covered by the exceptions – Scope*

(European Parliament and Council Regulation No 1049/2001, Art. 4(1)(a), third and fourth indents, and Art. 4(6))

(see paragraph 143)

8. *EU institutions – Right of public access to documents – Regulation No 1049/2001 – Obligation to demonstrate the usefulness of the document to the applicant – None*

(European Parliament and Council Regulation No 1049/2001, Art. 4(6))

(see paragraph 150)

Résumé

The General Court, hearing an action for annulment, which it partially upholds, specifies the conditions under which the exceptions to the right of access to documents laid down in Regulation No 1049/2001 may apply, ([1](#)) where the documents at issue originate from Member States opposing their disclosure. The Court also refuses to establish a general presumption of confidentiality applicable to documents relating to the revision of the ‘Tax Code of Conduct’ adopted by a working group set up by the Council of the European Union and composed of high-level representatives of the Member States and the European Commission (‘the Code of Conduct Group’), reaffirming the principle of the widest possible access to the documents of the institutions.

The applicant, Mr Martijn Frederik Nouwen, is a professor who, inter alia, carries out research on the Tax Code of Conduct. On 14 July 2023, he submitted a request for access to documents under Regulation No 1049/2001, by which he sought disclosure of emails from the Member States, the Commission and the Council, exchanged from 2019 to 30 May 2023, concerning the reform or revision of the mandate or scope of the Tax Code of Conduct and its supervising body, namely the Code of Conduct Group, in the area of business taxation.

Following numerous exchanges between the applicant and the Council, the institution, by decision of 7 March 2024 (‘the contested decision’), in response to a confirmatory request from the applicant, informed him that it had identified 75 emails meeting the criteria of his request. The Council fully disclosed 55 of them, refused access to 19 of them and granted access to one of them in part (together, ‘the documents at issue’).

The Council based the refusal of access on the third and fourth indents of Article 4(1)(a) of Regulation No 1049/2001, on the ground that their disclosure would undermine the public interests relating to international relations and the financial, monetary or economic policy of the Union or of a Member State. That refusal was made after having consulted the Member States concerned under Article 4(5) of that regulation.

Findings of the Court

In the first place, the Court examines the Council's argument that the documents at issue are covered by a general presumption of confidentiality, since they form part of the work carried out by the Code of Conduct Group, which must remain confidential in order to protect the financial, monetary or economic policy of the Union or of a Member State and to preserve the effectiveness of that work.

In that regard, the Court recalls that Regulation No 1049/2001 reflects the intention to mark a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen. To those ends, Article 1 of Regulation No 1049/2001 provides that the purpose of that regulation is to confer on the public as wide a right of access as possible to documents of the EU institutions.

That being said, it follows from Article 4 of Regulation No 1049/2001, which introduces a system of exceptions to the right of access to documents, that that right is, nevertheless, subject to certain limits based on reasons of public or private interest. Such exceptions must be interpreted and applied strictly. In that regard, where an EU institution, body, office or agency that has received a request for access to a document decides to refuse to grant that request on the basis of one of the exceptions laid down in Article 4 of Regulation No 1049/2001, it must, in principle, explain how access to that document could specifically and actually undermine the interest protected by that exception, and the risk of the interest being undermined must be reasonably foreseeable and must not be purely hypothetical.

In certain cases, the Court's case-law has acknowledged that it was however open to that institution, body, office or agency to base its decisions 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. The objective of such presumptions is thus the possibility, for the EU institution, body, office or agency concerned, to consider that the disclosure of certain categories of documents undermines, in principle, the interest protected by the exception which it is invoking, by relying on such general considerations, without being required to examine specifically and individually each of the documents requested.

The Court notes that, as the law stands, the Court of Justice has recognised five categories of documents which enjoy general presumptions of confidentiality and the General Court has recognised five further general presumptions of confidentiality regarding other categories of documents. In each of those cases, the refusal to grant access at issue 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.

Moreover, the general presumptions of confidentiality are based on the fact that the exceptions to the right of access to documents set out in Article 4 of Regulation No 1049/2001 cannot, where the documents which are the subject of a request for access fall within a particular area of EU law, be interpreted without taking account of the specific rules governing access to those documents. Those general presumptions thus make it possible to ensure consistency in the application of legal rules which pursue different objectives and do not expressly provide for one to take precedence over the other.

Furthermore, the application of general presumptions is essentially dictated by the overriding need to ensure that the procedures at issue operate correctly, and to guarantee that their objectives are not jeopardised. Accordingly, a general presumption may be recognised on the basis that access to the documents involved in certain procedures is incompatible with the proper conduct of those procedures and the risk that those procedures could be undermined, it being understood that general presumptions ensure that the integrity of the conduct of the procedure can be preserved by limiting intervention by third parties.

In the present case, first of all, the Court finds that the documents requested are not defined by the fact that they all belonged to a file relating to ongoing administrative or judicial proceedings. Next, it is common ground that there are no specific rules governing access to documents relating to the revision of the Tax Code of Conduct. Lastly, the Council cannot rely on the Council's Conclusions, from which

it would follow that the entire work of the Code of Conduct Group should be confidential. The scope of the obligations incumbent upon an EU institution under Regulation No 1049/2001, as interpreted by the Courts of the European Union, cannot depend on the content of acts, such as the Council's Conclusions, adopted by the institution concerned itself. In those circumstances, the Court finds that a presumption of confidentiality is not intended to apply to the documents at issue.

The Court takes the view that that finding is not called into question by the Council's argument that such a presumption must apply to the documents requested on the ground that the Code of Conduct Group has an intergovernmental character because taxation remains an exclusive competence of the Member States. The Council fails to explain how that fact alone would justify the establishment of a general presumption of confidentiality. Furthermore, it is common ground that the Council holds the documents at issue. Thus, those documents are subject to the principles arising from Regulation No 1049/2001, including those enshrined in the case-law of the Courts of the European Union for the purpose of recognising a general presumption of confidentiality.

In those circumstances, the Court rejects the Council's argument that the documents at issue are covered by a presumption of confidentiality.

In the second place, as regards the question of the applicability of the third and fourth indents of Article 4(1)(a) of Regulation No 1049/2001 to the documents at issue, and compliance with the obligation to state reasons, the Court points out that, where a Member State relies on Article 4(5) of Regulation No 1049/2001 and puts forward grounds for refusal listed in Article 4(1) to (3) thereof, it is for the European Union judicature to review, on application by a person to whom the institution has refused to grant access, whether that refusal could have been validly based on those exceptions, regardless of whether the refusal results from an assessment of those exceptions by the institution itself or by the Member State concerned. Thus, ensuring effective judicial protection for the person who has made the request and to whom the institution has refused to grant access to one or more documents originating from a Member State following an objection by that State means that the European Union judicature must assess the lawfulness of the decision to refuse access in the specific case, in the light of all relevant factors, among the most important of which are the documents whose disclosure has been refused.

As regards the scope of the exceptions concerned, the Court notes that, under the third indent of Article 4(1)(a) of Regulation No 1049/2001, the institutions are to refuse access to a document where disclosure would undermine the protection of the public interest as regards international relations. Likewise, under the fourth indent of Article 4(1)(a) of Regulation No 1049/2001, the institutions are to refuse access to a document where disclosure would undermine the protection of the public interest as regards the financial, monetary or economic policy of the Union or a Member State. The particularly sensitive and essential nature of the interests protected by Article 4(1)(a) of Regulation No 1049/2001 confers on the decision which must thus be adopted by the institution a complex and delicate nature which calls for the exercise of particular care. That is all the more so since the exceptions set out in Article 4(1) of Regulation No 1049/2001 are framed in mandatory terms inasmuch as the institutions are obliged to refuse access to documents falling under any one of those exceptions once the relevant circumstances covered by those exceptions are shown to exist, and there is no need to balance the protection of the public interest against an overriding general interest.

Furthermore, the criteria set out in Article 4(1)(a) of Regulation No 1049/2001 are very general, since access must be refused, as is clear from the wording of that provision, if disclosure of the document concerned would 'undermine' the protection of the 'public interest' at issue and not only, as had been proposed during the legislative procedure which preceded the adoption of that regulation, when that protection has actually been 'significantly undermined'. Thus, the principle of strict interpretation of the exceptions set out in Article 4 of Regulation No 1049/2001 does not, in respect of the public interest exceptions provided for in Article 4(1)(a) of that regulation, preclude the institution concerned from enjoying a wide discretion for the purpose of determining whether disclosure of a document to the public would undermine the interests protected by that provision. Consequently, the review by the General Court of the legality of a decision by that institution refusing access to a document on the basis of one of those exceptions must be limited to verifying whether the procedural rules and the duty to state reasons have been complied with, whether the facts have been accurately stated and whether there has been a manifest error of assessment or a misuse of powers.

In the present case, the Court notes that the Council relied on the grounds of the protection of the public interest as regards international relations and the financial, monetary or economic policy of the Union to justify its refusal to grant access to the documents at issue under the exceptions provided for in the third and fourth indents of Article 4(1)(a) of Regulation No 1049/2001. It is therefore for the Court to ascertain whether that refusal could validly be based, in light of the content of the documents at issue, on such grounds. Following its examination, the Court concludes that three of the documents at issue were not covered by those exceptions and that, therefore, the Council should have granted full access to the applicant. In contrast, it finds that the Council was justified in objecting, on the basis of the exceptions provided for in the third and fourth indents of Article 4(1)(a) of Regulation No 1049/2001, to the disclosure of the other documents at issue.

In the third place, the Court examines whether the Council should have granted partial access to those other documents at issue to which access was fully refused.

In that regard, the Court notes, first of all, that some passages of those documents contain, in particular, general observations on the reasons for revising the Tax Code of Conduct and the appropriate time to do so, and editorial observations on certain parts of the draft new Tax Code of Conduct or the resolution relating thereto, or, moreover, general questions on the practical implementation of the draft new Tax Code of Conduct. Some of those documents also contain courtesies between the various stakeholders involved in the revision of the Tax Code of Conduct and proposals to hold additional meetings. The disclosure of such passages is manifestly not likely to present a reasonably foreseeable, and not purely hypothetical, risk to the interests protected by the exceptions provided for in the third and fourth indents of Article 4(1)(a) of Regulation No 1049/2001.

Next, those passages can be easily separated from the rest of the content of the documents concerned.

Lastly, in so far as the Council maintains that disclosure of those passages would not be of use to the applicant, the Court recalls that Article 4(6) of Regulation No 1049/2001, like that regulation as a whole, does not require the applicant to show that the document whose disclosure is requested is 'useful' to him or her. It is not for the institution receiving a request for access to documents to assess the usefulness of the document for the applicant. This is all the more so since Article 4(6) of Regulation No 1049/2001 cannot be interpreted in such a way as to amount to exempting the institution concerned from an obligation which is expressly envisaged in that provision, namely the obligation to disclose parts of the document requested, whereas such an exemption is not among the exceptions exhaustively listed by that regulation.

The Court concludes that the Council made a manifest error of assessment when it found that partial access could not be granted to the documents at issue, apart from three of them, to which full access should, in any event, have been granted.

In conclusion, the Court partially annuls the contested decision. However, it notes that it is not for the Court to substitute itself for the Council and to indicate all the parts of the documents at issue to which partial access should have been granted, because the Council is required, when implementing the judgment, and in accordance with Article 266 TFEU, to take into account the reasoning set out in it. In the present case, the Court emphasises that the passages of the documents at issue which it identified as requiring disclosure constitute only examples of passages which are manifestly not covered by the exceptions provided for in the third and fourth indents of Article 4(1)(a) of Regulation No 1049/2001, the Council being obliged, where appropriate after consulting the Member States under Article 4(5) of that regulation, to identify all passages which are not covered by them.

(¹) 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](#)).