

## **Recommendation of the European Ombudsman in case 1245/2015/NF on the Commission's refusal to give full access to documents concerning the labelling of Croatian wine**

Recommendation

**Case 1245/2015/NF - Opened on 08/10/2015 - Recommendation on 15/02/2017 - Decision on 24/11/2017 - Institution concerned** European Commission ( Maladministration found ) |

Made in accordance with Article 3(6) of the Statute of the European Ombudsman [1]

The case concerns the Commission's alleged mishandling of a request for public access to documents. The complainant, a Slovenian agricultural cooperative that produces "Teran" wine – a red wine of the Kras region in Western Slovenia that benefits from a 'protected designation of origin (PDO)' under EU law –, requested public access to any documents concerning Croatia's request for an exception for the use of the name "Teran" for wines produced in Croatia.

The Commission granted full access to one document but refused full disclosure of another four documents. The Commission argued that non-disclosure of certain parts of the four documents would be warranted to protect personal data and commercial interests of wine producers and the Commission's ongoing decision-making process on whether to grant the exception for the use of the name "Teran" requested by Croatia.

The Ombudsman inquired into the issue and found that the Commission has committed maladministration in not granting full access to the requested documents, except for the redaction of personal data. The Ombudsman recommends that the Commission otherwise fully disclose the documents at issue.

### **The background to the complaint**

1. The complaint, submitted by a Slovenian agricultural cooperative that produces a red wine called *Teran*, concerns a refusal by the European Commission to make public documents regarding restrictions on the use of the *Teran* name in Croatia.
2. The *Teran* wine produced in Slovenia benefits from a 'protected designation of origin (PDO)' [2] under EU law [3] . A Protected designation of origin (PDO) identifies a wine from a region, a specific place or, in exceptional cases, a country, whose quality and characteristics are



essentially or exclusively due to particular inherent natural and human factors, that is, to its geographical environment. [4] Through the EU PDO logo, consumers can easily recognise traditional quality products and rely on their authenticity. When a product has been registered under the PDO scheme, its producers are legally protected against imitation or misuse of the product name by producers outside the protected region.

3. *Teran* is, traditionally, produced in different parts of Istria, a region that is today divided between Slovenia, Italy and Croatia. The registration by Slovenia of its *Teran* wine as a wine with a protected designation of origin meant that when Croatia joined the EU, its wine producers were no longer allowed (after the expiry of transitional measures) to sell their own *Teran* wine under that name [5] . Croatia then requested the Commission to allow [6] Croatian producers to use the *Teran* name. [7]

4. In 2015, the complainant requested the Commission to give it public access to any documents in which Croatia had requested the Commission to allow Croatian wine producers to continue to use the name *Teran* .

5. The Commission at first identified only one document. It refused to grant access to this document [8] .

6. The complainant requested the Commission to review its decision to refuse access (it made a so-called “confirmatory application”). The complainant clarified that its request covered any documents in which Croatia requested the granting of an exception, regardless of whether such request had been made before or after Croatia’s accession to the EU. The complainant also argued that the Commission had failed to explain why it could not disclose of the requested documents. In addition, the complainant argued that there was an overriding public interest in disclosure of the requested documents.

7. In its decision on the complainant’s request for review, the Commission identified the five documents falling within the complainant's access request:

(1) A cover letter from the Mission of the Republic of Croatia to the Commission, dated 16 May 2013 (pre-accession correspondence);

(1a) A letter from the Croatian Ministry of Agriculture to the Commission, dated 13 May 2013 ("Annex XV Part A and Part B of the Commission Regulation (EC) No 607/2009 of 14 July 2009, List of wine grape varieties and their synonyms that may appear on the labelling of wines");

(1b) A letter from the Croatian Ministry of Agriculture to the Commission, dated 13 May 2013 ("Transitional measures for the Republic of Croatia in the wine sector regarding wines harvested in 2012 and previous years, according to Article 41 of the Accession Treaty");

(1c) A letter from the Croatian Ministry of Agriculture to the Commission, dated 13 May 2013;

(2) A letter from the Croatian Ministry of Agriculture to the Commission, dated 16 April 2014



("Legal solution for Teran issue").

8. The Commission granted full access to document (1) and partial access to documents (1a), (1b), (1c), and (2). The Commission based its non-disclosure of certain parts of documents (1a), (1b), (1c), and (2) on the following three exceptions to public access to documents: (i) the protection of privacy and integrity of the individual [9] ; (ii) the protection of an ongoing decision-making process [10] ; and (iii) the protection of commercial interests [11] . It also rejected the complainant's argument that there was an overriding public interest in the disclosure of the documents.

9. The complainant then turned to the Ombudsman.

### **The inquiry**

10. The Ombudsman opened an inquiry into the complainant's concern that the Commission had failed to handle properly the request for access to the letters sent by the Croatian authorities to the Commission in relation to the use of the name *Teran* for wine produced in Croatia. The complainant wished the Commission to grant full access to the documents.

11. When opening the inquiry, the Ombudsman asked the Commission to address the complainant's argument that the documents should be subject to a high level of transparency, given that the exception to the protected designation of origin, requested by Croatia, were to be granted through the adoption of a Commission delegated act. The recital of the EU rules on public access to documents set out that wider access should be granted to documents in cases where the institutions are acting in their legislative capacity, including under delegated powers. [12]

12. In the course of the inquiry, the Ombudsman received the reply of the Commission setting out its views on the complaint and, subsequently, the comments of the complainant in response to the Commission's reply. The Ombudsman's inquiry team also carried out an inspection of the Commission's file. In conducting the inquiry, the Ombudsman has taken into account the arguments and opinions put forward by the parties.

### **The Commission's refusal to grant full access to the letters sent by the Croatian authorities in relation to the use of the name *Teran* for wine produced in Croatia**

Arguments presented to the Ombudsman

13. The Commission gave the following reasons for refusing (full) public access to the requested documents. It stated that document (1b) contains personal data of Croatian wine producers, such as their names and addresses. Under EU rules on public access to documents, personal data may be released only if the person requesting access establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interest might be prejudiced. [13] The Commission argued that the complainant had not demonstrated the necessity of transferring the personal data and that this data could therefore



not be disclosed on the basis of the exception to public access on the **protection of the privacy of the individual** [14] .

**14.** The Commission further argued that disclosure of the documents could have far-reaching consequences for the concerned Slovenian and Croatian wine producers. The Commission's decision on whether to grant the exception for the PDO of the *Teran* wine will strongly affect the producers' marketing strategies and sales and thus their business interests. The Commission therefore also applied the exception to access for the **protection of commercial interests** [15] . The Commission argued that “ *it seems reasonably foreseeable and not purely hypothetical that if a decision will produce a commercially significant impact on Slovenian and Croatian producers [...] release of the commercially sensitive information informing that process would have a similar impact* ”. In the Commission's view, the fact that the complainant – a Slovenian producer of *Teran* wine – is interested in obtaining access to the documents concerned confirms that the documents are commercially sensitive.

**15.** The Commission confirmed that it is empowered to adopt delegated acts covering exceptions to the use of a PDO wine name for the labelling of products [16] . The Commission, however, has so far not adopted a proposal for a delegated act regarding the *Teran* wine PDO, which means that its decision-making process is still ongoing. The Commission therefore also applied the exception to access for the protection of the ongoing decision-making process. [17] The Commission contended that full disclosure of the documents would reveal arguments put forward by the Croatian authorities in support of an exception in relation to the *Teran* wine PDO. Given that the Commission is still in the process of deliberating on the matter, full disclosure of the documents would seriously undermine its ability to take a decision free from external pressure and would hinder it in carrying out the necessary internal consultations in a peaceful and efficient manner. The Commission also pointed out that a delegated act on the matter would be subject to the control of the EU legislature [18] , which could veto the proposal during a two month time period. The Commission therefore concluded that full disclosure of documents (1a), (1b), (1c), and (2) would seriously undermine its ongoing decision-making process.

**16.** In addition, the Commission argued that the protection of the commercial interests of Slovenian and Croatian wine producers and of the Commission's ongoing decision-making process would outweigh any **public interest** [19] in full disclosure of the documents.

**17.** In response to the Ombudsman's request that the Commission address the complainant's argument that the documents should be subject to a high level of transparency, given that they relate to the adoption of a delegated act, the Commission reiterated that it had not yet adopted a proposal for a delegated act, but that it was still in the process of deliberating on the matter. It recalled that an eventual delegated act would be subject to the EU legislature's scrutiny and it argued that, in any event, it was clear from the EU courts' case-law that a delegated act is distinct [20] from a legislative act.

**18.** The complainant argued that the Commission was wrong to apply the exception to access aiming at protecting the commercial interests of Slovenian and Croatian wine producers. The



Commission's argument that disclosure of the documents would undermine the commercial interests of the wine producers was based on the effects of the Commission's eventual *decision* on the requested PDO exception, rather than on the effects of disclosure of the documents. The complainant argued that *"the non-existence of a relevant causal link between the disclosure of the hidden parts of documents on the one hand and the effects of the decision on the deviation on the other is also demonstrated by the fact that the same effect – i.e. a significant effect on the marketing and sale strategy and the relevant results achieved by the Slovenian and Croatian producers – would occur regardless of the disclosure of these documents. That is because those effects will not be caused by the disclosure of information in the hidden parts of documents, but [by] the new circumstances on the market resulting from [the Commission's decision whether or not to grant the PDO exception]"*. The complainant added that the application of the exception for the protection of commercial interests must be examined solely on the basis of the information contained in the requested documents, irrespective of who seeks access to the documents.

**19.** Regarding the Commission's application of the exception for the protection of the ongoing decision-making process, the complainant argued that this exception can be invoked only where the external public pressure resulting from disclosure of the documents is so intense as to *seriously* undermine the Commission's decision-making process. The Commission would have to prove that it would be impossible or extremely difficult for it to take a decision on the requested PDO exception after having disclosed the documents at issue. The Commission did not put forward any arguments to show that this would be the case. In the complainant's view, the possibility of external pressure was thus purely hypothetical.

**20.** The complainant also argued that the EU rules on public access to documents [21], as well as the related case-law [22], indicates that wider access to documents shall be granted when institutions execute delegated powers. The need for public scrutiny of the Commission's execution of its delegated powers, and of the related documents, must thus, in the complainant's view, be regarded as a public interest overriding the need for the protection of commercial interests and of the ongoing decision-making process. In addition, the promotion of fair competition between wine producers and the protection of consumers would also represent an overriding public interest. The complainant maintained that the Commission should grant full access to the requested documents.

The Ombudsman's assessment leading to a recommendation

**21.** Transparency is an essential aspect of good democratic governance. The principle of transparency finds specific expression in the fundamental right of access to documents [23], the application of which is governed by specific EU rules [24]. The EU rules on public access to documents are a key element in ensuring that decisions are taken as openly as possible and as closely as possible to the citizens.

**22.** The right of public access to documents, however, is not absolute; it is subject to certain exceptions laid down in the relevant EU rules [25]. In order to ensure that the right of public access is not unnecessarily limited, it is crucial that the exceptions are applied correctly and



narrowly by the EU institutions [26] . If the Commission considers that it cannot disclose a document requested by a member of the public, it is obliged to provide an adequate justification for its refusal to grant such public access, based on at least one of the exceptions to access. [27] In the present case, the Commission has invoked three exceptions to refuse full access to the documents requested by the complainant: (i) the protection of privacy and integrity of the individual [28] ; (ii) the protection of an ongoing decision-making process [29] ; and (iii) the protection of commercial interests [30] .

*The Commission's application of the exception for the protection of privacy*

23. The Ombudsman agrees with the Commission's position that under the relevant EU rules [31] , in order to get access to personal data, an applicant has to establish the necessity of having the data transferred. The complainant has not put forward any such necessity argument as regards the personal data contained in document (1b), neither in its request for review, nor in its complaint to the Ombudsman or in the context of the Ombudsman's inquiry. **The Commission was thus entitled to rely on the exception to access for the protection of privacy as regards the personal data contained in document (1b).**

*The Commission's application of the exception for the protection of commercial interests*

24. The relevant exception to access applies if disclosure of a document would undermine the protection of commercial interests of a natural or legal person, unless there is an overriding public interest in disclosure. First, the exception can apply only if there are “ *commercial interests* ” that could “ *specifically and actually* ” [32] be undermined by disclosure. Notwithstanding the fact that the EU courts have not clearly defined the meaning of commercial interests, it is established case-law that **not all information relating to a company and its business relations can be regarded as being covered by the protection** given to commercial interests in accordance with EU rules on public access to documents [33] . If all such information were to be covered by the relevant exception, the general principle of giving the public the widest possible access to documents held by the EU institutions would be circumvented. [34]

25. Information typically covered by the exception are business secrets [35] , information covered by the obligation of professional secrecy, and information provided in the context of competition and state aid investigations [36] . **No information of any such kind is contained in the relevant documents** . Neither does the information in the documents enable the commercial activity of undertakings to be determined [37] , nor does it relate to the cost structure of undertakings [38] or to the economic viability, market shares or production costs of undertakings [39] . The Commission itself has defined commercial interests as “ *the ability of natural or legal persons to exercise their commercial and business activities* ” [40] . In the Ombudsman's view, there is no information in the relevant documents that, if disclosed, would undermine the ability of Slovenian and Croatian wine producers to exercise their commercial and business activities.

26. The Commission has not provided any concrete explanation identifying [41] *the commercial*



*interests* that would, in its view, **be undermined** as a consequence of the documents being disclosed. Nor has the Commission explained in *what way* such commercial interests would be *specifically and actually undermined*. It has also failed to explain why the risk of such interests being undermined would be *reasonably foreseeable* and not purely hypothetical. [42] The Commission argues that its decision to grant or refuse the derogation requested by Croatia for the use of the name *Teran* will have a major impact on the marketing and sales strategies of both Slovenian and Croatian producers and hence on their commercial interests. It argues that it seems reasonably foreseeable that if such a decision will produce a commercially significant impact on Slovenian and Croatian producers, the release of information informing that process would have a similar impact. **This argument, to be convincing, would have at least to be premised on the existence of commercially sensitive information in the relevant documents, or that the documents were to indicate whether the Commission will or will not grant the requested exception for the PDO of the *Teran* wine**. In the Ombudsman's view, based on a careful review of the documents obtained in the Ombudsman's inspection, there is no commercially sensitive information or any indication of the Commission's substantive position on the request in the relevant documents. **The Ombudsman thus concludes that the Commission has wrongly refused full access to documents (1a), (1b), (1c) and (2) on the basis of the exception aimed at protecting commercial interests.**

*The Commission's application of the exception for the protection of the ongoing decision-making process*

27. EU rules on public access to documents [43] provides that access to a document which relates to a matter where the decision has not been taken by the institution shall be refused if disclosure of the document would seriously undermine the institution's decision-making process. Like any exception to the right of public access to documents, this exception must be *interpreted and applied strictly*. [44] The internal decision-making process at issue is the **Commission's decision-making process deliberating on the adoption of a delegated act**. [45]

28. The aim to protect the decision-making process from targeted external pressure may constitute a legitimate ground for restricting access to documents relating to a particular decision-making process. Nevertheless, it must be reasonably foreseeable that there will be external pressure resulting from the release of the documents and that the external pressure will be of such a character and of such an intensity as to seriously undermine the Commission's decision-making processes. [46] The Commission's argument that the disclosure of the requested documents would create a public debate which could *possibly* pressure the Commission to adopt a particular decision is a very vague and general statement. The Commission has not put forward sufficiently specific and substantiated arguments to show that there would be a real risk of external pressure of such a character and of such an intensity as to seriously undermine the Commission's decision-making processes, should the documents be disclosed in their entirety [47]. Even if it were the case that wine producers in either Croatia or Slovenia were to express their disagreement with the contents of such documents, such expressions of disagreement are a normal part of public discourse, which the Commission should be capable of dealing with without, in any way, seriously compromising its





decision-making processes. Indeed, any possible criticism of the contents of the documents by such third parties could, far from damaging the Commission's decision-making processes, only serve to improve the Commission's decision-making by allowing it to identify and deal with any concerns of the various stakeholders. The Ombudsman therefore considers that **the Commission has failed to establish that full disclosure of documents (1a), (1b), (1c), and (2) would seriously undermine its internal decision-making process**.

29. An additional reason for the Ombudsman to consider that disclosure of the redacted parts of documents (1a) and (1b) could not possibly seriously undermine the Commission's internal decision-making process on the PDO issue, is that these documents are not *specifically* related to the particular issue of the *Teran* wine PDO. Documents (1a) and (1b) concern transitional measures and the application by Croatia of EU law in the wine sector in the context of Croatia's accession to the EU, which are matter that have been resolved through the adoption of a Commission Implementing Regulation [48].

*High level of transparency for documents where the Commission is acting under delegated powers*

30. The purpose of the EU rules on public access to documents [49] is to give the public the widest possible right of access to documents. "Widest possible access" means that the public must have a right to *full* disclosure of the requested documents and that the only means of limiting that right is the strict application of the exceptions explicitly provided for [50]. [51] When applying the exceptions to specific documents, **particular attention must be paid to the nature of the activity that is being carried out [52]**. The internal decision-making process at issue in the present case is the **Commission's decision whether or not to adopt a delegated act** granting an exception to the rule that the wine grape variety *Teran*, which consists of a protected designation of origin to the benefit of Slovenian wine producers, shall not be used for the purposes of labelling wine produced by Croatian, or any other, producers. [53] The recital of the EU rules on public access to documents [54] **provides that access should be granted to the greatest possible extent "to documents in cases where the institutions are acting in their legislative capacity, including under delegated powers"**. The Commission stated, in its reply to the Ombudsman, that it "*has not yet adopted its proposal for a delegated act, and the deliberations on the latter are still fully ongoing*".

31. The Commission has not (yet) adopted a delegated act. However, this does not mean that the Commission, when it is deliberating on whether to adopt such an act, is not currently *acting under delegated powers*. **The Commission could not possibly deliberate on whether or not to grant the exception requested by Croatia, had it not being acting under delegated powers entrusted to it by the EU legislature**. It follows that **the Commission's internal decision-making process on whether or not to adopt a delegated act does not precede, but necessarily entails, its acting under delegated powers**. [55] The relevant documents should thus benefit from the highest possible level of transparency. Given the wording of the recital of the EU rules on public access to documents, which expressly refers to the acting under delegated powers, it is irrelevant, in the Ombudsman's view, that the Commission is not, as it has rightly pointed out, acting in a legislative capacity.





**32. In light of all of the above, the Ombudsman finds that the Commission's refusal to give full access to the documents at issue, except for the personal data in document (1b), constitutes maladministration .** She therefore makes a corresponding recommendation below, in accordance with Article 3(6) of the Statute of the European Ombudsman.

## **Conclusion**

### Recommendation

On the basis of the inquiry into this complaint, the Ombudsman makes the following recommendation to the Commission:

**The Commission should (i) grant access to document (1b), with the exception of the personal data, and should (ii) fully disclose documents (1a), (1c) and 2.**

The Commission and the complainant will be informed of this recommendation. In accordance with Article 3(6) of the Statute of the European Ombudsman, the Commission shall send a detailed opinion within three months from the date of this recommendation. The detailed opinion could consist of the acceptance of the recommendation and a description of how it has been implemented.

Strasbourg, 15/02/2017

Emily O'Reilly

European Ombudsman

[1] Decision of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties (94/262/ECSC, EC, Euratom), OJ 1994 L 113, p. 15.

[2] See the relevant entry in the Commission's e-bacchus database:

<http://ec.europa.eu/agriculture/markets/wine/e-bacchus/index.cfm?event=pdfEccgi&language=EN&eccgild=8347>  
[Link]

[3] An overview of the EU's protected quality schemes for wines is available here:

[http://ec.europa.eu/agriculture/quality/schemes/wines/index\\_en.htm](http://ec.europa.eu/agriculture/quality/schemes/wines/index_en.htm) [Link]

An overview of the EU's legislation on the PDO of wines is available here:

[http://ec.europa.eu/agriculture/quality/schemes/legislation/index\\_en.htm](http://ec.europa.eu/agriculture/quality/schemes/legislation/index_en.htm)

[4] [http://ec.europa.eu/agriculture/quality/schemes/wines\\_en](http://ec.europa.eu/agriculture/quality/schemes/wines_en)



[5] As a transitional measure, Croatia was allowed to market its wines produced before 30 June 2013 with the labels provided for in Croatia's pre-accession legislation until stocks were exhausted. See Article 1(1) of Commission Implementing Regulation 753/2013 of 2 August 2013 amending Regulation (EC) No 607/2009 laying down certain detailed rules for the implementation of Council Regulation (EC) No 479/2008 as regards protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products, OJ 2013 L 210, p. 21.

[6] The Commission may grant an exception by adopting a delegated act according to Article 100(3) of Regulation 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007, OJ 2013 L 347, p. 671.

[7] See the Commission's answer of 13 February 2015 to a parliamentary question on the matter:

<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2014-010598&language=EN>  
[Link]

[8] Article 4(3) (protection of an institution's decision-making process) and Article 4(2) first indent (protection of the commercial interests of a natural or legal person, including intellectual property) of Regulation 1049/2001 of the European Parliament and the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.

[9] Article 4(1)(b) of Regulation 1049/2001.

[10] Article 4(3) of Regulation 1049/2001.

[11] Article 4(2) first indent of Regulation 1049/2001.

[12] See recital 6 of Regulation 1049/2001.

[13] Article 4(1)(b) of Regulation 1049/2001 in conjunction with Articles 2(a) and 8(b) of Regulation 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. See also judgement of the Court of Justice of 29 June 2010, *Commission v Bavarian Lager*, C-28/08 P, ECLI:EU:C:2010:378.

[14] Article 4(1)(b) of Regulation 1049/2001.

[15] Article 4(2) first indent of Regulation 1049/2001.



- [16] Article 100(3) of Regulation 1308/2013.
- [17] Article 4(3) of Regulation 1049/2001.
- [18] The European Parliament and the Council of the EU.
- [19] Article 4(2) and (3) of Regulation 1049/2001.
- [20] Order of the General Court of 6 September 2011, *Inuit Tapiriit Kanatami and Others v Parliament and Council*, T-18/10, ECLI:EU:T:2011:419, para 56.
- [21] Recital 6 of Regulation 1049/2001.
- [22] Judgment of the Court of Justice of 1 July 2008, *Sweden and Turco v Council*, C-39/05 P and C-52/05 P, ECLI:EU:C:2008:374.
- [23] Article 42 of the Charter of Fundamental Rights of the European Union.
- [24] Regulation 1049/2001.
- [25] Article 4 of Regulation 1049/2001.
- [26] Judgment of the Court of Justice of 21 September 2010, *Sweden and Others v API and Commission*, C-514/07 P, C-528/07 P and C-532/07 P, ECLI:EU:C:2010:541, para 73; judgment of the Court of Justice of 18 December 2007, *Sweden v Commission*, Case C-64/05, ECLI:EU:C:2007:802, para 66.
- [27] Judgment of the Court of Justice of 1 July 2008, *Sweden and Turco v Council*, C-39/05 P and C-52/05 P, ECLI:EU:C:2008:374, para 35; judgment of the Court of First Instance of 11 March 2009, *Borax Europe v Commission*, T-166/05, ECLI:EU:T:2009:65, para 40.
- [28] Article 4(1)(b) of Regulation 1049/2001.
- [29] Article 4(3) of Regulation 1049/2001.
- [30] Article 4(2) first indent of Regulation 1049/2001.
- [31] Article 4(1)(b) of Regulation 1049/2001 in conjunction with Articles 2(a) and 8(b) of Regulation 45/2001 on the protection of individuals with regard to the processing of personal data.
- [32] See, for example, judgment of the Court of First Instance of 30 January 2008, *Terezakis v Commission*, T-380/04, ECLI:EU:T:2008:19, para 97.
- [33] Article 4(2) first indent of Regulation 1049/2001.



[34] Judgment in *Terezakis v Commission*, T-380/04, cited above, ECLI:EU:T:2008:19, para 93; judgment of the General Court of 22 May 2012, *EnBW Energie Baden-Württemberg v Commission*, T-344/08, ECLI:EU:T:2012:242, para 134.

[35] Judgment of the General Court of 15 January 2013, *Strack v Commission*, T-392/07, ECLI:EU:T:2013:8, para 227.

[36] Judgment of the Court of Justice of 29 June 2010, *Commission v Technische Glaswerke Ilmenau*, C-139/07 P, ECLI:EU:C:2010:376, para 61; judgment of the Court of Justice of 28 June 2012, *Commission v Éditions Odile Jacob*, C-404/10 P, ECLI:EU:C:2012:393, paras 123 and 124; judgment of the Court of Justice of 28 June 2012, *Commission v Agrofert Holding*, C-477/10 P, ECLI:EU:C:2012:394, paras 64, 66 and 68; judgment of the Court of Justice of 27 February 2014, *Commission v EnBW*, C-365/12 P, ECLI:EU:C:2014:112, para 93.

[37] Judgment of the General Court of 19 January 2010, *Co-Frutta v Commission*, T-355/04 and T-446/04, ECLI:EU:T:2010:15, para 131.

[38] Judgment in *Terezakis v Commission*, T-380/04, cited above, ECLI:EU:T:2008:19, para 95.

[39] Judgment in *Strack v Commission*, T-392/07, cited above, ECLI:EU:T:2013:8, para 227.

[40] Confirmatory decision SG.B.2/SB/md D(2005) 1375 of 15 February 2005.

[41] Judgment in *Terezakis v Commission*, T-380/04, cited above, ECLI:EU:T:2008:19, paras 93 and 104.

[42] See judgment of the General Court of 22 March 2011, *Access Info Europe v Council*, T-233/09, ECLI:EU:T:2011:105, para 59, where the General Court summarised the standard in relation to the applicability of an exception: “ *Moreover, the mere fact that a document concerns an interest protected by an exception is not sufficient to justify application of that exception (Case T-2/03 Verein für Konsumenteninformation v Commission [2005] ECR II-1121, paragraph 69). Such application may, as a rule, be justified only if the institution has previously assessed whether access to the document could specifically and effectively undermine the protected interest. In addition, the risk of a protected interest being undermined must, in order to be capable of being relied on, be reasonably foreseeable and not purely hypothetical (Sweden and Turco v Council, paragraph 57 above, paragraph 43, and judgment of 11 March 2009 in Case T-166/05 Borax Europe v Commission, not published in the ECR, paragraph 50).* ”

[43] Article 4(3) first subparagraph of Regulation 1049/2001.

[44] See, for example, judgment in *Access Info Europe v Council*, T-233/09, cited above, ECLI:EU:T:2011:105, para 55; judgment of the Court of Justice of 18 December 2007, *Sweden v Commission*, C-64/05 P, ECLI:EU:C:2007:802, para 66.



[45] See Articles 100(3) and 227 of Regulation 1308/2013.

[46] Judgment of the General Court of 9 September 2014, *MasterCard and Others v Commission*, Case T-516/11, ECLI:EU:T:2014:759, para 71.

[47] See, for example, judgment of the General Court of 20 September 2016, *PAN Europe v Commission*, T-51/15, ECLI:EU:T:2016:519, para 33.

[48] Commission Implementing Regulation 753/2013 of 2 August 2013 amending Regulation (EC) No 607/2009 laying down certain detailed rules for the implementation of Council Regulation (EC) No 479/2008 as regards protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products, OJ 2013 L 210, p. 21.

[49] See recital 4 and Article 1 of Regulation 1049/2001.

[50] Regulation 1049/2001.

[51] Judgment in *Access Info Europe v Council*, T-233/09, cited above, ECLI:EU:T:2011:105, para 56.

[52] Opinion of Advocate General Cruz Villalón delivered on 16 May 2013, Case C-280/11 P, ECLI:EU:C:2013:325, para 55.

[53] See Articles 100(3) and 227 of Regulation 1308/2013.

[54] Recital 6 of Regulation 1049/2001.

[55] EU law does not define a procedure for the exercise of delegated powers by the Commission. What is clear, however, is that the Commission's exercise of its delegated powers *finishes* with the adoption of a delegated act. Whether or not the entry into force of that delegated act is then subject to a veto right by the EU legislature, is of no relevance in this regard.