Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fifth Chamber)

15 July 2015*

(Access to documents — Regulation (EC) No 1049/2001 — Documents relating to the affiliation of certain Members of the European Parliament to the additional pension scheme — Refusal to grant access — Exception relating to the protection of privacy and the integrity of the individual — Article 8(b) of Regulation (EC) No 45/2001 — Transfer of personal data — Conditions concerning the necessity of having the data transferred and the risk that the data subject's legitimate interests might be prejudiced)

In Case T-115/13,

Gert-Jan Dennekamp, residing in Giethoorn (Netherlands), represented by O. Brouwer, T. Oeyen and E. Raedts, lawyers,

applicant,

supported by

Republic of Finland, represented by H. Leppo, acting as Agent,

by

Kingdom of Sweden, represented initially by A. Falk, C. Meyer-Seitz, S. Johannesson and U. Persson, and subsequently by A. Falk, C. Meyer-Seitz, U. Persson, E. Karlsson, L. Swedenborg, C. Hagerman and F. Sjövall, acting as Agents,

and by

European Data Protection Supervisor (EDPS), represented by A. Buchta and U. Kallenberger, acting as Agents,

interveners,

v

European Parliament, represented by N. Lorenz and N. Görlitz, acting as Agents,

defendant,

APPLICATION for annulment of Decision A(2012) 13180 of the European Parliament of 11 December 2012 refusing to grant the applicant access to certain documents relating to the affiliation of certain Members of the European Parliament to the additional pension scheme,

* Language of the case: English.

THE GENERAL COURT (Fifth Chamber),

composed of A. Dittrich, President, J. Schwarcz (Rapporteur) and V. Tomljenović, Judges,

Registrar: L. Grzegorczyk, Administrator,

having regard to the written part of the procedure and further to the hearing on 19 November 2014,

gives the following

Judgment

Background to the dispute

1 The applicant, Mr Gert-Jan Dennekamp, is a journalist employed by the Nederlandse Omroep Stichting (Netherlands Broadcasting Association).

2 On 25 November 2005, the applicant submitted an application to the European Parliament, on the basis of 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), for access to 'all documents' relating to the additional pension scheme for Members of the European Parliament ('the additional pension scheme'). He was granted access to: (i) a note from the Secretary-General to the Bureau of the European Parliament ('the Bureau'); (ii) 'Annual Reports and Accounts' spanning several years; and (iii) the minutes of a Bureau meeting. Subsequently, the complaint lodged by the applicant with the European Ombudsman against the refusal to grant him access to the list of Members of the European Parliament ('MEPs') who were members of the additional pension scheme was closed.

3 By letter of 20 October 2008, the applicant submitted an application for access to all the documents indicating which MEPs were then members of the additional pension scheme, to the list of MEPs who were members of the scheme on 1 September 2005 and to the list of members of the scheme as at the date of the application for access for whom the European Parliament paid a monthly contribution. By decision of 17 December 2008, the Parliament rejected the confirmatory application for access to the abovementioned documents.

4 The General Court dismissed the action for annulment of the decision of 17 December 2008 by its judgment of 23 November 2011 in *Dennekamp* v *Parliament* (T-82/09, EU:T:2011:688). In essence, the Court ruled that the applicant had failed to take account, in his application for access to the documents, of the principle laid down in the judgment of 29 June 2010 in *Commission* v *Bavarian Lager* (C-28/08 P, ECR, EU:C:2010:378, paragraph 63), that it is necessary, where an application for access relates to personal data, to apply in full Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1). More specifically, the Court found that the applicant had failed to demonstrate the necessity for the personal data to be transferred, as was required by the provisions of Article 8(b) of Regulation No 45/2001 (judgment in *Dennekamp* v *Parliament*, EU:T:2011:688, paragraphs 31 to 35).

5 By letter of 10 September 2012, the applicant asked the President of the European Parliament to grant him access to four categories of documents: all documents showing which current MEPs were also members of the additional pension scheme; a list of names of MEPs who were members of the

scheme after September 2005; a list of names of the members of the scheme for whom the Parliament paid a monthly contribution; all documents related to the financial position of the scheme since 2009 ('the initial application').

6 In the initial application, the applicant submitted that there was an objective necessity within the meaning of Article 8(b) of Regulation No 45/2001 for the personal data to be transferred and, moreover, that there was no risk that the data subjects' legitimate interests would be prejudiced by disclosure of the data concerned.

7 As regards the necessity of having the personal data transferred, the applicant, relying on the existence of a broad public interest in transparency, recognised by Regulation No 1049/2001, highlighted the need for the public to have a better understanding of how decisions were being taken and the fact that, to that end, a debate could be generated through press reporting. In the present case, he stressed that it was of the utmost importance for European citizens to know which MEPs had a personal interest in the additional pension scheme, having regard, principally, to the fact that the European Parliament paid two thirds of the contributions of the MEPs participating in the scheme, that it had, on several occasions, made up shortfalls in the scheme and that it had committed itself to compensating any losses suffered by the scheme, thus ensuring the preservation of the acquired pension rights of MEPs participating in the scheme, which, in the applicant's view, translated into considerable use of public funds.

8 As to there being no prejudice to the legitimate interests of the MEPs, the applicant took the view that it was difficult to see what harm could come from disclosing the names of the MEPs participating in the additional pension scheme, as those MEPs could continue to participate in it and to benefit from it, and that this would not lead to disclosure of their private investments. Should the view be taken that disclosure of the names of the MEPs participating in the scheme would affect their private interests, the applicant's arguments that these are not legitimate private interests since, given that the scheme was established and was influenced by elected representatives for elected representatives and pays benefits funded from public money, such private interests ought not to be treated in the same manner as those relating to private contributions into a normal pension scheme. In the applicant's view, a negative public reaction to the membership of certain MEPs in the scheme cannot be regarded as undermining the right to privacy, which Regulation No 1049/2001 seeks to avoid.

9 Lastly, in the initial application, having referred to the Charter of Fundamental Rights of the European Union and to the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 ('the ECHR'), the applicant claimed that, by his application, he was not seeking to interfere with the MEPs' home or family lives, but to foster a public debate regarding the exercise of public functions, in which European citizens should be allowed to participate.

10 By letter of 17 October 2012, the Secretary-General of the European Parliament refused access to the first three categories of documents on the ground that they were documents containing personal data in respect of which Article 8(b) of Regulation No 45/2001 required the applicant to establish the necessity of having the data transferred and that there was no reason to assume that the data subjects' legitimate interests might be prejudiced. In the Secretary-General's view, the applicant had failed to demonstrate the necessity for the data at issue to be transferred by referring exclusively to the public interest in transparency. Accordingly, he took the view that it was not necessary to examine whether there was a risk that the MEPs' legitimate interests might be prejudiced. Lastly, as regards the fourth category of documents requested by the applicant, the Secretary-General identified the documents relating to the financial position of the additional pension scheme since 2009 and provided the references under which those documents could be found on the Parliament's website.

11 By letter of 8 November 2012, the applicant submitted, pursuant to Article 7(2) of Regulation No 1049/2001, a confirmatory application for access to the first three categories of documents referred to in paragraph 5 above ('the confirmatory application'). The applicant drew particular attention to the reasons why he considered it necessary to have the personal data at issue transferred, relying on the right of access to information and the right to freedom of expression. He noted the European Parliament's failure to weigh the necessity for that data to be transferred against the right to privacy of the MEPs concerned, and the lack of any explanation as to how the requested access could specifically and actually have undermined the privacy of those MEPs. Next, the applicant explained in detail, on the one hand, why it was necessary for the documents requested to be disclosed, namely, in order for him to be able to report on the manner in which public money was being spent, the possible impact of private interests on the voting behaviour of the MEPs and on the functioning of control mechanisms, and, on the other hand, why any private interests of the MEPs concerned by the requested documents could not prevail over the freedom of expression and the public's interest in being informed of how public funds were spent and political decisions taken.

12 By Decision A(2012) 13180 of 11 December 2012, the European Parliament rejected the confirmatory application ('the contested decision').

13 In the contested decision, the European Parliament based the refusal to grant access to the documents requested on the exception relating to a risk of privacy and the integrity of the individual being undermined, as provided for in Article 4(1)(b) of Regulation No 1049/2001, on the grounds that those documents contained personal data within the meaning of Article 2(a) of Regulation No 45/2001, disclosure of which would be contrary to that regulation, which must be applied in its entirety where the documents requested contain such data.

14 As regards the requirement relating to necessity laid down in Article 8(b) of Regulation No 45/2001, in the contested decision the European Parliament first considered that it had to be interpreted restrictively like any other exception to a fundamental right. Secondly, it agreed that the applicant had been very specific about his intentions concerning the personal data at issue, but stated that his arguments failed to establish the necessity of having the data transferred. The Parliament took the view that to accept as a valid argument, in the context of Article 8(b) of Regulation No 45/2001, the assertion of an interest of the public and of the media in exercising control over public expenditure would be to allow the disclosure of personal data beyond any reasonable limit and would infringe the rules on the protection of such data. More specifically, the Parliament noted that the applicant had not established a link between his intentions and the specific data to which he had requested access. It was neither necessary nor proportionate to request the names of all MEPs participating in the additional pension scheme, since decisions relating to that scheme were adopted by the Bureau. Thirdly, the Parliament observed that the risk of a conflict of interest was typical of the situation of a parliament, for a parliament always decided on the remuneration of its members, a fact which could not justify per se the disclosure of personal data. Fourthly, the Parliament considered that Article 8(b) of Regulation No 45/2001 had to be interpreted in such a way as to safeguard the rationale and effectiveness of that regulation and that it could not be applied in such a way as to render the regulation completely devoid of substance, which would be the case if, as in the present case, the sole purpose of the transfer of personal data was the immediate disclosure of the data to the public. However, because the application of Article 8(b) of Regulation No 45/2001 requires the person requesting the transfer to demonstrate the necessity for the personal data to be transferred, the aim pursued by the applicant would enable persons who had not demonstrated any such necessity to have access to those data, contrary to the rule laid down in the judgment in *Commission* v *Bavarian Lager*, cited in paragraph 4 above (EU:C:2010:378, paragraph 63).

15 As regards the weighing up of the necessity of transferring the personal data at issue against the legitimate interests of the data subjects, the European Parliament considered, in the light of Regulation No 45/2001, that those legitimate interests prevailed, on the ground that it would not be proportionate to allow such a transfer. First, the Parliament accepted that MEPs' legitimate interests were less

far-reaching than those of a private person without any public commitment and that, therefore, the degree of protection of their data was lower. Secondly, the Parliament nevertheless pointed out that the public funding of the additional pension scheme did not mean that the MEPs' personal data should not be afforded any protection or that those MEPs would have no legitimate interests in arguing against disclosure of such data. In that context, the Parliament explained that it was necessary to draw a distinction between data falling into the public sphere, subject to a lower degree of protection, and data falling into the private sphere, protected by the concept of legitimate interests. In the Parliament's view, the personal data at issue fell into the MEPs' private sphere, the information those data contained constituting a legitimate interest that was required to be protected. The data related to the personal financial situation of the MEPs concerned, namely contributions into a pension scheme and pension rights under that scheme, which were private concerns. The Parliament noted that while the existence of a parliamentary mandate was the *sine qua non* for gaining access to the scheme, the pension was paid only after the end of the mandate and that the personal contributions were significant. Thirdly, the Parliament argued that, if public funding were sufficient to deny the personal character of the data, then the same would also have to apply to any member of staff of a public authority. Fourthly, the Parliament concluded in the weighing up of the interests that, given, in particular, the general nature of the interest of the media and the general public in the personal situation of MEPs, it was not proportionate to disclose the data requested, unless it were to be accepted that it should be possible to gain access to all personal data of MEPs or of any public officials involving public expenditure. In the Parliament's view, such an approach would render Article 16 TFEU entirely meaningless, when, in order to achieve his goals, the applicant could have merely requested the aggregated figures concerning the financial situation of the scheme. Fifthly, the Parliament noted that there were more appropriate measures for achieving the goals pursued by the applicant, which ensured sufficient control of public expenditure and informed the public.

Procedure and forms of order sought

16 The applicant brought the present action by application lodged at the Court Registry on 22 February 2013.

17 By documents lodged on 29 and 30 May and 11 June 2013 respectively, the European Data Protection Supervisor (EDPS), the Kingdom of Sweden and the Republic of Finland applied for leave to intervene in support of the form of order sought by the applicant.

18 By orders of the President of the Second Chamber of the General Court of 11 September 2013, the EDPS, on the one hand, and the Republic of Finland and the Kingdom of Sweden, on the other, were granted leave to intervene.

19 The composition of the Chambers of the Court having been altered, the Judge-Rapporteur was assigned to the Fifth Chamber, to which this case was therefore allocated.

20 The applicant claims that the Court should:

— annul the contested decision;

— order the European Parliament to pay the costs, including those incurred by the interveners.

21 The Republic of Finland, the Kingdom of Sweden and the EDPS claim that the Court should grant the form of order sought by the applicant and accordingly annul the contested decision.

22 The European Parliament contends that the Court should:

— dismiss the action as unfounded;

— order the applicant to pay the costs.

23 By way of a measure of organisation of procedure, the Court put a question to the main parties. The parties replied by letters lodged on 16 October 2014, in the case of the European Parliament, and on 17 October 2014, in the case of the applicant.

24 After the end of the hearing, a number of questions were sent to the European Parliament in writing, the reply to which was received at the Court Registry on 7 January 2015. The applicant submitted its observations on the Parliament's reply. The oral part of the procedure was closed on 2 February 2015.

Law

1. *Scope of the action*

25 In its response to the measure of organisation of procedure, the applicant stated that 64 MEPs who were members of the additional pension scheme had objected to the amendments to the scheme made by the Bureau in its meetings on 9 March and 1 April 2009 and had brought an action before the General Court in that respect, which was dismissed by order of 15 December 2010 in *Albertini and Others and Donnelly* v *Parliament* (T-219/09 and T-326/09, ECR, EU:T:2010:519).

26 In addition, another MEP who was a member of the additional pension scheme also brought an action before the General Court against the decision of the European Parliament refusing to grant him his voluntary additional pension in the form of a lump sum (judgment of 18 October 2011 in *Purvis* v *Parliament*, T-439/09, ECR, EU:T:2011:600).

27 It must therefore be noted that the names of 65 MEPs who were members of the additional pension scheme had been made public when the Court gave its ruling in the three cases mentioned in paragraphs 25 and 26 above, that is to say, before the present action was brought.

28 To that extent, the present action is devoid of purpose (see, to that effect, order of 11 December 2006 in *Weber* v *Commission*, T-290/05, EU:T:2006:381, paragraph 42).

29 Consequently, there is no need to adjudicate on that aspect of the dispute.

2. *Substance of the action*

30 In challenging the contested decision, the applicant raises two pleas in law. The first plea alleges infringement of Articles 11 and 42 of the Charter of Fundamental Rights and an error of law in the application of Article 4(1)(b) of Regulation No 1049/2001, read in conjunction with Article 8(b) of Regulation No 45/2001. The second alleges failure to state reasons.

First plea in law, alleging infringement of Articles 11 and 42 of the Charter of Fundamental Rights and an error of law in the application of Article 4(1)(b) of Regulation No 1049/2001, read in conjunction with Article 8(b) of Regulation No 45/2001

31 In the first part of the plea, the applicant maintains that, in the confirmatory application, he provided express and legitimate reasons for the necessity of having the personal data contained in the requested documents transferred, in accordance with Article 8(b) of Regulation No 45/2001, acting on the basis of European citizens' right to information. In the second part, the applicant submits that, in the weighing up of interests, MEPs do not have a legitimate interest in the protection of their privacy for the purposes of Article 8(b) of Regulation No 45/2001.

32 The first part of the plea is divided into four claims, by which the applicant submits (i) that he has established the necessity of having the personal data transferred, the test laid down by Article 8(b) of Regulation No 45/2001 and interpreted in the light of the judgments in *Commission* v *Bavarian Lager*, cited in paragraph 4 above (EU:C:2010:378, paragraph 63), and *Dennekamp* v *Parliament*, cited in paragraph 4 above (EU:T:2011:688, paragraphs 31 to 35); (ii) that the test of necessity must not be interpreted narrowly; (iii) that he has made an express link between the aim pursued by his application for access and the necessity of disclosing all the names requested, the most appropriate means of achieving that aim; and (iv) that the contested decision fails to take sufficient account of the structure and purpose of Regulation No 1049/2001.

33 The second part of the plea is divided into three claims. First, the applicant maintains that MEPs have no legitimate interest in the protection of their privacy for the purposes of Article 8(b) of Regulation No 45/2001, as they open their conduct to a significant degree of public scrutiny. Secondly, the applicant takes the view that the European Parliament failed to establish in the contested decision that the MEPs' legitimate interests would be prejudiced by disclosure of the requested documents. By his third claim, he asserts that even if the Parliament had rightly considered that the requested information fell within the MEPs' private sphere, that would not be sufficient to protect it as a legitimate interest within the meaning of Article 8(b) of Regulation No 45/2001, which requires a weighing up of the interests engaged.

34 It is appropriate, first of all, to examine the conditions under which the transfer of personal data is permitted by Article 8(b) of Regulation No 45/2001, responding in particular to the second and fourth claims in the first part of the plea, which seek to challenge the way in which the European Parliament applied Regulations No 1049/2001 and No 45/2001 in conjunction with each other. Next, the Court must determine whether the Parliament correctly assessed the justification given by the applicant regarding the necessity of having the personal data transferred, responding to the first and third claims in the first part of the plea. Lastly, it is appropriate to examine whether the Parliament correctly weighed up the MEPs' legitimate interests in the protection of their privacy and the interest in having the personal data transferred, responding to all three claims in the second part of the plea, which largely overlap.

The combined application of Regulations No 1049/2001 and No 45/2001 and interpretation of the conditions for the application of Article 8(b) of Regulation No 45/2001

35 It should be recalled, at the outset, that Article 15(3) TFEU provides that any citizen of the European Union, and any natural or legal person residing or having its registered office in a Member State, is to have a right of access to the documents of the institutions of the European Union, subject to the principles and the conditions defined in accordance with the procedure laid down in Article 294 TFEU (see judgment of 27 February 2014 in *Commission* v *EnBW*, C-365/12 P, ECR, EU:C:2014:112, paragraph 61 and the case-law cited). In accordance with recital 1 in the preamble to Regulation No 1049/2001, that regulation reflects the intention expressed in the second paragraph of Article 1 TEU — inserted by the Treaty of Amsterdam — of marking 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. As is stated in recital 2 in the preamble to Regulation No 1049/2001, the right of public access to documents of the institutions is related to the democratic nature of those institutions (judgments of 1 July 2008 in *Sweden and Turco* v *Council*, C-39/05 P and C-52/05 P, ECR, EU:C:2008:374, paragraph 34, and 21 July 2011 in *Sweden* v *MyTravel and Commission*, C-506/08 P, ECR, EU:C:2011:496, paragraph 72).

36 To that end, Regulation No 1049/2001 is intended, as is apparent from recital 4 in the preamble thereto and from Article 1, to give the fullest possible effect to the right of public access to documents of the institutions (judgments in *Sweden and Turco* v *Council*, cited in paragraph 35 above, EU:C:2008:374, paragraph 33, and *Sweden* v *MyTravel and Commission*, cited in paragraph 35 above, EU:C:2011:496, paragraph 73).

37 However, that right is none the less subject to certain limitations based on grounds of public or private interest. More specifically, and in reflection of recital 11 in the preamble thereto, Article 4 of Regulation No 1049/2001 provides that the institutions are to refuse access to a document where its disclosure would undermine the protection of one of the interests protected by that provision (judgment in *Sweden* v *MyTravel and Commission*, cited in paragraph 35 above, EU:C:2011:496, paragraph 74).

38 However, since they derogate from the principle of the widest possible public access to documents, those exceptions must be interpreted and applied strictly (judgments in *Sweden and Turco* v *Council*, cited in paragraph 35 above, EU:C:2008:374, paragraph 36, and *Sweden* v *MyTravel and Commission*, cited in paragraph 35 above, EU:C:2011:496, paragraph 75).

39 Thus, if the institution concerned decides to refuse access to a document which it has been asked to disclose, it must, in principle, explain how disclosure of that document could specifically and actually undermine the interest protected by the exception — among those provided for in Article 4 of Regulation No 1049/2001 — that is relied upon by that institution (judgment in *Sweden* v *MyTravel and Commission*, cited in paragraph 35 above, EU:C:2011:496, paragraph 76). Moreover, the risk of that undermining must be reasonably foreseeable and not purely hypothetical (judgments in *Sweden and Turco* v *Council*, cited in paragraph 35 above, EU:C:2008:374, paragraph 43, and *Sweden* v *MyTravel and Commission*, cited in paragraph 35 above, EU:C:2011:496, paragraph 76).

40 It must also be noted that it follows from the case-law that, when examining the relationship between Regulations No 1049/2001 and No 45/2001 for the purposes of applying the exception provided for under Article 4(1)(b) of Regulation No 1049/2001 — namely, the protection of privacy and the integrity of the individual — it must be borne in mind that those regulations have different objectives. Regulation No 1049/2001 is designed to ensure the greatest possible transparency of the decision-making process of the public authorities and the information on which they base their decisions. It is thus designed to facilitate as far as possible the exercise of the right of access to documents and to promote good administrative practices. Regulation No 45/2001 is designed to ensure the protection of the freedoms and fundamental rights of individuals, particularly their private life, in the handling of personal data (judgments in *Commission* v *Bavarian Lager*, cited in paragraph 4 above, EU:C:2010:378, paragraph 49, and *Dennekamp* v *Parliament*, cited in paragraph 4 above, EU:T:2011:688, paragraph 23).

41 As Regulations No 45/2001 and No 1049/2001 do not contain any provisions granting one primacy over the other, the full application of both regulations should, in principle, be ensured (judgments in *Commission* v *Bavarian Lager*, cited in paragraph 4 above, EU:C:2010:378, paragraph 56, and *Dennekamp* v *Parliament*, cited in paragraph 4 above, EU:T:2011:688, paragraph 24).

42 Article 4(1)(b) of Regulation No 1049/2001, on which the European Parliament based its refusal to grant access to the requested documents in the contested decision, provides that '[t]he institutions shall refuse access to a document where disclosure would undermine the protection of … privacy and the integrity of the individual, in particular in accordance with [EU] legislation regarding the protection of personal data'. It is apparent from the case-law that that is an indivisible provision which requires that any undermining of privacy and the integrity of the individual must always be examined and assessed in conformity with the legislation of the European Union concerning the protection of personal data, in particular with Regulation No 45/2001. That provision thus establishes a specific and reinforced system of protection for a person whose personal data could, in certain cases, be

communicated to the public (judgments in *Commission* v *Bavarian Lager*, cited in paragraph 4 above, EU:C:2010:378, paragraphs 59 and 60, and *Dennekamp* v *Parliament*, cited in paragraph 4 above, EU:T:2011:688, paragraph 25).

43 Where a request based on Regulation No 1049/2001 seeks access to documents including personal data, Regulation No 45/2001 becomes applicable in its entirety, including Article 8 thereof (judgments in *Commission* v *Bavarian Lager*, cited in paragraph 4 above, EU:C:2010:378, paragraph 63, and *Dennekamp* v *Parliament*, cited in paragraph 4 above, EU:T:2011:688, paragraph 26).

44 It is in the light of those considerations that the Court must examine the arguments of the applicant, who is supported in that respect by the Republic of Finland, the Kingdom of Sweden and the EDPS.

45 The applicant submits that the contested decision fails to take sufficient account of the structure and purpose of Regulation No 1049/2001, namely to increase the accountability and legitimacy of public decision-making by bringing it closer to the citizen through transparency. In accordance with the judgment in *Commission* v *Bavarian Lager*, cited in paragraph 4 above (EU:C:2010:378), Regulation No 1049/2001 cannot be rendered devoid of purpose by an interpretation of the relevant provisions that would mean that legitimate disclosure could never pursue the aim of full disclosure to the public. In addition, such a result would not take into consideration the conditions under which the European Court of Human Rights considers that the public interest in receiving information prevails over the right of a public figure to privacy, namely that the reporting should relate facts capable of contributing to a debate in a democratic society concerning those public figures in the exercise of their official functions. According to the applicant the European Parliament is infringing Article 11 of the Charter of Fundamental Rights, read in the light of Article 10 of the ECHR, when it is claimed in the contested decision that it would be contrary to the objective of Article 8(b) of Regulation No 45/2001 for the public disclosure of data to be a legitimate aim.

46 In his reply, the applicant submits that the test of necessity in Article 8(b) of Regulation No 45/2001 must not be interpreted restrictively; that would lead to a broad interpretation of an exception to the fundamental right of access to documents, an unlawful restriction of that right and inconsistency with the case-law of the European Union.

47 The applicant's argument is based on the notion that the combined application of Regulations No 1049/2001 and No 45/2001, in accordance with the judgment in *Commission* v *Bavarian Lager*, cited in paragraph 4 above (EU:C:2010:378), must not result in the provisions of Regulation No 1049/2001 and, therefore, the fundamental right of access to documents of the EU institutions enjoyed by all European citizens, being neutralised altogether. Furthermore, in its statement in intervention, the Republic of Finland states that the core content and fundamental principles of both regulations must be applied so that each is applied in a manner compatible and consistent with the other. As regards those principles, it is necessary, in its view, to take account in particular of the rule laid down by Regulation No 1049/2001 concerning the lack of justification for applications for access to documents. In that context, the concept of the necessity of having personal data transferred, as provided for in Article 8(b) of Regulation No 45/2001, cannot be interpreted strictly, as that would restrict or remove altogether any possibility of access to documents where the application is based on a public interest such as the right to information.

48 In order to respond to those arguments, which seek to strike a balance between the right of access to documents held by the institutions, under Regulation No 1049/2001, and the obligations under Regulation No 45/2001 in respect of the transfer of personal data by those institutions, it is necessary to clarify the relationship between the rules laid down by those two regulations.

49 In the first place, it must be noted that, in the context of an application for access to documents, Regulation No 45/2001 is applied only when the institution in receipt of the application refuses to grant access to documents by applying vis-à-vis the applicant the exception provided for in

Article 4(1)(b) of Regulation No 1049/2001. That provision requires that any undermining of privacy and the integrity of the individual must be examined and assessed in conformity with the legislation of the European Union concerning the protection of personal data, in particular with Regulation No 45/2001 (see, to that effect, judgment in *Commission* v *Bavarian Lager*, cited in paragraph 4 above, EU:C:2010:378, paragraph 59).

50 If the documents requested contain personal data within the meaning of Article 2(a) of Regulation No 45/2001, the institution must, in principle, ensure the full application of both regulations to the application for access (judgments in *Commission* v *Bavarian Lager*, cited in paragraph 4 above, EU:C:2010:378, paragraph 56, and *Dennekamp* v *Parliament*, cited in paragraph 4 above, EU:T:2011:688, paragraph 24). However, it must be noted that Regulation No 45/2001 establishes a specific and reinforced system of protection for a person whose personal data could be communicated to the public, and that when the application for access is being examined, the provisions of Regulation No 45/2001 become applicable in their entirety, including Article 8 thereof (judgments in *Commission* v *Bavarian Lager*, cited in paragraph 4 above, EU:C:2010:378, paragraphs 60 and 63, and *Dennekamp* v *Parliament*, cited in paragraph 4 above, EU:T:2011:688, paragraphs 25 and 26). Moreover, recitals 7 and 14 in the preamble to Regulation No 45/2001, read together, indicate that the provisions of that regulation are binding and apply to all processing of personal data by the institutions of the European Union in any context whatsoever.

51 Consequently, if an application for access to documents may, if granted, result in the disclosure of personal data, the institution in receipt of the application must apply all the provisions of Regulation No 45/2001, and the full scope of the protection afforded to those data may not be limited as a result of the various rules and principles in Regulation No 1049/2001. That principle guiding the action of the institutions is, according to recital 12 in the preamble to Regulation No 45/2001, attributable to the importance attached to the rights granted to data subjects for their protection with regard to the processing of such data.

52 In this general context, it is admittedly true, as both the applicant and the Republic of Finland have emphasised, that the right of access to documents is not, in accordance with Article 6(1) of Regulation No 1049/2001, conditional upon an applicant justifying an interest in the disclosure of those documents. That is a concrete expression of the principles of openness and transparency which must drive the action taken by the institutions of the European Union, and of the democratic nature of those institutions.

53 However, it should be noted that, by requiring the institutions to examine the risk that the protection of privacy and of the integrity of the individual may be undermined through Regulation No 45/2001 and the restrictions and limitations thereby imposed on the processing of personal data, notably by means of Article 8(b) thereof, Article 4(1)(b) of Regulation No 1049/2001 indirectly requires an applicant for access to establish, through the provision of one or more express and legitimate reasons, the necessity of the transfer of the personal data contained in the documents to which he has requested access (see, to that effect, judgments in *Commission* v *Bavarian Lager*, cited in paragraph 4 above, EU:C:2010:378, paragraph 78, and *Dennekamp* v *Parliament*, cited in paragraph 4 above, EU:T:2011:688, paragraph 30).

54 Thus, Article 8(b) of Regulation No 45/2001 requires the institution in receipt of an application for access initially to make an assessment of the necessity, and thus proportionality, of the transfer of personal data in the light of the applicant's objective (see, to that effect, judgment in *Dennekamp* v *Parliament*, cited in paragraph 4 above, EU:T:2011:688, paragraph 34). That same Article 8(b) of Regulation No 45/2001 requires that institution then to examine whether the legitimate interests of the data subjects might be prejudiced by the transfer of personal data, and to determine in that examination whether the applicant's objective is likely to have that effect (see, to that effect, judgments in *Commission* v *Bavarian Lager*, cited in paragraph 4 above, EU:C:2010:378, paragraph 78,

and *Dennekamp* v *Parliament*, cited in paragraph 4 above, EU:T:2011:688, paragraph 30). In so doing, the institution will be required to assess the applicant's justification for the transfer of personal data and thus for access to the documents.

55 Accordingly, to apply the condition as to the necessity of the transfer of personal data set out in Article 8(b) of Regulation No 45/2001 is to recognise the existence of an exception to the rule laid down by Article 6(1) of Regulation No 1049/2001. That consequence is justified by the *effet utile* that must be conferred on the provisions of Regulation No 45/2001, since any solution other than that of having the necessity of the transfer of personal data examined in the light of the objective of the applicant for access to documents would necessarily result in Article 8(b) of that regulation being disapplied.

56 In the second place, it is necessary to take into particular consideration the essential characteristics of the system of protection which Regulation No 45/2001 provides to natural persons with respect to the processing of their personal data, since the application of the exception to the right of access provided for in Article 4(1)(b) of Regulation No 1049/2001 means that Regulation No 45/2001 must be fully applied, Article 1 thereof making clear that the object of the regulation is, notably, to protect the fundamental rights and freedoms of natural persons, and in particular their right to privacy.

57 In Chapter II, Section 2 of Regulation No 45/2001, Article 5 of Regulation No 45/2001 specifies the grounds on which the processing of personal data is regarded as lawful. Articles 7, 8 and 9 of Regulation No 45/2001 lay down the conditions for making a transfer of personal data within or between EU institutions or bodies; to recipients, other than EU institutions and bodies, subject to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31); and to recipients, other than EU institutions and bodies, which are not subject to Directive 95/46.

58 While neither Article 7, Article 8 nor Article 9 of Regulation No 45/2001 establishes a principle coupled with exceptions, each article precisely limits the possibility of transferring personal data so as to make it subject to strict conditions which, if not fulfilled, prohibit any transfer. Those conditions always include the necessity of the transfer in the light of various aims.

59 According to recital 5 in the preamble to Regulation No 45/2001, the regulation seeks to provide individuals which it defines as data subjects with legally enforceable rights, and to define the data processing obligations of controllers within the EU institutions and bodies. In order to achieve that objective, the conditions subject to which an EU institution or body may transfer personal data must be interpreted strictly, so as not to jeopardise the rights of those persons, which are recognised by Regulation No 45/2001 as being fundamental rights, according to recital 12 in the preamble thereto. Thus, if the condition of necessity is to be fulfilled, it must be established that the transfer of personal data is the most appropriate of the possible measures for attaining the applicant's objective, and that it is proportionate to that objective, which means that the applicant must submit express and legitimate reasons to that effect (see, to that effect, judgments in *Commission* v *Bavarian Lager*, cited in paragraph 4 above, EU:C:2010:378, paragraph 78, and *Dennekamp* v *Parliament*, cited in paragraph 4 above, EU:T:2011:688, paragraphs 30 and 34).

60 Contrary to what is argued by the applicant, the condition of necessity provided for in Article 8(b) of Regulation No 45/2001, thus interpreted, cannot be regarded as a broad interpretation of an exception to the fundamental right of access to documents which would result in an unlawful restriction of that right, contrary to EU case-law. Such an interpretation does not have the effect of creating a categorical exception for personal data to the principle of access to documents, but of reconciling two fundamental yet opposing rights where an application for access to documents relates to personal data, protected by Regulation No 45/2001, as is evident from paragraphs 56 to 59 above. In the relationship between the provisions protecting those opposing rights, the right of access to documents

is also preserved, since the mandatory application, as in this case, of Article 8(b) of Regulation No 45/2001 merely results, first, in the applicant being required to establish the necessity of obtaining the transfer of personal data, that is to say, to prove that the measure concerned is proportionate and the most appropriate means of attaining the aim pursued (see, to that effect, judgment in *Dennekamp* v *Parliament*, cited in paragraph 4 above, EU:T:2011:688, paragraph 34), and, secondly, in the institution being required to examine whether the legitimate interests of the data subjects might be prejudiced by the transfer of personal data in the light of the applicant's aim (see, to that effect, judgments in *Commission* v *Bavarian Lager*, cited in paragraph 4 above, EU:C:2010:378, paragraph 78, and *Dennekamp* v *Parliament*, cited in paragraph 4 above, EU:T:2011:688, paragraph 30). The strict interpretation of the conditions imposed by Article 8(b) of Regulation No 45/2001 does not in any way therefore result in an exception being established that would generally prevent any access to documents containing personal data.

61 None the less, the strict interpretation of the condition of necessity laid down by Article 8(b) of Regulation No 45/2001 does not mean that a general justification for the transfer of personal data, like the public's right to information concerning the conduct of MEPs in the exercise of their duties, cannot be taken into consideration. In fact, as is already evident from paragraph 54 above, the general nature of the justification for the transfer has no direct effect on whether the transfer is necessary for the purposes of attaining the applicant's aim.

62 It is true that, as the European Parliament notes, the provisions of Article 4(1)(b) of Regulation No 1049/2001 do not provide for the public interest in privacy and the integrity of the individual to be weighed against an overriding public interest. However, with the exception of Article 4(1)(b) of Regulation No 45/2001, which requires that personal data should not be processed in a way incompatible with the purposes for which they were collected, there is nothing in that regulation to limit the scope of the justification for the transfer sought that may be given by the applicant. Nothing prevents the applicant from relying on a general justification such as that relied on in the present case: in essence, the public's right to information.

63 Although the exception to the right of access to documents provided for by Article 4(1)(b) of Regulation No 1049/2001 requires the institutions to examine the risk that the protection of privacy and the integrity of the individual may be undermined — through Regulation No 45/2001 and more specifically through Article 8(b) thereof — it must be applied in such a way as to render effective the other provisions of Regulation No 1049/2001. That would not be the case if the institution in receipt of the application for access to documents containing personal data could, on the basis of Article 4(1)(b) of Regulation No 1049/2001, prohibit the applicant from justifying the transfer of data sought on the basis of a general objective such as, in the present case, the public's right to information.

64 Consequently, it cannot be maintained that the general justification given by the applicant for the transfer of personal data to sustain the condition of necessity laid down by Article 8(b) of Regulation No 45/2001 would effectively reintroduce an overriding public interest test within the meaning of Regulation No 1049/2001.

65 In the third place, notwithstanding what is stated in paragraph 51 above, the Court must reject the European Parliament's arguments that a strict interpretation of the condition of necessity imposed by Article 8(b) of Regulation No 45/2001 would be particularly necessary as, in this instance, the applicant's explicit and exclusive aim is the imminent communication to the public of the personal data that would be transferred to him, which would constitute maximum interference with the right to protection of those data. According to the Parliament, Regulation No 45/2001 is not designed to enable disclosure of personal data *erga omnes*.

66 The applicant has expressed his intention to communicate to the public the personal data whose transfer he has requested. However, it is necessary to bear in mind the legal context in which Article 8(b) of Regulation No 45/2001 is applied. As explained in paragraphs 49 and 50 above, the provisions of Regulation No 45/2001 have become applicable in full because an application for access to documents held by the European Parliament was submitted under Regulation No 1049/2001, and the exception under Article 4(1)(b) of that regulation was applied.

67 Even in that context, the purpose of an application for access and its effect, if successful, is to disclose the documents requested, which means, in accordance with Article 2(4) of Regulation No 1049/2001, that the institution or body in receipt of the application makes those documents available to the public. There can be no question of interpreting the conditions to which the transfer of personal data is subject under Regulation No 45/2001, particularly those laid down by Article 8(b), as meaning that one of those conditions would, as a matter of principle, have the effect of access to the documents containing those data being granted only to the applicant and being denied to the public, and thus of it being impossible for Regulation No 1049/2001 to be applied. Where the person requesting access to the documents containing the personal data has established the necessity of having them transferred, and the institution in question has taken the view that there is no reason to assume that the data subjects' legitimate interests might be prejudiced, the data may be transferred and, provided that none of the exceptions provided for by Regulation No 1049/2001 applies, other than that relating to the undermining of the protection of privacy and the integrity of the individual, the document(s) containing the data are to be disclosed and, therefore, made available to the public.

68 It follows from paragraphs 49 to 67 above that the test of necessity laid down in Article 8(b) of Regulation No 45/2001 must be strictly interpreted; that the condition of the necessity of having the personal data transferred entails an examination of necessity by the relevant institution or body in the light of the objective pursued by the applicant for access to the documents, which restricts the scope of the rule on the absence of justification for an application for access; that the justification for the necessity of having those data transferred, invoked by the applicant, may be of a general nature; and that Regulation No 1049/2001 must not be rendered devoid of purpose by an interpretation of the relevant provisions that would mean that legitimate disclosure could never have the aim of full disclosure to the public.

Assessment of the justification given for the necessity of the transfer of the personal data

69 In essence, the applicant takes the view that he has established the necessity of having the personal data transferred, the test laid down by Article 8(b) of Regulation No 45/2001, as interpreted in the light of the judgments in *Commission* v *Bavarian Lager*, cited in paragraph 4 above (EU:C:2010:378, paragraph 63), and *Dennekamp* v *Parliament*, cited in paragraph 4 above (EU:T:2011:688, paragraphs 31 to 35), and has made an express link between the aim pursued by his application for access and the necessity of disclosing all the names requested.

70 For the purpose of responding to the applicant's claims, it is appropriate to set out, first of all, the justification for the necessity of having the personal data at issue transferred that was provided during the administrative procedure, and the European Parliament's assessment in that regard in the contested decision, before giving the Court's assessment in the light of the arguments exchanged before it.

– The European Parliament's assessment in the contested decision of the necessity of the transfer of the personal data

71 It should be noted that, as regards the necessity of having the personal data transferred, the initial application highlighted the need for the public to have a better understanding of how decisions were taken and the fact that, to that end, a debate could be generated through press reporting. In this case,

it was said to be of the utmost importance for European citizens to know which MEPs had a personal interest in the additional pension scheme when called upon to take decisions regarding its management.

72 In the confirmatory application, the applicant took the view that the transfer of personal data was necessary, relying on the right to information and the right to freedom of expression. He explained that it was necessary for the documents requested to be disclosed so that he could report on the manner in which public money was being spent, on the possible impact of private interests on the voting behaviour of the MEPs and on the functioning of control mechanisms. With that aim in mind, he indicated that it was essential for the purpose of his report to know the names of the MEPs concerned, in order to exercise his freedom of expression and to communicate that information to the public which, as citizens and taxpayers, had an interest in it. According to him, the disclosure of the names of the MEPs participating in the additional pension scheme would ensure that they could not use their votes to influence the scheme so as to benefit from it in a manner that would not accord with the wishes of their voters. According to the applicant, there is no other way for the public to find out how MEPs have exercised their public powers with regard to the scheme.

73 In the contested decision, the European Parliament found, principally, that the applicant had not established the necessity of having the personal data transferred, relying on two separate grounds in order to reject the reasons put forward. First, the Parliament identified the interest of the public and the media in the expenditure of public money, which includes the financial benefits enjoyed by MEPs, as constituting one justification for the application in the context of the freedom of information and the freedom of expression. On that point, it took the view that the public interest asserted was abstract and very general, and that if this argument were a valid argument in the context of Article 8(b) of Regulation No 45/2001, it would allow for the disclosure of personal data beyond any reasonable limit, and would result in a situation that would not be in line with EU rules on data protection. Secondly, the Parliament stated that the applicant had failed to provide a link between his aims and the specific personal data he had requested to be transferred, the reasons why the transfer was necessary being unclear. It went on to note that, in order to exercise public control, it was neither necessary nor proportionate to request the names of all members of the additional pension scheme as decisions on that scheme were adopted by the Bureau, and pointed out that the applicant should have identified a particular and specific risk of conflict of interest in order to prove the necessity of the data transfer.

– Arguments of the parties

74 By his first claim, the applicant submits that his justification for the necessity of having the personal data transferred was that this was information of public interest which, as a journalist, he could present to European citizens so that they would know how public money was spent, how their elected representatives conducted themselves and whether the voting behaviour of those representatives with regard to the additional pension scheme had been influenced by their financial interest. By his second claim, the applicant states that he expressly established a link between the aim of his application and the necessity of disclosing all the names requested, which is the only way for the public to hold its representatives accountable for their actions in relation to the scheme. He was not obliged to be more precise in his application regarding those MEPs who were members of the Bureau.

75 In the view of the Republic of Finland, the Kingdom of Sweden and the EDPS, the disclosure of the requested information is justified by the general public interest in transparency, which must make it possible to provide the public with a meaningful assessment of the facts relating to the additional pension scheme, such as the voting behaviour of MEPs, and to offer the opportunity of interviewing or hearing those MEPs; by the fact that the threshold for establishing whether the transfer of personal data is necessary must be low when the exception to the right of access provided for in Article 4(1)(b)

of Regulation No 1049/2001 is to be interpreted; and by the fact that necessity for the purposes of that article may be based on reasons relating to the public interest, as the applicant precisely and specifically argued in his application for access.

76 The European Parliament's principal contention is that the applicant does not satisfy the requirements of proportionality stemming from EU case-law in order to establish the necessity of having the personal data in question transferred. It observes that that interpretation of 'necessity' is consistent with Article 15 TEU and with Regulation No 1049/2001. This is, *a fortiori*, the case when, as in this instance, the purpose of the application for the transfer of personal data is the disclosure of the data to the public, which constitutes maximum interference with the right to protection of the data. In the Parliament's view, Regulation No 45/2001 is not designed to enable disclosure *erga omnes*, but to allow the exclusive transfer of personal data to specific recipients. Furthermore, it notes that the applicant did not, prior to the adoption of the contested decision, provide any argument objectively substantiating the alleged public interest, in particular as to the existence, currently, of a public debate on the additional pension scheme or the questionable behaviour of an MEP, as envisaged by the judgment in *Dennekamp* v *Parliament*, cited in paragraph 4 above (EU:T:2011:688).

– Findings of the Court

77 As noted in paragraph 59 above, if the condition of necessity laid down by Article 8(b) of Regulation No 45/2001, which is to be interpreted strictly, is to be fulfilled, it must be established that the transfer of personal data is the most appropriate of the possible measures for attaining the applicant's objective, and that it is proportionate to that objective. In the present case, it is appropriate to answer together the two claims that the transfer of data in question is the most appropriate measure for attaining the objectives pursued.

78 So far as concerns the objectives in the light of which the applicant maintained in his confirmatory application that it was necessary for the European Parliament to transfer the personal data at issue, a distinction must be made between, on the one hand, public control over the way in which public funds are spent, through the exercise of the right to information, and, on the other hand, the possible influence of MEPs' interests on their voting behaviour in respect of the additional pension scheme, that is to say, the identification of potential conflicts of interest of MEPs.

79 In the first place, the applicant states his intention to present information on the additional pension scheme through articles in the press and television reporting, to allow the public to participate in a legitimate debate about the scheme, emphasising particularly his role as a journalist in a democratic society.

80 To that end, the applicant argued at the hearing that the necessity of the transfer of personal data had to be assessed in the light of Article 9 of Directive 95/46, which laid down specific rules where the processing of such data was being carried out for journalistic purposes, because Article 4(1)(b) of Regulation No 1049/2001 referred to EU legislation regarding the protection of personal data without giving further details. However, it is apparent from the provisions of Article 76(d), in conjunction with Article 84(1), of the Rules of Procedure of the General Court that the application initiating proceedings must state the subject-matter of the proceedings and contain a summary of the pleas in law relied on, and that no new plea in law or argument may be introduced in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the procedure (judgment of 21 October 2010 in *Umbach* v *Commission*, T-474/08, EU:T:2010:443, paragraph 60) or it is a plea or an argument that amplifies a plea put forward previously, whether directly or by implication, in the original application, and which is closely connected therewith (see judgment of 29 November 2012 in *Thesing and Bloomberg Finance* v *ECB*, T-590/10, EU:T:2012:635, paragraph 24 and the case-law cited). That is not the case in this instance, and that argument, belatedly put forward, must be rejected as inadmissible.

81 In so far as the applicant relied in his confirmatory application on the right to information and on the right to freedom of expression in order to justify the necessity of having the personal data at issue transferred, it must be held that that is not sufficient to establish that the transfer of the names of the MEPs participating in the additional pension scheme is the most appropriate of the possible measures for attaining his objective or that it is proportionate to that objective.

82 It is true that, by his arguments, the applicant clearly specified his aims and the reasons why he regarded the transfer of the data as being necessary: in essence, to produce a report on the additional pension scheme in order to make the European public aware of how the scheme operates and to exercise oversight over the MEPs who represent it. In so doing, he did not, however, make clear in what respect transferring the names of the MEPs participating in the scheme was the most appropriate measure for attaining the objective he had set himself, contrary to the requirement under Article 8(b) of Regulation No 45/2001, as interpreted by the judgment in *Dennekamp* v *Parliament*, cited in paragraph 4 above (EU:T:2011:688, paragraphs 30 and 34).

83 The applicant merely asserted in the confirmatory application that the measures designed to provide public control over public expenditure in the context of the additional pension scheme, like the discharge procedure, did not protect the fundamental rights he had invoked, namely the right to information and to communicate to the public the information gathered, and that those measures could not, therefore, justify the non-disclosure of the data at issue. It must be noted that it cannot be determined from those points in what respect the transfer of the names of MEPs participating in the scheme is the most appropriate measure for attaining the applicant's objective, or how it is proportionate to that objective. The mere assertion that that transfer would best ensure the protection of fundamental rights cannot be considered to have been the result of even a limited analysis of the effects and implications of the various measures that might be adopted in order to meet the applicant's objectives.

84 As regards the applicant's argument that there is already a debate about the additional pension scheme, given the controversy about its creation and funding, or that, even without such a debate, it would be necessary to have the MEPs' names in order to encourage a debate to arise, the applicant is merely relying on arguments that relate to the purpose of his application for access to documents. Those arguments do not establish that it is necessary for him to have the data at issue transferred, no link to the appropriateness or proportionality of the measure requested being apparent, as required by EU case-law (see, to that effect, judgment in *Dennekamp* v *Parliament*, cited in paragraph 4 above, EU:T:2011:688, paragraph 34). In addition, the existence of a debate about the scheme, or, more specifically, about the advantageous nature of the scheme for MEPs at the expense of public funds tend, like the various matters of fact alluded to by the applicant, to show that he already has precise information on the rules and operation of the scheme that may enable him to encourage or develop the public debate he seeks to initiate with regard to the sound management of the scheme and to the financial risks to the EU budget. In addition to the absence of proof of the necessity of the transfer of the personal data at issue, it must be noted that those various matters put forward by the applicant himself do not militate in favour of the proposition that it would be necessary to know the names of the MEPs participating in the scheme in order to denounce its allegedly adverse effects on public funds.

85 Next, the same conclusion must be drawn as regards the case-law of the European Court of Human Rights, which ruled that it was not necessary, in a democratic society, to refuse access to information constituting the personal data of an elected official, in the light of the right of journalists to receive and impart information of public interest. It cannot in any way be determined from such a finding whether the measure requested by the applicant is the most appropriate for attaining his objective, or whether it is proportionate to that objective.

86 Lastly, the conclusion reached in paragraph 82 above is also unaffected by the arguments that the applicant made an express link between the aim pursued by his application for access and the necessity of disclosing all the names requested, and that he was not obliged to be more precise in his application, particularly with regard to those MEPs who were members of the Bureau, in view of the possibility of partial disclosure provided for by Article 4(6) of Regulation No 1049/2001. There is nothing in those arguments to demonstrate the necessity of having the names of MEPs participating in the additional pension scheme transferred, as required by Article 8(b) of Regulation No 45/2001.

87 Accordingly, the Court must reject the applicant's arguments regarding the necessity of having the names of MEPs participating in the additional pension scheme transferred in the light of the aim of informing the public and enabling it to take part in a debate on the legitimacy of the scheme; Articles 11 and 42 of the Charter of Fundamental Rights, relating, respectively, to the freedom of expression and to the right of access to documents of the institutions and bodies of the European Union, have not, therefore, been infringed.

88 In the second place, the applicant takes the view that the transfer of personal data at issue is necessary for the purpose of being able to determine whether MEPs' voting behaviour with regard to the additional pension scheme is influenced by their financial interests, the disclosure of all the names of the MEPs participating in the scheme being the only way for the public to hold its representatives accountable for their actions in relation to the scheme.

89 The applicant's arguments are based, both in his confirmatory application and in his written statements, on the necessity of bringing to light possible conflicts of interest of MEPs.

90 First, it must be stated that, in reply to a question put at the hearing, the European Parliament maintained that disclosure of conflicts of interest could not, from a legal perspective, be regarded as a legitimate purpose of the processing of personal data within the meaning of Article 4(1)(b) of Regulation No 45/2001, thereby restating an argument it had put forward in the defence without relating it to that provision. However, it must be noted that the Parliament did not argue, in the contested decision, that transferring the names of MEPs participating in the additional pension scheme would be a processing of personal data that would be incompatible with the legitimate purposes for which the data had been collected. Therefore, that argument must in any event be rejected as having no factual basis, since none of the reasons given for the contested decision includes any such assertion.

91 Secondly, Article 3(1) of the Code of Conduct for Members of the European Parliament with respect to financial interests and conflicts of interest states:

'A conflict of interest exists where [an MEP] has a personal interest that could improperly influence the performance of his or her duties as a Member. A conflict of interest does not exist where a Member benefits only as a member of the general public or of a broad class of persons.'

92 It may also be noted that, for the Council of Europe, a conflict of interest arises from a situation in which a public official has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties, such private interest including any advantage to himself or herself, to his or her family, close relatives, friends and persons or organisations with whom he or she has or has had business or political relations, and also any liability, whether financial or civil, relating thereto (see Article 13 of Recommendation R (2000) 10 of the Committee of Ministers of the Council of Europe to Member States on codes of conduct for public officials, adopted on 11 May 2000).

93 In the case of an elected representative, a conflict of interest therefore presupposes, as the applicant submits, that, when voting on a given subject, that representative's behaviour may be influenced by his private interest. In the present case, the potential conflict of interest lies in the fact that, by voting, MEPs can amend the additional pension scheme or express their views on it in such a way as to promote their interests as beneficiaries of the scheme.

94 In order to be in a position to bring to light potential conflicts of interest of MEPs when they are deciding on the additional pension scheme, it is necessary to know the names of those who are members of the scheme, without the fact that the conflict of interest in question is, as the European Parliament contends, inherent in the duties of members of an elected assembly having any influence on the assessment of the necessity of having the personal data transferred. In itself, that fact cannot in any way establish that the envisaged transfer is not necessary. Such a transfer is therefore the only measure by which the applicant's aim can be attained, no other measure being capable of ensuring that MEPs facing a potential conflict of interest are identified. Consequently, it must be concluded, for the purpose of applying Article 8(b) of Regulation No 45/2001, that the transfer of the names of MEPs participating in the scheme is the most appropriate measure and that it is proportionate for the purpose of determining whether the interests that MEPs have in the scheme can influence their voting behaviour (see, to that effect, judgment in *Dennekamp* v *Parliament*, cited in paragraph 4 above, EU:T:2011:688, paragraphs 30 and 34).

95 Nevertheless, it must be noted at this stage that, in the present situation, in which the potential conflict of interest lies in the voting behaviour of MEPs, mere disclosure of the identity of those who are members of the additional pension scheme cannot by itself bring the conflict to light. It is also necessary to determine which of the MEPs have been called upon to decide on the scheme in a vote, since the European Parliament maintains that only MEPs who are members of the scheme and of the Bureau — the body which, according to the Parliament, takes decisions on the management of the scheme — could find themselves in a situation in which there is a potential conflict of interest.

96 Yet the applicant did not refer in the confirmatory application only to votes resulting in amendments being made to the management of the additional pension scheme but to any vote in which the European Parliament or one of its bodies decides on the scheme in one way or another. He thus relied on the possible impact of private interests on the voting behaviour of MEPs; the position of MEPs by which they can influence the way in which public funds are used for their benefit; and the lack of any means — other than disclosure of the names of the MEPs who are members of the scheme — of revealing how the elected representatives use their public powers in relation to the scheme.

97 In reply to a measure of organisation of procedure (see paragraph 23 above), the applicant submitted to the Court the measures adopted since 1 October 2005 by which, according to him, the plenary of the European Parliament, the Parliament's Committee on Budgetary Control and the Bureau had made amendments to the additional pension scheme or decided on its management. With regard to the plenary, the acts concerned are Decision 2008/497/EC, Euratom of the European Parliament of 24 April 2007 on the discharge for implementation of the European Union general budget for the financial year 2005, Section I — European Parliament (OJ 2008 L 187, p. 1); Decision 2009/185/EC, Euratom of the European Parliament of 22 April 2008 on discharge in respect of the implementation of the European Union general budget for the financial year 2006, section I — European Parliament (OJ 2009 L 88, p. 1); Decision 2009/628/EC, Euratom of the European Parliament of 23 April 2009 on discharge in respect of the implementation of the European Union general budget for the financial year 2007, Section I — European Parliament (OJ 2009 L 255, p. 1); and Decision 2012/544/EU, Euratom of the European Parliament of 10 May 2012 on discharge in respect of the implementation of the general budget of the European Union for the financial year 2010, Section I — European Parliament (OJ 2012 L 286, p. 1). In the case of the Committee on Budgetary Control, the relevant acts are the draft report of 8 March 2007 on amendments 1 to 21 to the discharge for implementation of the European Union general budget for the financial year 2005, Section I — European Parliament; an information document

concerning the committee's opinion on budgetary discharge for the financial year 2006; and a committee report on budgetary discharge for the financial year 2010. As regards the Bureau, the documents concerned are the decision of 30 November 2005 on the management of the scheme; the decision of 19 May and 9 July 2008 concerning implementing measures for the Statute for Members of the European Parliament (OJ 2009 C 159, p. 1); the decision of 9 March 2009 on the voluntary pension scheme; and the decision of 1 April 2009 on the voluntary pension scheme.

98 Decision 2005/684/EC, Euratom of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament (OJ 2005 L 262, p. 1) must be disregarded at the outset, since that decision is beyond the scope of the application for access to documents made by the applicant, which relates, in particular, to a list of names of MEPs participating in the additional pension scheme after September 2005. The same must apply to the information document on the opinion of the Committee on Budgetary Control on budgetary discharge for the financial year 2006 and that committee's report on budgetary discharge for the financial year 2010, which merely refer indirectly to decisions or votes without identifying them clearly.

99 Next, it must be noted, on reading the replies of the main parties to the measure of organisation of procedure, that the four decisions of the plenary mentioned in paragraph 97 above, each of which contains a decision granting the President of the European Parliament discharge in respect of the implementation of the budget and observations set out in a resolution, were subject to a vote on the discharge decisions themselves and on the resolutions. When questioned at the hearing, the Parliament was unable to specify whether, in respect of each of those decisions and resolutions, votes had been cast as overall votes or as separate votes on particular paragraphs or proposals for amendment of certain paragraphs.

100 The written questions put to the European Parliament after the end of the hearing thus related in particular to the identification of the specific voting procedures applied in respect of the four budgetary discharge decisions mentioned above and the four accompanying resolutions, adopted in plenary.

101 It is apparent from the European Parliament's reply that while each of the four discharge decisions referred to in paragraph 97 above and each of the accompanying resolutions was adopted on the basis of an overall vote in plenary, the votes on the resolutions on discharge for the financial year 2005, held on 24 April 2007, discharge for the financial year 2006, held on 22 April 2008, and discharge for the financial year 2010, held on 10 May 2012, were each preceded by separate votes on amendments and on specific paragraphs of the draft resolutions. In the case of the resolution on discharge for the financial year 2005, paragraphs 74 to 84 of the draft resolution, which concern the additional pension scheme, were the subject of separate votes, during which MEPs expressed their views. In the case of the resolution on discharge for the financial year 2006, paragraphs 70 to 73, which concern the scheme, were adopted in the same way. The same applies in the case of the resolution on discharge for the financial year 2010 with regard to paragraphs 98 and 99 of the draft resolution, which concerned the scheme.

102 It follows from the above that all MEPs forming part of the plenary were entitled to decide on the additional pension scheme on 24 April 2007, on 22 April 2008 and on 10 May 2012.

103 Consequently, in order to enable the applicant to attain his aim of bringing to light potential conflicts of interest of MEPs, the European Parliament would have had to transfer the names of those MEPs participating in the additional pension scheme who were also members of the plenary on the dates mentioned in paragraph 102 above and who actually took part in the votes held on those dates, not just the names of those who took part in the votes organised in accordance with the procedure for voting by roll call provided for by Article 180 of the Rules of Procedure of the Parliament, as the applicant's remarks in his observations lodged on 2 February 2015 might suggest. Irrespective of the

voting procedure used in the votes relating to the scheme, all the MEPs who actually voted and who were members of the scheme could be influenced by their personal interest in that regard (see paragraph 102 above).

104 It follows from the foregoing that it is not necessary to examine the precise voting procedures applied by the Committee on Budgetary Control or the Bureau, since their members are also members of the plenary.

105 Thirdly, in the European Parliament's view it is inherently impossible to determine whether or not MEPs have really been influenced by their own financial interests or by any other — legitimate or illegitimate — motive when called upon to decide on the additional pension scheme, since the identification of MEPs participating in the scheme would not provide any information on the subjective reasons for their votes on the scheme.

106 However, the concept of a conflict of interest does not relate only to a situation in which a public official has a private interest which has actually influenced the impartial and objective performance of his official duties — in this case that of an elected representative in the European Parliament — but also to a situation in which the interest identified may, in the eyes of the public, appear to influence the impartial and objective performance of his official duties. Furthermore, the disclosure of potential conflicts of interest is not aimed only at revealing those cases in which the public official has performed his duties with the intention of satisfying his private interests, but also at informing the public of the risks of public officials being subject to conflicts of interest, so that they act impartially in the performance of their official duties, after, in view of the circumstances in which they find themselves, having declared the potential conflict of interest to which they are subject and taken or proposed measures to resolve or avoid that conflict. Accordingly, the Parliament's argument is unfounded and must be rejected, the subjective reasons for a vote cast by an elected representative being, moreover, inherently unascertainable.

107 Fourthly, for the same reasons as those set out in paragraph 106 above, the Court must reject the European Parliament's argument concerning the applicant's lack of proof of a debate on the potential conflicts of interest of MEPs in relation to the additional pension scheme or on the behaviour of a specific MEP.

108 Fifthly, it is also evident from the reasoning in paragraphs 91 to 106 above that the rule under which it follows from Regulation No 45/2001, as interpreted by the judgment in *Dennekamp* v *Parliament*, cited in paragraph 4 above (EU:T:2011:688, paragraphs 34 and 35), that it is incumbent on the person requesting the transfer of personal data accurately to provide evidence of the fact that that transfer is necessary cannot lead to the consequences that the European Parliament's arguments would imply.

109 First of all, contrary to the European Parliament's contention, it must be noted that the applicant set out the reasons why he needed to find out which MEPs were members of the additional pension scheme, notably as regards the possibility of thereby revealing potential conflicts of interest that might influence the performance of their duties.

110 Next, while the European Parliament seeks to argue that the applicant was obliged accurately to adduce all the evidence of the existence of conflicts of interest in order to establish the necessity of the transfer, it should be noted that, for the purpose of bringing to light the potential conflicts of interest of MEPs voting on the additional pension scheme, the applicant was, as a matter of law, entitled merely to show that they were in that situation because of their dual role as MEPs and as members of the scheme. The concept of a conflict of interest relates to a situation in which the interest identified may, in the eyes of the public, appear to influence the impartial and objective performance of official duties (see paragraph 106 above) and does not, therefore, require the lack of any impartial performance of the duties in question to be demonstrated. More specifically, the applicant cannot be

criticised for not having himself identified the body within the Parliament that was required to decide on the scheme, and thus the group of MEPs concerned, before requesting that the names of the relevant MEPs be transferred.

111 A contrary interpretation would mean that the applicant was required to apply, initially, for access to documents identifying those bodies within which the additional pension scheme had been voted upon, and, in the light of the result obtained, to apply, secondly, for access to the documents identifying the MEPs who actually took part in the vote on that point, and then to the documents identifying the MEPs participating in the scheme. There is nothing in Regulation No 1049/2001 to require an applicant for access to the documents held by an institution or body of the European Union to adopt that approach, nor can it be inferred from the application of Regulation No 45/2001 with respect to documents containing personal data.

112 Sixthly, the European Parliament claims that the interest underpinning the request for the names of MEPs participating in the additional pension scheme to be transferred is based entirely on the assessment of the journalist applying for access to documents — in this instance, the applicant — and not on objective grounds. In so doing, however, the Parliament loses sight of the fact that the applicant relied on the existence of potential conflicts of interest on the part of MEPs who are members of the scheme when it is voted upon, which is not a subjective assessment of a given situation but a statement as to a risk to the impartial and objective performance of official duties by the MEPs concerned.

113 Consequently, it follows from paragraphs 88 to 112 above that the European Parliament made a manifest error of assessment in finding that the applicant had not established the necessity of the transfer of the names of those MEPs participating in the additional pension scheme who, as members of the plenary, had actually voted on the scheme in the votes held on 24 April 2007, 22 April 2008 and 10 May 2012, having regard to the aim of bringing to light potential conflicts of interest.

114 It is appropriate, however, to examine the action further by analysing the arguments relating to the application of the second cumulative condition for the transfer of personal data required by Article 8(b) of Regulation No 45/2001, that is that there is no reason to assume that transferring the names of the members of the plenary participating in the additional pension scheme who took part in a vote on it could prejudice their legitimate interests.

Application of the condition under Article 8(b) of Regulation No 45/2001 relating to the lack of a legitimate interest in the protection of privacy of MEPs

115 The second part of the plea is divided into three claims which overlap. By the first claim, the applicant submits that the MEPs have no legitimate interest in the protection of their privacy for the purposes of Article 8(b) of Regulation No 45/2001, as they open their conduct to a significant degree of public scrutiny. By his second claim, the applicant takes the view that the European Parliament failed in the contested decision to establish that the legitimate interests of the MEPs would be prejudiced by the disclosure of the requested documents. By his third claim, he asserts that even if the Parliament had rightly considered that the requested information fell within the MEPs' private sphere, that would not be sufficient to protect it as a legitimate interest within the meaning of Article 8(b) of Regulation No 45/2001, which requires a weighing up of the interests engaged.

116 It should be noted at the outset that, according to the case-law, once the necessity of having the personal data transferred is established, the institution or body of the European Union in receipt of an application for access to documents containing such data must weigh up the various interests of the parties concerned and verify whether there is any reason to assume that the data subjects' legitimate interests may be prejudiced by that transfer, as required by Article 8(b) of Regulation No 45/2001

(see, to that effect, judgments in *Commission* v *Bavarian Lager*, cited in paragraph 4 above, EU:C:2010:378, paragraph 78, and *Dennekamp* v *Parliament*, cited in paragraph 4 above, EU:T:2011:688, paragraph 30).

117 That requirement must lead the EU institution or body in receipt of the application to refuse to transfer the personal data if it is found that there is the slightest reason to assume that the data subjects' legitimate interests would be prejudiced.

118 In the first place, the applicant's entire argument in support of the second part of the first plea is based on the premiss that the public nature of MEPs' duties and of their status is such that their legitimate interests should not enjoy the same degree of protection as those of individuals who are not public figures. As regards MEPs' interests, a distinction should be made between those falling into the public sphere, which must be subject to a lesser degree of protection when being weighed against an interest that would favour the transfer of personal data, and those forming part of the private sphere, which must be protected.

119 As the European Parliament acknowledges, the distinction which the applicant makes in the case of public figures between the public and private spheres is relevant for the purposes of determining the degree of protection of personal data to which they are entitled under the rules in Regulation No 45/2001, even if that regulation does not contain any such rule. It would be entirely inappropriate for an application for the transfer of personal data to be assessed in the same way irrespective of the identity of the data subject. Public figures have chosen to expose themselves to scrutiny by third parties, particularly the media and, through them, by a lesser or greater general public depending on the policy area, even if such a choice in no way implies that their legitimate interests must be regarded as never being prejudiced by a decision to transfer data relating to them. Thus, public figures have generally already accepted that some of their personal data will be disclosed to the public, and may even have encouraged or made such disclosure themselves. It is necessary therefore to take that environment into account when assessing the risk of the legitimate interests of public figures being prejudiced in the context of the application of Article 8(b) of Regulation No 45/2001, and in weighing those interests against the necessity of transferring the personal data requested.

120 In that context, it is appropriate, for the purposes of assessing the risk of MEPs' legitimate interests being prejudiced in this case — interests which undeniably include certain aspects of their professional activities, such as aspects of remuneration — to take into particular consideration the link between the personal data at issue, namely the names of MEPs participating in the additional pension scheme who have voted on it, and their mandate. The possibility of being a member of the scheme is open only to MEPs. Thus, having a mandate as a Member of the European Parliament is the first condition and is necessary in order to benefit from the additional pension provided under the scheme. For that principal reason, the personal data at issue fall into the public sphere of MEPs.

121 In the light of that feature, which limits the scope of application of the additional pension scheme to MEPs alone, the fact that membership of the scheme is optional and a result of voluntary affiliation, and thus does not arise automatically as a result of their mandate, or that the additional pension is paid after the end of their mandate (which, moreover, is in the very nature of any retirement pension), is not determinative as regards the inclusion of the personal data at issue in the private sphere of MEPs. It is also necessary to take into consideration not only the link with the MEP's mandate, but also all the information given by the applicant (not disputed by the European Parliament and indeed confirmed by the contents of the case-file) concerning the operation of the scheme, namely the Parliament's funding of two thirds of the contributions paid, the fact that it makes up shortfalls in the scheme and its commitment to compensating any losses suffered by the scheme, which, according to the applicant, thus ensures the preservation of the acquired pension rights of MEPs who are members of the scheme. These are matters which reinforce the proposition that the personal data at issue belongs in the public sphere of MEPs, denoting as they do the significant financial and legal commitment of the Parliament to the scheme.

122 Account must also be taken of the case-law according to which the additional pension scheme is part of the statutory provisions which are intended, as a matter of general interest, to ensure the financial independence of MEPs and, moreover, decisions taken in that respect by the competent bodies of the European Parliament must be regarded as measures of internal organisation which are intended to ensure its proper functioning and which fall within the rights conferred by public law on the Parliament so that it is able to perform the tasks entrusted to it, the rights and obligations under that scheme being a matter of public law (see, to that effect, judgments in *Purvis* v *Parliament*, cited in paragraph 26 above, EU:T:2011:600, paragraphs 60 and 61, and of 13 March 2013 in *Inglewood and Others* v *Parliament*, T-229/11 and T-276/11, ECR, EU:T:2013:127, paragraph 61).

123 The European Parliament's argument that contributions to the additional pension scheme relate to the private financial situation of MEPs must be rejected in view of the connection that can be made between the financial elements of the scheme, of which contributions form part, and the public sphere of MEPs. The same reasoning applies in respect of the Parliament's argument that the voting behaviour of MEPs, which is always part of their public sphere, must be distinguished from their membership of the scheme, which, according to the Parliament, falls into their private sphere. Moreover, transferring the names of the MEPs who are members of the scheme merely reveals their affiliation without disclosing any information about their financial situation, including their assets, their savings or the instruments in which the funds paid into the scheme are invested.

124 Having regard to the foregoing, it must therefore be held that, in weighing up the interests engaged, the legitimate interests of the MEPs who are members of the additional pension scheme, which fall into the public sphere of those MEPs, must be subject to a lesser degree of protection than that which, following the logic of Regulation No 45/2001, would be enjoyed by the interests falling into their private sphere.

125 In the second place, it must be borne in mind that, even in that context, personal data are transferred only if there is no reason to assume that the legitimate interests of the data subjects may be prejudiced by that transfer. However, the slightest degree of protection of the names of MEPs who are members of the additional pension scheme has the effect of giving greater weight to the interests represented by the aim of the transfer.

126 As the applicant argues, bringing to light potential conflicts of interest of MEPs, which is the aim of the transfer of data requested, ensures better scrutiny of the actions of MEPs and of the functioning of an EU institution which represents the peoples of the Member States, and improves the transparency of its actions. Contrary to the European Parliament's contention at the hearing, such interests may be lawfully taken into consideration in the weighing up of interests that must be carried out under Article 8(b) of Regulation No 45/2001 (see paragraphs 61 to 63 above). Consequently, in view of the importance of the interests invoked here, which are intended to ensure the proper functioning of the European Union by increasing the confidence that citizens may legitimately place in the institutions, it must be held that the legitimate interests of the MEPs who are members of the additional pension scheme, as defined in paragraphs 120 and 121 above, cannot be prejudiced by the transfer of the personal data at issue.

127 The weighing up of the interests engaged ought therefore to have resulted in approval of the transfer of the names of the MEPs participating in the additional pension scheme who took part in votes on it, since the European Parliament cannot lawfully maintain that there is a legally binding presumption favouring the legitimate interests of the data subjects to whom the personal data to be transferred relate. Nothing in the wording of Article 8(b) of Regulation No 45/2001 militates in favour of such a presumption being recognised, since the assessment of an application for personal data to be transferred requires the interests engaged to be weighed up after the applicant has established that there is a necessity for the data to be transferred (see, to that effect, judgments in *Commission* v *Bavarian Lager*, cited in paragraph 4 above, EU:C:2010:378, paragraph 79, and *Dennekamp* v *Parliament*, cited in paragraph 4 above, EU:T:2011:688, paragraph 34), a condition which is to be

interpreted strictly and requires the applicant to provide express and legitimate reasons for the necessity he invokes. Moreover, the Parliament wrongly relies on Regulation No 1049/2001 in order to justify the existence of such a presumption, noting that the regulation permits exceptions to the right to transparency. While Regulation No 1049/2001 does indeed provide for an exception to the right of access to documents where disclosure would risk undermining the privacy or the integrity of the individual, thus making Regulation No 45/2001 applicable, that does not have the effect of creating a presumption in favour of the legitimate interests of persons whose personal data are protected by the latter regulation.

128 Among the other arguments put forward by the European Parliament, its criticism of the proportionate nature of the measures requested by the applicant is ineffective. In arguing that point, the Parliament challenges the necessity of transferring the names of the MEPs participating in the additional pension scheme for the purpose of attaining the applicant's objectives, and not the weighing up of the interests engaged.

129 Other arguments put forward by the European Parliament must be rejected as unfounded, as, for example, when it contends that, were the applicant's arguments to be accepted, MEPs would no longer be entitled to any privacy, and that the transfer of personal data would endanger the independence of their mandate. No proper evidence is adduced in support of such assertions, whereas the limited nature of the information disclosed by the transfer of data at issue must be emphasised, and there is nothing to explain how the independence of an MEP's mandate would be damaged if the public knew of his membership of the additional pension scheme. The same applies in respect of the argument concerning the fact that MEPs might attract criticism from the public in relation to an alleged conflict of interest. Since such a conflict is inherent in the function of Member of the European Parliament, any criticisms may already be made by any member of the public familiar with the issues concerning the scheme, even if that person is not precisely aware of the names of MEPs potentially affected by such a conflict of interest. Furthermore, it must be noted that the applicant voices such criticism in a representative capacity through his various written pleadings.

130 Accordingly, it must be held that the European Parliament made a manifest error of assessment in finding that the legitimate interests of MEPs participating in the additional pension scheme who took part in a vote on it might be prejudiced by the transfer of their names.

131 It is appropriate to examine the action further, since the European Parliament's error of assessment in applying the two cumulative conditions under Article 8(b) of Regulation No 45/2001 relates only to those members of the plenary who took part in the votes on the additional pension scheme on 24 April 2007, 22 April 2008 and 10 May 2012, and not to those who did not participate in those votes or those not yet, or no longer, in office on the ground, inter alia, that their mandate had previously ended, which includes those who had exercised their pension rights.

Second plea in law, alleging failure to state reasons

132 In essence, the applicant submits that the conclusion of the contested decision, that the obligation to protect privacy in relation to personal data prevails over the requirement of transparency, is vitiated by the failure to state reasons. The European Parliament, he submits, failed to explain how the disclosure of the documents requested would specifically and actually undermine the privacy of the MEPs whose names appeared in those documents.

133 It must be borne in mind that if the institution concerned decides to refuse access to a document which it has been asked to disclose, it must, in principle, explain how disclosure of that document could specifically and actually undermine the interest protected by the exception — among those provided for in Article 4 of Regulation No 1049/2001 — upon which it is relying (judgments in *Sweden* v *MyTravel and Commission*, cited in paragraph 35 above, EU:C:2011:496, paragraph 76, and

of 28 March 2012 in *Egan and Hackett* v *Parliament*, T-190/10, EU:T:2012:165, paragraph 90). Such an explanation cannot therefore consist of a mere assertion that access to certain documents would undermine privacy within the meaning of Article 4(1)(b) of Regulation No 1049/2001 (judgment in *Egan and Hackett* v *Parliament*, EU:T:2012:165, paragraph 91).

134 It should also be borne in mind that, where a request based on Regulation No 1049/2001 seeks access to documents including personal data, Regulation No 45/2001 becomes applicable in its entirety, including Article 8 thereof (judgments in *Commission* v *Bavarian Lager*, cited in paragraph 4 above, EU:C:2010:378, paragraph 63, and *Dennekamp* v *Parliament*, cited in paragraph 4 above, EU:T:2011:688, paragraph 26).

135 Therefore where, as in the present case, Article 8(b) of Regulation No 45/2001 is applicable to an application for access to documents, the examination of the specific and actual nature of the undermining of the interest protected by the exception provided for in Article 4(1)(b) of Regulation No 1049/2001 is indissociable from the assessment of the risk that the legitimate interests of the data subject might be prejudiced by the transfer of personal data, since the legitimate interests referred to in Article 8(b) of Regulation No 45/2001 overlap with the privacy and the integrity of the individual referred to by Article 4(1)(b) of Regulation No 1049/2001, which, through the disclosure of certain aspects thereof to the public, are liable to be prejudiced by the transfer of personal data.

136 Furthermore, it is clear from the case-law that the statement of reasons required by Article 296 TFEU must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent Court to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see judgment of 1 February 2007 in *Sison* v *Council*, C-266/05 P, ECR, EU:C:2007:75, paragraph 80 and the case-law cited).

137 According to the applicant, the statement of reasons for the contested decision does not explain how the disclosure of the documents requested would specifically and actually undermine the privacy of the MEPs participating in the additional pension scheme.

138 In the contested decision, the European Parliament took the view that it would not be proportionate to allow the transfer of personal data at issue, given the weight of the data subjects' legitimate interests. It expressed its view that the scope of MEPs' legitimate interests was certainly less far-reaching than those of a private person without any public commitment, while asserting that the protection mechanisms provided for by Regulation No 45/2001 did apply in the present case and that the MEPs had legitimate interests in not having the data at issue disclosed, such data falling into their private sphere and thus constituting a legitimate interest to be protected as data concerning their personal financial situation. According to the Parliament, pension contributions and the resulting pension rights are always private concerns, and the link with the MEP's mandate or the method of funding the additional pension scheme has no relevance. The Parliament went on to find that, if that were not the case, the applicant's proposition would apply to any member of staff of a public authority. It reiterated its view that the transfer of the data at issue, which is based on the general interest of the media and the general public in the personal financial situation of MEPs, was not proportionate, as, if it were otherwise, the media and the public would have access to all the private data of MEPs and of public officials involving public expenditure. It disputed the applicant's argument that the disclosure of the

documents requested would be more appropriate than the measures designed to provide public control of public expenditure. It concluded, in the light of these matters, that the legitimate interests of MEPs should prevail over the alleged necessity of the transfer of the data at issue.

139 It is apparent from the contested decision that the risk of MEPs' legitimate interests, and thus their privacy, being undermined lies in the fact that, falling as they do into the private sphere of MEPs, the personal data at issue constitute a legitimate interest to be protected on the ground that they concern the personal financial situation of MEPs, pension contributions and resulting pension rights being private matters. The other findings made by the European Parliament in weighing up the interests at stake, set out in paragraph 138 above, do not relate to an evaluation of the risk of the legitimate interests or privacy of MEPs being undermined.

140 Since examination of the specific and actual nature of the undermining of the interest protected by the exception provided for in Article 4(1)(b) of Regulation No 1049/2001 is indissociable from the assessment of the risk that the legitimate interests of the data subject might be prejudiced, as referred to in Article 8(b) of Regulation No 45/2001, it must be noted that the European Parliament carried out the latter assessment, stating that the personal data at issue fell into the private sphere of MEPs, were subject to a higher degree of protection under that regulation and therefore had to be protected as legitimate interests. It noted that contributions to a pension scheme and the resulting pension rights were private concerns, irrespective of the scheme in question and of the manner in which it was funded, that the retirement pension under the additional pension scheme was paid after the end of a mandate and that MEPs had to pay a significant personal financial contribution, which was not reimbursed by the Parliament.

141 The European Parliament's reasoning in the contested decision is relatively succinct but none the less allows both the addressee of the decision and the Court to understand the reasons why the Parliament concluded that there was a risk that MEPs' legitimate interests would be prejudiced if the transfer of personal data at issue were authorised. Since such an assessment necessarily encompasses an assessment of the risk of the privacy and the integrity of MEPs being specifically and actually undermined, the applicant's argument, which is somewhat lacking in detail, must, in consequence, be rejected.

142 Accordingly, the second plea in law must be dismissed.

143 It follows from all the foregoing that the action is devoid of purpose in so far as access is sought to the names of the 65 MEPs who were members of the additional pension scheme and applicants in the cases giving rise to the order in *Albertini and Others and Donnelly* v *Parliament*, cited in paragraph 25 above (EU:T:2010:519) and to the judgment in *Purvis* v *Parliament*, cited in paragraph 26 above (EU:T:2011:600); that the contested decision must be annulled in so far as the European Parliament refused to grant access to the names of the MEPs who were members of the scheme and who, as members of the plenary, actually took part in the votes on the scheme held on 24 April 2007, 22 April 2008 and 10 May 2012; and that the action must be dismissed as to the remainder.

Costs

144 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings However, pursuant to Article 134(2) and (3) of the Rules of Procedure, the Court may order that the costs be shared or decide that the parties are to bear their own costs where each party succeeds on some and fails on other heads.

145 Since the European Parliament has been largely unsuccessful, it must be ordered to bear its own costs and to pay three quarters of those incurred by the applicant. The applicant shall bear one quarter of his own costs.

146 Under Article 138(1) of the Rules of Procedure, the institutions and the Member States which have intervened in the proceedings are to bear their own costs. In the present case, the EDPS, the Republic of Finland and the Kingdom of Sweden shall bear their own costs.

On those grounds,

THE GENERAL COURT (Fifth Chamber)

hereby:

1. Declares that there is no need to adjudicate on the application for annulment of Decision A(2012) 13180 of the European Parliament of 11 December 2012 refusing to grant Mr Gert-Jan Dennekamp access to certain documents relating to the affiliation of certain Members of the European Parliament to the additional pension scheme in so far as access is thereby refused to the names of the 65 Members of the European Parliament who were applicants in the cases giving rise to the order of 15 December 2010 in *Albertini and Others and Donnelly* v *Parliament* (T-219/09 and T-326/09, ECR, EU:T:2010:519) and to the judgment of 18 October 2011 in *Purvis* v *Parliament* (T-439/09, ECR, EU:T:2011:600);

2. Annuls Decision A(2012) 13180 in so far as access is thereby refused to the names of Members participating in the additional pension scheme of the European Parliament who, as members of the Parliament's plenary, actually took part in the votes on that additional pension scheme held on 24 April 2007, 22 April 2008 and 10 May 2012;

3. Dismisses the action as to the remainder;

4. Orders the European Parliament to bear its own costs and to pay three quarters of those incurred by Mr Dennekamp;

5. Orders Mr Dennekamp to bear one quarter of his own costs;

6. Orders the European Data Protection Supervisor (EDPS), the Republic of Finland and the Kingdom of Sweden to bear their own costs.

Dittrich Schwarcz Tomljenović

Delivered in open court in Luxembourg on 15 July 2015.

[Signatures]