1 Access to documents – Regulation (EC) No 1049/2001 – Working documents issued by the General Secretariat of the Council concerning two legislative proposals pending at the time of the request for access – Partial refusal of access – Exception relating to the protection of the decision-making process – Action for annulment – No justification, in the Council's opinion, of documents to which access was granted pursuant to a request – Absence of a challengeable act – Inadmissibility – Lack of jurisdiction to rule

In Case T-592/21,

Patrick Breyer, represented by Lea Bensch (Belgium), represented by O. Brouwer, T. van Heffelaar and W. Pops, lawyers,

applicant,

supported by

Kingdom of Belgium, represented by M. Jacobs and C. Pochet, acting as Agents,

intervener,

Republic of Finland, represented by H. Leppo and M. Pere, acting as Agents,

intervener,

Kingdom of Sweden, represented by C. Meyer-Seitz, acting as Agent,

intervener,

versus

Council of the European Union, represented by L. Aiston, A. Chamodraka and J. Rutar, acting as Agents,

defendant,

supported by

French Republic, represented by B. Fodeux, E. Bergot and D. Torrent, acting as Agents,

intervener,

THE GENERAL COURT (Ninth Chamber),

composed, at the time of the deliberations, of L. Truchot, President, M. Sampol Pucurull (Rapporteur) and F. Schalin, Judges,

Registrar: E. Coles, Administrator,

having regard to the written part of the proceedings,

having regard to the order of 20 March 2023 ordering the Council to produce the documents to which it had refused the applicant access and the production of those documents by the Council on 24 April 2023,

having regard to the written questions and requests for the production of documents addressed to the applicant and Council on 13 March and 10 April 2023 and their responses,

further to the hearing on 30 April 2023,

gives the following

Judgment

1 By his action based on Article 263 TFEU, the applicant, Mr Patrick Breyer, seeks the annulment, first, of Decision ST 6120/2021 of the Council of the European Union of 11 July 2021 as to the partial refusal of access to documents of the Council of the European Union concerning the proposal for a regulation on artificial intelligence and amending certain Union legislative acts – Partial confirmation of initial application, pending at the time of the request for access 2020/0215 (COD) and 2020/0279 (COD), which were part of the Part on Transport and Telecommunications of the Multi-Annual Indicative Programme for the Internal Market, Industry, Research and Entrepreneurship – Part on Transport and Telecommunications, of the Multi-Annual Indicative Programme – Partial access granted to a request under Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43) ('the contested decision').

Background to the dispute

2 On 6 March 2020, the applicant, submitted, on the basis of Regulation No 1049/2001, a request for access to, inter alia, 152 documents concerning exchanges in the course of several legislative proposals between the Council and the Permanent Representatives Committee (Part 2) (Coreper II) including documents to which the Council had refused access.

3 By three letters of 27 March, 20 April and 24 April 2021, the General Secretariat of the Council replied to the initial request by providing the applicant full access to 27 WK documents and partial access to WK documents. However, the Council exceptionally granted access to the following documents: WK 2/2020, WK 3/2020, WK 4/2020, WK 5/2020, WK 6/2020, WK 7/2020, WK 8/2020, WK 9/2020 and WK 10/2020 ('the proposed documents'), which were part of the proposal for a Regulation of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of biometric data in order to effectively apply the Regulation on Asylum and Migration management, replacing Regulation (EU) 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) (OJ 2013 L 180, p. 31) ('the proposed Regulation on Eurodac') and the proposal for a Regulation of the European Parliament and of the Council on the establishment of a screening for third-country nationals at the external borders and amending Regulations (EC) 2017/240 and (EU) 2019/818 ('the amended proposal for the Screening Regulation'). These two legislative proposals are part of the Pact on Migration and Asylum, which was made up of a series of legislative wheels which the Council presented to the Member States Commission had proposed on 23 September 2020.

4 On 4 May 2021, the applicant made a confirmatory application for access to the documents at issue under Article 7(2) of Regulation No 1049/2001 ('the confirmatory application').

5 On 11 July 2021, the Council adopted the contested decision, by which it confirmed the refusal to grant access to the documents at issue on the basis of the first subparagraph of Article 4(3) of Regulation No 1049/2001.

Law

Admissibility

Jurisdiction to rule on the lawfulness of the contested decision

Lack of jurisdiction to rule on the lawfulness of the contested decision

Lack of jurisdiction to rule on the lawfulness of the contested decision

Lack of