

4. Fourth plea in law, alleging infringement of Article 140(1) of the Financial Regulation (equivalent to Article 106(16) of the Financial Regulation applicable from January 2016), of Article 140(2)(b) of the Financial Regulation (equivalent to Article 106(17)(b) of the Financial Regulation applicable from January 2016) and of Article 136(3) of the Financial Regulation, on the ground that there is a lack of reasons for the publication decision.
5. Fifth plea in law, alleging infringement of Article 106(13)(a) of the Financial Regulation applicable from January 2016. The applicant alleges that the competent authorising officer did not consider the application of a financial penalty as an alternative to the exclusion decision, therefore the decision must be annulled on the ground that it lacks reasoning. In any event, the applicant requests the Court, in the event that the latter decides not to annul the contested decision in its entirety, to replace the exclusion measure with a penalty that is reasonable in the light of the circumstances of the case, in accordance with Article 261 TFEU and Article 143(9) of the Financial Regulation.

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- (¹) Council Regulation (EU) 2018/1877 of 26 November 2018 on the financial regulation applicable to the 11th European Development Fund, and repealing Regulation (EU) 2015/323 (OJ 2018 L 307, p. 1).
- (²) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018 L 193, p. 1).
- (³) Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012 L 298, p. 1).
- (⁴) Regulation (EU, Euratom) 2015/1929 of the European Parliament and of the Council of 28 October 2015 amending Regulation (EU, Euratom) No 966/2012 on the financial rules applicable to the general budget of the Union (OJ 2015 L 286, p. 1).

Action brought on 9 March 2023 — eClear v Commission

(Case T-127/23)

(2023/C 155/87)

Language of the case: German

Parties

Applicant: eClear AG (Berlin, Germany) (represented by: R. Thomas, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul the implied rejection of 4 January 2023 of the applicant's request for access to Commission documents of 14 September 2022 — Reference GESTDEM No 2022/5489 — by which it seeks access to all binding tariff information decisions since 2004;
- order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law.

1. First plea in law, alleging infringement of Article 2(1) of Regulation 1049/2001. (¹) According to the applicant:
 - the requested binding tariff information decisions are documents within the meaning of Regulation 1049/2001.
 - In its decision on the initial application, the Commission failed to take into account that binding tariff information decisions in hard copy were sent to it in the past, all of which came within the concept of documents in Regulation 1049/2001.

- The Commission incorrectly assumes that the invalid binding tariff information decisions that can no longer be accessed online by the public are not documents within the meaning of Regulation 1049/2001. The binding tariff information database as a whole is a document that can be made accessible to the applicant.
 - According to the case-law of the Court of Justice, the individual binding tariff information decisions are also documents within the meaning of the regulation because EU officials can access them through the tools available to them.
2. Second plea in law, alleging infringement of Article 42 of the Charter of Fundamental Rights. According to the applicant:
- if the design of the database for binding tariff information decisions leads to invalid decisions no longer coming within the concept of documents in Regulation 1049/2001, this constitutes an infringement of Article 42 of the Charter of Fundamental Rights and the Commission cannot rely on it.
 - There is no doubt that valid binding tariff information decisions that are available on the database are documents within the meaning of Regulation 1049/2001.
 - If the actual conduct — in the present case, programming of a database — of an EU institution led to certain documents falling outside the scope of Regulation 1049/2001, this constitutes breach of the right of access to the documents of the institutions. The breach is to be examined in the light of Article 52(1) of the Charter of Fundamental Rights.
 - In the present case, there does not appear to be any legal basis allowing the Commission to remove binding tariff information decisions from the scope of the Charter of Fundamental Rights after their expiry.
 - Furthermore, it is not apparent which private or public interests, within the meaning of Article 15(3) TFEU, were advanced by the infringement of with Article 42 of the Charter of Fundamental Rights.

(¹) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

Action brought on 9 March 2023 — Meta Platforms Ireland v European Data Protection Board

(Case T-128/23)

(2023/C 155/88)

Language of the case: English

Parties

Applicant: Meta Platforms Ireland Ltd (Dublin, Ireland) (represented by: H.-G. Kamann, F. Louis, M. Braun and A. Vallery, lawyers, P. Nolan, B. Johnston, C. Monaghan and D. Breatnach, Solicitors, D. McGrath, E. Egan McGrath and H. Godfrey, Barristers)

Defendant: European Data Protection Board (EDPB)

Form of order sought

The applicant claims that the Court should:

- annul the EDPB's Binding Decision 4/2022 on the dispute submitted by the Irish SA on Meta Platforms Ireland Limited and its Instagram service (Art. 65 GDPR) adopted on 5 December 2022, in total or, in the alternative, in its relevant parts, and
- order the defendant to pay the costs of the proceedings.