

# GENERAL COURT

## Judgment of the General Court of 26 April 2016 — Strack v Commission

(Case T-221/08) <sup>(1)</sup>

*(Access to documents — Regulation (EC) No 1049/2001 — Documents relating to an OLAF investigation file — Action for annulment — Implied and express refusal to grant access — Exception relating to the protection of privacy and the integrity of the individual — Exception relating to the protection of the commercial interests of a third party — Exception relating to the protection of the decision-making process — Duty to state reasons — Non-contractual liability)*

(2016/C 211/51)

Language of the case: German

### Parties

*Applicant:* Guido Strack (Cologne, Germany) (represented by: H. Tettenborn and N. Lödler, lawyers)

*Defendant:* European Commission (represented initially by P. Costa de Oliveira and B. Eggers, and subsequently by B. Eggers and J. Baquero Cruz, acting as Agents)

### Re:

First, action for annulment of all implied and express decisions of the Commission adopted following the initial applications for access to documents made by Mr Strack on 18 and 19 January 2008 and, secondly, an action for damages.

### Operative part of the judgment

*The Court:*

1. Declares that there is no longer any need to adjudicate on the lawfulness of the implied decisions refusing access to the documents, taken in connection with the applications for access made by Mr Guido Strack.
2. Declares that there is no longer any need to adjudicate on the lawfulness of the express decisions refusing access, in full or in part, to the documents, adopted by the Commission of the European Communities and by the European Anti-Fraud Office (OLAF) in connection with the confirmatory applications for access to documents made by Mr Strack of 22 February and 21 April 2008, in so far as those documents did not exist or were not available, those documents, or parts of those documents, have been released to the public, or Mr Strack accepts the lawfulness of the decisions refusing access.
3. Annuls OLAF's decision of 30 April 2010 in so far as:
  - access to the documents marked 'PD' was refused;
  - Mr Strack's name was concealed in the documents marked 'PA';
  - documents were omitted in OLAF's list of 30 April 2010 or were not communicated to Mr Strack solely on the grounds that he created them, he had them in his possession for the purposes of 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 institutions and bodies of the European Union and on the free movement of such data, or another provision, without those documents having been disclosed to the public, or they were not included in the application for access, since they related to exchanges between OLAF and the European Ombudsman, or between OLAF and Mr Strack, and they concerned Mr Strack without being part of the investigation file in question;

4. Annuls OLAF's decision of 7 July 2010 in so far as:
  - access to document No 266 was refused 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;
  - access to document No 268 was refused, with exception of the information to which Mr Strack could have had access to on the basis of Regulation No 1049/2001 in the context of the transmission of other documents;
  - Mr Strack's name was concealed in the circulation sheets annexed to that decision;
5. Dismisses the action as to the remainder;
6. Orders the Commission to bear its own costs and to pay three quarters of the costs of Mr Strack;
7. Orders Mr Strack to bear one quarter of his own costs.

(<sup>1</sup>) OJ C 223, 30.8.2008.

---

**Judgment of the General Court of 27 April 2016 — European Dynamics Luxembourg and Others v  
EUIPO**

(Case T-556/11) (<sup>1</sup>)

*(Public service contracts — Tendering procedure — Software development and maintenance services —  
Rejection of a tenderer's bid — Classification of a tenderer in the cascade procedure — Grounds for  
exclusion — Conflict of interest — Equal treatment — Duty of diligence — Award criteria — Manifest  
error of assessment — Duty to state reasons — Non-contractual liability — Loss of opportunity)*

(2016/C 211/52)

Language of the case: English

**Parties**

*Applicants:* European Dynamics Luxembourg and Others (Ettelbrück, Luxembourg), European Dynamics Belgium SA (Brussels, Belgium), Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented initially by N. Korogiannakis, M. Dermizakis and N. Theologou, subsequently by I. Ampazis, and lastly by M. Sfyri, lawyers)

*Defendant:* European Union Intellectual Property Office (EUIPO) (represented initially by N. Bambara and M. Paolacci, and subsequently by M. Bambara, acting as Agents, assisted by P. Wytinck and B. Hoorelbeke, lawyers)

**Re:**

Action, first, for annulment of the decision of EUIPO notified by letter of 11 August 2011 and adopted in tendering procedure AO/029/10 entitled 'Software development and maintenance services' rejecting the tender submitted by European Dynamics Luxembourg and the other related decisions of EUIPO adopted in the context of that procedure, including those awarding the contract to other tenderers, and, second, for damages.

**Operative part of the judgment**

*The Court:*

1. Annuls the decision of the European Union Intellectual Property Office (EUIPO), notified by letter of 11 August 2011 and adopted in tendering procedure AO/029/10 entitled 'Software development and maintenance services', rejecting the tender submitted by European Dynamics Luxembourg SA and the other related decisions of EUIPO adopted in the context of that procedure, including those awarding the contract to three other tenderers as successful tenderers ranked first to third in the 'cascade' procedure;