

Pleas in law and main arguments

In support of the action, the applicant relies on five pleas in law:

1. In its decision of 8 November 2017, the SRB clearly confuses the general right of access to documents, on which any EU citizen can rely, with the more specific right of access to the file, which can be exercised only by parties which have an interest in the proceedings to which the file relates. The SRB, however, concludes that the list of documents to which the applicant can be granted access is the same under both rights, a statement which is at variance with the law.

The right of access to the file is clearly a separate right to that of access to documents. Whereas the former is one of the rights coming within the scope of the 'right to good administration' enshrined in the Charter of Fundamental Rights of the European Union, the latter is an independent right of a much more general nature and connected with the principle of public transparency.

2. This difference between those two rights implies that they are addressed to different persons and are protected differently, with the result that the right of access to the file can be invoked only by persons having an interest in the proceedings at issue, whereas the right of access to documents is granted to any EU citizen in relation to the documents held by the EU institutions.
3. The differing scope of those rights necessarily implies that the range of exceptions applicable to each right is also different. Accordingly, while one of the exceptions to the right of access to documents is that such access must not result in prejudice to the 'commercial interests' of the undertakings concerned, the right of access to the file, by contrast, is restricted by the fact that its exercise must not affect the 'business secrets' of the undertakings party to the proceedings. In that sense, the distinction between 'commercial interests', clearly a broad concept, and 'business secrets', a much more restrictive concept that refers to the set of knowledge that is specific to a given undertaking, known by a very specific group of persons, and disclosure of which may affect that undertaking, is justified. In this respect, the existence of business secrets must be weighed against the remaining interests involved, such as the right of defence.
4. Confidentiality, being another of the exceptions to which the right of access to the file is subject, must also be justified and is limited in a number of ways which must be taken into account, such that reliance cannot automatically be placed on confidentiality in order to deny the right of access to the file. Accordingly, reasons as to why confidentiality applies must be given, something which did not happen in the present case.
5. The key to the decision in the present case must lie in the application of Article 41(2)(b) of the Charter of Fundamental Rights of the European Union and, consequently, the SRB must, within the framework of Regulation No 806/2014, comply with the provisions of Article 90(4), and not those of 90(1), thereof.

**Order of the General Court of 16 January 2018 — fritz-kulturgüter v EUIPO — Sumol + Compal
Marcas (fritz-wasser)**

(Case T-862/16) ⁽¹⁾

(2018/C 083/35)

Language of the case: German

The President of the Eighth Chamber has ordered that the case be removed from the register.

⁽¹⁾ OJ C 38, 6.2.2017.
