

- award damages to the applicant amounting to 50 000 euros;
- order the defendant to pay the costs.

### **Pleas in law and main arguments**

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

1. First plea in law, alleging a manifest error of assessment by EPSO/the Selection Board in the evaluation of the applicant's working experience and, further, the infringement of Annex III to the notice of competition at issue detailing the required work experience.
2. Second plea in law, alleging infringement of Article 41 of the Charter of Fundamental Rights of the European Union and of the applicant's right to be heard, and, further, infringement of the duty to state reasons and of Article 296 of the Treaty on the Functioning of the European Union.
3. Third plea in law, alleging infringement of Article s 1, 2, 3 and 4 of Regulation No 1/58, <sup>(2)</sup> breach of Article s 1d and 28 of the Staff Regulations and of Article 1(1)(f) of Annex III to those Regulations and, further, breach of the principles of equal treatment and non-discrimination.

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<sup>(1)</sup> OJ 2016 C 187, p. A/1.

<sup>(2)</sup> Regulation No. 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ, English Special Edition 1952-1958 (I), p. 59).

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### **Action brought on 15 February 2018 — Batchelor v Commission**

**(Case T-85/18)**

(2018/C 152/48)

*Language of the case: English*

### **Parties**

*Applicant:* Edward William Batchelor (Brussels, Belgium) (represented by: B. Hoorelbeke, lawyer, and M. Healy, Solicitor)

*Defendant:* European Commission

### **Form of order sought**

The applicant claims that the Court should:

- annul Commission Decision C(2017) 8430 final of 5 December 2017, refusing access to a document containing a desk officer's ethics declaration filed in the Human Resource Management information system Sysper2 of the European Commission and to other documents falling within the scope of the initial access request;
- order the Commission to pay the costs.

### **Pleas in law and main arguments**

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

1. First plea in law, alleging violation of Article 15(3) TFEU, Article 42 of the Charter of Fundamental Rights of the EU, Articles 2(1) and 4(1)(b) of Regulation 1049/2001, <sup>(1)</sup> read in conjunction with Article 8(b) of Regulation 45/2001, <sup>(2)</sup> by refusing to grant full or partial access to the ethics declaration.

- In the first part of the first plea in law, the applicant demonstrates that the Commission did not examine nor demonstrate that the disclosure of the ethics declaration would specifically and actually undermine the interest protected by Article 4(1)(b) Regulation 1049/2001. Therefore, the Commission did not discharge its legal burden and erred in law by refusing access, at least in part, to the ethics declaration.
  
  - In the second part of the first plea in law, the applicant shows that the Commission erred in the application of Article 4 (1)(b) of Regulation 1049/2001, read in conjunction with Article 8 (b) Regulation 45/2001, when finding that the applicant had not properly demonstrated that disclosure of the ethics declaration was necessary.
2. Second plea in law, alleging violation of Article 42 of the Charter of Fundamental Rights, Article 15 (3) TFEU, and Article 2 (1) of Regulation 1049/2001, by refusing to grant access to further documents falling within the scope of the initial access request.
- In the second plea in law, the applicant sets out the relevant and consistent evidence underpinning its belief that more documents which fall within the scope of its initial access request exist, than the seventy-one documents identified by the Commission. By refusing access to those further documents, the Commission violated Article 42 of the Charter of Fundamental Rights, Article 15(3) TFEU and Article 2(1) of Regulation 1049/2001.
3. Third plea in law, alleging violation of the principles of good administration, in particular the duty of care.
- In the third plea in law, the applicant demonstrates that the Commission infringed its duty of care under Article 41 of the Charter of Fundamental Rights by failing to exercise the requisite due diligence when it determined that there are no further documents falling within the scope of the initial access request. In support of this plea, the applicant shows that there is no explanation how the Commission has ensured that no further documents exist, as no information is provided on the search methods applied by the Commission.
4. Fourth plea in law, alleging violation of the duty to state reasons as laid down in Article 296(2) TFEU.
- In the first part of the fourth plea in law, the applicant demonstrates that the Commission violated its duty to state reasons under Article 296 TFEU by failing to explain why disclosure of the ethics declaration would actually and specifically undermine the interest protected by Article 4(1)(b) of Regulation 1049/2001, nor does it set out why it is assumed that such disclosure would jeopardise the legitimate interest of the data subject in accordance with Article 8 (b) of Regulation 45/2001.
  
  - In the second part of the fourth plea in law, the applicant shows that the contested decision does not contain any reasoning why it did not identify any additional documents falling within the scope of the initial access request despite the applicant's submissions in his confirmatory application. Therefore also this part of the contested decision is based on insufficient reasoning.

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<sup>(1)</sup> Regulation (EC) 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).

<sup>(2)</sup> 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).