Reports of Cases

ORDER OF THE GENERAL COURT (Seventh Chamber)

25 March 2026*

(Action for annulment and damages – Law governing the institutions – Protection of personal data – Regulation (EU) 2018/1725 – Complaint to the EDPS concerning the processing of personal data by EUIPO – No need to adjudicate in part – Manifest inadmissibility in part)

In Case T-144/25,

WS, represented by H. Tettenborn, lawyer,

applicant,

v

European Data Protection Supervisor (EDPS), represented by D. Nardi, F. Muller and A. Zawiła-Niedźwiecka, acting as Agents,

defendant,

THE GENERAL COURT (Seventh Chamber),

composed of K. Kecsmár, President, P. Nihoul (Rapporteur) and U. Öberg, Judges,

Registrar: V. Di Bucci,

having regard to the written part of the procedure,

makes the following

Order

1 By his action, the applicant, WS, seeks, first, on the basis of Article 263 TFEU, the annulment of the alleged implicit decision of the European Data Protection Supervisor (EDPS) of 26 February 2025 not to take further action on his complaint of 25 November 2024 relating to the manner in which the European Union Intellectual Property Office (EUIPO) had processed his personal data ('the contested decision') and, secondly, on the basis of Articles 268 and 340 TFEU, compensation for the damage which he claims to have suffered as a result of the EDPS's conduct towards him.

* Language of the case: English.

Background to the dispute

2 On 1 August 2024, the applicant, 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 (OJ 2001 L 145, p. 43), requested access from EUIPO to certain documents.

3 As EUIPO failed to acknowledge that application or the subsequent confirmatory applications, the applicant requested, by letter of 4 November 2024, that it be treated as a data breach.

4 By decision of 15 November 2024, the Executive Director of EUIPO, on the basis of Article 4(1)(b), the second indent of Article 4(2) and Article 4(3) of Regulation No 1049/2001, confirmed the implicit rejection decision.

5 On 25 November 2024, the applicant lodged before the EDPS a complaint against EUIPO in which he stated, inter alia, that he wished to obtain from it a copy of his personal data and the logs related to any data processing operation, the restoration of his data which had been deleted, a restriction on the processing of his data and information about that data breach ('the complaint of 25 November 2024'). On the same day, the EDPS acknowledged receipt of that complaint by sending an automatically generated email.

6 On 5 December 2024, the applicant requested that the EDPS inform him of the case number assigned to his complaint of 25 November 2024 and of any additional information.

7 On 20 January 2025, the applicant reiterated his request relating to the case number.

8 On 21 January 2025, the EDPS acknowledged receipt of those two emails from the applicant. In addition, the EDPS informed the applicant that he had found no trace of the complaint of 25 November 2024 and invited him to submit it again.

9 By email of the same day, the applicant declined the EDPS's invitation to resubmit the complaint of 25 November 2024 on the ground that the acknowledgement of receipt which had been delivered to him on that date showed that that complaint had been properly submitted. Nevertheless, the applicant provided a copy of his complaint and of the annexes thereto, as well as a copy of the automatically generated acknowledgement of receipt.

10 On 24 January 2025, the EDPS informed the applicant that his complaint of 25 November 2024 had been saved under case number 2025-0100. In the same email, the EDPS provided the following clarification: 'We will analyse your complaint and keep you informed of further developments.'

11 On 29 January 2025, the applicant requested that the EDPS inform him of any further action taken.

12 On 31 January 2025, the EDPS inter alia reconfirmed receipt of the complaint of 25 November 2024 and the case number which had been assigned to it, and informed the applicant that the information that he had submitted in his email of 21 January 2025 would be taken into account when analysing his complaint.

13 By email of 7 February 2025, the EDPS informed the applicant, inter alia, that his complaint of 25 November 2024, as submitted online, had been located on 5 February 2025 and that it would be analysed.

14 On 2 March 2025, the applicant brought the present action.

Event subsequent to the bringing of the action

15 On 16 April 2025, the EDPS informed the applicant of his decision to close the file for the complaint of 25 November 2024. In that connection, the EDPS considered that that complaint did not concern the processing of personal data, but rather the management of requests for public access to documents under Regulation No 1049/2001. Accordingly, the EDPS considered that the complaint did not fall within his mandate and that there were not sufficient grounds to open an investigation.

Forms of order sought

16 In his application, the applicant claims that the Court should:

– annul the contested decision;

– order the EDPS to compensate, in the minimum amount of EUR 1 500, to be set by the Court, for the non-material damage which the applicant claims to have suffered as a result of the contested decision;

– order the EDPS to pay the costs.

17 In the plea of inadmissibility, the EDPS contends that the Court should:

– declare the application for annulment inadmissible;

– reject the claim for damages as unfounded;

– order the applicant to pay the costs.

18 In his observations on the plea of inadmissibility, the applicant claims, in essence, that the Court should:

– reject the plea of inadmissibility.

Law

The application for annulment

19 Under Article 131 of the Rules of Procedure of the General Court, if the Court declares that the action has become devoid of purpose and that there is no longer any need to adjudicate on it, it may at any time, of its own motion, on a proposal from the Judge-Rapporteur and after hearing the parties, decide to rule by reasoned order.

20 In the present instance, the Court considers that it has sufficient information available to it from the material in the file and has decided, pursuant to that article, after hearing the parties, to give a decision without taking further steps in the proceedings.

The question of whether an implicit decision arose on 26 February 2025

21 To determine whether the subject matter of an application for annulment has disappeared, the Court considers it appropriate to examine whether the subject matter existed at the time that the action was brought. Accordingly, it should be determined whether an implicit decision occurred on 26 February 2025.

22 Under Article 63(3) of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ 2018 L 295, p. 39), 'if the [EDPS] does not handle the complaint or does not inform the data subject within three months on the progress or outcome of the complaint, the [EDPS] shall be deemed to have adopted a negative decision.'

23 It follows that an implicit rejection decision occurs where two cumulative conditions are satisfied. First, the EDPS must not have informed the complainant of the outcome of the complaint within the three-month time limit. Secondly, the EDPS must not have informed the complainant of the progress of the complaint within the same time limit.

24 In the present case, as the applicant submitted his complaint on 25 November 2024, the three-month time limit ran until 25 February 2025. It is common ground between the parties, however, that the EDPS did not inform the applicant of the outcome of the complaint within three months of receiving the complaint. It should therefore be determined whether the EDPS nevertheless informed the applicant of the progress of the complaint before the expiry of that time limit, namely on 26 February 2025, thereby precluding the occurrence of an implicit rejection decision.

25 As is stated in paragraph 8 above, the EDPS, first of all, on 21 January 2025, informed the applicant that he had not found any trace of the complaint of 25 November 2024.

26 Next, on 24 January 2025, with the applicant having provided a copy of his complaint, the EDPS informed him that it had been received and registered under case number 2025-0100. The EDPS also informed the applicant that he would analyse the complaint and keep him informed of further developments.

27 Then, on 31 January 2025, the EDPS responded to other requests for information from the applicant by informing him that the information that he had submitted on 21 January 2025 would be taken into account in the examination of his complaint. The EDPS also clarified that the complaint would be treated as having been received on 25 November 2024.

28 Lastly, by email of 7 February 2025, the EDPS, in essence, inter alia:

– informed the applicant that his complaint of 25 November 2024, as had been submitted online, had been located on 5 February 2025 and would be analysed;

– clarified that, by his email of 31 January 2025, he had only wished to inform the applicant that his complaint would be analysed on the basis of the copy received on 21 January 2025, but that the date of submission taken into consideration was 25 November 2024;

– explained that, inasmuch as he now had the original version of the complaint of 25 November 2024 at his disposal, the complaint would be analysed on the basis of that original version; and

– responded to the applicant's request for access to his complaint by sending it to him in the form of a PDF file.

29 In that respect, it should be pointed out that that information, communicated by the EDPS to the applicant, does not constitute information on the progress of the complaint within the meaning of Article 63(3) of Regulation 2018/1725.

30 First, none of the information related to the loss – then recovery – of the complaint of 25 November 2024 may be classified as information on the progress of the complaint. In the present case, to accept such a classification would be to disregard the principal meaning of the term 'progress', which presupposes a certain genuine progression in the processing of the complaint.

31 Secondly, as the applicant correctly states, the mere communication of the case number and the statement that the complaint would be processed does not show any genuine progression in the processing of the complaint.

32 It follows that, as the information submitted before 26 February 2025 does not reflect any genuine progression in the processing of the complaint of 25 November 2024, it did not preclude the arising of an implicit decision. Consequently, in the absence of information on the outcome of the complaint or on its progress within the time limit provided for in Article 63(3) of Regulation 2018/1725, an implicit rejection decision arose on the expiry of that time limit, namely on 26 February 2025.

33 It follows from the foregoing that, at the time that the action was brought, the subject matter of the application for annulment existed.

The disappearance of the subject matter of the application for annulment in the course of proceedings

34 However, the question of whether the application for annulment has retained its subject matter since then must be examined.

35 It should be recalled that, in the present case, the current application seeks the annulment of the implicit rejection decision of 26 February 2025.

36 According to the case-law, the subject matter of the legal proceedings must continue to exist until the final decision, failing which there will be no need to adjudicate (see, to that effect, judgment of 21 January 2021, *Leino-Sandberg* v *Parliament*, C-761/18 P, EU:C:2021:52, paragraph 32 and the case-law cited).

37 In that connection, the adoption of an explicit decision results in the withdrawal of the implicit decision (see, to that effect, judgments of 2 October 2014, *Strack* v *Commission*, C-127/13 P, EU:C:2014:2250, paragraphs 88 and 89, and of 26 March 2020, *ViaSat* v *Commission*, T-734/17, not published, EU:T:2020:123, paragraph 17).

38 In the light of its retroactive character, that withdrawal of the contested act results in the disappearance of the subject matter of the legal proceedings (see, to that effect, judgments of 7 June 2007, *Wunenburger* v *Commission*, C-362/05 P, EU:C:2007:322, paragraphs 48 and 49; of 4 September 2018, *ClientEarth* v *Commission*, C-57/16 P, EU:C:2018:660, paragraph 45; and of 21 January 2021, *Leino-Sandberg* v *Parliament*, C-761/18 P, EU:C:2021:52, paragraph 33).

39 In such a case, consideration of an action against an implicit decision cannot be justified either by the objective of preventing the alleged unlawfulness from recurring or by that of facilitating potential actions for damages, since it is possible to attain both those objectives through consideration of an action brought against the express decision (see order of 11 February 2025, *Reverbel* v *Commission*, T-178/24, EU:T:2025:173, paragraph 23 and the case-law cited).

40 In the present case, the adoption of the explicit decision of 16 April 2025 had the effect of withdrawing the implicit decision of 26 February 2025. That implicit decision disappeared from the EU legal order and is no longer capable of being the subject of an application for annulment. Furthermore, the applicant did not, following the adoption of the explicit decision, modify the form of order sought on the basis of Article 86 of the Rules of Procedure. Therefore, it must be pointed out that the application for annulment is directed solely against the implicit rejection decision, which has, however, ceased to exist. In those circumstances, the disappearance of the contested decision results in the application for annulment losing its subject matter.

41 Admittedly, as the applicant submits, the explicit decision of 16 April 2025 confirmed the substance of the rejection of the complaint as expressed in the contested decision. However, that fact does not preclude the disappearance of the contested decision nor, accordingly, does it preclude the disappearance of the subject matter of the application for annulment (see, to that effect, orders of 19 February 2013, *Beninca* v *Commission*, T-418/12, not published, EU:T:2013:75, and of 18 March 2022, *Saure* v *Commission*, T-232/21, not published, EU:T:2022:165).

42 Consequently, there is no longer any need to adjudicate on the claim for annulment of the contested decision.

The claim for damages

43 The applicant submits, in essence, that he suffered non-material damage as a result of the failures by the EDPS invoked in support of the application for annulment. Those alleged failures placed the applicant in a state of continual insecurity and weakened his position in any legal action against EUIPO.

44 The EDPS disputes the applicant's arguments.

45 Under Article 126 of the Rules of Procedure, where the action is manifestly inadmissible, the Court may decide to give a decision by reasoned order without taking further steps in the proceedings.

46 In the present case, the Court, considering that it has sufficient information available to it from the material in the file, has decided to give a decision without taking further steps in the proceedings.

47 In that connection, under Article 76(d) of the Rules of Procedure, an application must set out in a sufficiently clear and precise manner the pleas in law relied on, so as to enable the defendant to prepare its defence and the Court to rule on the action. More specifically, to meet those requirements, a claim for damages must contain information allowing the illegality of the conduct alleged, the reality of the damage and the existence of a causal link between that conduct and the alleged damage to be established (see judgment of 11 July 1996, *International Procurement Services* v *Commission*, T-175/94, EU:T:1996:102, paragraph 44 and the case-law cited).

48 In the present case, the applicant refers, in the context of his claim for damages, to the plea relied on in support of his application for annulment. He alleges, moreover, that the EDPS acted illegally for all of the reasons set out in the line of argument developed in the context of his application for annulment.

49 It is appropriate to recall the context of that claim for damages. The implicit decision of 26 February 2025 had the effect of rejecting the complaint of 25 November 2024. Having considered that rejection to be illegal, the applicant brought an action against that implicit decision on 2 March 2025. Then, as a result of the adoption of the explicit decision of 16 April 2025, the contested decision disappeared. It is true that the rejection of the complaint is now affirmed by the explicit decision of 16 April 2025. However, that latter decision does not form part of the subject matter of the action, in the absence of any amendment of the forms of order sought in that connection.

50 It follows that the applicant, who must prove the illegality that he alleges, merely refers to arguments directed against a contested decision which has ceased to exist. Without other information or explanations provided by the applicant, the Court cannot understand how it could analyse the legality of the rejection of the complaint of 25 November 2024 solely on the basis of a contested decision which has disappeared from the EU legal order.

51 In that context, such a general reference does not precisely identify the illegality of the conduct of which the EDPS is accused. In that connection, it must be recalled that it is not for the Court to seek and identify, where a claim for damages is presented together with an application for annulment, from amongst the various pleas put forward in support of the action for annulment,

that or those on which the applicant intends the claim for damages to be based (see order of 11 January 2012, *Ben Ali* v *Council*, T-301/11, not published, EU:T:2012:4, paragraph 72 and the case-law cited).

52 Consequently, the claim for damages does not meet the requirements of clarity and precision of Article 76(d) of the Rules of Procedure. The action must therefore be dismissed as manifestly inadmissible.

Costs

53 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Where a case does not proceed to judgment, Article 137 of the Rules of Procedure provides that the costs are to be in the discretion of the Court.

54 In the present case, it should be noted that it was the EDPS's failure to provide information on the progress within the time limit set which led the applicant to bring the present action against the implicit decision rejecting his complaint.

55 In those circumstances, the Court considers that the EDPS must be ordered to pay the costs.

On those grounds,

THE GENERAL COURT (Seventh Chamber)

hereby orders:

1. **There is no longer any need to adjudicate on the application for annulment.**

2. **The claim for damages is dismissed as manifestly inadmissible.**

3. **The European Data Protection Supervisor (EDPS) is ordered to bear his own costs and to pay those incurred by WS.**

Luxembourg, 25 March 2026.

V. Di Bucci
Registrar

K. Kecsmár
President