

# Access denied: right to damages does not open the Commission's cartel files

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The Commission has no obligation to publish a cartel decision if it is still engaged in discussions on confidentiality with the parties involved. This is what the General Court decided in denying a request for access to the European Commission's confidential cartel decision. The Commission does, however, need to supply a provisional non-confidential version of its decision containing those parts of the decision not subject to confidentiality discussions. This is a setback for claimants wishing to substantiate their cartel damage claims with further evidence from the Commission's files: they will have to make do with a non-confidential version of the Commission decision.

Logistics company Schenker requested access under the [Transparency Regulation](#) to the confidential version of the Commission's [air freight cartel](#) decision and the accompanying case files. The [General Court](#) found that the Commission rightly rejected the request. It held that, regardless of whether the cartel proceedings are pending or closed, there is a general presumption under the Transparency Regulation that the disclosure of documents collected in the context of competition investigations will undermine the commercial interests of the companies concerned as well as the purpose of the Commission's investigation. It is up to the party seeking access, in this case Schenker, to rebut this general presumption by, for instance, claiming an overriding public interest.

The question therefore was whether the right to damages constitutes an overriding public interest. According to the General Court, the effective protection of the right to damages does not mean that every document related to a cartel proceeding needs to be disclosed to claimants, since it is highly unlikely that an action for damages will need to be based on all of the evidence in the Commission's cartel file. It is up to the claimant to prove the need for access to documents in the Commission's file so that the Commission can weigh, on a case-by-case basis, the interests in favour of disclosure and in favour of protection of those documents, respectively. Because Schenker did not substantiate any such need, the right to damages did not constitute an overriding public interest.

However, the General Court did not understand why the Commission failed to provide Schenker with any information at all. It ruled that Schenker should have been granted a provisional non-confidential version of the Commission decision containing those parts of the decision where non-confidentiality was undisputed.

Claimants will not have to await the public version of a

Commission decision. However, it remains to be seen whether disclosure of the Commission decision's non-confidential parts will be of much value to claimants seeking to substantiate their cartel damage claims.