



Milan Local Division

UPC CFI No. 342/2025
Order filed on
9/23/2025

APPELLANT

3V Sigma s.p.a.

RESISTANT ACEF

s.r.l.

AGA s.r.l. (formerly ACEF s.p.a.)

DECIDING BODY

presiding judge and judge rapporteur Pierluigi Perrotti

LANGUAGE OF THE PROCEEDINGS

Italian

SUMMARY OF THE FACTS OF THE CASE

On 26-27.6.2025, AGA and ACEF filed a request for protection of confidential information under Rule 262A RoP, with respect to a part of the documents acquired (hereinafter referred to as *Confidential Documents*) as a result of the execution of Evidence Protection Order No. 21737/2025, filed on 19.5.2025 in UPC CFI Proceedings No. 342/2025 - Act. No. 18051/2025.

The resisting parties requested: a) to prohibit 3V Sigma (including its attorneys and consultants) from accessing the unredacted version of the *Confidential Documents*; b1) in the alternative, to prohibit parties other than No. 2 attorneys and No. 1 consultant of 3V Sigma from accessing the *Confidential Documents* in their unredacted version; b2) in the further alternative, to allow access, in addition to the aforementioned attorneys and consultant, to only one director of 3V Sigma.

In support of the request, AGA and ACEF pointed out that:

- (i) the *Confidential Documents* were largely composed of various technical documents received from MFCI Co. Ltd. the manufacturer of the *MFSorb 513* filter, under contractual obligation of confidentiality;
- (ii) the remaining part of the *Confidential Documentation* contained (a) technical data on the solubility of products other than *MFSorb 513*, also referring to manufacturing entities/suppliers other than MFCI Co. Ltd. or (b) commercial and customer-related information of ACEF, which remained expressly outside the evidence protection order of 19.5.2025.

AGA and ACEF were, however, willing to allow 3V Sigma access to all remaining technical documentation related to the *MFSorb 513* product, also found and collected in the course of the execution of the evidence protection measure.

In Preliminary Order No. 31297/2025 dated 6/30/2025, the Tribunal:

- (i) held that there were no conditions for interdicting access to the *Confidential Documents* also to the representatives of the plaintiff, it being understood that access was allowed to them, at the present time, for the sole purpose of taking a position on the petition filed by the respondents under Rule 262A RoP;
- (ii) invited 3V Sigma to file comments on the application filed by ACEF and AGA by July 10, 2025;
- (iii) ordered that all documents, information and evidence, including the Court Expert's report, acquired in the execution of Evidence Protection Order No. 21737/2025, filed on 5/19/2025, remain secret and not be accessible to anyone, neither the parties nor the public, until otherwise ordered by the Court;
- (iv) ordered that all documents attached to the petition filed by ACEF and AGA on 6/26-28/2025 be accessible to representatives of 3V Sigma in these proceedings, for the sole purpose of taking a position on the content of the request for protection of confidential information.

On 10.7.2025, 3V Sigma filed a defense brief in response to the counterparts' request for confidentiality.

First, it pointed out that the representatives had not had actual access to the *Confidential Documents*, as ordered by the court.

It took note of the lack of challenge to the unrestricted accessibility to part of the documents collected during the execution of the measure and did not object to the establishment of a confidentiality regime for the information contained in the *Confidential Documents*.

Where the complete extraneousness of some documents to the enforcement perimeter of the Evidence Protection Order was indeed verified, it did not object to the AGA and ACEF's request to prevent access to these documents.

Insisted that access to *the Confidential Documents* be granted to at least one representative of the party, named in [REDACTED]

[REDACTED] ■ [REDACTED] [REDACTED] [REDACTED] 3V Sigma.

In a preliminary order dated 14.7.2025, noting the lack of effective access of 3V Sigma's representatives to the *Confidential Documentation*, the Tribunal granted the Respondents time until 21.7.2025 to file defense briefs containing (i) a rebuttal to the comments made by 3V Sigma in its brief dated 10.7.2025, and (ii) the unredacted version of the *Confidential Documentation*.

By memorandum dated 7/18/2025, AGA and ACEF proceeded to redeposit as requested by the Tribunal and reiterated all their defenses and requests.

In a reply brief dated 8/26/2025, 3V Sigma in turn reiterated its defense arguments. It did not object to the adoption of a confidentiality regime, provided that adequate protection of its right of defense was ensured. He finally acknowledged that some of the documents included in the *Confidential Documents* were indeed outside the implementation perimeter of the evidence protection order, resulting in a waiver of access to their contents.

REASONS FOR THE DECISION

In Order No. 21737/2025 (see Item 9 of the operative part), the court ordered that "*access to the expert's written report and its annexes shall be granted to the claimant as of June 30.2025, at the office of the Sub Registry of the Milan Local Division, under the supervision of the judge rapporteur, with the assistance of a clerk, unless the respondent avails itself of the right to file a petition for the protection of confidential information by 30.6.2025; in the event that such a petition for confidentiality is actually filed, the Tribunal will decide whether and which persons will have access and to what information.*"

The respondents filed *the* Rule 262A RoP request on 26-27.6.2025 and thus made timely use of the indicated option.

At the outcome of the exchange of written briefs, the Tribunal notes that the parties agree on the following profiles:

- absolute prohibition of access by 3V Sigma to the documents attached under docs. nos. 1, 2, 19 and 20, as they contain commercial information - not covered in the evidence protection order - or as they refer to products other than *MFSorb 513*;
- need to adopt a confidentiality regime for the information contained in the documents attached sub docs. nos. 3 to 18;
- recognition of the right of access, without further restrictions, to all remaining documents (other than those numbered Nos. 1 to 20 in the request of the respondents), attached to the expert's report, and acquired in the execution of the evidence protection order.

Thus, the only remaining issue in dispute between the parties is that of the identification of the persons entitled to be part of the confidentiality club in relation to documents Nos. 3 to 18, in compliance with the general provision of Art. 58 UPCA, according to which the court may limit access to evidence to specific persons.

According to Rule 262A.6 RoP, *"the number of persons referred to in paragraph 1 shall be no greater than necessary in order to ensure compliance with the right of the parties to the legal proceedings to an effective remedy and to a fair trial, and shall include, at least, one natural person from each party and the respective lawyers or other representatives of those parties to the legal proceedings."*

The procedural rule under consideration transposes the general provision contained in Article 9, EU Directive No. 943/2016 and aims to achieve a fair balance between the opposing requirements of ensuring adequate protection for confidential information and guaranteeing the effectiveness of the right of defense.

In this perspective, there is no valid reason to prevent access to the applicant's representatives. On this point, it is sufficient to note that the respondents have not made any allegations to support such a radical limitation, which is moreover contrary to the ordinary regime defined by Article 9, EU Directive No. 943/2016, and Rule 262A RoP.

In accordance with the most recent interpretative guidance (see UPC IFC No. 181/2024, order 15.7.2025 - LD Düsseldorf, as well as further case law referred to therein), the Tribunal considers that representatives are also entitled to share confidential information with other members of their team, to the extent that they are actively involved in defense activities closely related to the proceedings. If the representatives make use of this option in practice, it is still their responsibility to ensure that the team maintains the confidentiality of the information.

For these reasons, access to the confidential information contained in documents Nos. 3 - 18 is permitted to representatives and other persons who are part of the defense team, including - in particular - associates who are part of the law firm Trevisan & Cuonzo, to the extent that they are involved in the defense activities related to these proceedings and always under the direct responsibility of the representatives.

With regard to the right of access to the party's technical consultant, the Court first of all notes that - as clarified by the case law already cited (see again UPC IFC No. 181/2024, order 15.7.2025 - LD Düsseldorf) - the role of the party's consultant is more limited than that of the representatives since he or she is asked to provide input only on potentially relevant technical issues. However, such input is essential for the full exercise of the right of defense, as it allows for qualified interlocution even on technical issues.

The plaintiff requests that access be granted to his party's technical consultants, without quantitative limits and without an indication of one or more names of appointed professionals.

At the current state of the record, the complexity of the technical issues does not appear to be such as to justify extending the right of access to a plurality of party technical consultants and even in an indeterminate number.

For the purpose of the effective exercise of the right of defense, the Tribunal therefore finds that access to the confidential information may be authorized by only one of 3V Sigma's advisors, provided that he or she is a person outside the party's business organization and is a member of a professional association, and for this reason required to abide by the rules of professional conduct, which include compliance with confidentiality obligations.

By virtue of these findings, the Tribunal authorizes a trusted party advisor to the plaintiff to access the confidential information contained in documents Nos. 3 - 18, with a duty to promptly disclose the name, for obvious reasons of identifying a center of responsibility in relation to possible breaches of confidentiality obligations.

Finally, in relation to access by a natural person on behalf of the plaintiff, the general interpretive principle should be recalled that the granting of full access to a particular person, pursuant to Rule 262A.6 RoP, must be evaluated on the basis of all the concrete circumstances of the particular case, taking into account the role of that person in the proceedings before the Court, the relevance of the confidential information, and the trustworthiness of the authorized person in order to see the confidentiality of the information effectively maintained (see UPC CoA No. 621/2024, Order 12.2.2025; UPC CoA No. 221/2025, Order 3.7.2025).

The Tribunal notes that the responding parties did not provide specifics to support the request for a total exclusion of an exponent of 3V Sigma, basing the request mainly on the prospect of a future granting of the request for reconsideration of the evidence protection order, filed on 6/27/2025.

The establishment of the confidential information protection regime cannot be based on a prior deliberation of the grounds underlying the request for reconsideration. The considerations made by ACEF and AGA regarding the lack of grounds for granting the evidence protection order will be fully examined at the outcome of the hearing on 11.11.2025, set for the discussion of the request for reconsideration filed by the respondents pursuant to Article 60.6 UPCA and Rule 197.3 RoP.

In the present case, therefore, there is no reason to depart from the provision of Rule 262A.6 RoP, which, as clarified above, expressly provides for access to at least ("at least") "*one natural person from each party.*"

Since the respondents have not raised any exceptions in relation to the designation of the person named by the plaintiff - [REDACTED] - the latter is granted access to the confidential information.

- 6) this obligation of confidentiality will continue to apply after the conclusion of these proceedings;
- 7) in the event of a violation of this order, the Court may impose a fine for each violation, which will be determined taking into account the circumstances of the individual violation;
- 8) taking into account the agreement of the parties, all other evidence and information gathered in the course of the execution of the order for the protection of evidence and other than those mentioned above in (1) and (2) shall be accessible to the parties without restriction;
- 9) this order may be subject to an application for review to be filed within 15 days after service of this order, pursuant to Rule 333 RoP;
- 10) the appellant's actual access to the expert's written report and the documents indicated in (2) and (8) above shall be implemented on 10/21/2025, 11:30 a.m., at the office of the Sub Registry of the Milan Local Division, under the supervision of the judge rapporteur, with the assistance of a clerk, unless an application for review is proposed pursuant to Rule 333 RoP;
- 11) in the event that an application for review of this order is filed pursuant to accordance with Rule 333 RoP, any further decision shall be referred to the Panel.

Milan, September 23, 2025.

Pierluigi Perrotti
presiding judge and judge rapporteur

Pierluigi Perrotti Signed
digitally by
Pierluigi Perrotti
Date: [REDACTED]
14:29:27 +02'00'