

AG: Plausibility Test for OLAF Report Required

Thomas Wahl



News

On 13 July 2023, Advocate General (AG) *Laila Medina* provided her [opinion in an appeal case](#) in which compensation due to false accusations from the part of OLAF is claimed ([Case C-363/22 P](#)).

The initial case dates back to 2003 when OLAF reported possible criminal liability of Planistat Europe and its director *Hervé-Patrick Charlot*. After having opened an external investigation against Planistat, OLAF forwarded information to the French judicial authorities in March 2003 giving rise to offences of misappropriation of EU funds and complicity in breach of trust. However, French courts subsequently dismissed criminal proceedings against the persons under investigations. Planistat and its Director then sought compensation from the Commission for non-contractual liability and put forward several arguments in favour of a breach of obligations from the part of the Commission and OLAF during the proceedings. On 6 April 2022, the General Court (GC) dismissed the action by finding that there was no unlawful or defamatory behaviour on the part of OLAF or the Commission. The persons concerned appealed against this decision.

The AG examined the necessary scope of judicial review that has to be carried out by the GC. She concluded that the GC's judgment should partly be put aside. First, the GC had to carry out a "plausibility test". Since the duty of care as part of the principle of good administration requires OLAF to exercise caution and care as to whether any information/material it possesses is sufficient to justify reporting the matter to the national judicial authorities, the GC must verify whether the information forwarded *appeared plausible*. To that end, it was for the GC to establish whether OLAF had sufficiently precise material evidence showing that there were plausible reasons to consider that the information forwarded concerned matters liable to be characterised as criminal. In the judgement under appeal, the GC however relied on the assessment by OLAF and repeated the procedure, but failed to show that OLAF was *itself* entitled to consider that the matters in question were liable to be characterised as criminal.

Second, the AG pointed out that it was for the GC to duly consider arguments of false accusations made by OLAF and the Commission. The GC should have examined those arguments in the light of the right to private life and the right to good administration enshrined respectively in Art. 7 and Art. 41 of the Charter. The AG emphasised, however, that the argument of false accusation can only succeed if the appellants demonstrate, at first instance, that OLAF *intentionally* forwarded false information to the national authorities; inadvertence or negligence is not sufficient.

Regarding the appellants' argument that the Commission acted wrongfully by lodging a complaint against the dismissal of the criminal proceedings before the French courts and by applying to become a civil party in the French criminal proceedings because the Commission should have first verified the truth of the informa-

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tion contained in the complaint, the AG sees no error in the GC's rejection of this argument. The AG argues, *inter alia*, that the Commission cannot be required to verify information forwarded by OLAF, because this would encroach on OLAF's powers and independence.

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