

# GC Rules on Liability in Case of Press Leaks of OLAF Reports

Thomas Wahl



## News

In its [judgment of 28 June 2023](#), the General Court (GC) ruled on the compensation of damage caused by press leaks of OLAF reports. In the case at issue ([Case T-752/20](#)), the International Management Group (IMG) seeks compensation for the material and non-material damage which it claims to have suffered as a result of the unlawfulness of the conduct of the European Commission and OLAF following an OLAF report concerning IMG. IMG concluded several agreements with the European Commission to implement EU funding but the OLAF report found that it might not have been entitled to do so within the meaning of the EU financial regulations. Shortly after the report was sent to the competent national authorities and the Commission, news magazines reported on the contents of the report. The Commission's investigations have failed to identify the source of the press leaks.

IMG argued that the Commission and OLAF breached their obligations to ensure confidentiality of the OLAF reports and claimed the Commission's non-contractual liability. In essence, the GC had to give a verdict on the scope of the duty of diligence following the disclosure of a document to the press.

The GC dismissed the action. It argued that it cannot be deduced from the obligation of confidentiality and professional secrecy (in particular established by Arts. 11(3), 10(1) and 10(3) of Regulation 883/2013) that the Commission would have had the duty to publicly condemn a leak and to put an end to the dissemination of false information caused by that leak by means of the publication of a press release. The failure of confidentiality lies in the leak and not in the Commission's omission. However, the leak cannot be imputed to the Commission.

The GC adds that, even assuming that the Commission was under a legal obligation to act by virtue of its duty to act diligently, it cannot be held that the breach of that duty, alleged by the applicant, constitutes a sufficiently serious breach of a rule of law intended to confer rights on individuals. In sum, the conditions to trigger the Union's non-contractual liability according to Art. 340 TFEU were not fulfilled.

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