



Reports of Cases

JUDGMENT OF THE GENERAL COURT (Eighth Chamber)

21 May 2014*

(Access to documents — Regulation (EC) No 1049/2001 — Documents relating to an OLAF investigation concerning the implementation of a project for the modernisation of infrastructure in Syria — Access refused — Exception concerning the protection of the purpose of inspections, investigations and audits)

In Case T-447/11,

Lian Catinis, residing in Damascus (Syria), represented by S. Pappas, lawyer,

applicant,

v

European Commission, represented by J.-P. Keppenne and F. Clotuche-Duvieusart, acting as Agents,

defendant,

APPLICATION for annulment of the decision of the European Anti-Fraud Office (OLAF) of 10 June 2011 refusing, first, to grant the purported request to close OLAF's investigation concerning a project for the modernisation of infrastructure in Syria and, second, to grant access to certain documents in the file relating to that investigation,

THE GENERAL COURT (Eighth Chamber),

composed of M. Kancheva, acting as President, C. Wetter (Rapporteur) and V. Kreuzschitz, Judges,

Registrar: S. Spyropoulos, Administrator,

having regard to the written procedure and further to the hearing on 16 January 2014,

gives the following

Judgment

Background to the dispute

- 1 The Institutional and Sector Modernisation Facility (ISMF) is a European Union programme designed to provide the Syrian authorities with technical assistance with a view, inter alia, to the economic reform of the central administration.

* Language of the case: English.

- 2 As a result of allegations of irregularities in the implementation of the ISMF programme in Syria, the European Anti-Fraud Office (OLAF) initiated a number of inter-related investigations on 16 October 2007 in order to ascertain whether the allegations were founded. In that connection, OLAF investigators questioned the applicant, Lian Catinis, as well as other experts responsible for implementing the programme in Syria.
- 3 By letter of 3 August 2010 to one of OLAF's heads of unit, the applicant made a number of complaints concerning the conduct and duration of the investigation and requested that it be closed.
- 4 On 23 September 2010, a Director of OLAF informed the applicant that OLAF's investigation concerning the alleged irregularities in the implementation of the ISMF programme in Syria was still ongoing. That Director provided information on the legal framework of the confidentiality policy which must govern investigations and asked the applicant to indicate in what capacity he had submitted his request.
- 5 On 18 October 2010, the applicant stated that he was acting in a personal capacity and requested OLAF to forward to him the documents relating to the investigation which concerned him and, once again, to close the investigation.
- 6 By letter of 21 February 2011, one of the directors of OLAF replied to the applicant, indicating that he was required to provide further information on the documents to which he sought access under 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). The applicant was also informed in that letter of his right to confirm his initial request for disclosure within 15 working days.
- 7 On 15 March 2011, the applicant submitted a confirmatory application, indicating, *inter alia*, the documents to which his request for access referred and setting out the reasons why the exceptions to access provided for in Article 4(2) of Regulation No 1049/2001 did not appear to him to apply. The applicant also stated that the delay in conducting the investigation was such as to jeopardise his right to be heard in a reasonable time.
- 8 By letter of 10 June 2011, the Director General of OLAF informed the applicant that he could not grant his request for access. In particular, he stated that interested parties had no specific right of direct access to OLAF's investigation file and explained the reasons why, on the basis of Regulation No 1049/2001, no access could be granted to the eight documents which had finally been identified by OLAF as being covered by the scope of the applicant's request. However, the Director General of OLAF provided a copy of the written record of the interview of 27 November 2007 between the applicant and two OLAF investigators, not on the basis of Regulation No 1049/2001 but on the basis of OLAF's internal rules of procedure.

Procedure and forms of order sought by the parties

- 9 The applicant brought the present action by application lodged at the Registry of the General Court on 9 August 2011.
- 10 On 3 November 2011, the European Commission lodged its defence at the Court Registry.
- 11 The applicant did not lodge a reply within the prescribed period.

- 12 By order of 16 July 2013, in accordance with Article 65(b), Article 66(1) and the third subparagraph of Article 67(3) of its Rules of Procedure, the General Court called on the Commission to produce the documents at issue but ruled that those documents would not be communicated to the applicant in the course of these proceedings. That order was complied with.
- 13 Following a change in the composition of the Chambers of the General Court, the Judge-Rapporteur was assigned to the Eighth Chamber and the present case was therefore reallocated to that Chamber.
- 14 As the President of the Chamber was prevented from attending, the President of the General Court designated, in accordance with the order of precedence laid down in Article 6 of the Rules of Procedure, a first judge to replace the President of the Chamber and, pursuant to Article 32(3) of the Rules of Procedure, a second judge to complete the Chamber.
- 15 Upon hearing the report of the Judge-Rapporteur, the Court (Eighth Chamber) decided to open the oral procedure.
- 16 The parties presented oral argument and answered the questions put by the Court at the hearing on 16 January 2014.
- 17 The applicant claims that the Court should:
- annul the decisions contained in the letter of the Director General of OLAF of 10 June 2011, in so far as they refuse to close the investigation and allow him access to his file;
 - order the Commission to pay the costs.
- 18 The Commission contends that the Court should:
- dismiss the application on the basis that it is inadmissible as regards the alleged implied decision refusing to close the investigation and on the basis that it is unfounded as regards the refusal to give access to the applicant's personal file;
 - order the applicant to pay the costs.

Law

- 19 The applicant submits that, by the letter of its Director General of 10 June 2011, OLAF refused to allow both his principal request, seeking closure of the investigation, and his request seeking access to the investigation file.

The application for annulment of the alleged implied refusal by OLAF to close the investigation

Arguments of the parties

- 20 The applicant relies in essence on two heads of claim in support of his application for annulment of the alleged implied refusal by OLAF to close the investigation.
- 21 By his first head of claim, the applicant submits that, by extending its investigation beyond a reasonable period and by failing to inform and to hear the interested parties, OLAF not only seriously infringed the principle of sound administration, the presumption of innocence and the rights of the defence, but also misused its powers.

- 22 The second head of claim relied on by the applicant alleges infringement by OLAF of its obligation to state the grounds on which it decided not to close the investigation. By failing to give reasons for the implied rejection of the applicant's request to close the investigation, OLAF disregarded an essential procedural requirement and infringed the applicant's fundamental rights, as enshrined, inter alia, in Articles 41 and 48 of the Charter of Fundamental Rights of the European Union. The applicant also considers that by continuing its investigation beyond a reasonable period, namely for over 41 months, and by failing to inform him about this, OLAF disregarded the procedural rules laid down in Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by OLAF (OJ 1999 L 136, p. 1) and the principles set out in the Manual relating to the Guidelines on Investigation Procedures for OLAF Staff. That view is shared by OLAF's Supervisory Committee. Lastly, the applicant argues that, although some of OLAF's measures of investigation were categorised as preparatory measures with no adverse effect, it is apparent from the case-law that infringement of essential procedural requirements and fundamental rights during preparatory investigations can mar the lawfulness of the final decision taken on the basis of OLAF's investigations.
- 23 The Commission is of the view that the letter of the Director General of OLAF of 10 June 2011 cannot be considered to contain an implied refusal of the request to close the investigation in question.

Findings of the Court

- 24 In the present case, the applicant seeks annulment of an alleged implied decision by OLAF refusing to close the investigation.
- 25 As indicated above, the applicant maintains that, as the letter of the Director General of OLAF of 10 June 2011 does not refer to his principal request, which relates to the closure of the investigation, he infers from this an implied refusal of his request for the investigation conducted by OLAF to be closed.
- 26 First, it should be noted that, as observed by the Commission, while the applicant has complained on a number of occasions about the duration of OLAF's investigation, he has not formally maintained his claim that a decision should be adopted on the closure of the investigation. It is true that the applicant sought the closure of the investigation in his letter of 3 August 2010. However, in his letter of 18 October 2010, he repeated the same request, but only in so far as the closure of the investigation was feasible. In the event that OLAF took the view that it was not possible to close the investigation at that stage, the applicant added a request for disclosure of the documents in the investigation file which concerned him. The confirmatory application of 15 March 2011 contains further criticism concerning the duration of the investigation but does not ask OLAF to define its position on that question. Accordingly, in the light of all the correspondence exchanged, OLAF was entitled to take the view that the applicant's request was simply a request for disclosure of documents and, for that reason, defined its position only in relation to that request.
- 27 Second, it is to be noted in any event that Regulation No 1073/1999 does not contain any provision concerning the fixing of a period beyond which an implied decision rejecting a request for closure of an investigation is to be deemed to have been taken by OLAF.
- 28 It is established case-law that, as a general rule, in the absence of express provisions laying down a deadline by which an implied decision will be deemed to have been taken by an institution which has been requested to adopt a position and prescribing the content of that decision, mere silence on the part of an institution cannot be deemed to be equivalent to a decision without calling into question the system of remedies instituted by the Treaty (Case C-123/03 P *Commission v Greencore* [2004] ECR

I-11647, paragraph 45; Joined Cases T-189/95, T-39/96 and T-123/96 *SGA v Commission* [1999] ECR II-3587, paragraph 27; and Joined Cases T-190/95 and T-45/96 *Sodima v Commission* [1999] ECR II-3617, paragraph 32).

- 29 According to that same line of case-law, in certain particular circumstances that principle may not be applicable, so that an institution's silence or inaction may exceptionally be considered to constitute an implied refusal (*Commission v Greencore*, paragraph 28 above, paragraph 45).
- 30 Article 6(5) of Regulation No 1073/1999 simply provides that 'investigations shall be conducted continuously over a period which must be proportionate to the circumstances and complexity of the case'. Similarly, Article 11(7) of that regulation states that '[w]here an investigation has been in progress for more than nine months, the Director shall inform the Supervisory Committee of the reasons for which it has not yet been possible to wind up the investigation. and of the expected time for completion'. That requirement to keep the Supervisory Committee informed does not give rise to a direct obligation on the part of OLAF as regards the duration of its investigations.
- 31 However, it is clear that the applicant has not pleaded any specific circumstances on the basis of which, exceptionally, silence on the part of OLAF may be deemed to be equivalent to an implied refusal.
- 32 It follows from the foregoing that the applicant's claims are inadmissible in so far as they seek annulment of OLAF's alleged implied decision refusing to close the investigation.
- 33 For the sake of completeness, with regard to the alleged infringement of essential procedural requirements and fundamental rights, it is true, as is also apparent from recital 10 in the preamble to Regulation No 1073/1999, that OLAF investigations must be conducted with full respect for human rights and fundamental freedoms. However, the applicant's allegations, such as the claim alleging infringement of the presumption of innocence, infringement of the rights of the defence and misuse of power, are not in any way substantiated and cannot therefore succeed. In any event, even if OLAF had infringed one of those fundamental rights, that could not alter the findings made at paragraphs 26 to 31 above and is irrelevant for the purpose of determining whether the first head of claim is admissible.
- 34 With regard in particular to the complaint relating to the duration of the investigation, it should be recalled that the obligation to conduct administrative procedures within a reasonable time is a general principle of EU law which is enforced by the European Union Courts and which is, moreover, referred to, as an element of the right to good administration, in Article 41(1) of the Charter of Fundamental Rights (see Case T-48/05 *Franchet and Byk v Commission* [2008] ECR II-1585, paragraph 273 and the case-law cited). It is also established case-law that where the duration of a procedure is not set by a provision of EU law, as in the present case (see paragraph 30 above), the reasonableness of the period of time taken is to be appraised in the light of all of the circumstances specific to each individual case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the parties to the case (see, to that effect, Joined Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P *Limburgse Vinyl Maatschappij and Others v Commission* [2002] ECR I-8375, paragraph 187).
- 35 It should be noted that, as observed by the applicant, *prima facie*, the fact that, when the present action was brought, the investigation had been going on for over 41 months may be regarded as constituting an exceptionally long period of time. However, in the circumstances, the question whether such a lengthy period of time is justified by the complexity of the case is irrelevant for the purpose of the response to be given to the plea under consideration, which concerns whether or not there was an implied refusal of the request that the investigation at issue be closed. It should be noted in that regard that the question whether there was any breach of the fundamental rights in question must be assessed at the time when a decision concerning the applicant is taken at the conclusion of OLAF's investigation.

The request for annulment of OLAF's decision refusing to give the applicant access to the documents concerning him in the investigation

Arguments of the parties

- 36 The applicant claims that the refusal to grant access to documents relating to an OLAF investigation must be supported by sufficient reasons following a specific and individual examination of each document requested and the identification of a genuine, rather than hypothetical, need to protect the confidentiality of the investigation and the effectiveness of future investigations. In the present case, the letter of the Director General of OLAF of 10 June 2011 did not explain specifically how disclosure of the documents requested would harm one of the interests protected under Regulation No 1049/2001. The applicant also claims that, by refusing to grant him access to the documents which concern him, OLAF irremediably impaired the exercise of his rights of defence and infringed the principle of proportionality.
- 37 The Commission contests the applicant's arguments

Findings of the Court

- 38 As is apparent from recital 1 in the preamble to Regulation No 1049/2001, that regulation reflects the intention expressed in the second paragraph of Article 1 of the EU Treaty to mark a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen. As indicated in the second recital of that regulation, right of public access to documents of the institutions reflects the democratic nature of those institutions (see Case C-506/08 P *Sweden v MyTravel and Commission* [2011] ECR I-6237, paragraph 72 and the case-law cited).
- 39 To that end, Regulation No 1049/2001 is intended, as is apparent from recital 4 and Article 1 thereof, to give the fullest possible effect to the right of public access to documents of the institutions (see *Sweden v MyTravel and Commission*, paragraph 38 above, paragraph 73 and the case-law cited).
- 40 That right is none the less subject to certain limitations based on grounds of public or private interest. More specifically, in reflection of recital 11 in the preamble to Regulation No 1049/2001, Article 4 thereof provides for a number of exceptions enabling the institutions to refuse access to a document where its disclosure would undermine the protection of one of the interests covered by that provision (see *Sweden v MyTravel and Commission*, paragraph 38 above, paragraph 74 and the case-law cited).
- 41 However, since they derogate from the principle of the widest possible public access to documents, those exceptions must be interpreted and applied strictly (see *Sweden v MyTravel and Commission*, paragraph 38 above, paragraph 75 and the case-law cited).
- 42 Thus, if the institution concerned decides to refuse access to a document which it has been asked to disclose, it must, in principle, explain how disclosure of that document could specifically and actually undermine the interest protected by the exception — among those provided for in Article 4 of Regulation No 1049/2001 — upon which it is relying. Moreover, the risk of the interest protected being thus undermined must be reasonably foreseeable and not purely hypothetical (see *Sweden v MyTravel and Commission*, paragraph 38 above, paragraph 76 and the case-law cited).
- 43 However, it is open to the institution concerned to base its decisions in that regard on general presumptions which apply to certain categories of documents, as similar general considerations are likely to apply to requests for disclosure relating to documents of the same nature (see Joined Cases C-514/11 P and C-605/11 P *LPN and Finland v Commission* [2013] ECR, paragraph 45 and the case-law cited). That general presumption does not exclude the possibility of demonstrating that a

given document disclosure of which has been requested is not covered by that presumption, or that there is an overriding public interest justifying the disclosure of the document concerned by virtue of the last phrase of Article 4(2) of Regulation No 1049/2001. Similarly, the institution concerned is not required to base its decision on that general presumption. It may always carry out a specific examination of the documents covered by a request for access and provide appropriate reasons (*LPN and Finland v Commission*, paragraphs 66 and 67).

- 44 It is in the light of those principles that the applicant's claims must be examined, in so far as they seek the annulment of OLAF's decision refusing to grant the applicant access to the documents concerning him in the investigation.
- 45 In the letter of its Director General of 10 June 2011, OLAF identified eight documents which the applicant sought disclosure of and, after carrying out a specific examination of those documents, gave the reasons why they could not be disclosed.
- 46 The documents which the applicant sought disclosure of are the following:
- the written record of an interview of 27 November 2007 ('document 1');
 - OLAF's letter of 21 May 2010 ('document 2');
 - the internal decision of OLAF of 16 October 2007 concerning the appointment of an investigator ('document 3');
 - the on-the-spot check report of 29 July 2010 ('document 4');
 - the letter addressed to OLAF received on 14 September 2010 ('document 5');
 - the letter addressed to OLAF received on 25 June 2009 ('document 6');
 - the information provided to OLAF's Supervisory Committee of 19 September 2008 relating to the fact that the investigation had been going on for more than nine months ('document 7');
 - the opening of the external investigation of 16 October 2007 ('document 8').
- 47 In the light of the arguments put forward by the applicant in support of his claim that OLAF's decision refusing to disclose the documents requested should be annulled, it is necessary, first of all, to determine whether OLAF fulfilled the obligation to provide adequate reasons, then to examine whether the reasons given by OLAF regarding the exceptions relied on are valid and, lastly, whether there is an overriding public interest justifying disclosure of the documents in question.
- 48 First, the Court finds that OLAF fulfilled the obligation to provide adequate reasons. It is for the institution which has refused access to a document to provide a statement of reasons from which it is possible to understand and ascertain, first, whether the document requested does in fact fall within the sphere covered by the exception relied on and, second, whether the need for protection relating to that exception is genuine (see Case T-331/11 *Besselink v Council* [2013] ECR, paragraph 99 and the case-law cited).
- 49 In the present case, OLAF clearly indicated to the applicant the exceptions on which it based its refusal to grant access to the documents at issue by invoking: (i) for all those documents, both the exception provided for in the third indent of Article 4(2) of Regulation No 1049/2001, concerning the protection of the purpose of inspections, investigations and audits, and the exception provided for in Article 4(1)(b) of that regulation, concerning the privacy and integrity of the individual; (ii) for documents 1, 3, 4, 7 and 8, the exception provided for in the first subparagraph of Article 4(3) of the

regulation, relating to the institution's decision-making process; and (iii) for documents 1, 2, 4, 6 and 7, the exception provided for in the first indent of Article 4(2) of the regulation, relating to the protection of commercial interests.

- 50 According to the letter of the Director General of OLAF of 10 June 2011, documents 1, 3, 4, 7 and 8 were prepared for internal use and form part of the deliberations and preliminary consultation within OLAF. Documents 2, 4 and 5 relate to correspondence between OLAF and the competent national authorities and contain operational information exchanged in connection with investigations carried out by OLAF and national authorities in certain specific cases. Lastly, document 6 relates to a letter from another economic operator who provided information that was of use to OLAF. All those documents are covered by the exceptions provided for in Article 4 of Regulation No 1049/2001. Next, OLAF considered whether there was an overriding public interest and concluded that there was no such interest. OLAF pointed out in that regard that, having regard to the specific nature of anti-fraud investigations, in particular the fact that the information gathered by it is confidential, there must be clear evidence demonstrating that there is an overriding interest justifying public disclosure of documents relating to an investigation. Lastly, OLAF considered whether it was possible to grant partial access to the documents requested but, given that the information contained in those documents was covered at the very least by one of the exceptions invoked, it concluded that partial access could not be granted.
- 51 Second, as to whether OLAF's decision refusing to grant the applicant access to those documents is justified in so far as concerns the exceptions invoked, in particular the exception provided for in the third indent of Article 4(2) of Regulation No 1049/2001, concerning the protection of the purpose of inspections, investigations and audits, it is common ground that the eight documents in question do in fact relate to investigations within the meaning of that provision and that investigations were ongoing at the time that decision was adopted.
- 52 Consequently, OLAF was entitled, in principle, to invoke the exception provided for in the third indent of Article 4(2) of Regulation No 1049/2001 (see, to that effect, Joined Cases T-391/03 and T-70/04 *Franchet and Byk v Commission* [2006] ECR II-2023, paragraph 113).
- 53 The fact that a document concerns an inspection or investigation cannot in itself justify the application of the exception invoked. The institution concerned must also provide explanations as to how disclosure of such a document could specifically and actually harm the interest protected by one of the exceptions provided for in Article 4(2) of Regulation No 1049/2001.
- 54 However, in the present case, it should be noted in that regard that OLAF set out in the letter of its Director General of 10 June 2011 the reasons why disclosure of the documents to which access was sought would harm the interest protected. Thus, in addition to the fact that documents 1 to 8 did in fact relate to the ongoing investigation, a number of documents revealed evidence gathered from various sources and disclosure could have alerted the persons or entities under investigation before all the evidence had been gathered. Similarly, those documents might also be used as evidence in proceedings before the national courts and their disclosure might compromise any effective use of those documents by those courts. Furthermore, documents 1, 2, 4, 5 and 7 disclose OLAF's strategy and the manner in which it conducted the investigation. Disclosure of those documents could provide information on its working methods in the present case and thus undermine the effectiveness of OLAF in the performance of its tasks. Documents 2, 4 and 5 all relate to information exchanged with the national authorities in the investigation under consideration and their disclosure could have an adverse effect on the climate of mutual trust essential to effective cooperation with the national authorities in the investigation. Moreover, disclosure of those documents would also reveal the investigation strategies, action taken and the interpretation of procedures. Finally, public disclosure of those documents, such as document 6 — a letter from an economic operator providing information to OLAF — would expose the informant and his anonymity would therefore no longer be protected, which would have the effect of discouraging individuals from providing information concerning

possible cases of fraud and thereby deprive OLAF and the Commission of information that is of use for the purpose of undertaking investigations for the protection of the financial interests of the European Union.

- 55 Moreover, the complaint that the investigation at issue took an unreasonable length of time must be rejected as ineffective. Even if it were established that the duration of the investigation was unreasonable, that could not call into question the legality of OLAF's decision refusing to grant the applicant access to the documents in question in so far as concerns the exceptions relied on.
- 56 In the light of the foregoing considerations, it must be concluded that OLAF was entitled to take the view that disclosure of the documents to which access was sought would undermine the ongoing investigation.
- 57 Furthermore, the applicant has failed to put forward in support of the plea under consideration any argument to rebut OLAF's conclusion that partial access could not be granted.
- 58 Lastly, as regards the overriding public interest in disclosure within the meaning of the last sentence of Article 4(2) of Regulation No 1049/2001, it must be recalled that, according to the letter of the Director General of OLAF of 10 June 2011, there is no such interest in this case.
- 59 That finding that there is no overriding public interest within the meaning of the last sentence of Article 4(2) of Regulation No 1049/2001 is not vitiated by any error.
- 60 Indeed, it is clear that, at the time OLAF's decision refusing to grant the applicant access to the documents at issue was adopted, the investigation was still ongoing. Furthermore, the applicant has failed to put forward before the Court any detailed argument on the basis of which it could be concluded that OLAF erred in considering that there was no overriding public interest in disclosure of the documents at issue under Article 4(2) of Regulation No 1049/2001.
- 61 In so far as the applicant contends that the overriding public interest resides in the rights of the defence, it is sufficient to note that the right of access to documents does not depend on the nature of the specific interest which the applicant may or may not have in obtaining the information requested (see, to that effect, Case C-266/05 P *Sison v Council* [2007] ECR I-1233, paragraph 44).
- 62 Similarly, the applicant's argument to the effect that failure to grant him access to the investigation file will infringe his rights of defence and be contrary to Article 42 and Article 48(2) of the Charter of Fundamental Rights cannot succeed. It should be recalled in that regard, first, that the present action was brought on the basis of Regulation No 1049/2001 after access to documents was refused. Second, it is common ground that the investigation had not been concluded and no final report yet completed at the time when the present proceedings were brought and, accordingly, no consequent decision had been adopted. Moreover, contrary to what is claimed by the applicant, Regulation No 1049/2001 is intended to ensure that any person may have access to documents, so that once a document has been disclosed, in accordance with the provisions of the regulation, it enters the public domain.
- 63 Furthermore, it is to be noted in that context that, irrespective of the rights provided for in Regulation No 1049/2001, OLAF is under no obligation to grant to a person who claims to be concerned by an ongoing investigation access to the documents in the file relating to that investigation (see, to that effect, *Franchet and Byk v Commission*, paragraph 34 above, paragraphs 255 to 258).
- 64 It should be noted in that regard that access to documents in OLAF's files relating to an OLAF investigation — leaving aside the right of the person concerned to receive the written record of his or her interview with OLAF — actually takes place in the course of a monitoring procedure. Indeed, OLAF's final recommendation will be submitted to the competent authorities of the European Union or to the national authorities. If those authorities intend to impose penalties on a person concerned

by the investigation, namely, in the present case, the applicant, they must give that person the opportunity to exercise his or her rights of defence in accordance with the administrative or criminal-law procedure applicable. The applicant will therefore then be able to have recourse to the remedies made available by those authorities, subject to the procedural rules applicable.

- 65 In conclusion, as is apparent from the foregoing, OLAF was entitled to refuse access to the documents which it had been asked to disclose by relying on the exception provided for in the third indent of Article 4(2) of Regulation No 1049/2001.
- 66 Accordingly, the action must be dismissed, without there being any need to examine the applicant's arguments concerning the other exceptions relied on by OLAF to justify its refusal to disclose the documents in question.

Costs

- 67 Under Article 87(2) 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. Since the applicant has been unsuccessful, he must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby:

- 1. Dismisses the action;**
- 2. Orders Mr Lian Catinis to pay the costs.**

Kancheva

Wetter

Kreuschitz

Delivered in open court in Luxembourg on 21 May 2014.

[Signatures]