

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law.

1. First plea in law, alleging an infringement of Article 31(1) and Article 32(8) of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1), on the ground that the Commission fails to show that the expenditure effected by the Belgian paying agency is not compatible with EU law and that the failure to recover or the unlawfulness was caused by irregularity or negligence attributable to the Bureau d'intervention et de restitution belge (the Belgian Intervention and Restitution Board) (BIRB).
2. Second plea in law, invoked in the alternative, alleging an infringement of Article 31(2) of Regulation No 1290/2005 and of the principle of proportionality on the ground that the amount excluded does not correspond to the significance of the lack of conformity found and that the financial loss caused to the European Union was not taken into account.

Action brought on 3 June 2016 — Inox Mare v Commission**(Case T-289/16)**

(2016/C 270/69)

*Language of the case: Italian***Parties**

Applicant: Inox Mare Srl (Rimini, Italy) (represented by: R. Holzeisen, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- Annul Final Report OF/2013/0086/B1 THOR (2015) 40189 — 26.11.2015 because it is invalidated by serious illegalities;
- And, in consequence, annul Recommendation for action to be taken following an OLAF investigation THOR (2015) 4257 — 09.12.2015;
- Order the defendant to pay the costs.

Pleas in law and main arguments

The present action is brought against the contested measures, inasmuch as they find that, for a certain number of years, the applicant has evaded the payment of customs and anti-dumping duties. The applicant states in that regard that it has imported a large amount of stainless steel fixation goods, relying on the correctness of the certification in bulk by the customs authorities of the Philippines that the goods supplied by two Philippine companies allegedly originated from the Philippines, until it became aware of the opening by the European Union of an anti-circumvention procedure against the Philippines on the grounds of suspicion that the goods referred to above were goods originating from Taiwan and were, therefore, merely transhipped from Taiwan via the Philippines to the European Union.

In support of the action, the applicant relies on two pleas in law.

1. First plea in law alleging, as a preliminary point, that the measures against which the action has been brought are challengeable under Article 263 TFEU.

- It is argued in that regard that the contested measures, despite their *nomen juris* (legal name) which could infer the contrary, have in essence binding effect on the Italian customs authorities, and have direct legal effects that harm the interests and the personal and actual rights of the applicant, altering its legal position, and this is so taking into consideration (1) the nature of the customs duties as 'EU own resources' and of the consequential obligations for Member States, which are responsible simply for charging the duties, (2) the nature of OLAF as the administrative investigating body that replaces the Commission in external investigations, (3) the role of the European Commission, as the institution with an enforcement function in relation to the application of the European Union's Customs Code.
- To deny, in this legal context, direct challengeability under Article 263 TFEU of OLAF's measures contested by the applicant would amount to denying the fundamental right of the applicant to effective remedies, and, therefore, an infringement of Article 47 of the Charter of Fundamental Rights of the EU and Article 13 of the European Convention on Human Rights.

2. Second plea in law, alleging the illegality of the contested measures.

- It is argued in this respect that Final Report OF/2013/0086/B1 THOR (2015) 40189 does not contain any of the mandatory essential information envisaged by the legislator in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013, ⁽¹⁾ with the result that it is absolutely unlawful and lacking in any evidential value.
- The contested measure is vitiated by the following illegalities: lack of information relating to procedural guarantees, to the persons involved in the investigation, to the hearing of the applicant's legal representatives, to the required preliminary legal qualification, unreasoned and contradictory rejection of the responsibility of the competent authorities, failure by OLAF to fulfil its duty to conduct its investigations objectively and impartially and in accordance with the principle of presumption of innocence, and also incorrect information in the Final Report because of the lack of a preliminary investigation.
- Because of all the illegalities outlined above, the recommendation of the Director General of OLAF that the Agenzia delle Dogane e dei Monopoli della Repubblica italiana should adopt all the measures necessary for the recovery of the duties from the applicant lacks any basis at all in law and is therefore unlawful.

⁽¹⁾ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ 2013L 248, p. 1)

Action brought on 7 June 2016 — Fruits de Ponent v Commission

(Case T-290/16)

(2016/C 270/70)

Language of the case: Spanish

Parties

Applicant: Fruits de Ponent, SCCL (Alcarràs, Spain) (represented by: M. Roca Junyent, J. Mier Albert, R. Vallina Hoset, lawyers)

Defendant: European Commission