Reports of Cases

OPINION OF ADVOCATE GENERAL
MEDINA
delivered on 13 July 2023 [1]

Case C-363/22 P

Planistat Europe,
Hervé-Patrick Charlot
v

European Commission

(Appeal – Non-contractual liability – External investigation by OLAF – Forwarding to the national judicial authorities of information concerning matters liable to result in criminal proceedings before the conclusion of the investigation – Filing of a complaint by the Commission before the conclusion of the investigation – National criminal proceedings – Ruling that there is no need to adjudicate which has become final – Concept of a 'sufficiently serious breach' of a rule of EU law – Material and non-material damages allegedly suffered by the appellants)

1. By this appeal, Planistat Europe and Mr Hervé-Patrick Charlot ('the appellants') ask the Court to set aside the judgment of the General Court of the European Union of 6 April 2022, *Planistat Europe and Charlot* v *Commission*,[2] by which the General Court dismissed in part the action brought by the appellants seeking compensation, first, for the damage that Mr Charlot claims to have suffered as a result of information concerning matters liable to be characterised as criminal being forwarded by the European Anti-fraud Office (OLAF) to the national judicial authorities and the complaint filed by the European Commission before those authorities and, second, the material damage that the appellants claim to have suffered as a result of the termination of contracts concluded between Planistat Europe and the European Commission.

2. In support of their appeal, the appellants put forward three grounds of appeal alleging, in essence, errors committed by the General Court, first, in determining the event giving rise to the damage invoked, second, in refuting the existence of false accusations made by OLAF and the Commission, and, third, in dismissing the appellants' arguments relating to the existence of material and non-material damage. In accordance with the Court's request, this Opinion will be confined to an analysis of the second ground of appeal.

3. That ground provides the Court with the opportunity of ruling on the judicial review that the General Court has to carry out in the context of an action to establish non-contractual liability, first, when OLAF forwards information to the national judicial authorities and allegedly makes

[1] Original language: French.

[2] T-735/20 (the contested decision), EU:T:2022:220.

false accusations, although the national courts subsequently discontinued the proceedings directed against the parties concerned, and, second, when the Commission filed a complaint and applied to join the proceedings as a civil party.

I. Regulation (EC) No 1073/1999

4. Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF),[3] governed the inspections, checks and other measures undertaken by employees of OLAF in the performance of their duties.[4] The investigations conducted by OLAF consist of 'external' investigations – those carried out outside the EU institutions – and 'internal' investigations – those carried out within those institutions.

5. Article 9 of Regulation No 1073/1999, headed 'Investigation report and action taken following investigations', concerns the report drawn up on completion of an investigation carried out by OLAF.

6. Under Article 10 of Regulation No 1073/1999, headed 'Forwarding of information by [OLAF]':

'1. Without prejudice to Articles 8, 9 and 11 of this Regulation and to the provisions of Regulation (Euratom, EC) No 2185/96 [concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities], OLAF may at any time forward to the competent authorities of the Member States concerned information obtained in the course of external investigations.

2. Without prejudice to Articles 8, 9 and 11 of this Regulation, the Director of the Office shall forward to the judicial authorities of the Member State concerned the information obtained by the Office during internal investigations into matters liable to result in criminal proceedings. Subject to the requirements of the investigation, he shall simultaneously inform the Member State concerned.

…'

II. Background to the dispute

7. The background to the dispute, as set out in paragraphs 2 to 18 of the judgment under appeal, can be summarised as follows.

8. In 1996, Eurostat set up a network of sales outlets for statistical information called 'datashops'. In the Member States, those datashops, which lack legal personality, were in principle integrated within the national statistical institutes ('NSIs'), with the exception of Belgium, Spain and Luxembourg where they were managed by commercial companies. To that end, tripartite agreements were concluded between Eurostat, the Publications Office of the European Union and the organisation hosting the datashop.

[3] OJ 1999 L 136, p. 1.

[4] That regulation, which applies ratione temporis to the facts of the present case, was repealed and replaced by Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by [OLAF] (OJ 2013 L 248, p. 1).

9. From 1996 to 1999, Planistat Europe, directed by Mr Charlot, benefitted from framework contracts signed with Eurostat for various services including, in particular, the provision of personnel within the datashops.

10. From 1 January 2000, Planistat Europe was entrusted with the management of datashops in Brussels (Belgium), Madrid (Spain) and Luxembourg, and had to pay the Commission all the turnover from those three datashops

11. In September 1999, the Eurostat Internal Audit Service issued a report finding irregularities in Planistat Europe's management of the datashops.

12. On 17 March 2000, the Commission's Directorate-General for Financial Control forwarded that report to OLAF.

13. On 18 March 2003, following an internal investigation to examine the methods for establishing the network of datashops, billing systems, financial appropriation and the possible involvement of officials or other servants of the European Union, OLAF decided to open external investigation OF/2002/0510 concerning Planistat Europe.

14. On 19 March 2003, OLAF forwarded to the French judicial authorities, in the course of the ongoing investigation, information relating to matters liable to be characterised as criminal ('the note of 19 March 2003'). On that basis, on 4 April 2003, the public prosecutor in Paris (France) opened an investigation file before the investigating judge of the tribunal de grande instance de Paris (Regional Court, Paris, France) in relation to the offences of misappropriation and complicity in breach of trust.

15. On 16 May 2003, the forwarding of information at issue was mentioned in the press and was the subject of written questions addressed to the Commission from MEPs.

16. The Commission and OLAF issued several press releases, only two of which mentioned Planistat Europe. Accordingly, the Commission's press release of 9 July 2003 made reference to Planistat Europe for the first time, whereas in the press release of 23 July 2003, the Commission confirmed its decision to terminate the contracts concluded with Planistat Europe.

17. On 10 July 2003, the Commission filed a complaint against X with the public prosecutor in Paris for breach of trust and all other offences that could be inferred from the facts set out in the complaint and applied to join the proceedings as a civil party.

18. On 10 September 2003, Mr Charlot was put under investigation for breach of trust and misappropriation.

19. On 25 September 2003, OLAF closed internal investigation IO/2000/4097 and external investigation OF/2002/0510.

20. On 9 September 2013, the investigating judge of the tribunal de grande instance de Paris (Regional Court, Paris) made an order dismissing the proceedings against all the persons under investigation. The Commission lodged an appeal against that order.

21. By judgment of 23 June 2014, the Cour d'appel de Paris (Court of Appeal, Paris, France) dismissed the Commission's appeal against that order and upheld the dismissal order.

22. By judgment of 15 June 2016, the Cour de Cassation (Court of Cassation, France) dismissed the Commission's appeal against that judgment, thereby ending the legal proceedings.

23. On 10 September 2020, the appellants sent the Commission a letter of formal notice calling on it to pay them the sum of EUR 11.6 million by way of reparation for the damages allegedly suffered as a result of the complaint filed and press releases issued in that regard.

24. On 15 October 2020, the Commission rejected the application made by the appellant by finding that that the conditions on which the non-contractual liability of the European Union depends were not satisfied.

III. Forms of order sought by the parties and the procedure before the Court

25. The appellants claim, in essence, that the Court should:

– set aside the judgment under appeal in so far as it found part of the appellants' action to be time-barred and in so far as it dismissed the action for non-contractual liability brought by the Commission;

– uphold the form of order sought at first instance;

– order the Commission to publicly recognise that it made an error of assessment with regard to Planistat Europe and the director thereof;

– order the Commission to pay the costs of the proceedings at both instances.

26. The Commission contends that the Court should:

– dismiss the appeal; and

– order the appellants to pay the costs.

27. In accordance with Article 76(2) of the Rules of Procedure of the Court, the latter decided to proceed without a hearing.

IV. Analysis

28. By their second ground of appeal, raised in the alternative and which is the subject of this Opinion, the appellants claim that the General Court erred with regard to incurring the EU's non-contractual liability. That ground is divided into three parts. The first is based, in essence, on the General Court's error relating to the unlawfulness of the defamatory behaviour on the part of OLAF and the Commission towards the appellants, the second is based on the error relating to the unlawfulness of OLAF's conduct and the third is based on the error relating to the unlawfulness of the Commission's conduct

29. I propose to reverse the analysis of the three parts. In the context of the second and third parts, it is necessary to examine the obligations on the part of OLAF when it reported matters liable to be characterised as criminal and the obligations on the part of the Commission which

joins the proceedings as a civil party. I therefore consider it useful to begin my analysis with those parts, in order to then examine the allegedly defamatory and false nature of the forwarding of information at issue which is the subject of the first part of the second ground of appeal.

A. The second part of the second ground of appeal

30. By the second part, which is subdivided into two complaints, the appellants claim that the General Court erred in law in finding, in paragraphs 84 to 104 of the judgment under appeal, that OLAF's conduct, in particular the forwarding to the French authorities of information concerning matters liable to be characterised as criminal, did not breach the principles of good administration and confidentiality.

1. The first complaint

31. The appellants submit that the General Court erred, in paragraph 88 of the judgment under appeal, in taking the view that OLAF already had, on 19 March 2003, information or evidence on the basis of which to consider that the facts in question were liable to be characterised as criminal. According to the appellants, OLAF was fully aware that the irregularities noted in Eurostat's internal investigation report had not given rise to any misappropriation of funds. In so far as the French courts found there to be no prejudice caused to the budget of the European Union, the finding set out in paragraph 88 of the judgment under appeal is manifestly incorrect. By forwarding false information to the French authorities, OLAF took insufficient precautions, which constitutes a breach of its duty to verify data and therefore of the principle of good administration.

32. According to the Commission, by their arguments, the appellants seek a re-examination of the facts, without however claiming that they have been distorted and without identifying the error of law allegedly committed by the General Court.

33. As to the substance, those arguments are in any event unfounded. In that regard, so far as concerns the forwarding of the note by OLAF, the General Court, in paragraphs 87 and 89 of the judgment under appeal, rightly noted that it took into account, on the one hand, the fact that the information contained in that note was the result of an investigation that began in 1999 on the basis of an audit report carried out by Eurostat and, on the other hand, the fact that investigation OF/2002/0510 constituted the external part of internal investigation IO/2000/4097. As for the claim that OLAF was fully aware that the irregularities noted in Eurostat's internal investigation report had not given rise to any misappropriation of funds, such a claim, having not been invoked at first instance, is inadmissible.[5] In addition, according to the Commission, the fact that the French courts reached a different conclusion to OLAF as to whether any prejudice was caused to the budget of the European Union does not call OLAF's investigation into question. The fact that the French courts found there to be no prejudice caused to the budget of the European Union is not sufficient, by itself, to establish that OLAF acted wrongfully towards the appellants, thus infringing the principle of good administration.

[5] In any event, the Commission maintains that that claim is contradicted by the terms of the final investigation report, which mentions an amount paid irregularly to Planistat Europe, in so far as the investigation established that that company actively participated in the creation of a hidden reserve which enabled it, though a system of false invoicing, to receive, in particular, financial resources not provided for under market conditions. That finding also confirms the finding in the Eurostat audit report (see Annexes A.11, p. 550 to 552, and A. 13, p. 569).

34. Before embarking on an analysis of the admissibility of the first complaint, I must observe that, in so far as the appellants claim that OLAF committed the offences of making false accusations and defamation, they are repeating the argument that they also set out in the context of the first part of the second ground of appeal, which I will examine under that part.[6] It is clear from paragraphs 60 to 66 of the appeal that, by the second part of that ground, the applicants are seeking to establish a breach of the principle of good administration on account of a failure on the part of OLAF to exercise due care and attention in having, on the one hand, hastily forwarded information to the national authorities and, on the other hand, leaked information to the press.

(a) Admissibility

35. By their first complaint, the appellants claim that OLAF sent the note of 19 March 2003 without sufficient evidence of unlawful conduct on the part of the appellants, which constitutes a breach of the principle of good administration. Having regard to the Commission's arguments and for the purpose of the admissibility of that complaint, I note that, in their application at first instance, the appellants have already invoked breach of the principle of good administration and of the presumption of innocence on account of the allegedly unlawful media coverage by OLAF.[7]

36. Furthermore, it seems to me that the arguments set out in paragraphs 60 to 66 of the appeal and directed against paragraphs 87 and 88 of the judgment under appeal do not constitute a simple repetition of their arguments at first instance, but seek to demonstrate the errors which allegedly vitiate those paragraphs of the judgment under appeal. It is evident that the appellants are seeking to demonstrate that, by considering in those paragraphs of the judgment under appeal that OLAF already had, on 19 March 2003, information or evidence on the basis of which to consider that the matters in question were liable to be characterised as criminal, the General Court misapplied the principle of good administration.

37. In addition, the appellants' arguments should be understood as alleging that it is apparent from the judgment in *Commission* v *De Esteban Alonso*, C-591/19,[8] that, in so far as the forwarding of information to the national authorities constitutes a discretionary power, OLAF was required to act cautiously in order to comply with the principle of good administration. In other words, according to the appellants, the absence of an obligation to forward OLAF's report to the national authorities implies an obligation to verify the results of the investigation, which the General Court should have undertaken.

38. Consequently, I propose that the Court finds the first complaint to be admissible.

(b) Substance

39. The first complaint of the second part of the second ground of appeal is directed against paragraphs 82 to 92 of the judgment under appeal. In those points, the General Court considered that it followed from Article 10 and recital 13 of Regulation No 1073/1999 that OLAF is entitled to refer the matter to the judicial authorities, including before the end of the external investigation, if it considers that it has information or material that might warrant the opening of a judicial investigation or constitute evidence relevant to such an investigation.[9] The General Court noted

6 See paragraph 88 of this Opinion.

7 Paragraphs 57 et seq. of the application at first instance.

8 Judgment of 10 June 2021 (EU:C:2021:468, paragraph 61).

9 See paragraphs 82 to 86 of the judgment under appeal.

that, since the note of 19 March 2003 was based on Eurostat's internal audit report from September 1999 and included relevant facts and circumstances, OLAF already had, on 19 March 2003, information or evidence on the basis of which to consider that the matters in question were liable to be characterised as criminal. The General Court concluded that that was no indication of a breach of the principle of good administration or the principle that action must be taken within a reasonable time. [10]

40. According to the appellants, since the French courts were able to find there to be no prejudice caused to the budget of the European Union, such a conclusion is manifestly incorrect, which thus constitutes a breach of the principle of good administration. In that regard, I consider it useful to analyse, in the first place, whether the rule of law relied on by the applicants is intended to confer rights on individuals, in the second place, the reporting of matters by OLAF and its obligation of due care and, in the third place, the judicial review applied to such reporting.

(1) Sufficiently serious breach of a rule of law

41. It should be borne in mind that it is apparent from settled case-law that a right to reparation is afforded where three conditions are met: the rule of law infringed must be intended to confer rights on individuals; the breach must be sufficiently serious; and there must be a direct causal link between the breach of the obligation resting on the author of the act and the damage sustained by the injured parties. As regards the second condition, the Court also pointed out that the decisive test for finding that a breach of EU law is sufficiently serious, in circumstances such as those in the present case, is whether the EU institution or body concerned manifestly and gravely disregarded the limits on its discretion. [11] Such a breach is established when it implies that the institution concerned manifestly and gravely disregarded the limits set on its discretion, the factors to be taken into consideration in that connection being, inter alia, the degree of clarity and precision of the rule breached and the measure of discretion left by that rule to the EU authorities. [12]

42. With regard to the rule which is alleged to have been breached, the appellants invoke the duty of care. [13] In that regard, it follows from the case-law that that duty, inherent in the right to good administration enshrined in Article 41(1) of the Charter of Fundamental Rights of the European Union ('the Charter'), entails that the EU administration must act with care and caution, [14] and constitutes a rule of law conferring rights on individuals. [15] I therefore consider that the appellants are indeed invoking a rule of law intended to confer rights on individuals. [16]

[10] See paragraphs 87 to 92 of the judgment under appeal.

[11] Judgment of 23 March 2004, *Ombudsman* v *Lamberts* (C-234/02 P, EU:C:2004:174, paragraph 49 and the case-law cited).

[12] See, to that effect, judgments of 4 April 2017, *Ombudsman* v *Staelen* (C-337/15 P, EU:C:2017:256, paragraph 37), and of 30 May 2017, *Safa Nicu Sepahan* v *Council*, (C-45/15 P, EU:C:2017:402, paragraph 30). For example, where that institution has only considerably reduced, or even no, discretion, the mere infringement of EU law may be sufficient to establish the existence of a sufficiently serious breach (see, to that effect, judgment of 10 December 2002, *Commission* v *Camar and Tico* (C-312/00 P, EU:C:2002:736, paragraph 54)).

[13] So far as concerns the judicial review of infringements allegedly committed by OLAF, see Inghelram, J.F.H., "*Legal and Institutional Aspects of the European Anti-fraud Office (OLAF) – An Analysis with a Look Forward to a European Public Prosecutor's Office*", Europa Law Publishing, Zutphen 2011, p. 203, and Groussot, X., Popov, Z., "*What's wrong with OLAF? Accountability, due process and criminal justice in European anti-fraud policy*," Common Market Law Review vol. 47, 2010, p. 605 to 643. As for the action for damages, see Inghelram, J.F.H., "*Judicial review of investigative acts of the European Anti-Fraud Office (OLAF): a search for balance*", Common Market Law Review vol. 49, 2012, pp. 616 to 617.

[14] See, to that effect, judgment of 16 December 2008, *Masdar (UK)* v *Commission* (C-47/07 P, EU:C:2008:726, paragraphs 92 and 93).

[15] See, to that effect, judgment of 16 September 2013, *ATC and Others* v *Commission* (T-333/10, EU:T:2013:451, paragraph 93).

[16] See, by analogy, with regard to the requirement of impartiality, judgment of 6 April 2006, *Camós Grau* v *Commission* (T-309/03, EU:T:2006:110, paragraphs 102 and 103).

(2) The reporting of matters by OLAF and the duty of care

43. It is apparent from recital 1 of Regulation No 1073/1999 that the aim of OLAF's investigations is the protection of the EU's financial interests and to fight against fraud and any other illegal activities detrimental to the EU's financial interests.[17] According to recital 5 of that regulation, OLAF's responsibility extends beyond the protection of financial interests to include all activities relating to safeguarding Union interests against irregular conduct liable to result in administrative or criminal proceedings. It is therefore to attain those objectives that OLAF carries out internal and external investigations, the results of which are presented in a report, in accordance with Article 9 of Regulation No 1073/1999, and that OLAF forwards information to the national authorities and the institutions, in accordance with Article 10 thereof.

44. On the one hand, it should be noted that, in the present case, the forwarding of information by OLAF appears to have been carried out during the course of an external investigation[18] on the basis of Article 10(1) of Regulation No 1073/1999.[19] Pursuant to that provision, ' [OLAF] *may at any time* forward to the competent authorities of the Member States concerned information obtained in the course of external investigations',[20] which means that, in the context of external investigations, the reporting of matters to those authorities is discretionary.[21] That discretion is exercised by OLAF in the light of its obligation to protect the European Union's financial interests effectively in accordance with Article 280 EC (now Article 325 TFEU).[22] I take the view that it therefore amounts, at first sight, to the proper exercise of OLAF's powers for the protection of the EU's financial interests.[23] It follows that the act of forwarding information to national authorities cannot, as such, constitute unlawful conduct.

45. On the other hand, it should be noted that it is apparent from recital 13 of Regulation No 1073/1999 that the findings of OLAF which are set out in a final report do not lead automatically to the initiation of judicial or disciplinary proceedings, since the competent authorities are free to decide what action to take pursuant to a final report and are accordingly the only authorities having the power to adopt decisions capable of affecting the legal position of those persons in relation to which the report recommended that such proceedings be instigated.[24] The material supplied by OLAF may be supplemented and verified by the national authorities which have a wider range of investigative powers than OLAF.

46. To that effect, it should be noted that the Court has already held that no provision 'expressly prohibits the institution concerned from referring the matter to the judicial authority before the end of OLAF's investigation if it considers that it has information or material that might warrant the opening of a judicial investigation or constitute evidence relevant to such an

17 See, to that effect, Inghelram, J.F.H., *Legal and Institutional Aspects of the European Anti-Fraud Office (OLAF)*, Europa Law Publishing, Amsterdam, 2011, in particular p. 107.

18 With regard to conducting an external investigation, see Inghelram, J. F. H., "Legal and Institutional Aspects of the European Anti-Fraud Office (OLAF) An Analysis with a Look Forward to a European Public Prosecutor's Office", cited in note 13 of this Opinion, p. 65 et seq.

19 See paragraph 84 of the judgment under appeal.

20 Emphasis added.

21 See, in that regard, Article 10(2) of Regulation No 1073/1999, under which OLAF *must* forward to the judicial authorities of the Member State concerned the information obtained by the Office during internal investigations into matters liable to result in criminal proceedings.

22 See also recital 1 of Regulation No 1073/1999.

23 See also the powers conferred on OLAF expressly defined in detail by Decision 1999/352/EC, ECSC, Euratom: Commission Decision of 28 April 1999 establishing OLAF (OJ 1999 L 136, p. 20).

24 See, to that effect, orders of 13 July 2004, *Comunidad Autónoma de Andalucía* v *Commission* (T-29/03, EU:T:2004:235, paragraph 37); of 21 June 2017, *Inox Mare* v *Commission* (T-289/16, EU:T:2017:414, paragraph 22); of 22 January 2018, *Ostvesta* v *Commission* (T-175/17, EU:T:2018:49, paragraph 29); and the case-law cited.

investigation.'[25] Since the national authorities are free to decide whether to open a judicial investigation, I propose to understand that condition as meaning that OLAF had information or material on the basis of which to consider that the matters in question were liable to be characterised as criminal.

47. However, the power to refer the matter to national authorities thus conferred on OLAF must be tempered, first, by Article 9(2) of Regulation No 1073/1999, from which it is apparent that the reports drawn up by OLAF constitute admissible evidence in administrative or judicial proceedings of the Member State in which their use proves necessary, in the same way and under the same conditions as administrative reports drawn up by national administrative inspectors. It follows in my opinion, *mutatis mutandis*, that the information acquired by OLAF in the course of an investigation has a certain level of credibility. Generally, I take the view that care must be taken since, in the context of OLAF forwarding information to the national authorities, OLAF is not acting as a whistle-blower, but as an office which has investigation powers, and that the information was transmitted between two authorities with such powers.[26] On the other hand, it is necessary to take into account the fact that referring matters to national authorities could provide the basis for legal, civil and criminal proceedings. The Court has already held that, in criminal law, the fundamental rights guaranteed by the Charter must be respected by the Member States not only during the criminal proceedings, but also during the stage of the preliminary investigation, from the moment when the person concerned becomes an accused.[27] It is clear that the institutions and bodies of the European Union are bound by the same requirements as the Member States when implementing EU law. It follows that it is necessary to establish that, in the context of forwarding information to the national authorities, OLAF acted with all the requisite care and caution, so as not to breach the duty of care and to respect the limits imposed on its discretion, in order to determine whether that information and material are sufficient to justify reporting the matters in question.

48. The question which then arises is what review the General Court must carry out in order to verify whether the information or material provide a basis for reporting the matters in question.

(3) Review by the General Court of information or material forwarded by OLAF

49. As the General Court must verify, in the context of forwarding information to the national authorities, whether OLAF legitimately has information or material liable to be characterised as criminal,[28] it must establish, in my opinion, that OLAF forwarded to the national authorities information that *appeared plausible*.[29] That idea of plausibility implies that the court at first instance verifies that OLAF had, at the time of forwarding information to the national authorities, more than a suspicion, without however requiring established proof which no longer

[25] See judgment of 10 June 2021, *Commission* v *De Esteban Alonso* (C-591/19 P, EU:C:2021:468, paragraph 57).

[26] I that regard, I recall that, in the light of the principle of sincere cooperation enshrined in Article 4(3) TEU, the cooperation between OLAF and the national authorities assumes a certain level of trust and thus has significant evidential value.

[27] See, to that effect, judgment of 17 January 2019, *Dzivev and Others* (C-310/16, EU:C:2019:30, paragraph 33).

[28] I consider that, as I have already stated in point 46 above, although the judgment of 10 June 2021, *Commission* v *De Esteban Alonso* (C-591/19 P, EU:C:2021:468, paragraph 57) refers only to the need to '[open] a judicial investigation or constitute evidence relevant to such an investigation', I nevertheless take the view that the relevant criterion should be whether evidence of unlawful conduct exists, in so far as the need to open legal proceedings is a matter for the national authorities.

[29] See, by analogy, the wording of Article 10(2) of Regulation No 1073/1999.

requires any investigation.[30] Consequently, in the present case, the nature of that information could not be presumed,[31] and it was therefore for the General Court to examine the content of the note of 19 March 2003.

50. In that regard, I observe that the appellants put forward two arguments at first instance. First, they argued that the principle of good administration had been breached as a result of the information that was hastily forwarded to the national authorities.[32] To that end, in so far as the appellants criticise the Commission for not having exercised due care on account of the short period of time that elapsed between the 1999 Eurostat audit and the note of 19 March 2003, as I have already stated, pursuant to the duty of care, together with the principle of good administration enshrined in Article 41 of the Charter, the administration must carefully and impartially examine all the relevant aspects of the individual case. However, it is clear that the length of time in question does not point to either a particular level of care or to a lack thereof, such that the General Court did not err in that regard.

51. Second, so far as concerns the appellants' argument at first instance that the Commission was 'subject to a duty to verify data that may have an impact on the outcome, since the document in question alleged serious irregularities on the part of the appellants and could have serious economic consequences for them', it is necessary to understand their argument in the sense that OLAF did not fulfil its duty to verify data which could affect the conclusion reached by the local authorities.[33] The appellants maintained, in essence, that the unlawfulness in question was the result of the breach of the duty of care and that it was for OLAF (and/or the Commission) to verify the information that it forwarded to the national authorities.[34]

52. In that regard, as I have already stated,[35] I consider that in the context of an action under Article 340 TFEU, the plausible nature of the information forwarded by OLAF cannot be presumed,[36] with the result that it was for the General Court to examine the content of the note of 19 March 2003 and to verify whether the information forwarded *appeared plausible*.[37] To that end, it was for the General Court 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. I would add that the discretion of the national authorities as to the opening of national proceedings in no way detracts from the obligation on the part of OLAF to forward plausible information and for the General Court to verify whether the information forwarded met that requirement. The fact that there is a possible 'discrepancy' between the information forwarded by OLAF to the national authorities and the

30 See, to that effect and by analogy, Mascala, C. *La fonction de l'apparence vraisemblable dans l'enquête pénale* in: *Juge et Apparence(s)* [online].: Presses de l'Université Toulouse Capitole, Toulouse 2010. http://books.openedition.org/putc/293. According to the author, the concept of appearing plausible corresponds to a state between simple doubt which is insufficient to initiate criminal proceedings or to carry out certain acts, and established proof, which no longer requires any investigation.

31 See, Groussot. X. and Popov, Z., "What's wrong with OLAF? Accountability, due process and criminal justice in European anti-fraud policy", Common Market Law Review, vol. 47, pp. 605 to 643.

32 See, in particular, paragraph 86 of the application at first instance.

33 See also paragraph 74 of the Commission's reply at first instance.

34 In those circumstances, I consider that the right to good administration enshrined in Article 41 of the Charter, as invoked by the appellants, constitutes the expression of specific rights within the meaning of that provision, namely the right to have your affairs handled impartially and fairly and, therefore, the obligation of the competent institution to examine, with care and impartiality, all the relevant aspects of the individual case. Accordingly, that right must, in the present case, be classified as a rule of law conferring rights on individuals.

35 See point 49 above.

36 See, Groussot. X. and Popov, Z., "What's wrong with OLAF? Accountability, due process and criminal justice in European anti-fraud policy", Common Market Law Review, vol 47, p. 605 to 643.

37 See paragraph 88 of the judgment under appeal.

findings of the national courts cannot constitute an infringement of the right to good administration, since the national authorities, who are in no way bound by OLAF's findings, conduct an independent and impartial examination of the facts and legal issues.

53. In the present case, I must point out that, in paragraph 87 of the judgment under appeal, the General Court, first, merely noted that it was apparent from the note of 19 March 2003 that the information contained therein was the result of an investigation that began on the basis of Eurostat's internal audit report from September 1999, that is to say nearly three and a half years earlier, and, second, found that the note of 19 March 2003 set out the institutional framework in which it was carried out, presented the facts covered by the investigation starting with the creation of the network of datashops in 1995 and 1996, explained the financial relationships within that network and detailed the findings made during the investigation. In paragraph 88 of the judgment under appeal, the General Court found that OLAF already had, on 19 March 2003, information or material on the basis of which to consider that the matters in question were liable to be characterised as criminal.

54. It seems to me that, in doing so, the General Court has not demonstrated that it verified the plausibility of the information forwarded to the national authorities. By outlining the procedure that led to the decision to forward the information to the national authorities and the content of the note of 19 March 2003, the judgment under appeal seeks to show that OLAF was *itself* entitled to consider that the matters in question were liable to be characterised as criminal. However, I take the view that it was for the General Court itself to verify the information and evidence, in order to establish whether it was plausible that the matters in question were liable to be characterised as criminal.

55. Accordingly, I consider that the General Court erred by not verifying the plausibility of the information and evidence forwarded by OLAF to the national authorities. I therefore propose that the Court set aside the judgment under appeal in that regard, finding that it was for the General Court, as the court at first instance, to examine whether, on the basis of the information forwarded by OLAF to the French authorities in the note of 19 March 2003, it was plausible that the matters in question were liable to be characterised as criminal.

2. The second complaint

56. The appellants claim that Mr Charlot's reputation was undermined as a result of the information leaked to the press by OLAF. The appellants refer to articles which appeared in May and June 2003 in some German-language newspapers, mentioning Planistat Europe. On account of those alleged leaks, OLAF breached the duty of confidentiality under Article 8 of Regulation No 1073/1999 and breached the principle of good administration.

57. According to the Commission, with regard to the alleged leak by OLAF of the content of the note of 19 March 2003, they are allegations of fact and, in the absence of any distortion, do not form part of the subject matter of an appeal. In any event, it is not possible, on the basis of the press articles put forward in support of the appellants' allegation, to establish a breach of the duty of confidentiality, in so far as, in those articles, reference is made only to matters that were made public when a German Member of the European Parliament asked a written question on

13 May 2003, that is to say before the publication of the articles in question.[38] Therefore, the allegations relating to press leaks do not establish a breach, let alone a sufficiently serious breach, of the duty of confidentiality on the part of OLAF.

58. In that regard, in so far as, by their second complaint the appellants criticise OLAF for having disclosed information to the press,[39] it should be borne in mind that it is apparent from the second subparagraph of Article 256(1) TFEU and the first subparagraph of Article 58 of the Statue of the Court of Justice of the European Union, together with Article 168(1)(d) and Article 169(2) of the Rules of Procedure of the Court, that an appeal must indicate precisely the contested elements of the judgment which the appellants seek to have set aside and also the legal arguments specifically advanced in support of the appeal, failing which the appeal or the ground of appeal in question will be dismissed as inadmissible.[40] In the present case, I note that the appellants make no reference to any errors of law or to any paragraph of the judgment under appeal, so that I propose that the Court rejects that complaint as manifestly inadmissible.

B. The third part of the second ground of appeal

59. By the third part of the second ground of appeal, which is subdivided into three complaints, the appellants criticise the General Court for having committed, in paragraph 114 of the judgment under appeal, an error of law in concluding that the Commission did not commit a wrongful act by lodging a complaint directed against X before the French courts and by becoming a civil party thereto.

1. The first complaint

60. The appellants submit that the Commission made false accusations against Planistat Europe and the director thereof. The Commission disputes the admissibility of that complaint.

61. In that regard, I observe that the appellants failed to identify the error of law which allegedly vitiates the reasoning of the General Court. As stated above, it is apparent from Article 168(1)(d) of the Rules of Procedure of the Court that an appeal must indicate precisely the contested elements of the judgment which the appellants seek to have set aside and also the legal arguments specifically advanced in support of the appeal, failing which the appeal or the ground of appeal in question will be dismissed as inadmissible.[41] Those requirements are not satisfied by a ground of appeal which, without even including an argument aimed specifically at identifying the error of law which allegedly vitiates the judgment under appeal, merely repeats or reproduces verbatim the pleas and arguments put forward before the General Court. Lastly, with regard to the concept of false accusations, I refer to my analysis in the context of the first part of the second ground of appeal.[42]

[38] Annex A.18, pp. 669 to 675.

[39] See paragraphs 67 to 69 of the appeal.

[40] Judgments of 26 January 2017, *Mamoli Robinetteria* v *Commission* (C-619/13 P, EU:C:2017:50, paragraph 42), and of 8 June 2017, *Dextro Energy* v *Commission* (C-296/16 P, EU:C:2017:437, paragraph 60).

[41] See point 58 of this Opinion.

[42] See points 81 and 90 of this Opinion.

2. The second complaint

62. According to the appellants, the General Court erred in law in finding that the Commission did not commit a wrongful act by filing a complaint directed against X before the French courts and by becoming a civil party thereto. More specifically, the appellants criticise, in essence, the Commission for having acted hastily when it filed the complaint without waiting for OLAF's investigation to be closed. The General Court erred in recognising, in paragraph 111 of the judgment under appeal, that the Commission had the right to submit the complaint, although the exercise of such a right is, in the circumstances of the case, 'wrongful'. The Commission should have first verified the truth of the information contained in the complaint.

63. As a preliminary point, as I have already indicated, in the present case, OLAF forwarded the information to the French authorities on the basis of Article 10(1) of Regulation No 1073/1999 [43] and such an action amounts to OLAF exercising its powers in order to protect the EU's financial interests effectively in accordance with Article 280 EC (now Article 325 TFEU). [44] Furthermore, it is apparent from the Court's case-law that none of the provisions of that regulation expressly prohibit the Commission from referring the matter to the judicial authority before the end of OLAF's investigation if it considers that it has information or material liable to be characterised as criminal. [45] Therefore, as the Commission argues, it would have been contrary to the objective pursued by Article 280 EC to wait for the formal closure of OLAF's investigation, since OLAF was already in a position, at the end of three years of investigation, to gather information which it forwarded to the competent authorities during the investigation in accordance with Article 10(1) of Regulation No 1073/1999. [46]

64. So far as concerns the appellants' argument alleging breach of the principle of observance of a reasonable period in that the Commission hastily joined the proceedings as a civil party, as the General Court rightly pointed out in paragraph 108 of the judgment under appeal, the breach of that principle, if established, is capable of engaging the non-contractual liability of the Commission only in so far as it can cause damage as a result of the excessive lapse of time. [47] Furthermore, it should be established that any breach of that principle affects the appellants' ability to defend themselves effectively, which is not the case here, in so far as they were able to defend themselves before the national courts. Consequently, the General Court did not err in considering that the Commission did not breach that principle by joining the proceedings as a civil party before receiving the final report in the context of the external investigation.

65. As regards the appellants' argument that it was not for the Commission to review the work carried out by OLAF, it should be noted that OLAF acts in complete independence. [48] Accordingly, pursuant to Article 2(1) of Decision 1999/352 and Article 1(1) of Regulation No 1073/1999, it was directly on OLAF that the Commission conferred its powers to carry out

[43] See paragraph 84 of the judgment under appeal.

[44] It must be noted that the forwarding of information at issue is distinct from the possibility of presenting evidence, provided for in Article 9(2) of Regulation No 1073/1999.

[45] See, by analogy, judgment of 10 June 2021, *Commission* v *De Esteban Alonso* (C-591/19 P, EU:C:2021:468, paragraphs 56 and 57).

[46] In that regard, it is important to note that the Commission invokes the six-year limitation period, provided for under French law for bringing proceedings, to explain that it was obliged to file a complaint as soon as possible once OLAF had been able to establish the facts, since criminal proceedings are time-barred in France, at least in part. According to the Commission, Article 113-8 of the French Criminal Code requires, with regard to offences committed outside French territory, that proceedings only be instigated at the request of the public prosecutor and must be preceded by a complaint made by the victim. In the present case, the six-year limitation period provided for in Article 8 of the French Code of Criminal Procedure for bringing proceedings had already begun to run, since the facts dated back to the period from 1996 to 1999.

[47] See, by analogy, judgment of 9 June 2016, *CEPSA* v *Commission* (C-608/13 P, EU:C:2016:414, paragraph 61).

[48] See, to that effect and by analogy, judgment of 8 July 2008, *Franchet and Byk* v *Commission* (T-48/05, EU:T:2008:257, paragraph 299).

external administrative investigations for the purpose of strengthening the fight against fraud, corruption and any other illegal activity adversely affecting the financial interests of the European Union, as well as any other act or activity by operators in breach of EU provisions. Therefore, the Commission cannot, without encroaching on OLAF's powers, be required to verify information forwarded by OLAF.

66. Lastly, the appellants argue that the Commission should not have lodged a complaint, since there were 'entirely exceptional circumstances' preventing it from doing so. In so far as that argument was not raised in the context of the application, it is, in my view, inadmissible.

3. The third complaint

67. By their third complaint, the appellants submit that the Commission reported the complaint directed against X to the media, thus infringing the principle of good administration. The Commission raises a plea of inadmissibility in relation to that ground for complaint.

68. It should be noted that, by that complaint, the appellants fail to demonstrate the error which allegedly vitiates the reasoning of the General Court in the judgment under appeal. That complaint is therefore inadmissible.

69. Consequently, I propose that the Court rejects the third part of the second ground of appeal as inadmissible in part and unfounded in part.

C. The first part of the second ground of appeal

70. By the first part of the second ground of appeal, the appellants claim that the General Court should have recognised the existence of false accusations made by OLAF and the Commission, which fall within the concept of defamation and constitute both a criminal offence and a civil wrong in 25 of the 27 countries of the European Union. The General Court erred in finding, in paragraphs 74 and 76 of the judgment under appeal, that the appellants relied, in order to invoke the existence of false accusations, on provisions of French criminal law, the case-law of the French courts and French doctrine.

71. According to the appellants, the General Court should have examined those arguments in the light of the right to private life and the right to good administration enshrined respectively in Article 7 and Article 41 of the Charter. The appellants cited national case-law on false accusations only by way of example, in order to demonstrate that such wrongful conduct breaches the general principles common to the laws of the Member States.

72. The Commission considers that those arguments are inadmissible since they were not raised at first instance. It takes the view that, in the context of their application before the General Court, the appellants maintained the existence of false accusations and expressly referred to the French Criminal Code and the national case-law relating thereto. The appellants clearly argued, before the General Court, that the conduct of OLAF and the Commission was unlawful on account of the false accusations made. [49]

[49] The Commission relies, moreover, on an extract from the Report for the Hearing before the General Court, which refers to false accusations and not to slander or defamation.

73. As regards the admissibility of the first part of the second ground of appeal, in the first place, the Commission submits, in essence, that the Court was seised, under the terms of that first part, of a case of wider ambit than that which came before the General Court, in so far as the appellants invoked defamation for the first time in their appeal.

74. In that regard, so far as concerns the question whether the appellants' arguments concerned the concept of false accusations or the concept of defamation, I observe that, in their application at first instance, they claimed that the false accusations – that is to say the forwarding of information to the French judicial authorities – were accompanied by defamatory communications, namely the alleged press leaks relating to the forwarding of information. [50] First, to the extent they criticised the forwarding of the note of 19 March 2003, and the complaint and application to join the proceedings as a civil party filed against them by the Commission on 10 July 2003, they invoked false accusations made against them. [51] Second, in so far as the appellants criticised the alleged press leaks committed by OLAF and the Commission, I note that they referred, albeit laconically, to the 'defamatory' press releases, in breach of the principle of the presumption of innocence of the person concerned. [52]

75. I therefore propose that the Court finds that the appellants already put forward at first instance their arguments relating to the offences of making false accusations and defamation. However, the defamation argument seems to refer only to the allegation of leaking information to the press [53] and not to the forwarding of information by OLAF and the Commission to the national authorities. Furthermore, with regard to whether making a false accusation constitutes a concept which is similar to the concept of defamation or whether it falls directly within the scope of that concept and whether it constitutes a violation of Article 7 and 41 of the Charter, I take the view that those questions relate to the substance of the case which I will examine below. [54]

76. In the second place, the Commission maintains, in essence, that it is not possible from the application at first instance to identify any arguments relating to the existence of defamation in breach of a provision or general EU law principle.

77. In that regard, it is sufficient to note that, first, the petitum of the application initiating proceedings refers to the sufficiently serious breach of the duty of care and of the principle of good administration, of the rights of the defence, of the presumption of innocence and of the duty of confidentiality. It is, in my opinion, clear that the appellants referred to general EU law principles, such as those given specific expression in the Charter. [55] Second, a reading of the arguments set out in the application at first instance only confirms that assessment, in so far as, with regard, in particular, to the allegations related to the offence of making false accusations, the appellants invoked the harm caused to the reputation or honour of a person and therefore to their private life, within the meaning of the freedom of expression enshrined in Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950. [56] Furthermore, in their reply at first instance, they concluded that harm was

[50] Paragraphs 37 to 40 of the application at first instance. See also the distinction in points 62 and 63 of the application at first instance.

[51] See, in particular, paragraphs 37, 43, 44 and 56 of the application at first instance.

[52] See, in particular, paragraphs 59 and 69 of the application at first instance, which refer to press leaks.

[53] See, in particular, the context of paragraph 110 of the application at first instance.

[54] See points 81 to 88 of this Opinion.

[55] In particular, the reference to the duty of care and to the principle of good administration, which are prima facie binding on the EU authorities, reveals the intention of the appellants to rely on general EU law principles.

[56] See, in particular, paragraph 110 of the application at first instance.

caused to the reputation of a person, which relates to respect for private life,[57] as well as the right to good administration, enshrined in Article 41 of the Charter.[58] I infer from this that the Commission cannot validly consider that infringement of EU law is a new argument put forward at the appeal stage.

78. In the third place, as to whether the first part of the second ground of appeal alleging defamation is time-barred, it should be recalled that, pursuant to Article 46 of the Statute of the Court of Justice of the European Union, proceedings against the European Union in matters arising from non-contractual liability are to be barred after a period of five years from the occurrence of the event giving rise thereto. In the present case, it appears that the ground of appeal alleging defamation due to press leaks is time-barred, since the harm was caused instantaneously.

79. In the event that OLAF's investigation and the forwarding of the investigation report are covered by the principle of confidentiality, as enshrined in Article 8 of Regulation No 1073/1999, the harm caused by the breach of that principle occurs a*s soon as the confidential elements are disclosed*. It is thus necessary to distinguish whether the harm occurs because of false accusations made or as a result of defamation, and therefore, for the latter, whether the wrongful act is established independently of the delivery of the judgment by the Cour de cassation (Court of Cassation). The General Court was therefore right to find, in paragraph 60 of the judgment under appeal that the eventual outcome of national legal proceedings is not likely to affect the introduction of an action for non-contractual liability, with the result that the offence of defamation was established independently of the delivery of the judgment by the Cour de cassation (Court of Cassation).

80. It follows that the appellants should have sought compensation for the harm caused within five years of the publication of the allegedly defamatory remarks, which were made between May and July 2003. I therefore propose that the Court upholds that plea of illegality raised by the Commission.

81. With regard to the substance of the first part of the second ground of appeal, the appellants call into question the General Court's assessment of the arguments relating to false accusations.

82. In paragraphs 74 to 76 of the judgment under appeal, included in the part of that judgment relating to the examination of the unlawfulness of OLAF and the Commission's conduct as a result of making false accusations, the General Court notes that the appellants relied on French criminal law, the case-law of the French courts and on relevant French doctrine. I observe that, while it is true that the EU courts have exclusive jurisdiction to hear actions seeking compensation for damage attributable to the European Union, the interpretation and legal framework under French criminal law of the facts alleged by the appellants do not fall within the competence of the EU courts. Accordingly, the General Court rejected as ineffective the appellants' arguments alleging the existence of false accusations.

83. It should be observed that the General Court's reasoning, in paragraphs 74 to 76 of the judgment under appeal, is based on a reading of the application, according to which the appellants *only* put forward arguments in support of national law. However, as I have already explained in the section relating to inadmissibility, it seems to me that it has been established

[57] Paragraph 27 of the application at first instance.

[58] Paragraph 29 of the application at first instance.

that the appellants invoked EU law and, in particular, general EU law principles.[59] According to the application at first instance, false accusations allegedly made by OLAF and the Commission are contrary to the duty of care[60] and the right to good administration enshrined in Article 41 of the Charter.[61]

84. In any event, even in the absence of express references to general EU law principles, I take the view that it is for the General Court to carry out, in accordance with the maxim iura novit curia, a review of those principles.[62] Lastly, in so far as there has been little or no development of the concept of making false accusations under EU law, it is quite understandable that, in order to define its scope, the parties illustrate their point with national case-law and doctrine, especially since the general principles of law, which have been reaffirmed in the Charter, result, in part, from the common traditions of the Member States.[63]

85. I therefore consider that, in finding that the appellants referred to the infringement of rules of national law, the General Court's examination of the application and reply at first instance, which contain express references to general principles of EU law and to provisions of the Charter, was too formal and narrow. I therefore propose that the Court should uphold the first part of the second ground of appeal and find that the General Court erred in considering, in paragraphs 74 and 76 of the judgment under appeal, that the appellants relied, in order to establish that false accusations were made, on provisions of French criminal law, the case-law of the French courts and on French doctrine.

86. Lastly, for the sake of completeness, I will make a few observations on whether false accusations may constitute a sufficiently serious breach of a rule of law conferring rights on individuals.

87. It should be noted that the offence of making false accusations has no direct legal source in the provisions of secondary EU law. In order to determine the characteristics of offending conduct for the purposes of establishing a breach of a rule of law conferring rights on individuals, it is necessary to examine the common traditions of the Member States.

88. In that regard, the offence of making false accusations is an offence publishable under the criminal codes of several Member States,[64] with the result that it is possible to regard it as being a common tradition of the Member States. It consists of informing the competent authority of a *non-existent* act or event which may be punishable as a criminal offence.[65] However, not all accusations are necessarily false. False accusations are usually characterised by the falseness of

59 See points 74 and 75 of this Opinion.

60 Paragraph 56 of the application at first instance.

61 Paragraph 58 of the application at first instance.

62 See, to that effect, judgment of 20 January 2021, *Commission* v *Printeos* (C-301/19 P, EU:C:2021:39, paragraph 54). Furthermore, the General Court itself considered that, according to the case-law, the admissibility of a plea in law does not depend on the use of specific terminology, or specific legal rules or principles being relied on. It noted that it is for the EU judicature to identify the relevant provisions and to apply them to the facts put before it by the parties, even if the parties do not refer to the provisions in question or rely on different provisions (see, to that effect, judgment of 24 September 2015, *Italy and Spain* v *Commission*, T-124/13 and T-191/13, EU:T:2015:690).

63 See points 87 to 88 of this Opinion.

64 By way of illustration, see, under German law, Paragraph 164 of the Strafgesetzbuch (Criminal Code); under French law, Article 226-10 of the Criminal Code; under Latvian law, Articles 290 and 298 of the Krimināllikums (Criminal law), and under Slovakian law, Paragraph 345 of the zákon 300/2005 Z.z., Trestný zákon (Criminal Code). See, also, judgment of 6 September 2011, *Patriciello* (C-163/10, EU:C:2011:543), relating to the crime of making false accusations in Italy.

65 See, by way of example, Article 226-10 of the French Criminal Code.

the conduct reported and by the scurrilous nature of the person making the accusation. [66] In other words, inadvertence or negligence is not sufficient to constitute the element of intent in the offence. Therefore, if the appellants demonstrate, at first instance, that OLAF intentionally forwarded false information to the national authorities, then the offence of making a false accusation may be established. Such conduct could then infringe the fundamental individual rights of the person in question and it would be for the General Court, in order to determine whether it is a sufficiently serious breach of a rule of law conferring rights on individuals, to examine whether the alleged false accusations constitute an infringement of the fundamental rights enshrined in the Charter which, pursuant to Article 52(3) of the Charter, must be interpreted in accordance with the case-law of the European Court of Human Rights.

89. In the light of the foregoing, I propose that the Court partially upholds the first part of the second ground of appeal, in so far as the General Court refused to examine the appellants' arguments alleging that a false accusation was made.

V. The action before the General Court

90. In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, if the Court quashes the decision of the General Court, it may itself give final judgment in the matter, where the state of the proceedings so permits. That is not the case here, since the General Court did not examine the plausibility of the information and facts forwarded by OLAF to the national authorities, or the content thereof, or even OLAF's intention behind forwarding the information.

VI. Costs

91. Since, according to my analysis, the case must be referred back to the General Court, the costs must be reserved, in accordance with Article 137 of the Rules of Procedure, which applies to appeal proceedings pursuant to Article 184(1) of the Rules of Procedure.

VII. Conclusion

92. In the light of the foregoing, without prejudging the question as to whether the other grounds of appeal are well founded, I propose that the Court partially sets aside the judgment of the General Court of the European Union of 6 April 2022, *Planistat Europe and Charlot* v *Commission* (T-735/20, EU:T:2022:220) in that the General Court erred in law when, first, it failed to verify the plausibility of the information and facts forwarded by the European Anti-Fraud Office to the national authorities and, second, it failed to examine the appellants' arguments alleging that a false accusation was made. I propose that the Court reserves the costs.

[66] See the provisions cited in footnote 64 of this Opinion. See, also, Ceccaldi, S., 'Sur la nature conjecturale de l'élément moral: l'exemple de la dénonciation calomnieuse', Revue de science criminelle et de droit pénal comparé, vol.2 N° 3, p. 587 to 598.