



Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

11 January 2024*

(Appeal – Second paragraph of Article 340 TFEU – Non-contractual liability of the European Union – Regulation (EC) No 1073/1999 – Investigations conducted by the European Anti-Fraud Office (OLAF) – External investigation by OLAF – ‘Eurostat’ case – Forwarding by OLAF of information concerning matters liable to result in criminal proceedings to the national judicial authorities before the conclusion of the investigation – Filing of a complaint by the European Commission before the conclusion of the OLAF 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 intended to confer rights on individuals – Material and non-material damage allegedly suffered by the appellants – Actions for damages)

In Case C-363/22 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 6 June 2022,

Planistat Europe SARL, established in Paris (France),

Hervé-Patrick Charlot, residing in Paris,

represented by F. Martin Laprade, avocat,

appellants,

the other party to the proceedings being:

European Commission, represented by J. Baquero Cruz and F. Blanc, acting as Agents,

defendant at first instance,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, Z. Csehi, M. Ilešič (Rapporteur), I. Jarukaitis and D. Gratsias, Judges,

Advocate General: L. Medina,

Registrar: A. Calot Escobar,

* Language of the case: French.

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 13 July 2023,

gives the following

Judgment

- 1 By their appeal, Planistat Europe SARL and Mr Hervé-Patrick Charlot 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* (T-735/20, ‘the judgment under appeal’, EU:T:2022:220), by which the General Court dismissed the action brought by the appellants seeking compensation, first, for the non-material 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, secondly, the material damage that the appellants claim to have suffered as a result of the termination of contracts concluded between Planistat Europe and the Commission.

I. Legal context

- 2 Recitals 1, 5, 10 and 13 of 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) (OJ 1999 L 136, p. 1), which are applicable to the present case *ratione temporis*, stated:
 - ‘(1) Whereas the institutions and the Member States attach great importance to the protection of the Communities’ financial interests and to the fight against fraud and any other illegal activities detrimental to the [European] Communities’ financial interests; ...
...
(5) Whereas the responsibility of [OLAF] as set up by the Commission extends beyond the protection of financial interests to include all activities relating to safeguarding Community interests against irregular conduct liable to result in administrative or criminal proceedings;
...
(10) Whereas these investigations must be conducted in accordance with the Treaty and in particular with the Protocol on the privileges and immunities of the European Communities, while respecting the Staff Regulations of officials and the conditions of employment of other servants ... and with full respect for human rights and fundamental freedoms, in particular the principle of fairness, for the right of persons involved to express their views on the facts concerning them and for the principle that the conclusions of an investigation may be based solely on elements which have evidential value; whereas to that end the institutions, bodies, offices and agencies must lay down the terms and conditions under which such internal investigations are conducted; whereas consequently the Staff Regulations should be amended in order to lay down the rights and obligations of officials and other servants as regards internal investigations;

...

(13) Whereas it is for the competent national authorities or the institutions, bodies, offices or agencies, as the case may be, to decide what action should be taken on completed investigations on the basis of the report drawn up by [OLAF]; whereas it should nevertheless be incumbent upon the Director of [OLAF] to forward directly to the judicial authorities of the Member State concerned information acquired by [OLAF] in the course of internal investigations concerning situations liable to result in criminal proceedings’.

3 Article 2 of that regulation, entitled ‘Administrative investigations’, provides:

‘Within the meaning of this Regulation, “administrative investigations” ... shall mean all inspections, checks and other measures undertaken by employees of [OLAF] in the performance of their duties, in accordance with Articles 3 and 4, with a view to achieving the objectives set out in Article 1 and to establishing, where necessary, the irregular nature of the activities under investigation. These investigations shall not affect the powers of the Member States to bring criminal proceedings.’

4 Article 8 of that regulation, entitled ‘Confidentiality and data protection’, provided:

‘1. Information obtained in the course of external investigations, in whatever form, shall be protected by the relevant provisions.

2. Information forwarded or obtained in the course of internal investigations, in whatever form, shall be subject to professional secrecy and shall enjoy the protection given by the provisions applicable to the institutions of the European Communities.

Such information may not be communicated to persons other than those within the institutions of the European Communities or in the Member States whose functions require them to know, nor may it be used for purposes other than to prevent fraud, corruption or any other illegal activity.

3. The Director shall ensure that [OLAF]’s employees and the other persons acting under his authority observe the Community and national provisions on the protection of personal data, in particular those provided for in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [(OJ 1995 L 281, p. 31)].

4. The Director of [OLAF] and the members of the Supervisory Committee referred to in Article 11 shall ensure that this Article and Articles 286 and 287 of the Treaty are applied.’

5 Article 9 of that regulation, entitled ‘Investigation report and action taken following investigations’, provided:

‘1. On completion of an investigation carried out by [OLAF], the latter shall draw up a report, under the authority of the Director, specifying the facts established, the financial loss, if any, and the findings of the investigation, including the recommendations of the Director of [OLAF] on the action that should be taken.

2. In drawing up such reports, account shall be taken of the procedural requirements laid down in the national law of the Member State concerned. Reports drawn up on that basis shall 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. They shall be subject to the same evaluation rules as those applicable to administrative reports drawn up by national administrative inspectors and shall be of identical value to such reports.

3. Reports drawn up following an external investigation and any useful related documents shall be sent to the competent authorities of the Member States in question in accordance with the rules relating to external investigations.

4. Reports drawn up following an internal investigation and any useful related documents shall be sent to the institution, body, office or agency concerned. The institution, body, office or agency shall take such action, in particular disciplinary or legal, on the internal investigations, as the results of those investigations warrant, and shall report thereon to the Director of [OLAF], within a deadline laid down by him in the findings of his report.'

6 Article 10 of Regulation No 1073/1999, entitled 'Forwarding of information by [OLAF]', was worded as follows:

'1. Without prejudice to Articles 8, 9 and 11 of this Regulation and to the provisions of [Council] Regulation (Euratom, EC) No 2185/96 [of 11 November 1996 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 (OJ 1996 L 292, p. 2)], [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 [OLAF] shall forward to the judicial authorities of the Member State concerned the information obtained by [OLAF] 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.

3. Without prejudice to Articles 8 and 9 of this Regulation, [OLAF] may at any time forward to the institution, body, office or agency concerned the information obtained in the course of internal investigations.'

II. Background to the dispute

7 The background to the dispute was set out by the General Court in paragraphs 2 to 18 of the judgment under appeal and, for the purposes of the present proceedings, may be summarised as follows.

8 In 1996, the Statistical Office of the European Communities (Eurostat) created a network of sales outlets for statistical information (datashops). In the Member States, those datashops, which lack legal personality, were in principle integrated within the national statistical institutes, 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 Communities (OPOCE) and the organisation hosting the datashop.

- 9 From 1996 to 1999, Planistat Europe, directed by Mr Charlot, benefitted from framework contracts concluded with Eurostat for various services including, in particular, the supply of staff within the datashops.
- 10 From 1 January 2000, Planistat Europe was entrusted with the management of the datashops in Brussels (Belgium), Madrid (Spain) and Luxembourg (Luxembourg). It was to pay the Commission all of the turnover generated in 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 (IO/2000/4097) to examine the methods for establishing the network of datashops, billing systems, financial appropriation and the possible involvement of officials 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 Members of the European Parliament.
- 16 The Commission and OLAF issued several press releases, only two of which mentioned Planistat Europe. Thus, 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 23 July 2003, the Commission terminated the contracts concluded with Planistat Europe in question.
- 20 On 25 September 2003, OLAF closed internal investigation IO/2000/4097 and external investigation OF/2002/0510.

- 21 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 in the context of the criminal proceedings brought before the French judicial authorities. The Commission lodged an appeal against that order.
- 22 By judgment of 23 June 2014, the cour d'appel de Paris (Court of Appeal, Paris, France) dismissed the Commission's appeal and upheld the order dismissing the proceedings.
- 23 By judgment of 15 June 2016, the Cour de cassation (Court of Cassation, France) dismissed the Commission's appeal against that judgment of 23 June 2014, thereby bringing the legal proceedings to an end.
- 24 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 compensation for the damage allegedly suffered as a result, inter alia, of the complaint filed by the Commission and the press releases issued in that regard.
- 25 On 15 October 2020, the Commission rejected the appellant's request, finding that that the conditions for the European Union to incur non-contractual liability were not satisfied.

III. The procedure before the General Court and the judgment under appeal

- 26 By application lodged at the Registry of the General Court on 15 December 2020, Planistat Europe and Mr Charlot brought an action under Article 268 TFEU for compensation, first, for the non-material damage which Mr Charlot claims to have suffered as a result of OLAF's forwarding to the national authorities of information relating to matters liable to be characterised as criminal and the complaint lodged by the Commission with those authorities before OLAF's investigation was closed and, secondly, for the material damage which they claim to have suffered as a result of the termination of the contracts concluded between Planistat Europe and the Commission.
- 27 In support of that action, the appellants submitted that OLAF and the Commission had infringed the duty to have regard for the welfare of officials, the principles of good administration and of the presumption of innocence and the rights of the defence as enshrined in the Charter of Fundamental Rights of the European Union ('the Charter'). They relied, in essence, on the existence of wrongful acts committed by OLAF and by the Commission on account, first, of the forwarding to the French judicial authorities of information relating to matters liable to be characterised as criminal and, secondly, of the lodging of a complaint against X which had led to the initiation of criminal proceedings against the appellants and the continuation of those proceedings unjustifiably. According to the appellants, those wrongful acts committed by OLAF and the Commission had a direct causal link with the non-material and material damage for which they seek compensation.
- 28 The General Court dismissed the action as, in part, inadmissible on account of the limitation period of five years laid down in Article 46 of the Statute of the Court of Justice of the European Union and, in part, unfounded.

IV. Forms of order sought by the parties before the Court of Justice

- 29 By their appeal, the appellants claim that the Court should:
- set aside the judgment under appeal in so far as it, first, declared part of the appellants’ action to be time-barred and, secondly, dismissed the Commission’s action for non-contractual liability;
 - uphold the form of order sought at first instance;
 - order the Commission to recognise publicly that it made an error of assessment with regard to them; and
 - order the Commission to pay the costs.
- 30 The Commission contends that the Court should:
- dismiss the appeal; and
 - order the appellants to pay the costs.

V. The appeal

- 31 As a preliminary point, it must be noted that, under Article 169(1) of the Rules of Procedure of the Court, ‘an appeal shall seek to have set aside, in whole or in part, the decision of the General Court as set out in the operative part of that decision’. In addition, in accordance with Article 170(1) of those rules, an appeal is to seek, in the event that it is declared well founded, the same form of order, in whole or in part, as that sought at first instance and is not to seek a different form of order.
- 32 The appellants’ third head of claim, seeking that the Commission be ordered to acknowledge publicly that it made an error of assessment with regard to them, does not seek either the annulment of the decision of the General Court or the granting of the form of order sought at first instance, since, as is apparent from the judgment under appeal and as is confirmed by reading the application at first instance, contained in the file at first instance transmitted to the Court of Justice in accordance with Article 167(2) of the Rules of Procedure, the appellants had not submitted such a head of claim at first instance. It follows that the appellants’ third head of claim constitutes a new claim and must be rejected as inadmissible.
- 33 As to the remainder, in support of their appeal, the appellants put forward three grounds of appeal. By their first, and principal ground of appeal, they allege that the General Court erred in adopting an incorrect interpretation of the event giving rise to the damage invoked. By their second ground of appeal, raised in the alternative, they claim that the General Court made errors in relation to the incurring of the European Union’s non-contractual liability. By their third ground of appeal, they allege that the General Court erred in finding that it was not necessary to examine whether the appellants had suffered the damage alleged and the existence of a causal link.

A. The first ground of appeal

34 By their first ground of appeal, which is divided into two parts concerning, respectively, non-material damage and material damage, the appellants submit that the General Court distorted their arguments by considering, in paragraph 36 of the judgment under appeal, that they alleged that the Commission had caused non-material damage to Mr Charlot because he was implicated in the criminal proceedings before the French prosecuting authorities and material damage because of the termination of all the contracts concluded with Planistat Europe. According to the appellants, that distortion led the General Court to err in defining the wrongful acts which gave rise to the damage for which the appellants seek compensation, which vitiates the entirety of its analysis, in particular paragraph 116 of the judgment under appeal, in which the General Court dismissed their action as being, in part, inadmissible and, in part, unfounded.

1. First part of the first ground of appeal

(a) Arguments of the parties

35 By the first part of their first ground of appeal, the appellants claim that the General Court erred by incorrectly defining the event giving rise to the alleged non-material damage.

36 In that regard, they claim that the General Court distorted their arguments when it held that their action related only to the non-material damage allegedly suffered as a result of OLAF's forwarding of the note of 19 March 2003 and not that resulting from the 'extensive media coverage' of that forwarding. They maintain that the General Court erred in its definition of the wrongful acts which gave rise to the damage for which they seek compensation.

37 In that regard, it is apparent from the application at first instance that, according to the appellants, OLAF and the Commission committed a number of wrongful acts consisting in having, first, made 'false accusations', by the note of 19 March 2003, which they sent to the French judicial authorities, and, secondly, lodged the complaint and application to join the proceedings as a civil party referred to in paragraph 17 above, accompanied by extensive media coverage and a press release in which they deliberately 'leaked' information relating to that note and made 'defamatory' statements. It was the combination of those wrongful acts which damaged the honour and reputation of Mr Charlot, the director of Planistat Europe.

38 The Commission contends that the appellants' arguments are based on a misreading of the judgment under appeal.

(b) Findings of the Court

39 It should be noted, first of all, that, contrary to what is claimed, in essence, by the appellants, the General Court did not disregard the fact that they had invoked non-material damage resulting from the media coverage of the forwarding of the note of 19 March 2003 by OLAF. It is apparent from paragraph 47 of the judgment under appeal that the General Court took that alleged non-material damage into consideration, while taking the view that it was instantaneous in nature and that, therefore, it was time-barred, pursuant to Article 46 of the Statute of the Court of Justice of the European Union and the principles laid down in the case-law set out in paragraphs 34 and 35 of that judgment. It follows that, in so far as, by the first part of the first ground of appeal, the appellants claim that the General Court distorted their application at first

instance, by disregarding the non-material damage alleged as a result of the media coverage of that note, that first part is based on a misreading of the judgment under appeal and must, accordingly, be rejected as unfounded.

- 40 In so far as, next, that first part must be understood as alleging distortion of the appellants' arguments in that the General Court ignored the fact that the alleged damage resulted from a combination of the forwarding of that note and its media coverage, it should be recalled that, in accordance with settled case-law, it follows from the second subparagraph of Article 256(1) TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and Article 168(1)(d) and Article 169(2) of the Rules of Procedure that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and the legal arguments specifically advanced in support of that appeal, failing which the appeal or ground of appeal concerned will be inadmissible (judgment of 21 September 2023, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others v Commission*, C-478/21 P, EU:C:2023:685, paragraph 162 and the case-law cited).
- 41 An appeal which, without even including an argument specifically identifying the error of law allegedly vitiating the judgment or order under appeal, merely repeats or reproduces verbatim the pleas in law and arguments previously submitted to the General Court, including those based on facts expressly rejected by the General Court, does not satisfy the requirement to state reasons under those provisions. Such an appeal amounts in reality to no more than a request for re-examination of the application submitted to the General Court, which the Court of Justice does not have jurisdiction to undertake (see, to that effect, judgment of 27 April 2023, *PL v Commission*, C-537/21 P, EU:C:2023:363, paragraph 125 and the case-law cited).
- 42 In that regard, it should be noted that, although the appellants claim that their arguments put forward before the General Court were presented incorrectly by that court in the judgment under appeal, the fact remains that those appellants do not identify any error of law arising from that allegedly incorrect presentation and vitiating that judgment (see, by analogy, judgment of 4 June 2015, *Andechser Molkerei Scheitz v Commission*, C-682/13 P, EU:C:2015:356, paragraph 59).
- 43 In particular, as the Commission rightly observed, the appellants do not put forward any argument in order to call into question the General Court's finding, in paragraph 47 of the judgment under appeal and noted in paragraph 39 above, or the case-law principles set out in paragraphs 34 and 35 of the judgment under appeal.
- 44 Consequently, the first part of the first ground of appeal must be rejected as in part inadmissible and in part unfounded.

2. The second part of the first ground of appeal

(a) Arguments of the parties

- 45 By the second part of their first ground of appeal, the appellants complain that the General Court erred in concluding that the event giving rise to the alleged material damage resulted from the termination of the contracts concluded between Planistat Europe and the Commission in 2003, whereas it was clear from the application at first instance that that damage consisted of a loss in value of that company's shares and in an 'asphyxiation' and the 'near disappearance of a successful

business' resulting from the defamatory conduct of OLAF and the Commission. That damage is continuous in nature, unlike the instantaneous damage which resulted from the termination of those contracts. The confirmation by the Cour de cassation (Court of Cassation), on 15 June 2016, of the order of the investigating judge of the tribunal de grande instance de Paris (Regional Court, Paris) dismissing the proceedings, by which Mr Charlot's innocence was confirmed, makes it possible, a posteriori, to classify that defamatory conduct as 'unlawful'. Thus, the appellants submit that the General Court should have analysed their claim for compensation, referred to in paragraph 24 above, in a completely different way, in particular as regards the question whether their action against the European Union in respect of non-contractual liability was time-barred.

46 The Commission disputes that line of argument.

(b) Findings of the Court

47 While it is true that, in their application at first instance, the appellants claimed that the material damage which they claim to have suffered consisted of a loss in value of the shares in Planistat Europe and of an 'asphyxiation' and a 'near disappearance of a successful business' resulting from the defamatory conduct of OLAF and the Commission, the fact remains that, according to the wording of that application itself, that loss of value resulted, first, from the suspension and then the termination of the contracts between that company and the Commission and, secondly, from the termination of the contracts concluded with other customers. It cannot therefore be held that the General Court distorted their arguments on that point, with the result that, in so far as it alleges distortion of the appellants' arguments, the second part of the first ground of appeal must be rejected as unfounded.

48 In addition, it should be noted that, as regards the termination of the contracts concluded between that company and the Commission, the appellants merely criticise the General Court for having considered, in paragraphs 58 to 61 of the judgment under appeal, that that material damage was instantaneous in nature, with the result that the claim for compensation for that damage was time-barred, without, however, indicating, contrary to the case-law referred to in paragraphs 40 and 41 above, how that reasoning was vitiated by an error of law, and that part of their appeal therefore seeks, by a repetition of the arguments put forward at first instance, to obtain a re-examination of their application before the General Court and must, accordingly, be rejected as inadmissible.

49 As regards the material damage resulting from the termination of the contracts concluded with the other customers, it should be recalled that, in paragraph 62 of the judgment under appeal, the General Court held that the appellants had not adduced any evidence capable of establishing, inter alia, the precise time at which such damage materialised.

50 It is settled case-law that, where the General Court has established or assessed the facts, the Court of Justice has jurisdiction, under Article 256 TFEU, solely to review their legal characterisation and the legal conclusions which were drawn from them (judgment of 14 October 2021, *NRW.Bank v SRB*, C-662/19 P, EU:C:2021:846, paragraph 35 and the case-law cited). The appraisal of the facts does not therefore constitute, save where the clear sense of the evidence produced before the General Court is distorted, a question of law which is subject, as such, to review by the Court of Justice (judgment of 25 March 2021, *Deutsche Telekom v Commission*, C-152/19 P, EU:C:2021:238, paragraph 68 and the case-law cited).

- 51 Since the appellants have not alleged any distortion of the facts or evidence, their arguments must also be rejected as being inadmissible on that point.
- 52 The second part of the first ground of appeal must therefore be rejected as in part unfounded and in part inadmissible.
- 53 Consequently, the first ground of appeal must be rejected in its entirety.

B. The second ground of appeal

- 54 The second ground of appeal, by which the appellants claim an error of law as to whether the European Union incurred non-contractual liability, is divided into three parts, alleging, in essence, first, that the General Court erred in relation to the unlawfulness of the defamatory conduct of OLAF and the Commission vis-à-vis the appellants, secondly, an error relating to the unlawfulness of OLAF's conduct, in that OLAF, in the absence of sufficient evidence, forwarded to the French authorities information relating to matters liable to be characterised as criminal and, thirdly, an error relating to the unlawfulness of the Commission's conduct.

1. The first complaint of the second part of the second ground of appeal

(a) Arguments of the parties

- 55 By the first complaint in the second part of their second ground of appeal, the appellants submit that the General Court erred in law in holding that OLAF had not committed a wrongful act by forwarding to the French judicial authorities information relating to matters liable to be characterised as criminal.
- 56 Furthermore, the appellants submit, in essence, that the unlawfulness in question was the consequence of a breach, by OLAF, of its duty of diligence and that it was for OLAF to verify the information which it forwarded to the national authorities.
- 57 The appellants claim that the General Court erred, in paragraphs 82 to 92 of the judgment under appeal, in finding 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 capable of justifying the opening of a judicial investigation or which may constitute evidence relevant to such an investigation. In that regard, the General Court noted, in paragraph 88 of that judgment, that OLAF already had, on 19 March 2003, information or material enabling the view to be taken that the matters at issue were liable to be characterised as criminal. The General Court wrongly concluded, in paragraphs 90 and 91 of that judgment, that OLAF had not committed any wrongful act and, in particular, that it had not infringed either the principle of good administration or the duty to act within a reasonable time.
- 58 According to the appellants, 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.

- 59 The Commission contends that the first complaint of the second part of the second ground of appeal should be rejected as being, in part, manifestly inadmissible and, in part, unfounded.
- 60 According to the Commission, the appellants are seeking a re-examination of the facts, without however alleging a distortion of the facts or identifying the error of law allegedly committed by the General Court.
- 61 As to the substance, the Commission contends that the arguments put forward by the appellants are unfounded. As regards the General Court's assessment that, on the date on which the note of 19 March 2003 was sent, OLAF had sufficient information to forward it, the General Court, in paragraphs 87 and 89 of the judgment under appeal, correctly took account, first, of the fact that the information contained in that note was the result of an investigation which began in 1999 on the basis of an audit report carried out by Eurostat and, secondly, of the fact that investigation OF/2002/0510 was the external part of internal investigation IO/2000/4097.
- 62 In addition, according to the Commission, the fact that the French courts reached a different conclusion than OLAF cannot call into question the OLAF investigation and does not, in itself, demonstrate that OLAF committed a wrongful act constituting an infringement of the principle of good administration with regard to the appellants.

(b) Findings of the Court

(1) Admissibility

- 63 It should be noted that, although the presentation of some of the arguments put forward in support of the first complaint in the second part of the second ground of appeal could have been clearer, the fact remains that those arguments are intended, in essence, to call into question not the assessment, as such, of the facts by the General Court, but the General Court's conclusion that the facts found did not permit the inference that OLAF had committed a wrongful act by sending information to the French judicial authorities: in other words, the legal classification, by the General Court, of those facts. In accordance with the case-law referred to in paragraph 50 above, the legal classification of the facts is a question of law which may be raised in an appeal and is subject to review by the Court of Justice.
- 64 Accordingly, it must be held that the first complaint of the second part of the second ground of appeal is admissible.

(2) Substance

- 65 By the first complaint in the second part of the second ground of appeal, the appellants claim, in essence, that the General Court erred in law in that it held that OLAF had not infringed the principle of good administration by informing the French judicial authorities before it had finalised the report drawn up following the external investigation.
- 66 In that respect, it should be recalled that the conditions that must be satisfied in order for the European Union to incur non-contractual liability, under the second paragraph of Article 340 TFEU, include the requirement of a sufficiently serious breach of a rule of law that is intended to confer rights on individuals (judgment of 30 May 2017, *Safa Nicu Sepahan v Council*, C-45/15 P, EU:C:2017:402, paragraph 29).

- 67 That test is satisfied where a breach is established which 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 are, 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 (judgment of 30 May 2017, *Safa Nicu Sepahan v Council*, C-45/15 P, EU:C:2017:402, paragraph 30 and the case-law cited).
- 68 As the Advocate General noted in point 42 of her Opinion, the principle of good administration, enshrined in Article 41 of the Charter, includes a duty of care on the part of the EU administration, which must act with care and caution, and failure to comply with that obligation constitutes a breach of a rule of law intended to confer rights on individuals (see, to that effect, judgment of 16 December 2008, *Masdar (UK) v Commission*, C-47/07 P, EU:C:2008:726, paragraphs 91 to 93).
- 69 As regards, more specifically, the implications of the principle of good administration and of the duty of care inherent therein, as regards the possibility for OLAF to forward information to the national judicial authorities, it is apparent from Article 10(1) of Regulation No 1073/1999 that '[OLAF] may at any time forward to the competent authorities of the Member States concerned information obtained in the course of external investigations'.
- 70 It is also apparent from recital 1 of that regulation that that power must be exercised in the light of the objectives of protecting the financial interests of the European Union and combating fraud and any other illegal activities detrimental to the financial interests of the European Union.
- 71 In addition, according to recital 5 of that regulation, OLAF's responsibility extends beyond the protection of financial interests to include all activities relating to safeguarding EU interests against irregular conduct liable to result in administrative or criminal proceedings. It is therefore in order to achieve those objectives that OLAF carries out internal and external investigations, the results of which are, according to Article 9 of that regulation, presented in an investigation report sent to the competent authorities of the Member States, in the case of an external investigation, or to the institution, body, office or agency concerned, in the case of an internal investigation, in accordance with paragraphs 3 and 4 of that article.
- 72 In that regard, it is apparent from paragraph 2 of that article that reports drawn up by OLAF 'shall 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'.
- 73 It follows, as confirmed by recital 13 of Regulation No 1073/1999, that the findings of an OLAF investigation 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 that 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 that report recommended that such proceedings be instigated.
- 74 As the Advocate General observed in point 45 of her Opinion, the material provided by OLAF may be supplemented and verified by the national authorities, which have a wider range of investigative powers than OLAF.

- 75 It follows from the foregoing considerations that while it is indeed true that OLAF has not only the power, but also the obligation to forward to the competent national authorities, including judicial authorities, even before the closure of its investigation and the drafting of the final report, any relevant information that may justify the adoption of measures by those authorities, including the opening of a criminal investigation, the fact remains, as the Advocate General noted, in essence, in point 47 of her Opinion, that when it takes the decision to forward such information, OLAF must take account of its duty of care, referred to in paragraph 68 above, and exercise a certain degree of caution, since OLAF does not act as an ‘ordinary whistle-blower’, but as an office vested with powers of investigation, and such forwarding of information takes place between two authorities with such powers. That is all the more so since bringing the matter before the national authorities may serve as a basis for the initiation of civil and criminal judicial proceedings.
- 76 It follows that, in order to comply with its duty of care, OLAF must, before forwarding information to the national authorities under Regulation No 1073/1999, ensure, in accordance with recital 10 of that regulation, that the information in question is sufficiently plausible and credible to justify the adoption, by those authorities, of measures falling within their competence, including, as the case may be, the opening of a judicial investigation.
- 77 It follows, as the Advocate General observed in point 49 of her Opinion, that where, as in the present case, the General Court is called upon to determine whether OLAF has complied with its duty of care as regards the forwarding of information to the national authorities, it must verify that, at the time of that forwarding, OLAF had more than a mere suspicion, without however requiring established proof which no longer requires any investigation.
- 78 Accordingly, in the present case, it was for the General Court, first, to verify the credibility and content of the information or material in the note of 19 March 2003 and the intention with which that information or that material was forwarded to the French judicial authorities and, secondly, to determine whether that information or material could justify the opening of a judicial investigation or constitute evidence relevant to such an investigation. 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.
- 79 The General Court found, in paragraph 87 of the judgment under appeal, first, 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 an internal audit report of Eurostat from September 1999, that is to say, nearly three and a half years earlier, and, secondly, that that note 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 that judgment, the General Court found that OLAF already had, on 19 March 2003, information or material on the basis of which it could be considered that the matters in question were liable to be characterised as criminal.
- 80 In so doing, the General Court did not verify either the credibility and content of the information or material in the note of 19 March 2003, the intention with which that information or that material was forwarded to the French judicial authorities, or whether that information or material could justify the opening of a judicial investigation or constitute evidence relevant to such an investigation. To that extent, the General Court erred in law.

81 Consequently, the first complaint in the second part of the second ground of appeal must be upheld.

2. First part of the second ground of appeal

(a) Arguments of the parties

82 By the first part of their second ground of appeal, the appellants claim that the General Court should have recognised the existence of false accusations made by OLAF and by the Commission, which fall within the definition 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 legal literature. According to the appellants, the General Court should have examined the appellants' 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. In that regard, they submit that the French case-law on false accusations was mentioned only by way of example, in order to demonstrate that such a wrongful act infringes the general principles common to the laws of the Member States.

83 The Commission considers that those arguments are inadmissible since they were not raised at first instance. It submits 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. No argument relating to the existence of defamation which infringed a general principle of EU law appeared in their application. Furthermore, that application does not make it possible to identify any arguments relating to the existence of defamation in breach of a provision or general principle of EU law. In any event, those arguments are unfounded, since false accusations presuppose that allegations which the perpetrator knows to be false are made with the intention of causing harm, which the appellants have not demonstrated in the present case.

(b) Findings of the Court

84 As regards the admissibility of the first part of the second ground of appeal, it should be borne in mind that, according to settled case-law, to allow a party to put forward for the first time before the Court of Justice a plea in law which it has not raised before the General Court would in effect allow that party to bring before the Court of Justice, whose jurisdiction in appeal proceedings is limited, a case of wider ambit than that heard by the General Court. In an appeal, the jurisdiction of the Court of Justice is confined to review of the findings of law on the pleas argued before the General Court (judgment of 27 April 2023, *Casa Regina Apostolorum della Pia Società delle Figlie di San Paolo v Commission*, C-492/21 P, EU:C:2023:354, paragraph 100 and the case-law cited).

85 However, in the present case, it must be noted that, contrary to the Commission's submissions, the appellants submitted, in their application at first instance, that the false accusations resulting from the forwarding of the information at issue to the French judicial authorities were accompanied by defamatory communications, namely the press leaks relating to that forwarding, and that they expressly invoked in that regard an infringement, inter alia, of the right to good

administration, as enshrined in Article 41 of the Charter, and of the rights of the defence, the right to the presumption of innocence and the obligation of confidentiality, which are also enshrined in the Charter.

86 Accordingly, the Commission's claims concerning the admissibility of the first part of the second ground of appeal must be rejected.

87 As regards its merits, it should be noted that, in paragraph 74 of the judgment under appeal, the General Court found that the appellants relied on provisions of French criminal law, on the case-law of the French courts and on the relevant French legal literature. It considered however, in paragraph 75 of that judgment, 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, in paragraph 76 of that judgment, rejected as ineffective the appellants' arguments alleging the existence of false accusations.

88 As the Advocate General observed, in essence, in point 83 of her Opinion, that reasoning of the General Court is based on a manifestly incorrect reading of the application at first instance. It is apparent from that application, as already stated in paragraph 85 above, that the appellants relied, in support of their arguments alleging the unlawfulness of the conduct of OLAF and the Commission on account of false accusations, on general principles of EU law, in particular the right to good administration enshrined in Article 41 of the Charter. Although the appellants invoked French law in support of that line of argument, they clearly did so only by way of example.

89 It follows that the General Court erred in law when it rejected that line of argument as ineffective.

90 The first part of the second ground of appeal must therefore be upheld.

91 Consequently, it is appropriate, without it being necessary to examine the second complaint in the second part of that ground of appeal, the third part of that ground of appeal or the third ground of appeal, to set aside the judgment under appeal, in so far as, by that judgment, the General Court dismissed the action, to the extent that it sought compensation for the non-material damage allegedly suffered by Mr Charlot as a result of the criminal proceedings initiated against him before the French judicial authorities. The appeal must be dismissed as to the remainder.

VI. Referral of the case back to the General Court

92 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, the Court of Justice is to quash the decision of the General Court if the appeal is well founded. It may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment.

93 In the present case, as found in the context of the examination of the first complaint in the second part of the second ground of appeal, the General Court erred in law, in paragraphs 82 to 92 and 104 of the judgment under appeal, by examining neither the credibility and content of the information and material set out in the note of 19 March 2003, nor the intention with which that information or that material was forwarded to the French judicial authorities, nor whether that information or material could justify the opening of a judicial investigation or constitute

evidence relevant to such an investigation. Furthermore, it is apparent from the examination of the first part of the second ground of appeal that the General Court erred in law, in paragraphs 74 to 76 of the judgment under appeal, when it rejected as ineffective the appellants' arguments criticising OLAF and the Commission for having made false accusations.

- 94 In the judgment under appeal, the General Court concluded that there was no sufficiently serious breach of a rule of EU law, without going on to examine the other conditions which must all be met in order for the European Union to incur non-contractual liability (see, to that effect, judgments of 19 April 2007, *Holcim (Deutschland) v Commission*, C-282/05 P, EU:C:2007:226, paragraph 57, and of 10 September 2019, *HTTS v Council*, C-123/18 P, EU:C:2019:694, paragraph 108).
- 95 In those circumstances, the Court of Justice considers that the state of the proceedings in the present dispute concerning the claim for compensation for the non-material damage allegedly suffered by Mr Charlot as a result of the criminal proceedings initiated against him before the French judicial authorities do not permit final judgment to be given in the matter and that it is appropriate to refer the case back to the General Court, so that it may carry out a new examination of the possible existence of a sufficiently serious breach of a rule of EU law to incur the European Union's non-contractual liability. If that examination shows that there is such a breach, the General Court will have the task of examining the other conditions which must be met in order for the European Union to incur non-contractual liability.

VII. Costs

- 96 As the case is being referred back to the General Court, the costs relating to the present appeal proceedings must be reserved.

On those grounds, the Court (Fifth Chamber) hereby:

- 1. Sets aside the judgment of the General Court of 6 April 2022, *Planistat Europe and Charlot v Commission* (T-735/20, EU:T:2022:220), in so far as, by that judgment, the General Court rejected the action, to the extent that it sought compensation for the non-material damage allegedly suffered by Mr Hervé-Patrick Charlot as a result of the criminal proceedings initiated against him before the French judicial authorities;**
- 2. Dismisses the appeal as to the remainder;**
- 3. Refers the case back to the General Court of the European Union;**
- 4. Reserves the costs.**

[Signatures]