



The General Court annuls OLAF's decision not to grant partial access to the final report of its investigation relating to street-lighting projects implemented by the company Elios in Hungary with financial participation from the EU

Since the Hungarian authorities have already closed the national investigations relating to that report, the protection of investigations no longer justifies the refusal to grant access to the document requested

A civil association in the municipality of Gyál (Hungary) claims to have found that, in certain areas of that municipality, the street lighting installed in 2015 by the Hungarian undertaking Elios Innovatív Zrt. was insufficient and of very low quality. In March 2019, pursuant to the regulation on access to documents,¹ an activist from that association asked the European Anti-Fraud Office (OLAF) to grant her access to the final report of the investigation conducted by that body, relating to the street-lighting projects implemented by Elios with financial participation from the EU. OLAF closed that investigation in December 2017 and sent the Hungarian authorities the report in question, with recommendations on the follow-up action to be taken.

By decision of 22 May 2019, OLAF refused that request, taking the view that the general presumption that the public does not have access to documents relating to its investigations applied in the present case. The activist concerned subsequently brought an action before the General Court of the European Union, seeking annulment of that decision in so far as OLAF refused to grant her access to its final report, with any personal data concerning witnesses, internal notes and references to OLAF's methods redacted.

By today's judgment, the General Court recalls that the regulation on access to documents seeks to confer on citizens the widest possible access to documents of the EU institutions while making that right subject to certain exceptions based on reasons of public or private interest. In this context, the General Court highlights that, in order to invoke those exceptions, the EU institutions may rely on general presumptions which apply to certain categories of document and which seek to ensure the proper functioning of the procedures to which those documents relate as well as the attainment of their objectives. In that regard, the General Court states that the application of specific rules laid down by a legal act relating to a procedure conducted before an EU institution for the purposes of which the documents requested were produced is one of the criteria for recognising a general presumption.

The General Court holds that OLAF's investigation procedure is also covered by specific rules in relation to both access to information obtained or established in the course of such a procedure and to the processing of that information. By virtue of the regulation governing OLAF investigations,² OLAF is legally obliged to treat information it obtains in the course of its investigations as confidential and subject to professional secrecy. Thus, the General Court finds that **there is a general presumption that disclosure of the documents from an administrative**

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

² Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by [OLAF] and repealing Regulation No 1073/1999 and Council Regulation (Euratom) No 1074/1999 (OJ 2013 L 248, p. 1).

file processed by OLAF would, in principle, undermine the protection of the purpose of its investigations.

However, the General Court specifies that the existence of such a general presumption does not exclude the right of interested parties to demonstrate that a given document, disclosure of which has been requested, is not covered by that presumption or that its disclosure would not undermine the purpose of investigations or, failing that, that there is an overriding public interest justifying the disclosure of the document concerned.

In that connection, the General Court holds that the documents which are connected to an investigation conducted by an EU authority can, admittedly, remain covered by the exception relating to the protection of the purpose of investigations even after the closure of the investigation, in cases where that investigation has given rise to the follow-up action to be taken by national authorities. Nonetheless, the General Court points out that to accept that those documents are **in any case covered by that exception** until the follow-up action in question has been decided **would make access to them dependent on an uncertain, future and possibly distant event, depending on the speed and diligence of the various authorities.** In that regard, the General Court specifies that **OLAF may rely on that general presumption to refuse to disclose documents concerning an investigation only where that investigation is ongoing or where it has just been closed and if, in the latter case, the competent national authorities have not yet decided, within a reasonable period of time, on the action to be taken following the OLAF investigation report.**

The General Court finds that, when the contested decision was adopted, the Hungarian authorities had **already closed** the follow-up procedure by **a decision finding that there was no infringement.** Accordingly, the General Court observes that the possibility of relying on the general presumption of harm to the purpose of investigations **could no longer be justified** either by the **need to allow the Hungarian authorities to make a decision dispassionately in relation to action to be taken following the OLAF report,** or even by the **need to respect the presumption of innocence of the persons concerned.**

In those circumstances, the General Court finds that, **by relying on that general presumption to support the refusal of the request for access in question, OLAF erred in law** in the application of the regulation on access to documents). Therefore, the General Court **annuls the contested decision** in so far as OLAF refused to grant access to its final report, with any personal data concerning witnesses, internal notes and references to OLAF's methods redacted.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery

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