JUDGMENT OF THE COURT OF FIRST INSTANCE
(Fourth Chamber, Extended Composition)

6 April 2006 *

In Case T-309/03,

Manel Camós Grau, official of the Commission of the European Communities, residing in Brussels (Belgium), represented by M.-A. Lucas, lawyer,

applicant,

v

Commission of the European Communities, represented by J.-F. Pasquier and C. Ladenburger, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION, first, for the annulment of the report of the European Anti-Fraud Office (OLAF) of 17 October 2002 terminating the investigation concerning the Institute for European-Latin American Relations (IRELA) and, secondly, for compensation for non-material damage and damage to the applicant's employment prospects claimed to have arisen by virtue of that report,

* Language of the case: French.

THE COURT OF FIRST INSTANCEOF THE EUROPEAN COMMUNITIES
(Fourth Chamber, Extended Composition),

composed of H. Legal, President, P. Lindh, P. Mengozzi, I. Wiszniewska-Białecka and V. Vadapalas, Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 14 September 2005,

gives the following

Judgment

Legal framework

1 The European Anti-Fraud Office (OLAF), established by Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999 (OJ 1999 L 136 p. 20), is responsible inter alia for carrying out internal administrative investigations intended to investigate serious facts linked to the performance of professional activities which may constitute a breach of obligations by officials and servants of the Communities likely to lead to disciplinary and, in appropriate cases, criminal proceedings.

2 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) states that investigations concerning the institutions, bodies, offices and agencies of the Communities are to be carried out subject to the rules of the Treaties and with due regard for the Staff Regulations of Officials of the European Communities (second subparagraph of Article 4(1)). Article 6 specifies how the investigation procedure is to be conducted, and provides for that procedure to be carried out under the authority of the Director of OLAF by OLAF's employees, whose attitude must be in keeping, inter alia, with the Staff Regulations of Officials of the European Communities.

3 Article 9 of Regulation No 1073/1999 provides that on completion of an investigation carried out by OLAF, the latter is to draw up a report, under the authority of its Director, specifying in particular the findings of the investigation, including the recommendations of the Director on the action that should be taken. Article 9(4) states that reports drawn up following an internal investigation and any related documents are to be sent to the institution, body, office or agency concerned, which is, where necessary, to take such disciplinary or legal action on the internal investigations as the results of those investigations warrant.

4 Article 14 of that regulation provides that any official or other servant of the European Communities may submit to the Director of OLAF a complaint against an act adversely affecting him committed by OLAF as part of an internal investigation, in accordance with the procedures laid down in Article 90(2) of the Staff Regulations of Officials of the European Communities.

5 The first paragraph of Article 4 of Commission Decision 1999/396/EC, ECSC, Euratom of 2 June 1999 concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities' interests (OJ 1999 L 149, p. 57) states that where the possible implication of a Member, official or servant of the Commission

emerges, the interested party is to be informed rapidly as long as that would not be harmful to the investigation. It goes on to provide that no conclusion referring to the interested party by name may be drawn once the investigation has been completed without his having been enabled to express his views on all the facts which concern him.

Background

6 From 1992 to 1997, Mr Camós Grau, an official of the Commission in Grade A 3, was employed in the directorate responsible for Latin America of the Directorate General (DG) for external economic relations and was involved in the management of the Institute for European-Latin American Relations ('IRELA'), established in 1984.

7 After a number of reports, in particular from the Financial Control DG of the Commission, in 1997, and the Court of Auditors, in 1998, had shown evidence of budgetary and accounting irregularities at IRELA, the Director of OLAF decided on 4 July 2000 to initiate an investigation concerning IRELA and on 29 January 2001 to extend the initial investigation and at the same time to initiate an internal investigation regarding three officials of the Commission, including the applicant.

8 As required by Article 4 of Decision 1999/396, the Director of OLAF advised Mr Camós Grau on 30 January 2001 that the investigation had been initiated and that it was possible that he could be implicated in any irregularities that might be established. He also gave him details of the names of the OLAF employees responsible for carrying out the investigation.

9 Mr Camós Grau, who was accompanied by his lawyer, was heard on 22 February 2001 by three of the four OLAF agents carrying out the investigation.

10 By letters of 22 February 2002, sent to the Director of OLAF and the OLAF Supervisory Committee, Mr Camós Grau drew attention to the role of the Financial Control DG and expressed his concerns regarding one of the investigators, Mr P., on the ground that the latter could not possess the objectivity needed for carrying out the investigation, as part of his career had been undertaken in that Directorate-General. The Director of OLAF sent him a holding reply on 22 March 2002.

11 In a letter of 15 April 2002 sent to the Director of OLAF, Mr Camós Grau's lawyer set out his client's concerns in relation to the potential conflict of interest on Mr P.'s part in the light of the duties undertaken by the latter in the Unit responsible for monitoring IRELA in the Financial Control DG at the time of the events subject to the investigation and his conduct in the course of that investigation. The applicant's lawyer wrote in similar terms to the chairman of the OLAF Supervisory Committee on 26 April 2002.

12 Mr Camós Grau, accompanied by his lawyer, was heard on 22 April 2002, by the head of the OLAF Magistrates, Judicial Advice and Follow-up unit at a hearing convened for the purpose of his giving greater detail with regard to his allegations concerning Mr P. On 23 April 2002, the head of the unit heard the investigator in question.

13 By letter of 17 May 2002, the head of the Magistrates, Judicial Advice and Follow-up unit informed Mr Camós Grau that his unit had given a legal opinion to the Director of OLAF that 'the position of Mr P. as an assistant investigator in the [IRELA] case

could be perceived as involving a conflict of interest' and that, in accordance with the recommendation made to the director of that unit, OLAF had decided 'to remove [that investigator] from the investigation' ('the decision of 17 May 2002').

14 On 29 July 2002, Mr Camós Grau brought a complaint under Article 90 of the Staff Regulations of Officials of the European Communities, in its version applicable to the present case ('the Staff Regulations') pursuant to Article 14 of Regulation No 1073/1999, seeking in particular the annulment of the decision of 17 May 2002 in so far as it left extant the measures with which Mr P. had been involved in the investigation concerning IRELA, which were, according to the applicant, contrary to the requirements of impartiality and objectivity, and seeking payment of compensation for non-material damage caused to him and damage caused to his employment prospects.

15 The Director of OLAF acknowledged receipt of that complaint on 14 August 2002.

16 On 25 September 2002, Mr Camós Grau's lawyer sent a further letter to the Director of OLAF and the chairman of the Supervisory Committee in which he restated his client's objections as to the conduct of the investigation concerning IRELA.

17 On 17 October 2002, the final report of the investigation concerning IRELA was sent by the Director of OLAF to the Secretary-General of the Commission, the Secretary-General of the European Parliament and the Belgian and Spanish judicial authorities. It was also sent to Mr Camós Grau on 4 November 2002. The Spanish and Belgian judicial authorities notified OLAF of their decision to take no further action in the case on 13 February and 10 March 2003 respectively.

18 The OLAF report criticised the conditions under which IRELA had been managed and the role assumed by the Commission in that regard. It implicated, in particular, three Commission officials, including Mr Camós Grau, who had been involved in the management of IRELA, declaring them responsible for having proposed and authorised a system of funding which allowed budgetary and accounting irregularities to arise. The report recommended that disciplinary proceedings be initiated against them.

19 As the complaint brought by Mr Camós Grau on 29 July 2002 had not been the subject of an express reply in the period of four months laid down by Article 90(2) of the Staff Regulations, that complaint was impliedly rejected on 29 November 2002 ('the decision of 29 November 2002').

20 In its edition of 11 December 2002, the Spanish daily newspaper *El País* published an article on OLAF's findings in its report regarding IRELA, headed 'the European Union implicates Spanish politicians and officials in uncorroborated expenditure of 3.6 million', which mentioned the applicant by name.

21 On 4 February 2003, Mr Camós Grau submitted to the Director of OLAF a complaint directed against the report of 17 October 2002 terminating the OLAF investigation.

22 Following the delivery of the OLAF report, the Commission instructed the Investigation and Disciplinary Office ('IDOC') on 10 February 2003 to carry out a further administrative investigation in order to determine whether certain acts had complied with the rules in force at the relevant time and to determine whether any responsibility might lie with any of the officials referred to in the OLAF report.

23 By application lodged at the Court Registry on 10 March 2003, Mr Camós Grau brought an action, registered under number T-96/03, seeking, first, the annulment of the decision of 17 May 2002 removing Mr P. from the investigation concerning IRELA, in so far as it left extant measures with which he had been involved, and the decision of 29 November 2002 impliedly rejecting his complaint and an order that the Commission should pay him damages in respect of the non-material damage and the damage to his employment prospects allegedly suffered by reason of those decisions.

24 By decision of 28 May 2003, the Director of OLAF rejected Mr Camós Grau's complaint directed against the report of 17 October 2002, on the basis, primarily, that the report did not adversely affect him and, also, that the assertions made by him as to the lawfulness of the investigation were without merit.

25 IDOC delivered its report on 2 July 2003. The report concluded that the involvement of the Commission officials in the management of IRELA complied with the Community rules then in force and that, in the absence of evidence to show that those officials had adopted an attitude that was incompatible with those rules in relation to IRELA's restructuring plan, they could not be held to be responsible. The report stated that no instances of individual responsibility had been brought to light by the investigation, but that the latter had, on the other hand, disclosed a lack of coordination between the Commission's staff responsible for the monitoring of the Community funds granted to IRELA. Lastly, it proposed that either the further administrative investigation be terminated without further action being taken, or that additional investigations, which would be long and complicated, be carried out.

26 On 2 September 2003, the Appointing Authority informed Mr Camós Grau that it had decided to terminate the case without initiating disciplinary proceedings.

27 By order of 9 June 2004 in Case T-96/03 *Camós Grau* v *Commission* [2004] ECR-SC I-A-157 and II-707, the Court rejected the applicant's application referred to in paragraph 23 above as being inadmissible. The Court held in particular that the contested decision constituted an intermediate step which formed part of the investigation procedure initiated by OLAF, that it was without binding legal effects capable of affecting the applicant's interests and altering his legal position and that its unlawfulness could be raised before the Court in an application against the challengeable act terminating the procedure.

Procedure

28 By application lodged at the Court Registry on 8 September 2003, Mr Camós Grau brought the present action.

29 By letter of 29 September 2003, the applicant requested the Court to order the Commission to produce documents relating to OLAF's investigation and actions taken pursuant to it.

30 By measure of organisation of procedure notified on 30 March 2004, the Court requested the Commission to produce all of the annexes to the OLAF report, the report of the further administrative investigation carried out by IDOC and the draft report prepared by one of the investigators responsible for the OLAF investigation, which formed the basis of OLAF's final report. The Court also requested the Commission to indicate the changes made to the draft OLAF report and which measures undertaken by the investigation had been given further consideration, and to specify the reasons why OLAF did not undertake a more detailed analysis of the role of the Financial Control DG.

31 The Commission produced the documents requested and replied to the questions put by the Court on 10 May 2004, and the applicant submitted his observations in relation to those productions and replies on 1 July 2004.

32 Pursuant to Articles 14 and 51 of its Rules of Procedure, the Court, after hearing the parties, decided on 6 June 2005 to refer the case to the Fourth Chamber, composed of five judges.

33 By measure of organisation of procedure notified on 27 June 2005, the Court requested the parties to produce the complaint of 4 February 2003 referred to in paragraph 21 above, and, with regard to the applicant's application for a director's post referred to in his written pleadings, to indicate the circumstances in which the vacancy arose, the nature of the post and the application procedure adopted. The Court also asked the defendant to provide examples of acts adversely affecting the applicant which might, in its view, be capable of forming the subject of a complaint made under Article 14 of Regulation No 1073/1999 and to explain why the passages in the draft OLAF report relating to the involvement and the responsibility of the Financial Control DG had been deleted in the final version of the report. The defendant and the applicant replied to the questions put by the Court on 5 and 9 August 2005, respectively.

34 The parties presented oral argument and replied to questions put by the Court at the hearing on 14 September 2005.

35 By letter of 23 September 2005, the Commission indicated that it wished to provide further details in relation to certain questions addressed at the hearing regarding the distribution of the OLAF report within its services and the placing of that report on the applicant's personal file.

36 By order of 26 October 2005, the President of the Fourth Chamber of the Court (Extended Composition) reopened the oral procedure in order to place on the file the information so provided and to allow the applicant to submit any observations he might have on the additional material supplied by the Commission.

37 The applicant did not submit any observations within the period laid down by the Court.

38 The President of the Fourth Chamber of the Court (Extended Composition) ended the oral procedure by decision of 3 January 2006.

Forms of order sought

39 The applicant claims that the Court should:

— annul the decision of 17 May 2002 removing Mr P. from the investigation concerning IRELA in so far as it leaves extant measures undertaken with his involvement without reconsidering them, annulling them or laying down new measures;

— annul the decision of 29 November 2002 impliedly rejecting his complaint of 29 July 2002 brought against the decision of 17 May 2002;

— annul the OLAF report of 17 October 2002 terminating the investigation relating to IRELA;

— annul the decision of 28 May 2003 of the Director of OLAF rejecting the applicant's complaint of 4 February 2003 against that report;

— order the Commission to pay him a sum provisionally assessed at EUR 10 000 in compensation for his non-material damage;

— order the Commission to pay him a sum provisionally set at EUR 1 in compensation for damage to his employment prospects;

— order the Commission to reimburse him the expenses incurred in his defence in relation to the investigation and his administrative complaints against the decision of 17 May 2002 and the OLAF report of 17 October 2002;

— order the Commission to pay the costs.

40 The Commission contends that the Court should:

— dismiss the action as being inadmissible in its entirety or, alternatively, as regards the application for the annulment of the first two contested decisions;

— in the alternative, dismiss the action as being unfounded;

— order the applicant to pay the costs.

Law

The claims for the annulment of the decision of 17 May 2002 and the decision of 29 November 2002

41 The first and second heads of claim set out in this action, which seek the annulment of the decisions of 17 May and 29 November 2002, do no more than repeat in identical terms the claims previously put forward in Case T-96/03. On 8 September 2003, when the present action was brought, they were accordingly inadmissible by virtue of the objection of *lis alibi pendens* which the Court must, in any event, raise of its own motion (Joined Cases 45/70 and 49/70 *Bode* v *Commission* [1971] ECR 465, paragraph 11, and Case T-99/95 *Stott* v *Commission* [1996] ECR II-2227, paragraphs 22 and 23). Moreover, as mentioned in paragraph 27 above, the Court held in its order in *Camós Grau* v *Commission* that those claims were inadmissible on the basis that they were not directed towards a challengeable act.

42 It follows from the above that the first and the second heads of claim in the present action are, as such, inadmissible. That does not mean that the arguments put forward in support of them may not be taken into account in determining, if appropriate, the lawfulness of measures undertaken subsequently to those to which those claims refer.

The claims for the annulment of the decision of 28 May 2003 rejecting the applicant's complaint of 4 February 2003 brought against the OLAF report

43 It is settled case-law that claims directed against the rejection of a complaint have the effect of bringing before the Court the act against which the complaint was

submitted and as such lack any independent content (Case 293/87 *Vainker* v *Parliament* [1989] ECR 23, paragraph 8). It must therefore be held that the sole purpose of the third head of claim, directed against the OLAF report, and the fourth head of claim, directed against the rejection of the complaint brought against that report, is to seek the annulment of the OLAF report of 17 October 2002 (see, to that effect, Case T-310/02 *Theodorakis* v *Council* [2004] ECR-SC I-A-95 and II-427, paragraph 19).

The claims for the annulment of the OLAF report of 17 October 2002

Admissibility

Arguments of the parties

44 The Commission argues that the contested measure constitutes a preparatory act which does not adversely affect the applicant and cannot be the subject of an application for annulment. A report of an investigation carried out by OLAF, in the same way as the investigation and measures of organisation undertaken during it, are merely preparatory steps which do not mean the final decision of the administration will necessarily adopt the same approach. Accordingly, even were the claims regarding all kinds of procedural irregularities affecting the investigation to be proved, they would not undermine the conclusion that the disputed report was of the nature of a preparatory act and not of an act adversely affecting the applicant, in the absence of any change to his legal position. The infringement of procedural rules does not establish that an act adversely affecting the applicant has been committed, but may on the other hand be relied on in the course of proceedings against a final decision of the administration, which will, as such, represent an act adversely affecting the applicant. The defendant adds that the alleged effect on the applicant's

non-material interests and employment prospects is irrelevant, as these represent factual considerations and not necessary consequences of the report which alter his legal position. It also maintains that, notwithstanding its functional independence, OLAF has no decision-making power and that reports of its investigations have no binding legal effect, their purpose being, in particular, to form a basis for disciplinary proceedings.

45 The applicant contends that his application is admissible, as the OLAF report is an act which adversely affects him. The report directly and immediately affects his legal situation by reason of the irregularities comprised in it. The report represents the culmination of a complex procedure tainted by the irregularity of previous measures of investigation or failures to act on OLAF's part, by the infringement of principles of natural justice, impartiality, the protection of legitimate expectations and sound administration and the failure to have regard to the right to a fair hearing. It was adopted in irregular circumstances, as this was done without the concurrence of the only investigator whose authority continued until the end of the investigation and without having been submitted to the applicant, who, however, was implicated personally. Mr Camós Grau argues that the report directly and immediately affects his non-material interests, first, because it refers to him by name and wrongly ascribes responsibility to him for the irregularities that were established and, secondly, because it was sent to the Commission and the Spanish and Belgian judicial authorities and was the subject of publicity in the press. The report is also capable of having an effect on the applicant's employment prospects and appears also to have prevented his being promoted to a director's post which he had applied for. The OLAF report is of the nature of a decision, as it results from a decision of the Director of OLAF, in terms of Regulation No 1073/1999. Lastly, the applicant argues that the internal investigation procedure undertaken by OLAF must be treated as being separate from the disciplinary procedure by reason of OLAF's functional independence.

Findings of the Court

46 The action is directed against the act adopted by OLAF under the authority of its Director which approved the conclusions of the report terminating the investigation concerning IRELA.

47 According to established case-law, measures the legal effects of which are binding on and capable of affecting the interests of the applicant by bringing about a distinct change in his legal position are acts or decisions which may be the subject of an action for annulment in terms of Article 230 EC (Case 60/81 *IBM* v *Commission* [1981] ECR 2639, paragraph 9, and Case 346/87 *Bossi* v *Commission* [1989] ECR 303, paragraph 23).

48 A report such as that drawn up by OLAF on the conclusion of its external and internal investigations concerning IRELA does not bring about a distinct change in the legal position of those persons who, like the applicant, are referred to in it by name.

49 It is true that the report terminating an investigation, which is a completed document, adopted at the end of an autonomous administrative procedure by a service having functional independence, cannot, on that ground, be categorised as a measure preparatory to administrative or judicial proceedings liable to be initiated pursuant to it but which may equally well be initiated at the same time as or before OLAF is involved. However, the final nature of an OLAF report for the purposes of the procedure governing investigations which that office carries out does not thereby confer on it the nature of an act having binding legal effects.

50 The reports by which OLAF's investigations are completed and the drawing up and delivery of which complete its task contain, apart from the narrative of the facts established, a statement of the findings which are drawn from them and recommendations as to the action, in particular disciplinary measures and those involving criminal proceedings which may, in OLAF's view, be taken pursuant to the reports, with those conclusions and recommendations being addressed to the competent authorities of the Member States and the institutions concerned in order that they may decide whether or not to act upon them. While OLAF may recommend in its reports that measures be adopted having binding legal effects adversely affecting the persons concerned, the opinion it provides in that regard imposes no obligation, even of a procedural nature, on the authorities to which it is addressed.

51 In that regard, it is clear from the provisions of Regulation No 1073/1999, in particular the 13th recital in the preamble and Article 9, 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 (order of 13 July 2004 in Case T-29/03 *Comunidad Autónoma de Andalucía* v *Commission* [2004] ECR II-2923, paragraph 37).

52 It is moreover not in dispute in the present case that, although the disputed report recommended that disciplinary proceedings be initiated against the applicant, such proceedings were not brought, as, on the contrary, the Appointing Authority informed Mr Camós Grau on 2 September 2003 that it had decided to bring the matter to a close without taking disciplinary measures.

53 As a result of that decision to bring the matter to a close, together with the Appointing Authority's statement that it was not seeking to hold the applicant responsible for the matters which gave rise to OLAF's investigation, the contested report could no longer serve as the legal basis for any subsequent decision of the Appointing Authority concerning him and could not be taken into account in any way, unlike, for example, a staff report, in the career planning of the party concerned. Nor did the report have consequences in terms of criminal proceedings, as the Belgian and Spanish judicial authorities informed OLAF on 13 February and 10 March 2003 respectively of their decisions to take no further action in the case, as mentioned in paragraph 17 above. That being so, it follows in such circumstances that the applicant's professional situation cannot be affected by the contested report.

54 The arguments put forward by the applicant relative to the manner in which the investigation was conducted and the content of the report do not alter those conclusions in any way.

55 Procedural irregularities and infringements of essential procedural requirements raised in an action for annulment, in terms of which it is argued, as in the present case, that they have vitiated a report of an OLAF investigation, cannot confer on that report the status of an act adversely affecting the applicant. A challenge lies against such failures only in support of an action directed against a previous challengeable act, to the extent that they have influenced its content, and not independently, in the absence of such an act (see, to that effect, Joined Cases 181/86 to 184/86 *Plato and Others* v *Commission* [1987] ECR 4991, paragraphs 10, 22, 25, 33, 35, 36 and 38).

56 Furthermore, even if it were the case that the OLAF report affected the applicant's non-material interests inasmuch as, on the one hand, it referred to him by name and wrongly attributed responsibility to him for the irregularities that were established and, on the other, it was sent to the Commission and the Spanish and Belgian judicial authorities and was publicised in the press, such matters, which are capable of causing harm, cannot however confer on the report the status of an act adversely affecting the applicant for the purposes of Article 230 EC.

57 Lastly, the challengeability of the OLAF reports is unaffected by the fact that they are adopted, under the authority of the Director, by an act of OLAF, which takes the form, in the present case, of the adoption of the disputed report and its forwarding to the authorities concerned on 17 October 2002.

58 It follows from the above that the application for the annulment of the OLAF report of 17 October 2002 concerning IRELA is directed against a document which has no legal effects which are binding on and capable of affecting the interests of the applicant, by bringing about a distinct change in his legal position. The claims for the annulment of the report are accordingly inadmissible.

The claims for compensation for the alleged harm

Admissibility

Arguments of the parties

59 The Commission, which pleads that the action is inadmissible in its entirety, contends that the fact that the claims for annulment are inadmissible has the consequence that those for payment of monetary compensation are also inadmissible where, as in the present case, the two claims are closely connected.

60 Furthermore, as the complaint against the OLAF report which the applicant made to the Director of OLAF on 4 February 2003 did not include a request for monetary compensation, the claims of Mr Camós Grau for such compensation are also inadmissible by reason of Articles 90 and 91 of the Staff Regulations, to which Regulation No 1073/1999 refers.

61 The applicant submits that his application for compensation for the damage caused by the unlawfulness of the OLAF report and by the serious errors made by OLAF in his regard is admissible.

Findings of the Court

— The obligation to make a prior complaint

62 The documents before the Court show that in his complaint of 4 February 2003 against the OLAF report, the applicant restricted himself, as regards the damage for which he seeks compensation in the present action, to 'reserv[ing] the right to seek compensation for the extremely serious material and non-material damage which that report has caused him and is liable to cause him in the future'.

63 The defendant's position is based upon the premiss that Article 14 of Regulation No 1073/1999 requires that a complaint under Article 90(2) of the Staff Regulations be made before any application is brought by an official or servant against a decision of OLAF, whether that application seeks the annulment of a measure or compensation for damage. As a result, an application for monetary compensation must, in order to be admissible, have been preceded by a complaint having the same subject-matter. An exception can only be made where the claims for damages are clearly ancillary to claims for annulment which are both preceded by a complaint and admissible, which is not the case in these proceedings.

64 However, Article 14 of Regulation No 1073/1999 provides for the opportunity to submit a complaint to the Director of OLAF only where there is an act adversely affecting the person concerned, and not in the case of a request for damages based on allegedly wrongful acts or omissions on OLAF's part arising in the course of an investigation. It is therefore necessary to determine whether the broad interpretation given by the Commission to that provision as regards the duty to make a previous complaint is justified.

65 In so doing, it is necessary to consider whether this case falls to be treated as being covered by the general rules governing disputes based on non-contractual liability under Article 235 EC and Article 288 EC or those concerned with relations between the Community and its servants under Article 236 EC. In the former case, it is possible to bring claims for damages directly before the Court. By contrast, in the latter case, an action for damages in which compensation is sought for injury caused, not by a measure adversely affecting the applicant which it is sought to annul, but by a number of wrongful acts and omissions allegedly committed by the administration, must, according to case-law, be preceded by a two-stage procedure. It is imperative that that procedure should begin with the presentation of a request asking the Appointing Authority to make good the alleged injury and continue, if necessary, with the lodging of a complaint against the decision rejecting the request (Case T-20/92 *Moat* v *Commission* [1993] ECR II-799, paragraph 47).

66 In the present case, the applicant's challenge is not brought against the Commission in its capacity as Appointing Authority, under whose auspices he comes within as an official, but as the institution to which OLAF is attached. The latter is a service possessing functional autonomy and whose relations with the officials and servants of the various institutions are not subject to the normal rules applying to relations between officials and servants and their Appointing Authority. The fact that the Commission is the defendant in these proceedings, as in all actions directed against OLAF, is a consequence of the administrative and budgetary attachment of that service to the institution concerned and the fact that it is without legal personality. It is sufficient in that regard to note that had Mr Camós Grau not been an official of the Commission, but of another institution, he would still have been required to address a request for damages allegedly suffered by reason of OLAF's conduct to the Commission.

67 Furthermore, the dispute does not concern the actings or the conduct of the Commission which may affect the applicant's employment prospects, as the OLAF report has, of itself, no legal effect on his professional situation, as was held above. The objections he raises, which relate to the errors committed by OLAF in his regard in the course of the investigation concerning IRELA and which led to the report including opinions and findings that are unfavourable to him, put Mr Camós Grau in the same position as any person, whether or not an official of the Communities, who is implicated in a report by OLAF. The fact that OLAF's findings

relating to the applicant concern his role as a Commission official in the management and operation of IRELA does not alter the subject-matter of the dispute, which does not relate to Mr Camós Grau's professional activity but to the way in which OLAF conducted and concluded an investigation which refers to him by name and ascribes to him responsibility for the irregularities that were established.

68 The fact that Mr Camós Grau submitted a complaint to the Director of OLAF in terms of Article 14 of Regulation No 1073/1999, which was applicable at the time, under the procedure laid down in Article 90(2) of the Staff Regulations, for the purpose of having the OLAF report annulled, is irrelevant in that regard.

69 First, the organisation of legal remedies and, in that context, the applicability of the Staff Regulations are questions of law which are not subject to the will of the parties. Secondly, Article 14 of Regulation No 1073/1999 did not apply, since it allows a complaint to be made only where there is an act adversely affecting the person concerned; as has already been established, the OLAF report did not constitute such an act and as a result that provision did not make the procedure involving a complaint through official channels applicable to the dispute.

70 It is true that since the entry into force on 1 May 2004 of the new provisions of the Staff Regulations, an Article 90a, which relates to OLAF, has been inserted. In addition to the opportunity, as before, to submit a complaint to the Director of OLAF pursuant to Article 90(2) of the Staff Regulations against an act of OLAF carried out in the course of an OLAF investigation which adversely affects the person concerned, it allows a person to submit a request within the meaning of Article 90(1) of the Staff Regulations to the Director, asking him to take a decision relating to him in connection with an investigation by OLAF.

71 However, prior to that new provision coming into force and since Article 14 of Regulation No 1073/1999 is silent on the point, it was not necessary to have regard to the rules governing disputes set out in the Staff Regulations in the case of requests for damages in connection with OLAF investigations. The applicant was therefore not obliged to follow the procedure laid down under Article 90 of the Staff Regulations in order to submit such a request for damages. In those circumstances, the claims for damages in this action cannot be rejected on the ground that Mr Camós Grau failed to comply with a procedure which was not laid down under the provisions in force at the relevant time.

72 It should, moreover, be noted that in his complaint of 4 February 2003 against the OLAF report, Mr Camós Grau referred, admittedly on a hypothetical basis, to his right to request compensation for the damage caused by the report. Even though that reference cannot be considered to amount to a prior request for damages in the formal sense, the purpose of a complaint is to allow the Appointing Authority to adopt a position on a question concerning the Staff Regulations prior to an action being brought. The defendant cannot therefore reasonably submit in the context of the present case that it has been denied the opportunity of preparing itself prior to an action for damages being raised.

73 It is settled case-law that no form is prescribed for administrative complaints brought under Article 90(2) of the Staff Regulations, which must be interpreted and understood by the administration with all the care that a large and well-equipped organisation owes to those having dealings with it, including members of its staff (Case 54/77 *Herpels* v *Commission* [1978] ECR 585, paragraph 47).

74 In the present case, the Commission was given the opportunity to take a view on the essential elements of Mr Camós Grau's request for damages, both at the administrative stage and when the dispute was before the Court and, even if it is assumed that Article 90 of the Staff Regulations were to apply, a failure to make a

prior complaint cannot preclude the applicant's claims for damages on the ground that, prior to his action being brought, he did not make a formal request for compensation other than to request the annulment of the report.

— The connection between the claim for damages and the claim for annulment

75 The defendant cannot rely on the case-law which provides that, where a claim for damages and an action for annulment are closely connected, the inadmissibility of the action for annulment entails the inadmissibility of the claim for damages (*Bossi* v *Commission*, cited in paragraph 47 above, at paragraph 31).

76 That case-law is expressly designed to prohibit an official who has failed to contest within the prescribed period a decision of the Appointing Authority which has adversely affected him circumventing the consequences of his being out of time by bringing an action for damages based on the purported unlawfulness of that decision (Case 59/65 *Schreckenberg* v *Commission* [1966] ECR 543, 550, Case 4/67 *Collignon* v *Commission* [1967] ECR 365, 373, 374, and Case 401/85 *Schina* v *Commission* [1987] ECR 3911, paragraphs 10 and 13).

77 The position must be the same where the inadmissibility of claims for annulment arises not because they are out of time but from the nature of the contested measure which, while not allowing the person concerned to seek its annulment, may none the less give rise to a claim for damages.

78 Individuals who, by reasons of the conditions as to admissibility laid down under the fourth paragraph of Article 230 EC, cannot contest directly certain Community acts

or measures, none the less have the opportunity of putting in issue conduct lacking the features of a decision, which accordingly cannot be challenged by way of an action for annulment, by bringing an action for non-contractual liability under Article 235 EC and the second paragraph of Article 288 EC, where such conduct is of such a nature as to entail liability for the Community (Joined Cases T-377/00, T-379/00, T-380/00, T-260/01 and T-272/01 *Philip Morris International and Others* v *Commission* [2003] ECR II-1, paragraph 123). It is open to individuals in an action for damages of that kind to put forward unlawful acts which have been committed when an administrative report is drawn up and adopted, even though that report is not a decision directly affecting the rights of the persons mentioned therein (Case C-315/99 P *Ismeri Europa* v *Court of Auditors* [2001] ECR I-5281, paragraphs 29 and 30).

79 Moreover, the action for damages is an independent form of action, with a particular function to fulfil within the system of legal remedies and subject to conditions for its use conceived with a view to its specific purpose (see Case C-234/02 P *Ombudsman* v *Lamberts* [2004] ECR I-2803, paragraph 106, and the case-law cited there).

80 Accordingly, the admissibility of the action for damages brought by Mr Camós Grau, which seeks compensation for non-material damage and damage to his employment prospects arising from the unlawful acts committed by OLAF in the investigation concerning IRELA and the drawing up of the subsequent report, must be considered separately from the action for annulment.

81 It follows that the applicant's claims in respect of the damage caused to him by OLAF's conduct must be held to be admissible.

Substance

Arguments of the parties

82 The applicant argues that the unlawful acts committed by OLAF in the investigation concerning IRELA and in the adoption of the report of 17 October 2002 not only constituted maladministration but also damaged his employment prospects.

83 His application contains six pleas relating to the alleged unlawful acts.

84 First, the decision by OLAF to release Mr P. from the investigation did not satisfy the obligation to state adequate reasons required by Article 253 EC and by Article 25 of the Staff Regulations, as Mr Camós Grau was informed of it only by the notice given to him on 17 May 2002 by the head of the Magistrates, Judicial Advice and Follow-up unit, which did not state the reasons for that decision in detail.

85 Secondly, OLAF infringed the right to a fair hearing, together with the principle of the protection of legitimate expectations and the principle of sound administration. The external audit report of 14 December 2000 concerning IRELA was not provided to Mr Camós Grau in sufficient time prior to his hearing by OLAF on 22 February 2001. At that hearing, the investigators led him to understand that he was being heard as a witness and not with a view to his responsibility being determined. Nor was there available to him, at his hearing and thereafter for him to reply to the written questions which were subsequently put to him, information necessary to his

defence, in particular evidence gathered by OLAF against him. The right to a fair hearing and Article 4 of Decision 1999/396 were also infringed, inasmuch as the OLAF report and the annexes to it were not provided to him before the report was adopted.

86 Thirdly, the applicant submits that the OLAF report was drawn up in breach of Article 6(1) to (3) and Article 9(1) and (2) of Regulation No 1073/1999 and the principle that OLAF reports should be objective, as the only investigator remaining responsible for the investigation until its conclusion did not concur in it. The draft report prepared by that investigator before his departure from OLAF at the beginning of September 2002 differed significantly from the final report, which, moreover, did not bear his signature. The applicant maintains that OLAF reports must be drawn up by the investigators and that the Director of OLAF is not authorised by Regulation No 1073/1999 either to adopt or to amend a report of an investigation.

87 Fourthly, the applicant submits that the investigation was not carried out in compliance with the fundamental principles of Community law and the Staff Regulations, in particular Article 14, as Regulation No 1073/1999 requires. As Mr Camós Grau had given OLAF serious reason to believe that there was a conflict of interest on the part of one investigator, OLAF should have satisfied itself that the acts of that investigator and the policies adopted by the investigation were objectively necessary and were not the result of the conflict of interest he complained of. The relevance of the objections put forward by Mr Camós Grau at the time is substantiated by the contradictory reasoning of the decision of 28 May 2003 rejecting his complaint against the disputed report, as that decision acknowledged that the removal of Mr P. was necessary for the objectivity of the investigation, but held at the same time that his involvement had had no detrimental consequences.

88 Fifthly, OLAF had committed manifest errors in its assessment of Mr P.'s actual role, first, as regards the monitoring of IRELA by the Commission by reason of the

responsibilities passed by the investigator to the Financial Control DG and, secondly, by refusing to accept that the conflict of interest on Mr P.'s part had had an impact on the investigation when Mr P. had played a major and essential role in the policy and conduct of the investigation, as is shown by the final version of the report.

89 Sixthly, the applicant contends that the principles of natural justice and impartiality were infringed. Although OLAF acknowledged that the independence and objectivity of Mr P. could not be guaranteed and removed him from the investigation for that reason, OLAF failed to draw the appropriate conclusions from that, and allowed the actions of Mr P. to stand. Thus, no account was paid to the responsibility of the officials of the Financial Control DG in the report, which instead ascribed primary responsibility for the irregularities established to the Commission officials who had been involved in the management of IRELA, in particular the applicant.

90 In support of his application for damages, Mr Camós Grau argues that OLAF thereby committed two serious errors, the first in entrusting, by its decision of 17 May 2002, its investigation into IRELA to an official whose independence could not be formally guaranteed, and the second in adopting findings that were not based upon adequately strong evidence, as is shown by the further investigation conducted by the Appointing Authority.

91 The applicant maintains that the errors committed by OLAF caused him damage in two ways. First, OLAF damaged his peace of mind, his honour and his professional reputation in allowing unjustified suspicions in his regard to continue to exist and in threatening him with the instigation of disciplinary and criminal proceedings until the decision by the competent judicial and administrative authorities to take no further action, thereby causing him non-pecuniary damage. Mr Camós Grau refers in that regard to the length of the procedure, the gravity of OLAF's findings in his regard and the publicity given to them in the press. Secondly, the applicant suffered damage to his employment prospects, as his application for a director's post was rejected when he had been assured of being appointed to the post on an acting basis and thus satisfied the conditions necessary for being appointed to it.

92 The Commission submits that the conditions necessary for incurral of the non-contractual liability of the Commission are not met, given that no allegations of unlawful conduct can be made against it, as the OLAF investigation was carried out and the report was drawn up in accordance with the requisite requirements as to objectivity and impartiality.

93 First, the defendant argues that the decision of 17 May 2002 satisfies the obligation to provide adequate reasons and that the applicant is wrong to rely on Article 25 of the Staff Regulations, as it is Article 14 of Regulation No 1073/1999 which is applicable.

94 Secondly, it contends that the right to a fair hearing was not infringed. Mr Camós Grau was given ample time before his hearing to consider the external audit report concerning IRELA and was provided during the investigation with all information relevant to his defence. The investigators did not provide him with misleading information as to the subject-matter of the investigation and the large number of questions put to him enabled him to be fully aware of the matters for which he might be held responsible. Furthermore, neither Regulation No 1073/1999 nor Article 4 of Decision 1999/396 require that a draft of OLAF's report be supplied to the person concerned, but only that he is to be allowed to state his position on all the facts which concern him, as was done in the present case.

95 Thirdly, the Commission states that OLAF's internal rules provide that the drawing up of the report of an investigation, which Article 9 of Regulation No 1073/1999 requires to be under the authority of the Director, is to be entrusted to an executive board and that there is no general principle which requires that there be continuity in the membership of the group of officials and servants carrying out an investigation.

96 Fourthly, the Commission maintains as regards the proper conduct and the objectivity of the investigation, that OLAF carefully considered the possibility of a conflict of interest on Mr P.'s part and that once this was recognised OLAF removed the investigator at a point where the report had not yet been finalised.

97 Fifthly, OLAF's appraisal of the role of Mr P. was not vitiated by a manifest error of assessment, either as regards his previous responsibility or the investigation at issue in this case. The defendant submits that Mr P. was involved only as an assistant investigator, did not determine the strategy and policy of the investigation in any way and was not in charge of drawing up the report. The latter was prepared by another investigator and drawn up by the executive board of OLAF in the full knowledge of Mr P.'s removal.

98 Sixthly, the Commission maintains that the conduct of the investigation complied with the principles of impartiality and natural justice, since the decision to remove Mr P. was taken precisely in order to ensure the impartiality and objectivity of the investigation. The contested report makes it clear that other officials, particularly from the Financial Control DG, may have been responsible and that the documents produced by the applicant in that regard were placed in the file.

99 As regards the damages sought by Mr Camós Grau, the Commission submits that the applicant has failed to provide any concrete evidence in support of the true extent of the non-pecuniary damage claimed, nor has he provided any evidence as to the alleged damage to his employment prospects.

Findings of the Court

— The incurral of the Community's non-contractual liability

100 According to established case-law in relation to the liability of the Community for damage caused to an individual by a breach of Community law for which a Community institution or organ is responsible, a right to reparation is conferred 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 (Joined Cases C-46/93 and C-48/93 *Brasserie du pêcheur and Factortame* [1996] ECR I-1029, paragraph 51; Case C-352/98 P *Bergaderm and Goupil* v *Commission* [2000] ECR I-5291, paragraphs 41 and 42; and Case C-312/00 P *Commission* v *Camar and Tico* [2002] ECR I-11355, paragraph 53).

— The rules of law which are alleged to have been infringed

101 In order to give a ruling on the non-contractual liability of the Community, it is necessary in the present case to consider first of all whether the rules of law which are alleged to have been infringed are intended to confer rights on individuals. The applicant relies on infringements of the principles of impartiality, natural justice and objectivity, of the protection of legitimate expectations and of sound administration. He also argues that the right to a fair hearing, the procedural requirements relating to the drawing up of reports by OLAF and the obligation to provide adequate reasons were contravened.

102 It is sufficient to hold in that regard that at least the requirement of impartiality, to which the institutions are subject in carrying out investigative tasks of the kind which are entrusted to OLAF, is intended, as well as ensuring that the public interest is respected, to protect the persons concerned and confers on them a right as individuals to see that the corresponding guarantees are complied with (see, to that effect, Case C-269/90 *Technische Universität München* [1991] ECR I-5469, paragraph 14).

103 It must accordingly be held that the applicant is alleging the infringement of a rule which is intended to confer rights on individuals.

— OLAF's conduct in carrying out the investigation and the drawing up of the report concerning IRELA

104 In order to give a ruling on the non-contractual liability of the Community, it is necessary next to determine whether OLAF's conduct in carrying out the investigation and the drawing up of the report concerning IRELA constitutes a sufficiently serious breach of the rule as to impartiality relied on, that is to say, according to case-law, whether it discloses a manifest and grave disregard on the limits of its discretion (see, to that effect, *Ombudsman* v *Lamberts*, cited in paragraph 79 above, at paragraphs 49, 60, 62 and 63).

105 By virtue of the rules which apply to it, OLAF must conduct investigations falling within its competence in compliance with the Treaty and the general principles of Community law, in particular the requirement of impartiality and with the Staff Regulations, Article 14 of which in particular seeks to avoid a situation where there is a conflict of interest on the part of officials.

106 In order to appraise OLAF's conduct, it is necessary to consider, first, whether there was, in fact, a conflict of interest on Mr P.'s part, having regard to the responsibilities held by him in relation to IRELA in the context of his previous duties at the Financial Control DG, secondly, his actual involvement in the conduct of the investigation concerning IRELA and, thirdly, if necessary, the effect of that involvement on the drawing up of the report of 17 October 2002.

107 First, as regards the question whether there was a conflict of interest on Mr P.'s part, the letter of 17 May 2002 sent to Mr Camós Grau by the head of the Magistrates, Judicial Advice and Follow-up unit states that in the light of the legal opinion given by that unit to the Director of OLAF, according to which 'the position of [Mr P.] as

an assistant investigator in the [IRELA] case could be perceived as a conflict of interest' and in accordance with the proposal made to the Director by that unit, OLAF had decided to remove the person concerned from the investigation. In addition, the Commission's defence shows that it was in the light of that risk of a conflict of interest and in order to ensure the impartiality and objectivity of the investigation that Mr P. was removed from it.

108 Indeed, the fact that there was a conflict of interest on Mr P.'s part was hardly in doubt in the present case. The documents before the Court show that effectively all of IRELA's resources came from the Community budget, that the DG responsible for Latin America, within which Mr Camós Grau was working at the relevant time, carried out technical and financial monitoring of IRELA and that the Financial Control DG, the countersignature of which is required on all commitments as to expenditure and on payments made from Community funds, had authorised all the projects attributed to IRELA.

109 Mr P., who was an accountant by training, had worked, at the time of the facts which were the subject-matter of the investigation, at the Financial Control DG in the unit responsible for the monitoring of IRELA's expenditure, as the person in charge of the horizontal and methodological affairs of the food and humanitarian aid sector. He was in particular acting head of that unit from 1 March to 30 November 1998 and in March 2000, which gave him the authority to sign documents concerning IRELA. IDOC thus mentions in its report a memorandum of 3 January 1997, signed by Mr P. and addressed to the directorate responsible for Latin America, giving the Financial Control DG's approval to a project concerning IRELA.

110 The existence of a conflict of interest on Mr P.'s part is therefore established.

111 Secondly, as regards Mr P's actual involvement in the conduct of the investigation concerning IRELA, it should be noted that, according to the decision to initiate the

internal investigation of 30 January 2001, four OLAF agents, including Mr P., were appointed to conduct the investigation. Two of them left OLAF on 30 September 2001 and therefore ceased to be involved in the investigation. Following Mr P.'s removal from it by the decision of 17 May 2002, the only investigator remaining responsible for the investigation and who, according to OLAF, was in charge of it and had drawn up with Mr P. the draft report dated 20 September 2002, drew up the definitive report. As that investigator left OLAF on 30 September 2002, he did not sign the report.

112 The documents before the Court show that the investigator who was removed participated in all the hearings conducted in OLAF's name, which took place between February 2001 and April 2002, apart from that of the previous director of the directorate responsible for Latin America, who was Mr Camós Grau's immediate superior. That investigator was, moreover, one of the two authors of the report of the inspection carried out at IRELA's seat in Madrid and of the interim report of 20 December 2000 referred to above. It is also the case that all acts of an investigatory nature were completed before Mr P.'s withdrawal and that these were undertaken by two or three persons, the investigator who was removed being, with one exception, always involved.

113 It is clear that Mr P. participated in the conduct of the investigation in its entirety. The Commission's argument that he was not entrusted with the running of the investigation but had an ancillary and subordinate role cannot offset the findings set out above as to a continuing presence and a substantial involvement on Mr P.'s part in the investigation concerning IRELA.

114 Thirdly, as regards the influence of Mr P.'s participation in the investigation in the drawing up of the report of 17 October 2002, the defendant argues that OLAF took account of the possibility of a conflict of interest on the part of an investigator in the preparation of the final report and that the report was drawn up in full knowledge of the position in that regard.

115 It is therefore necessary to examine the series of documents which led to the report being produced, by considering in particular, as the applicant suggests should be done, first, whether they show that any responsibility of the Financial Control DG was, notwithstanding its function, improperly excluded or minimised, secondly, whether, as OLAF had acknowledged, in removing Mr P. from the investigation, that there was a risk of a conflict of interest on his part, it took that risk into account in the report of 17 October 2002 and, thirdly, more generally, whether the applicant's objections regarding the lack of impartiality of the investigation and of the subsequent report are substantiated by that examination.

116 Three documents that fall to be considered, namely the interim report of 20 December 2000 drafted by Mr P. and the investigator who remained responsible for the investigation until its completion, the draft report prepared by the latter at the end of August 2002, and the final report of 17 October 2002.

117 It is clear, first of all, from the interim report of 20 December 2000 that the latter emphasises the participation, which it describes as significant and questionable involvement, of Commission officials in the management of IRELA and states that they were the instigators of the creation of a financial reserve and that they approved, together with the members of the Parliament, such an unlawful practice in order to supply that fund. As regards any role of the Financial Control DG in the management of IRELA, that directorate is mentioned only in relation to the audit report on IRELA carried out by it in 1997 and the criticisms it made at that time of IRELA's financial management, which are described as having been a possible cause of the withdrawal of Commission officials from IRELA's management. The document also treats knowledge of the unlawful acts on the part of the Commission officials as an established fact.

118 Next, as regards the draft report prepared at the end of August 2002, it appears that some passages concerning the role of the Financial Control DG and that of the Commission as a whole were toned down or removed in the definitive version of the report. In particular, the draft report referred to the knowledge the Commission had of the practices which enabled IRELA to obtain unlawful payments in so far as the

institution (Financial Control) accepted the documents which supported them. The draft stated that the Financial Control DG carried out a partial analysis of the situation in its report of 1997. It stated that it was beyond comprehension that the auditors of that directorate failed to ask more detailed questions of a kind which would arise automatically once irregularities had been established. As regards the responsibility of the Commission, it stated that 'the IRELA case went beyond the responsibilities of a single DG and the Financial Control DG failed to take thorough steps when it had all the means necessary to undertake a detailed examination of [IRELA]'s financial problems'. The draft concluded by stating that the involvement of the Commission in the IRELA case was not limited to the actings of three people but was the 'result of an institutional activity', as the Commission's monitoring systems had failed to operate effectively, with the Financial Control DG having exercised 'weak supervision' and the Commission's staff having failed to act in a coordinated manner.

119 Lastly, the final report of 17 October 2002 shows that it merely states at the outset, as regards the involvement of and any responsibility the Financial Control DG may have had, that it was decided not to consider those issues in order not to delay the investigation. Although it adds that it must be determined whether any of the officials of that directorate were responsible, that issue is not addressed in the remainder of the report, which records that only one official of the directorate concerned was questioned during the investigation.

120 At the end of its scrutiny of the facts, the report states that the investigation showed that only those Commission officials who had been involved in IRELA's management had the knowledge of the operating arrangements which would have allowed unlawful profit margins to be achieved and draws attention to the 'active involvement' and the 'primary responsibility' of the persons concerned in the implementation and functioning of the system.

121 When looking at the involvement of the Commission, the report concentrates on the role and the responsibility of the directorate responsible for Latin America and states, in particular, that the officials in that directorate operating within IRELA

made use of their position 'to allow the use of documents which enabled payments to be made'. As regards the Financial Control DG, the report refers only to the audit carried out in 1997 and the fact that it was never completed.

122 The final conclusions of the report reiterate that the system for funding IRELA, which was the source of the irregularities that were established, was set up within a body the most active members of which were the Commission servants and that the directorate responsible for Latin America was aware of its operating arrangements. The role of the Financial Control DG does not appear to be addressed, although mention is made at the end of its 'passivity' and its 'lack of proper controls'.

123 As regards individual responsibility, the only Commission servants the report mentions by name are the officials of the directorate responsible for Latin America who were involved in IRELA's management and recommends that disciplinary proceedings be instituted against them. Those recommendations are repeated in the section headed 'Action to be taken', under the comment that they are 'to be extended, if appropriate, to other officials, in particular in the Financial Control DG'.

124 A comparison of the successive versions of the OLAF report shows that the definitive version clearly discounts and minimises the involvement of the Financial Control DG and at the same time apportions all responsibility for the irregularities for which the Commission was held to be responsible to those officials who had been involved in IRELA's management alone, thus electing to confirm the bias shown by the interim report, one of the authors of which was Mr P., and rejecting the more carefully shaded presentation of the draft report prepared without Mr P.'s participation at the end of August 2002, which addressed the role of the Financial Control DG in greater detail, making findings as to its own failings in the IRELA case, refused to attribute responsibility within the Commission only to those officials mentioned above and ultimately concluded that such responsibility resulted instead from an institutional malfunctioning for which the Financial Control DG was also answerable.

125 It follows from the above, first, that there was indeed a conflict of interest on Mr P.'s part. Secondly, that Mr P. was involved in almost all of the investigatory acts, none of which was called into question after his removal from the investigation. In addition, he was a member of a team which was reduced in size over the period of its existence and was one of the two persons who drafted the interim report. Thirdly, Mr P. played an effective and significant part in the conduct of the investigation.

126 In addition, the documents before the Court show that the influence exercised by Mr P. in the conduct of the investigation was prejudicial to the requirement of impartiality. The terms of their respective duties were such that two services, namely the directorate responsible for Latin America and the Financial Control DG, were responsible for the monitoring and control of IRELA's activities, in particular their financial aspects. There was all the more reason to consider the involvement of the Financial Control DG in the internal investigation carried out by OLAF, since IRELA was entirely dependent on Community subsidies and the Financial Control DG, which monitors all applications of Community funds, had expressed concerns regarding IRELA on a number of occasions.

127 It is clear that a decision was taken not to make inquiries into the Financial Control DG, since, as regards any possible responsibility of the Commission, the investigation related exclusively to the involvement of the directorate responsible for Latin America. It appears in that regard that the inquiries made in the period from February 2001 to April 2002, during which only one person employed in the Financial Control DG was questioned, against five from the directorate responsible for Latin America, followed the direction given to the investigation by the interim report. That report, one of the two authors of which was Mr P., thus did not seek to implicate the Financial Control DG, but included, by contrast, clear assertions as to the involvement of officials in the directorate responsible for Latin America in the irregularities that were established. The finding that the direction given to the investigation as a result of Mr P.'s influence was decisive is supported by the opinion of 2 May 2002 referred to by the defendant in its replies to the questions put by the Court of First Instance regarding the drawing up of the disputed report mentioned

at paragraph 30 above, in which the head of the OLAF Magistrates, Judicial Advice and Follow-up unit proposed that the investigator be removed and recommended that the final report should disregard 'suggestions emanating from [Mr P.]'.

128 The one-sided, and therefore biased, attitude to the Commission's involvement, which is methodologically suspect given the essential role of the financial monitoring function, could lead only, by omission, to an erroneous appraisal of the precise responsibility of the relevant services of the institution and, accordingly, of their members.

129 In attributing all responsibility for the fraudulent actings for which the Commission was answerable solely to the officials of the directorate responsible for Latin America who had been involved in IRELA's management, without referring to the material relating to the role of the Financial Control DG appearing in the draft report prepared at the end of August 2002, which included a number of observations critical of that directorate, confirms the imbalance which resulted from that one-sided and biased examination of the responsibility of the institution.

130 The justification set out in the report of 17 October 2002 for the failure to examine the involvement of the Financial Control DG, namely that 'in order not to delay the investigation, it has been decided not to inquire into the responsibility of the Financial Control DG', cannot be accepted. Although legitimate when the facts are old and liable to become subject to limitation, the concern of OLAF to conduct its investigations rapidly cannot however justify a one-sided or selective inquiry into the potential responsibility of different services of the institution when it is plain, as in the present case, that those services had, in different ways, a role to play in the facts of the matter which was the subject of the investigation.

131 It follows from the above that the content and the conclusions of the OLAF report fail to satisfy the requirement of impartiality. Such an infringement by OLAF of the rule of law concerned represents an infringement which is all the more serious since OLAF was set up in order to carry out investigations into all unlawful activities that might damage the interests of the Communities and against which administrative or criminal proceedings may lie and was established as an autonomous service of the Commission in order to give it the functional independence judged necessary for it to carry out its duties. Furthermore, in the light of the knowledge of the conflict of interest on Mr P.'s part, which OLAF moreover accepted in removing that investigator, the confirmation in the final report of the bias given to the investigation under Mr P.'s influence means that the infringement of the requirement of impartiality is manifest in its nature.

132 That finding is also confirmed by the IDOC report of 2 July 2003. It should be noted that IDOC had been tasked with determining the compatibility with the Community legislation then applying: (1) of the involvement of Commission officials in IRELA's management; (2) of the proposal for and/or the acceptance of the financial restructuring plan and to indicate any individual responsibility on the part of officials which might arise from it, and (3) any responsibility on the part of Commission officials who had been involved in IRELA's management and that of the services responsible for the monitoring of Community funds in the hands of IRELA.

133 Thus, the IDOC report, which considered the involvement of the Financial Control DG, noted that no reference whatever was made to that directorate in OLAF's final report, apart from the recommendation set out under the heading 'Action to be taken'.

134 As regards the decision to create a financial reserve, which was the source of the irregularities, IDOC observed that that reserve was created well before the involvement of the three officials implicated in the OLAF report, that it was recommended by the directorate responsible for Latin America and the Financial Control DG in 1986, decided upon in 1988 and accepted, not to say encouraged, by the Commission. IDOC also pointed out that the unlawfulness of that practice was

raised only belatedly, in 1997, by the directorate responsible for Latin America, which referred the matter to the Commission's legal service and the Financial Control DG, which expressed its doubts as to the lawfulness of the arrangement, contrary to the opinion it had given in 1986.

135 The IDOC report also states that Mr Camós Grau had informed OLAF that the Financial Control DG gave its approval each year to the audit of IRELA, undertaken by a firm of accountants, and that it was expressly stated in the audit report for 1995 that IRELA had generated profits of EUR 1.194 million. IDOC observed that the document referred to by Mr Camós Grau in support of his position was not placed in the file which accompanied OLAF's final report, but was found in the file retained by OLAF.

136 The IDOC report added that, having carried out its review in 1997, the Financial Control DG failed to undertake a more detailed examination and that, although it was asked by the former head of the financial unit of the directorate responsible for Latin America whether it was possible [for IRELA] to invoice the Commission for fees and expenses in excess of the working plan that had been adopted and of its subvention, the Financial Control DG ultimately authorised the commitments. The authors of the IDOC report expressed their astonishment that, although it was the duty of the Financial Control DG to authorise each project attributable to IRELA, it had waited until 1997 to raise criticisms. They also expressed astonishment as to the terms of the memorandum signed by Mr P., which is referred to at paragraph 112 above, indicating to the directorate responsible for Latin America that the Financial Control DG was giving its approval for a project, but nevertheless wished to receive appropriate supporting documents in every case.

137 The assessments by IDOC of the responsibility of the three Commission officials who were involved in IRELA's management are, moreover, considerably more carefully shaded. It is noted that the propriety of that involvement was raised only belatedly, in 1994, and that such involvement was expressly authorised, following opinions received from the Secretariat-General, the legal service and the Financial Control DG on 17 October 1995. IDOC formed the view, contrary to the

conclusions reached in the OLAF report, that it had not been shown that the three officials declared to be responsible by OLAF had been aware of the irregularities comprising in particular the justification of overstated costs by false records of expenditure and stated that the unlawfulness of the setting up of financial reserves was raised only in 1997 'in relatively vague terms'.

138 The conclusions reached by the IDOC report, which found, at least implicitly, that there were a number of failures in the investigation conducted by OLAF, were in any event considerably less clear cut than those of OLAF. IDOC stated that it was not possible to make findings as to the existence of acts that were objectionable from a disciplinary point of view. It refused to make findings of responsibility against individuals, taking the view that the matter instead showed a lack of coordination between the Commission services concerned in the monitoring of the Community funds granted to IRELA.

139 None of the arguments put forward by the defendant is capable of calling that finding into question. The Commission contends that the investigation concentrated in particular on the involvement of the Community officials in the functioning of IRELA's departments, whereas the role played by the Financial Control DG was of another kind; it stated that a widened investigation would have presented difficulties given the age of the facts and the human and material resources that would be required and that OLAF had full discretion as to the scope of its inquiries. However, those arguments cannot justify, where an investigating body is concerned, the bias which has been shown to exist in the conduct of its inquiries. Nor can the assertion that there is nothing which would go to show any manipulation of the facts on the investigator's part which would be capable of preventing the true position being disclosed undermine that finding.

140 Furthermore, the Commission's claims that account was taken in the final report of the circumstances in which Mr P. was removed from the investigation are disproved by the content itself of the report, as the reference in it to the possibility of other officials, in particular those of the Financial Control DG, being responsible appears to be no more than a formality. While the argument that OLAF could not have made

any findings in relation to the officials in that directorate without first having heard them is admittedly correct, it does not justify the Commission's lack of objectivity in restricting its investigation concerning the involvement of the Commission in the IRELA case to a single directorate. It seems neither comprehensible nor correct that consideration of the involvement of the Financial Control DG should have been removed from the scope of the inquiries made within the Commission when approval by that directorate is a precondition of the commitment of all Community funds, with, moreover, the IDOC report confirming in that respect the degree to which the roles and responsibilities in the IRELA case overlapped.

141 In conclusion, the unlawfulness of OLAF's conduct in the carrying out of the investigation and the drawing up of the disputed report, as to which findings are set out in paragraphs 126 to 132 above, is established, since OLAF acted in serious and manifest breach of the requirement of impartiality. Such an infringement constitutes a fault capable of giving rise to liability on the part of the Community, since there is a direct and certain causal link between the wrongful behaviour and the damage claimed.

— The causal link between the OLAF's wrongful behaviour and the damage claimed by the applicant

142 It must be held in this regard that the heads of damage, namely damage to his employment prospects and non-pecuniary damage, claimed by Mr Camós Grau originate directly in the personal criticism of his actings set out in the report and which takes the form of findings and recommendations which concern him as an individual. The causal link required by case-law is therefore established between the unlawful conduct described by the report and the damage which is deemed to result on the part of the person concerned.

143 It should however be stated in that regard that the fact that, by reason of its personal criticisms of the applicant, the report is the direct cause of the damage claimed does not mean that that damage is established. Such a finding may, if appropriate, be made only after assessing separately for each head of claim the actual impact that the findings and recommendations set out in the report may have had, first, on the applicant's professional position and, secondly, on his personal position.

144 By contrast, as regards the other unlawful acts relied on by the applicant, which relate, first, to the statement of reasons for OLAF's decision to remove Mr P. from the investigation, secondly, to compliance with the right to a fair hearing and the principles of the protection of legitimate expectations and sound administration, in relation to his hearing by OLAF and the making available of the report prior to its adoption, and, thirdly, to the power to draw up and adopt OLAF's reports within OLAF, it is clear that these could not, on any basis, by themselves have caused damage to the applicant distinct from that arising from the report itself.

— The damage suffered by the applicant

145 Two types of damage were caused to the applicant as a result of OLAF's wrongful conduct, namely material damage, affecting his employment prospects, and non-material damage, arising from the accusations made against him.

146 In the first place, as regards the damage which affected the applicant's employment prospects, it is necessary to consider whether, as the applicant contends, his application for a director's post was rejected, when he had been assured that he would be appointed as acting director and thus had shown that he met the conditions for holding such a post.

147 The information given by the parties in reply to the questions put by the Court, referred to at paragraph 33 above, shows that Mr Camós Grau applied for a director's post in Directorate A 'Estonia, Latvia, Lithuania, Poland' of the Enlargement DG, having, as the official with the greatest seniority of the highest grade, been acting director between December 2002 and 1 April 2003, when he took up other duties. The appointment procedure, initiated by the publication of a vacancy notice on 4 March 2003, proceeded, in accordance with the institution's normal practice on the basis of criteria relating to the particular skills and abilities required for the post concerned. A panel comprising four directors, three from the Enlargement DG and one from the Agriculture DG carried out a preselection, retaining eight people at that stage. The candidate ultimately selected was appointed by decision of 9 July 2003.

148 As regards the unfavourable impact that OLAF's conclusions may have had on the applicant's application, the latter relies on circumstances connected with the timing of the facts, which show that the OLAF report may have influenced the rejection of his application.

149 However, although it is a matter of agreement that the IDOC report was delivered to the Commission on 2 July 2003, that is to say effectively at the end of the procedure for making an appointment to the post concerned, and that the decision of the Appointing Authority to terminate the procedure without taking any action was not taken until 2 September 2003 when the post was filled, that history of events cannot constitute adequate evidence of a link between the OLAF report and the decision of the Appointing Authority to reject Mr Camós Grau's application in the absence of any other factor which might suggest that in other circumstances his application would have been preferred by the Appointing Authority, within the framework of its wide discretionary powers, over that of the successful candidate.

150 It must accordingly be held that the applicant has not shown that his application was rejected by reason of the accusations made against him in the OLAF report.

151 More generally, it should be noted that no damage to the applicant's employment prospects can be directly imputed to the OLAF report since, as mentioned at paragraphs 51 to 53 above, once the decision was taken not to initiate disciplinary proceedings in reliance upon it, that report could not serve as the basis of any measure affecting the applicant's employment prospects.

152 In that regard, the Commission expressly stated at the hearing that where, on the basis of an OLAF report, it decides not to initiate disciplinary proceedings, that report can no longer be of any effect. Furthermore, the Commission stated in its letter of 23 September 2005 referred to at paragraph 35 above that 'no OLAF report has been placed on the applicant's personal file' and that 'part H of the applicant's personal file, which is reserved for disciplinary matters, remains clean, as the person concerned has elected not to exercise his right, of which he was informed, to request that there be placed on his file a note that, following the further administrative investigation, the Appointing Authority decided to end the case without taking any disciplinary action'.

153 The defendant added that its invariable practice is not to put OLAF reports involving officials onto personal files, as those reports are not considered to fall within Article 26(a) of the Staff Regulations (which refers to reports relating to the official's ability, efficiency and conduct). The Commission also stated that 'documents relating to disciplinary matters or preparatory to possible disciplinary proceedings are placed on personal files only in cases involving sanctions or a warning under Article 3(b) of Annex IX to the Staff Regulations'. It should be noted at this point that the defendant refers to the provisions of the Staff Regulations in the version which came into force on 1 May 2004, by virtue of which the abovementioned provision was amended and that Article 3(b) of Annex IX to the Staff Regulations provides: 'on the basis of the investigation report, after having notified the official concerned of all evidence in the files and after hearing the official concerned, the Appointing Authority may: ... (b) decide, even if there is or appears to have been a failure to comply with obligations, that no disciplinary measure shall be taken and, if appropriate, address a warning to the official ...'.

154 That information shows that the OLAF report does not appear in Mr Camós Grau's personal file, which makes no reference to the IRELA case. In particular, it contains no reference to the fact that that case was closed without disciplinary proceedings being taken, the decision in that regard having been taken after the issuing of the additional report by IDOC. Lastly, the defendant concluded its submissions at the hearing by pointing out that 'after the decision to take no action in relation to the criminal and disciplinary procedures set in motion on the basis of a report [by OLAF], the Commission could not, as a matter of law, make use of that report in another underlying way or in another context against the official concerned and the principle of the presumption of innocence means that the Appointing Authority cannot make use of that report in a negative manner [against the official concerned]'.

155 It follows that the damage which is claimed to the applicant's employment prospects has not been established.

156 Secondly, as regards the non-pecuniary damage claimed, it is necessary to determine whether, as the applicant contends, the unlawful acts committed by OLAF adversely affected his peace of mind, his honour and his professional reputation having regard, in particular, to the gravity of the wrongdoing of which OLAF accused him, the length of the procedure and the publicity given to the case in the press. Account should be taken in that regard of the applicant's arguments that not only was he effectively the only person implicated by OLAF, which found that he had acted in a manner which gave rise to contraventions on a criminal and disciplinary level, but also that by reason of the accusations made against him he remained under threat of a disciplinary sanction at least until the IDOC report was delivered and the decision was made to take no further action in the case.

157 It is clear that the accusations made in the disputed report against Mr Camós Grau, which ascribe to him and two other Commission officials who were involved in IRELA's management, primary responsibility for the implementation and operation of a system which enabled unlawful profit margins to be achieved, and maintains in particular that those wrongful acts had been committed in the knowledge that they were unlawful and by those concerned taking advantage of their position within the Commission, represent particularly serious accusations, which adversely affect the honour and professional reputation of an official, especially one of the applicant's seniority, having regard to the gravity of the conduct complained of.

158 In particular, because of the one-sidedness of the procedure conducted by OLAF, which voluntarily removed the Financial Control DG from the scope of its inquiries, all blame which might be ascribed to the Commission was concentrated on the directorate having responsibility for Latin America and, more specifically, on the three officials in that directorate who had been involved in IRELA's management. Furthermore, as the other two officials who were implicated with the applicant were no longer in their posts at the Commission but were on leave on personal grounds when the report was issued, Mr Camós Grau in fact found himself in the position of being the only person designated as responsible by the report of 17 October 2002 remaining in office at the institution who was required to bear the weight of OLAF's accusations when he continued in the employment of that institution. All of that aggravated the damage caused to him.

159 The difficulties faced by the applicant in his living conditions as a result of OLAF's conduct, his dealings with it and the threat of judicial and disciplinary proceedings arising from the findings of the report affected the applicant for more than a year and a half. Mr Camós Grau, who was informed by OLAF that an internal investigation was being initiated on 30 January 2001 and heard on 22 February 2001, challenged, as from 22 February 2002, the investigator whom he suspected of having a conflict of interest and tried to ensure that the objectivity and impartiality of the investigation, the one-sidedness of which was already apparent in the interim report of December 2000, were restored and thereafter that the final report was corrected as a result. Quite apart from those fruitless steps, the applicant found himself, definitely no later than once the OLAF report was issued on 17 October 2002, under

threat, first of criminal proceedings being instigated by the Belgian and Spanish judicial authorities until the latter decided, on 13 February and 10 March 2003 respectively, to take no further action in the matter, and, secondly, of disciplinary proceedings being initiated by the Appointing Authority pursuant to OLAF's recommendations until the Commission decided, as the judicial authorities had done, to take no further action in the matter on 2 September 2003.

160 The adverse effect on Mr Camós Grau's honour was aggravated by the external publicity given to the OLAF report, as mentioned in paragraph 20 above. Although the disputed report was an internal document, intended to be communicated only to the parties referred to in Article 9 of Regulation No 1073/1999, it was distributed outside that restricted group and its findings were commented on in the press, the Spanish daily newspaper *El País* having reported the implication of Mr Camós Grau by name in an article which appeared on 11 December 2002.

161 By contrast, it cannot be held that there is a connection between the unlawful actings that have been established and the damage claimed by reason of the applicant not having been 'cleared' of the accusations made against him and not being free from the threat of additional investigations which might be decided upon in the future or might continue to be the subject of a report which remains in the records of the authorities and services to which it was issued.

162 However, it follows from the above that the non-material damage caused to Mr Camós Grau, who, by reason of the accusations, the findings and the recommendations made against him by OLAF, had his honour and professional reputation impaired and suffered difficulties in his living conditions, is established.

163 The applicant has provisionally assessed his non-material damage at the sum of EUR 10 000. The Commission has not submitted any observations regarding the amount claimed.

164 In the circumstances of the present case, the damage suffered by the applicant as a result of the OLAF report is not less than the amount claimed. Mr Camós Grau's claim for damages should therefore be allowed in its entirety and the Commission should be ordered to pay him the sum of EUR 10 000 in compensation for his non-material loss.

— The request for compensation in respect of the expenses incurred by the applicant in conducting his defence in the administrative procedure

165 Mr Camós Grau also asks the Court to order the Commission to reimburse him the expenses incurred by him in relation to the investigation and his administrative

complaints against the decision of 17 May 2002 and the OLAF report of 17 October 2002.

166 It must however be pointed out that no figure is provided in relation to that request and that the applicant has not established, or even claimed, special circumstances justifying the failure to provide a figure in the application for that head of loss. Therefore, the claim for compensation for the material damage in question fails to satisfy the requirements of Article 44(1) of the Rules of Procedure of the Court of First Instance and must accordingly be rejected (Case C-150/03 P *Hectors* v *Parliament* [2004] ECR I-8691, paragraph 62).

Costs

167 The first subparagraph of Article 87(3) of the Rules of Procedure states: 'Where each party succeeds on some and fails on other heads, or where the circumstances are exceptional, the Court of First Instance may order that the costs be shared or that each party bear its own costs.'

168 In the circumstances of the present case, the Commission should be ordered to bear all the costs of the case.

On those grounds,

THE COURT OF FIRST INSTANCE
(Fourth Chamber, Extended Composition)

Hereby orders:

1. The Commission shall pay Mr Camós Grau the sum of EUR 10 000.

2. The remainder of the claims are dismissed.

3. The Commission shall bear the costs.

Legal Lindh Mengozzi

Wiszniewska-Białecka Vadapalas

Delivered in open court in Luxembourg on 6 April 2006.

E. Coulon H. Legal

Registrar President

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