

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

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

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

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

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

---

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

---

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

**(Case T-290/16)**

(2016/C 270/70)

*Language of the case: Spanish*

**Parties**

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

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- Order the European Commission to pay compensation for the damage suffered by Escarp. S.C.P., Agropecuaria Sebar, S.L. and Rusfal 2000, S.L., as a result of their actions and omissions in connection with the disturbances suffered in the peach and nectarine markets during the 2014 marketing year and, in particular, as a result of adopting Commission Delegated Regulation (EU) No 913/2014 and Delegated Regulation (EU) No 932/2014.
- Order the European Commission to pay:
  - To Escarp, S.C.P., an amount of EUR 121 085,11, and the corresponding compensatory and default interest.
  - To Agropecuaria Sebar, S.L., an amount of EUR 162 540,46, and the corresponding compensatory and default interest.
  - To Rusfal 2000, S.L., an amount of EUR 28 808,99, and the corresponding compensatory and default interest.
- Order the European Commission to pay the costs.

**Pleas in law and main arguments**

The present application seeks compensation for damage allegedly suffered as a result of the actions and omissions of the European Commission in connection with the disturbances suffered in the peach and nectarine markets during the 2014 marketing year and, in particular, but not exclusively, a result of adopting Delegated Regulation No 913/2014 <sup>(1)</sup> and Delegated Regulation (EU) No 932/2014 <sup>(2)</sup>.

In support of its application, the applicant relies on a single plea, alleging that the conditions imposed by EU case-law, in order to recognise the right to compensation based on the non-contractual liability of the European Union, are fulfilled.

In that regard it is alleged, first, that by their actions and omissions the Commission has committed a sufficiently serious infringement of rules intended to confer rights on individuals, such as the principle of duty of diligence, the principles of assistance and protection, the principle of good administration enshrined in Article 41 of the Charter of Fundamental Rights of the European Union and, finally, the principle of the prohibition against arbitrary action.

This is the case in so far as, by adopting measures to prevent disruptions in the peach and nectarine market in the summer of 2014, the Commission:

- Adopted a crisis mechanism that it had itself previously considered inappropriate and ineffective, as it was not used by the producer organisations because they are too small and lack the resources to avail of it.
- It did not collect market information.
- It acted without obtaining adequate data concerning the withdrawal measures.
- It intervened belatedly.

Furthermore, the applicant continues, the measures of co-financed withdrawal of products and of free advertising and distribution were objectively inadequate.

It is also alleged that the Commission infringed the obligation to state reasons.

Secondly, it is claimed that the three companies concerned suffered actual and certain damage, which is also quantifiable.

Finally, there is a causal link between that damage and the unlawful conduct of the Commission.

<sup>(1)</sup> Commission Delegated Regulation (EU) No 913/2014 of 21 August 2014 laying down temporary exceptional support measures for producers of peaches and nectarines (OJ 2014 L 248, p. 1)

<sup>(2)</sup> Commission Delegated Regulation (EU) No 932/2014 of 29 August 2014 laying down temporary exceptional support measures for producers of certain fruit and vegetables and amending Delegated Regulation (EU) No 913/2014 (OJ 2014 L 259, p. 2).

---

### Action brought on 13 June 2016 — East West Consulting v Commission

(Case T-298/16)

(2016/C 270/71)

*Language of the case: French*

#### Parties

*Applicant:* East West Consulting SPRL (Nandrin, Belgium) (represented by: L. Levi and A. Tymen, lawyers)

*Defendant:* European Commission

#### Form of order sought

The applicant claims that the Court should:

— declare the present action admissible and well founded;

consequently,

— rule that the European Commission has incurred non-contractual liability;

— order the defendant to pay compensation for the damage suffered by the applicant, valued, subject to any adjustment, at EUR 496 000;

— in any event, order the defendant to pay the costs in their entirety.

#### Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission committed sufficiently serious breaches of rules of law by activating, on the basis of Commission Decision 2008/969/EC, Euratom, of 16 December 2008 on the Early Warning System for the use of authorising officers of the Commission and the executive agencies (OJ 2008 L 344, p. 125), Early Warning System ('EWS') Warning 'W3b' against the applicant, following an investigation by the European Anti-Fraud Office (OLAF), identifying the level of risk associated with the applicant in its capacity as the person awarded the public service contract concerning a project designed to strengthen the fight against undeclared work in the former Yugoslav Republic of Macedonia. That plea is divided into five parts:

— First part, alleging that the decision to issue an EWS warning against the applicant ('the EWS decision') is unlawful in that it has no basis in law, and that it infringes both Article 5 TEU and the fundamental right to the presumption of innocence;