JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)

4 October 2006 *

In Case T-193/04,

Hans-Martin Tillack, residing in Brussels (Belgium), represented by I. Forrester QC, T. Bosly, C. Arhold, N. Flandin, J. Herrlinger and J. Siaens, lawyers,

applicant,

supported by

International Federation of Journalists (IFJ), established in Brussels (Belgium), represented by A. Bartosch and T. Grupp, lawyers,

intervener,

v

Commission of the European Communities, represented by C. Docksey and C. Ladenburger, acting as Agents,

defendant,

* Language of the case: English.

APPLICATION, first, for the annulment of the act by which, on 11 February 2004, the European Anti-Fraud Office (OLAF) forwarded to the German and Belgian judicial authorities information concerning suspicions of breach of professional secrecy and bribery and, second, for damages in compensation for non-material injury suffered by the applicant as a result of the forwarding of that information and of the publication of press releases by OLAF,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fourth Chamber),

composed of H. Legal, President, P. Lindh and V. Vadapalas, Judges,

Registrar: J. Plingers, Administrator,

having regard to the written procedure and further to the hearing on 11 May 2006,

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 in particular 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 OLAF (OJ 1999 L 136, p. 1) governs the inspections, checks and other measures undertaken by employees of OLAF in the performance of their duties.

3 Recital 13 in the preamble to Regulation No 1073/1999 states that:

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

4 Article 6 of Regulation No 1073/1999, headed 'Investigations procedure', provides, at paragraph 6, that 'the Member States shall ensure that their competent authorities, in conformity with national provisions, give the necessary support to enable [OLAF] employees to fulfil their task'.

5 Article 9 of Regulation No 1073/1999, headed 'Investigation report and action taken following investigations', states the following at paragraph 2:

'... Reports drawn up on that basis shall constitute admissible evidence in administrative or judicial proceedings of the Member State in which their use proves necessary, in the same way and under the same conditions as administrative reports drawn up by national administrative inspectors. ...'

6 Article 10 of Regulation No 1073/1999, entitled 'Forwarding of information by [OLAF]', provides at paragraph 2:

'... the Director of [OLAF] shall forward to the judicial authorities of the Member State concerned the information obtained by [OLAF] during internal investigations into matters liable to result in criminal proceedings. ...'

Facts giving rise to the dispute

7 The applicant is a journalist employed by the German magazine *Stern.*

8 By memorandum of 31 August 2001, Mr van Buitenen, an official of the Commission of the European Communities, notified the existence of possible irregularities in a number of the Commission's services ('the van Buitenen memorandum'). A copy of that document was received by OLAF on 5 September 2001.

9 On 23 October 2001, the Director of OLAF instructed the Magistrates, Judicial advice and Follow-up Unit to investigate the allegations made in the van Buitenen memorandum and asked for recommendations as to further proceedings to be taken in relation to them.

10 On 31 January 2002, the Magistrates, Judicial advice and Follow-up Unit issued a confidential internal note, containing 12 proposals and recommendations, including the opening of investigations into some of the allegations referred to in the memorandum. On the basis of that document, the unit drew up an abridged note of 14 February 2002, which was also confidential.

11 The applicant was the author of two articles published in *Stern* on 28 February and 7 March 2002 respectively, in which he described irregularities within the European institutions. Those articles were based on the van Buitenen memorandum and the OLAF note of 31 January 2002.

12 On 12 March 2002, OLAF, suspecting that its confidential notes of 31 January and 14 February 2002 had been unlawfully disclosed, opened an internal investigation to identify the Community officials or servants who were the source of the leak.

13 On 22 March 2002, the Director of the OLAF Operations, Strategy and Information Services Directorate sent a note to the Director of OLAF to inform him that, according to a trustworthy source, the applicant had handed over EUR 8 000 to an OLAF official for a number of documents related to the van Buitenen case. On the same day, the OLAF spokesman told the Director of OLAF that he had met Mr G., the Commission spokesman dealing with budget and anti-fraud matters, and that the latter had claimed to have been informed by a journalist from *Stern* that the applicant had paid a member of OLAF in order to obtain documents.

14 On 27 March 2002, OLAF published a press release, headed 'Internal investigation concerning a leak of confidential information', which was worded as follows:

'... Following an apparent leak of confidential information included in a report prepared within OLAF, [OLAF] has decided, in accordance with Article 5(1) of Regulation ... No 1073/1999, to open an internal investigation. According to information received by [OLAF], a journalist has received a number of documents

relating to the so-called "van Buitenen affair". It is not excluded that payment may have been made to somebody within OLAF (or possibly another EU institution) for these documents. ...

[OLAF] always respects the highest ethical standards. It conducts its investigations in full independence. It would however point out that the bribery or payment of officials to provide official information is illegal in Belgium, and the information obtained by OLAF in the course of its investigations is protected by the relevant provisions of Belgian law. If following the internal investigation illegal activity is indicated, it is the intention of [OLAF] that the perpetrators be prosecuted in accordance with the applicable disciplinary and criminal provisions ...'

15 In reply, *Stern* published a press release on 28 March 2002, in which it, first, confirmed that it was in possession of the van Buitenen memorandum and, secondly, emphasised that it had not paid an official of the European Communities for providing documents connected with the case. That press release also mentions the applicant's name and address. *Stern* also wrote to the Chairman of the OLAF Supervisory Committee on 3 April 2002 to object to OLAF's allegations.

16 On 4 April 2002, the magazine *European Voice* stated that, according to an OLAF spokesman, OLAF had 'prima facie evidence' that 'a payment might have been made' and was treating the matter seriously.

17 At a meeting of 9 and 10 April 2002, the OLAF Supervisory Committee asked to be informed of the grounds for suspecting payment in this case.

18 On 11 April 2002, OLAF's spokesman sent an email to a number of OLAF officials stating the following:

'... the only facts of which we can be certain for the moment are: that a confidential OLAF document has found its way into the hands of the press (which should not have happened), [and that] there have been rumours or speculation around OLAF and around the ... Commission that these documents have been paid for (with even an indication of the price paid). It is unacceptable that confidential information from OLAF has been obtained by the press and that this information may have been obtained by means of the corruption of a public servant [and that] allegations, "rumours" or "speculation" of the sort which [OLAF], as an investigative body, has had to endure, remain unverified ...'.

19 On 22 October 2002, the applicant lodged a complaint (1840/2002/GG) with the European Ombudsman regarding OLAF's press release of 27 March 2002.

20 On 9 December 2002, the OLAF investigators formally heard Mr G. He indicated that according to one of his former colleagues from *Stern*, whose name he refused to reveal, the applicant had received DEM 8 000 or EUR 8 000 to obtain information concerning the Commission or possibly OLAF.

21 On 18 June 2003, in his draft recommendation regarding the applicant's complaint, the Ombudsman stated that by making allegations of bribery without a factual basis which was both sufficient and available for public scrutiny, OLAF had gone beyond what was proportionate to the purpose pursued by its action, and that that constituted an instance of maladministration. He recommended that OLAF withdraw the published allegations of bribery, which might be understood as referring to the applicant.

22 Following that draft recommendation, OLAF issued a press release on 30 September 2003, entitled 'OLAF clarification regarding an apparent leak of information', drafted as follows:

'On 27 March 2002, ... OLAF published a press release in which it announced that an internal investigation had been opened in accordance with Regulation ... No 1073/1999 regarding an apparent leak of confidential information included in a report prepared within [OLAF].

That press release stated that, according to information received by [OLAF], a journalist had received a number of documents relating to the so-called "van Buitenen affair", and that it was not excluded that payment might have been made to somebody within OLAF (or possibly another EU institution) for these documents.

OLAF's enquiries have not yet been completed, but to date, [OLAF] has not obtained proof that such a payment was made.'

23 On 12 November 2003, the applicant published an article on *Stern*'s website criticising the work of OLAF's Director.

24 In his final decision of 20 November 2003, the Ombudsman reaffirmed, in relation to complaint 1840/2002/GG, that OLAF had committed an act of maladministration and was of the opinion that OLAF, which had accepted his draft recommendation, had not implemented it adequately. In those circumstances, he took the view that a critical remark on his part could constitute adequate reparation for the complainant.

25 Mr G., who had left the Commission in July 2003, had a further hearing before OLAF's investigators on 6 January 2004. First, he confirmed the points covered at the first hearing and, second, disclosed the name of the person who had given him the information.

26 On 20 and 21 January 2004, at a meeting of the OLAF Supervisory Committee, the director informed the committee of the 'developments of an ongoing case' and stated that they involved confidential contacts with national judicial authorities. The minute of the meeting recorded that the members of the committee agreed 'in the light of the particular circumstances of the case to receive deferred information thereon ..., it being declared that OLAF should, at the appropriate time, provide adequate information to the institution concerned'.

27 On 11 February 2004, OLAF forwarded information concerning suspicions of breach of professional secrecy and bribery to the judicial authorities in Brussels (Belgium) and Hamburg (Germany), referring to Article 10(2) of Regulation No 1073/1999.

28 On the basis of the information sent, both the Belgian and German judicial authorities opened investigations into alleged corruption and, in the case of the Belgian judicial authorities, for breach of professional secrecy.

29 On 19 March 2004, on the instructions of the investigating judge responsible for the case, the Belgian police carried out a search at the applicant's home and office and seized or sealed professional documents and personal belongings.

30 The applicant brought proceedings to challenge that seizure before the Belgian courts. Following those proceedings the Belgian Cour de cassation (Court of Cassation) rejected his appeal on the merits on 1 December 2004.

31 On 15 April 2004, the applicant wrote to the Director of OLAF to complain about the procedure and to request access to the investigation file concerning him.

32 On 7 May 2004, a copy of the letter sent to the Belgian judicial authorities on 11 February 2004, from which all confidential material had been deleted, was sent to the President of the OLAF Supervisory Committee. At the end of May 2004, the applicant also obtained a copy of that letter.

33 On 12 May 2005, the Ombudsman issued a special report to the European Parliament concerning complaint 2485/2004/GG, brought by the applicant. According to that report, OLAF should acknowledge that it had made incorrect and misleading statements in its submissions to the Ombudsman in the investigation into complaint 1840/2002/GG. The European Ombudsman also proposed that the Parliament adopt that recommendation as a resolution.

Procedure and forms of order sought

34 By application lodged at the Registry of the Court of First Instance on 1 June 2004, the applicant brought the present action.

35 By separate document registered at the Registry of the Court of First Instance on 4 June 2004, the applicant requested essentially, first, the suspension of the operation of all measures to be adopted in the context of the alleged complaint lodged by OLAF with the Belgian and German judicial authorities on 11 February 2004 and, secondly, an order that OLAF should refrain from obtaining, inspecting, investigating and hearing the contents of all documents and information in the possession of the Belgian judicial authorities as a result of the search carried out at the applicant's home and office on 19 March 2004.

36 By document lodged at the Registry of the Court of First Instance on 17 June 2004, the International Federation of Journalists ('the IFJ') lodged an application to intervene in support of the forms of order sought by the applicant.

37 By order of the President of the Court of First Instance in Case T-193/04 R *Tillack* v *Commission* [2004] ECR II-3575, the President of the Court of First Instance rejected the application for interim measures and reserved costs.

38 By application lodged at the Registry of the Court of Justice on 24 December 2004, the applicant brought an appeal against that order in *Tillack* v *Commission*.

39 By order of 26 January 2005, the President of the Fourth Chamber of the Court of First Instance granted the IFJ leave to intervene in the present proceedings. The intervener lodged its statement in intervention and the other parties replied within the prescribed periods.

40 By order of 19 April 2005 in Case C-521/04 P(R) *Tillack* v *Commission* [2005] ECR I-3103, the President of the Court of Justice dismissed the appeal in that case and the applicant was ordered to pay the costs.

41 Upon hearing the report of the Judge-Rapporteur, the Court (Fourth Chamber) decided to open the oral procedure.

42 The parties presented oral argument and answered the questions put by the Court at the hearing on 11 May 2006.

43 The applicant claims that the Court should:

— annul the decision of OLAF to forward to the German and Belgian judicial authorities the 'complaint' of 11 February 2004;

— order the Commission to award him damages in an amount to be fixed by the Court, together with interest at a rate to be fixed by the Court;

— take such other or further action as justice may require;

— order the Commission to pay the costs.

44 The Commission contends that the Court should:

— dismiss the action for annulment and the action for damages as inadmissible;

— in the alternative, dismiss those actions as unfounded;

— order the applicant to pay the costs.

45 The IFJ submits that the Court should annul the decision of OLAF of 11 February 2004 to 'forward the complaints' to the German and Belgian judicial authorities.

Law

Admissibility of the pleas seeking annulment of the act by which OLAF forwarded information to the German and Belgian judicial authorities

Arguments of the parties

46 Without raising a formal plea of inadmissibility, the Commission contends that the application for annulment is manifestly inadmissible, in the absence of any challengeable act for the purposes of the fourth paragraph of Article 230 EC.

47 Referring to the order of the Court of First Instance in Case T-215/02 *Gómez-Reino* v *Commission* [2003] ECR-SC I-A-345 and II-1685, paragraphs 50 and 51, the Commission submits that the act by which OLAF forwarded information to the Belgian and German judicial authorities, in accordance with the obligation laid down in Article 10(2) of Regulation No 1073/1999, represents a preparatory act

which, in itself, does not change the legal position of the applicant. It is for the national judicial authorities alone to decide what is to be done with the information forwarded and to decide, in accordance with their national law, whether or not to initiate a judicial inquiry, to carry out investigative measures and to commence criminal proceedings. Thereafter, the national court is competent to decide whether the person concerned is guilty or not.

48 The Commission also submits that, in the judgment in Joined Cases T-377/00, T-379/00, T-380/00, T-260/01 and T-272/01 *Philip Morris and Others* v *Commission* [2003] ECR II-1, the Court of First Instance held that the Commission's decision to file a civil complaint before a court in the United States was not open to challenge by way of an action under the fourth paragraph of Article 230 EC, since that complaint did not of itself alter the legal position of the defendant. The Commission argues that that decision must apply a fortiori in the present case, where OLAF has neither filed a complaint nor brought proceedings, but has merely forwarded factual information which may or may not prompt the competent authorities to initiate proceedings to which neither OLAF nor the Commission would normally be a party.

49 In addition, the duty of cooperation, laid down in Article 10 EC, has no binding legal effect on the national legal authorities or the applicant. Article 6(6) of Regulation No 1073/1999 does not apply to acts taken in the course of national criminal investigations carried out by judicial authorities of the Member States after having received information from OLAF. Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ 1996 L 292, p. 2) also has no bearing on the present case.

50 Furthermore, the applicant did enjoy effective judicial protection. First, as the Belgian search warrant is the only measure affecting the applicant's freedom of speech, judicial protection against that measure must be provided by the Belgian courts. Secondly, even where a national search warrant is issued on the basis of

information forwarded by OLAF, national legal remedies also provide legal protection to the complainant, although recourse may be had to Article 234 EC when the claimant argues before the national court that OLAF has infringed Community law in its investigative procedure. Thirdly, the fact that the transmission of information under Article 10(2) of Regulation No 1073/1999 cannot be challenged by way of an action for annulment does not mean that an action for non-contractual liability before the Community Courts is precluded a priori.

51 Lastly, the Commission states that any exception made to the rules on the admissibility of an action under Article 230 EC would have serious adverse consequences for the efficiency, confidentiality and independence of OLAF's investigations. It maintains that even if the Belgian courts had rejected as inadmissible any plea of infringement of essential procedural requirements by OLAF, the present action for annulment would still not be admissible. Case C-167/02 P *Rothley and Others* v *Parliament* [2004] ECR I-3149 does not lead to a different conclusion.

52 The applicant contends that his action for annulment, brought under Article 230 EC, is admissible.

53 He maintains, first, that OLAF's 'complaint' produced legal effects because the national authorities went on to initiate an investigation. Article 10 EC and Regulation No 1073/1999, particularly Article 6(6) thereof, require the Member States to cooperate with OLAF.

54 Next, the applicant's interests would not be adequately protected if he were forced to wait until the Belgian authorities took a final decision before being able to challenge

OLAF's 'complaint'. More generally, journalists and their informants would be deterred from revealing information regarding the Community institutions if they were exposed to the risk that the 'complaints' lodged by OLAF might lead to criminal proceedings. The annulment of the contested measure would also help to re-establish the applicant's reputation, which has been greatly damaged by OLAF's continuing false allegations.

55 According to the applicant, a challenge to the 'complaint' is the only effective way of preventing the illegal exploitation of the information gathered by the Belgian authorities during the search, which might make it possible to identify the applicant's sources. OLAF may become a civil party in the Belgian criminal proceedings and thereby obtain access to the documents seized. Moreover, the annulment of the 'complaint' is itself capable of having legal consequences, in particular by preventing a repetition by the Commission of such a practice.

56 As regards the order in *Gómez-Reino* v *Commission*, the applicant takes the view that the circumstances which gave rise to that case were very different from those which have arisen in these proceedings.

57 In addition, Regulation No 1073/1999 and Regulation No 2185/96 confer special powers on OLAF, which is developing close cooperation with the national investigation bodies.

58 In response to the Commission's argument that OLAF never requested the German or Belgian judicial authorities to take any specific action, the applicant considers that it is incorrect. First, in the 'complaint' sent to the Belgian authorities, OLAF recommended swift action in view of the applicant's alleged impending move to Washington (United States). Next, the OLAF investigators had already contacted the national officials on 13 and 16 January 2004, in order to coordinate the

investigation measures. Lastly, OLAF asked the national authorities to search the applicant's home and office in order to obtain evidence for its internal investigation, as is confirmed by a statement made by the Chairman of OLAF's Supervisory Committee to the House of Lords Select Committee on the European Union (United Kingdom) on 19 May 2004. The investigating judge therefore did not act in complete independence, but did what OLAF asked.

59 The applicant also contends that the national authorities cannot but have full confidence in the accuracy of OLAF's investigation reports, which may be used as evidence in court pursuant to Article 9(2) of Regulation No 1073/1999. Breach of professional secrecy by an official of the European Communities is not an offence under Belgian law. Therefore, OLAF was able to become a civil party only because of the privileged relationship it has with the Belgian authorities, which were prepared to act on the 'complaint'.

60 It follows from the above that OLAF's 'complaint' is not comparable to the Commission's decision to bring civil proceedings in the case which gave rise to the judgment in *Philip Morris International and Others* v *Commission*, where the Commission's situation was identical to that of an ordinary citizen. The context in which the order in Case T-29/03 *Comunidad Autónoma de Andalucía* v *Commission* [2004] ECR II-2923 was made was different to that in this case, in that it concerned the final report in an external investigation procedure. Furthermore, the Court took into account the fact that the Spanish prosecutor had stopped the proceedings in the meantime, so that the report could no longer have any adverse legal effects.

61 Lastly, referring to *Rothley and Others* v *Parliament*, the applicant takes the view that Article 230 EC must be applied in the light of the right to effective judicial protection. In the present case, no other legal remedy is available to him to challenge OLAF's behaviour. It is not possible for him to request a national court to make a reference for a preliminary ruling, since the unlawfulness of OLAF's conduct does not determine that of the measures taken by the national judicial authorities. Only

the Community Courts are competent to judge OLAF and not the national courts or, in the final instance, the European Court of Human Rights. Accordingly, national proceedings do not provide for effective judicial review. It is unacceptable that, in a case where the freedom of the press is at stake, the sole remedy available to the applicant is an application for damages before the Court of First Instance.

62 The IFJ submits that the application is admissible since the 'complaints' sent to the German and Belgian judicial authorities constitute decisions for the purposes of the fourth paragraph of Article 230 EC. The action for annulment is not directed against the search carried out by the Belgian authorities but against a decision of OLAF intended to have legal effects as against the applicant.

63 Unlike the case which gave rise to the order in *Gómez-Reino* v *Commission*, this case concerns a 'complaint' having direct legal consequences for the applicant, and not mere preparatory measures.

64 Referring to Case 180/87 *Hamill* v *Commission* [1988] ECR 6141, the IFJ notes that even mere information supplied to national judicial authorities can be the subject of judicial review by the Community Courts.

65 Lastly, the IFJ argues that the action for annulment is also admissible by virtue of the right to effective judicial protection. Article 230 EC must be interpreted in the spirit of a Community based on the rule of law, in order that the applicant may obtain judicial protection against OLAF's conduct. In that regard, the Belgian courts are not in a position to verify, on a case-by-case basis and exhaustively and thoroughly, whether the acts of the Community institutions are in conformity with Community law.

Findings of the Court

66 In the present case, the action for annulment is brought against the act by which OLAF, on the basis of Article 10(2) of Regulation No 1073/1999, forwarded the German and Belgium judicial authorities information concerning suspicions of breach of professional secrecy and bribery involving the applicant.

67 According to settled 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 T-309/03 *Camós Grau* v *Commission* [2006] ECR II-1173, paragraph 47).

68 However, in the present case, the contested act does not bring about a distinct change in the applicant's legal position.

69 It is clear from the provisions of Regulation No 1073/1999, in particular from the 13th recital in the preamble and Article 9, that findings of OLAF 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 in *Comunidad Autónoma de Andalucía* v *Commission*, paragraph 37, and *Camós Grau* v *Commission*, paragraph 51).

70 Equally, Article 10(2) of Regulation No 1073/1999 merely provides for the forwarding of information to national judicial authorities, which remain free, in the context of their own powers, to assess the content and significance of that information and, thus, the action to be taken if necessary. Consequently, the possible initiation of legal proceedings following the forwarding of information by OLAF, and the subsequent legal acts, are the sole and entire responsibility of the national authorities.

71 None of the arguments raised by the applicant and the intervener calls that finding into question.

72 First, the duty to cooperate in good faith entails an obligation on the Member States to take all the measures necessary to guarantee the application and effectiveness of Community law and imposes on Member States and the Community institutions mutual duties to cooperate in good faith (Case C-275/00 *First and Franex* [2002] ECR I-10943, paragraph 49, and Case C-344/01 *Germany* v *Commission* [2004] ECR I-2081, paragraph 79). That duty implies that, when OLAF forwards them information pursuant to Article 10(2) of Regulation No 1073/1999, the national judicial authorities have to examine that information carefully and draw the appropriate consequences from it in order to comply with Community law, if necessary by initiating legal proceedings if they consider such action justified. Such a duty of careful examination does not, however, require an interpretation of that provision to the effect that the forwarded information in dispute has binding effect, in the sense that the national authorities are obliged to take specific measures, since such an interpretation would alter the division of tasks and responsibilities as prescribed for the implementation of Regulation No 1073/1999 (order in Case C-521/04 P(R) *Tillack* v *Commission*, paragraph 33).

73 In addition, Article 6(6) of Regulation No 1073/1999, which concerns investigations carried out by OLAF, and Regulation No 2185/96 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European

Communities' financial interests against fraud and other irregularities relate to OLAF's and the Commission's own powers of investigation. Even if the mutual duty to cooperate in good faith, which is expected of the Member States when exercising their own powers of investigation, implies that the competent national authorities support actions brought in the name of the Community, it bears no relation to the other prerogatives which those authorities have, in particular judicial ones, and does not interfere with their powers.

74 Second, as regards the applicant's argument that OLAF could become a civil party in the Belgian criminal proceedings in order to obtain access to the documents seized at the applicant's home and office, it must be pointed out that, even if use were made of that possibility, it would have no effect on whether the act by which OLAF forwards information to national judicial authorities is challengeable or not.

75 Third, *Hamill* v *Commission*, which concerns an action for damages and not an action for annulment, in no way states that a forwarding of information by OLAF pursuant to Article 10(2) of Regulation No 1073/1999 would have binding legal effect of a nature so as to affect the applicant's interests.

76 Fourth, the facts put forward by the applicant, which, in his view, prove that the Belgian judicial authorities did not act in complete independence, but did what OLAF asked, cannot be upheld.

77 In relation, first, to the statement made by the Chairman of the OLAF Supervisory Committee to the House of Lords Select Committee on the European Union on 19 May 2004, the applicant does not provide any form of information enabling the content of that statement to be verified and it cannot, therefore, be taken into consideration.

78 As regards, second, the interim report appended to the letter sent to the Belgian judicial authorities, points 2.2 and 2.3 thereof are respectively worded as follows:

'As already discussed with the public prosecution service in Hamburg ... on 13 January 2004 and with the public prosecution service in Brussels ... on 16 January 2004, the transmission of information to the two judicial authorities proves necessary in order to start proceedings which are independent but coordinated;

...

Swift action is desirable in view of the fact that, according to our information, Mr Tillack will leave Brussels in March this year to become the *Stern* correspondent in Washington ... . With his departure from Brussels, important evidence could disappear for good.'

79 However, in relation to point 2.2 of the interim report, the applicant does not challenge the Commission's statement that the contact made between OLAF and the national public prosecution services was related to purely formal issues such as to find out to whom the information should be sent exactly. As regards point 2.3, although OLAF effectively expressed its wish to deal with the case at issue as quickly as possible, that wish is in no way binding on the Belgian judicial authorities. It is not comparable to a request to the Belgian authorities to initiate legal proceedings or to adopt any other measure. Moreover, Article 10(2) of Regulation No 1073/1999 concerning the forwarding of information obtained in the course of investigations, which is sent to the competent national authorities, merely provides for the forwarding of that information to national authorities, which are charged, when exercising their own powers, with deciding what action is to be taken in respect thereof.

80 Finally, the argument alleging the lack of effective judicial protection is irrelevant. That argument is not, in itself, sufficient to justify the admissibility of an action (orders in Case T-247/04 *Aseprofar and Edifa* v *Commission* [2005] ECR II-3449, paragraph 59, and Joined Cases T-236/04 and T-241/04 *EEB and Stichting Natuur en Milieu* v *Commission* [2005] ECR II-4945, paragraph 68). Moreover, it is apparent from the case-file and the oral arguments during the hearing that the applicant brought an action before the Belgian courts, and then before the European Court of Human Rights, against measures taken by the Belgian judicial authorities in response to the forwarding of information by OLAF on 11 February 2004. In addition, the applicant also had the opportunity to request the national courts, which have no jurisdiction themselves to declare that the act by which OLAF forwarded information to the Belgian judicial authorities is invalid (see to that effect Case 314/85 *Foto-Frost* [1987] ECR 4199, paragraph 20), to make a preliminary reference to the Court of Justice in that regard.

81 It follows from the above that, since the forwarding of information pursuant to Article 10(2) of Regulation No 1073/1999 is not, in the present case, a legally binding measure, it cannot be regarded as a measure capable of changing the applicant's legal position.

82 Consequently, the claim for annulment of the act by which, on 11 February 2004, OLAF forwarded information to the German and Belgian Judicial authorities is inadmissible.

Admissibility of the claim for compensation for the alleged damage

Admissibility

— Arguments of the parties

83 The Commission argues that the action for damages contains two distinct claims. They cover compensation for the harm allegedly caused, first, by OLAF's 'complaint'

and, second, by the OLAF press releases of March 2002 and September 2003 and other public statements made by it.

84 That application is, according to the Commission, inadmissible in its entirety, since it fails to satisfy the conditions laid down by Article 44(1)(c) of the Rules of Procedure of the Court of First Instance.

85 Furthermore, the claim for damages relating to OLAF's 'complaint' is inadmissible as that application for damages is closely linked to an action for annulment which has itself been declared inadmissible.

86 The applicant contends, first of all, that the claim for damages in relation to OLAF's 'complaint' is admissible. He states that OLAF's misconduct cannot escape judicial review.

87 He next contests the argument that an action for damages is inadmissible if the cause of the damage was itself the subject of an inadmissible action for annulment.

88 Finally, he considers that the application meets the requirements of the Rules of Procedure for the admissibility of an action and is clear enough to enable the defendant to prepare its defence. It describes OLAF's unlawful conduct, the damage suffered and the reasons for which there is a causal link between the unlawful conduct and the damage.

— Findings of the Court

89 According to settled case-law, under the first paragraph of Article 21 of the Statute of the Court of Justice, which is applicable to proceedings before the Court of First Instance by virtue of the first paragraph of Article 53 of that Statute, as well as under Article 44(1)(c) of the Rules of Procedure of the Court of First Instance, all applications are to state the subject-matter of the proceedings and to include a summary of the pleas raised. That statement must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the application, if necessary without any further information. In order to guarantee legal certainty and the sound administration of justice it is necessary, in order for an action to be admissible, that the essential matters of law and fact relied on should be stated, at least in summary form, coherently and intelligibly in the application itself (Case T-38/96 *Guérin automobiles* v *Commission* [1997] ECR II-1223, paragraph 41, and Case T-157/01 *Danske Busvognmænd* v *Commission* [2004] ECR II-917, paragraph 45).

90 In order to satisfy those requirements, an application seeking compensation for damage allegedly caused by a Community institution must contain information making it possible to identify the conduct alleged against the institution, the reasons for which the applicant considers there is a causal link between the conduct and the damage it claims to have suffered, and the nature and extent of that damage (Case T-387/94 *Asia Motor France and Others* v *Commission* [1996] ECR II-961, paragraph 107, and Joined Cases T-215/01, T-220/01 and T-221/01 *Calberson GE* v *Commission* [2004] ECR II-587, paragraph 176).

91 In the present case, it must first be pointed out that the claim in the application seeking damages for the harm allegedly suffered is very brief. It does, however, make it possible to identify two instances of alleged misconduct of OLAF, which the applicant claims caused him harm. The first is OLAF's 'complaint' to the Belgian

judicial authorities. The second is constituted by OLAF's press releases of 27 March 2002 and 30 September 2003, the statements of the OLAF spokesman which were published in the *European Voice* magazine of 4 April 2002, and the statements of the Director of OLAF on Stern TV on 24 March 2004.

92 Next, it is apparent from the application that the harm which the applicant claims to have suffered as a result of the various alleged instances of misconduct by OLAF consists of detriment to his professional reputation and standing in professional circles. The application also makes it possible to identify the extent of the harm allegedly caused by OLAF.

93 Finally, the applicant mentions the existence of a causal link between the alleged harm and the various instances of misconduct of which OLAF is accused.

94 In addition, it is apparent from the arguments developed by the Commission on the well-foundedness of the action that it was properly able to prepare its defence in respect of the conditions for bringing an action for non-contractual liability of the Community.

95 It is thus necessary to dismiss the Commission's claim that the application does not satisfy the requirements of Article 44(1)(c) of the Rules of Procedure.

96 In relation to the claim for damages regarding OLAF's 'complaint', the Commission also submits that that claim is inadmissible since it is closely linked to an action for annulment which itself is inadmissible.

97 In that regard, the action to establish liability is an autonomous form of action, with a particular purpose to fulfil within the system of legal remedies and subject to conditions of use dictated by its specific purpose. Although actions for annulment and for failure to act seek a declaration that a legally binding measure is unlawful or that such a measure has not been taken, an action to establish liability seeks compensation for damage resulting from a measure or from unlawful conduct, attributable to a Community institution or body (Case C-234/02 P *Médiateur* v *Lamberts* [2004] ECR I-2803, paragraph 59, and the case-law cited).

98 Thus, 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 (*Phillip Morris International and Others* v *Commission*, paragraph 123, and *Camós Grau* v *Commission*, paragraph 78).

99 Therefore, the admissibility of the action for damages brought by the applicant seeking compensation for the non-material harm which he allegedly suffered as a result of the misconduct which OLAF is accused of must be considered independently of the action for annulment.

100 It follows from the above that the applicant's claims seeking damages for the harm which he allegedly suffered as a result of OLAF's alleged misconduct are admissible.

Substance

— Arguments of the parties

101 The applicant considers that the unlawful administrative acts consist, first of all, of the 'complaint' which OLAF made to the Belgian judicial authorities. That complaint was unlawful because it infringed several procedural requirements and the fundamental right of freedom of the press. The applicant also refers to the OLAF press releases of March 2002 and September 2003. In that regard, the Ombudsman stated that the press release of March 2002, based on rumours, was a clear act of maladministration and infringed the principle of proportionality. As such, that press release must be viewed as an unlawful administrative act. The press release of September 2003 was also an act of maladministration and infringed the principle of proportionality by repeating the allegations made in the press release of March 2002. Lastly, the applicant refers to the statements of the OLAF spokesman, as published in the *European Voice* magazine of 4 April 2002, and to those of the Director of OLAF on Stern TV on 24 March 2004. They are capable of damaging the applicant's reputation and, being based on mere rumours, also infringe the principle of sound administration.

102 The applicant also submits that OLAF overstepped the discretion which it enjoys. In view of the seriousness of the misconduct, OLAF's conduct must be regarded as a sufficiently serious breach of a rule of Community law.

103 The applicant claims to have suffered significant non-material damage in the form of harm to his professional reputation and standing in professional circles. First, it is much more difficult to gain information from the sources which he makes use of in order to practise his profession. Secondly, sales of his articles to magazines and newspapers are seriously impeded. OLAF's actions have thus seriously damaged the

applicant's career prospects. In addition, the existence of non-material damage is particularly apparent where false accusations lead to criminal investigations, searches and seizures, as in the present case. He asks the Court to fix the exact amount of pecuniary compensation, with the objective of both compensating him and acting as a deterrent to the Commission. The applicant provisionally proposes the sum of EUR 250 000.

104 As regards the causal link, the applicant claims that the damage to his reputation was caused by OLAF's press releases and subsequent announcements, culminating in OLAF's complaint to the Belgian judicial authorities, which led to the search of his home and office. OLAF's investigators provided the judicial authorities with guidance and, in the complaint, gave them misleading information as to the urgency of the need for action. The fact that the Belgian authorities may have acted negligently does not compromise the merits of the application.

105 With respect to OLAF's press releases and other public statements, the applicant points out that OLAF rarely publishes press releases announcing the opening of an investigation. Furthermore, everybody interested in the matter identified the applicant at once as the journalist who had bribed a Community official. Moreover, the facts as they are known today are even more serious than those investigated by the Ombudsman in 2003. In fact, OLAF misinformed the Ombudsman by alleging that it had received information from reliable sources, including Members of the European Parliament, while its only source was Mr G.

106 In his reply, the applicant points out that the public allegations by OLAF not only constitute an act of maladministration but also an infringement of the principles of sound administration, the presumption of innocence and the right to a fair trial. The

publication of press releases about ongoing investigations constitutes a breach of Article 8 of Regulation No 1073/1999, since information forwarded or obtained in the course of internal investigations is subject to professional secrecy.

107 The Commission argues that both claims for damages are unfounded.

108 As regards, first, the claim for compensation relating to the forwarding of information to the Belgian and German judicial authorities, it argues that OLAF did not infringe any rule of law. Furthermore, the applicant has failed to establish the existence of a sufficiently serious breach of the limits imposed on OLAF's discretion.

109 As to the existence of the damage claimed, the application provides no concrete information as to the applicant's particular professional situation. The applicant is an employee of *Stern* magazine and his reputation has not suffered as a result of the search and seizure undertaken by the Belgian authorities.

110 Most importantly, the applicant has failed to establish any causal link between the forwarding of information by OLAF and the harm he claims to have suffered. Two sovereign and discretionary acts of the Belgian authorities break any causal link: the initiation of criminal investigations; and the search and seizure. Only the latter constitute the direct and determining cause of the damage claimed. Had the search, which falls within the discretionary power of the national authorities, not taken place, the anonymity of the applicant's informants would not have been put at any

risk. If the applicant considers that he has suffered harm as a result of the search, his remedy is to sue the Belgian State for such damages.

111 As regards, second, the claim for compensation relating to the press releases and other public statements, the Commission maintains that OLAF did not contravene any rule of law affecting the applicant and, in particular, his reputation. In particular, the press release of 27 March 2002 does not refer to the name of any journalist or newspaper. It was only in a press release issued by *Stern* on 28 March 2002 that that magazine claimed to have exclusive possession of the documents disclosed and that the name of the journalist was revealed. Furthermore, the press release of 27 March 2002 described the main object of the investigation in the most neutral way possible. There was nothing untrue or disproportionate in it. To argue that OLAF's spokesman went too far is tantamount to denying OLAF any right at all to issue a press release confirming that an investigation has been initiated and indicating its subject-matter. In the alternative, the Commission submits that there was no manifest and grave transgression by OLAF of the limits imposed on its discretion in the way it conducts its relations with the media.

112 The Commission also claims that there is, in any event, no causal link between the press release of 27 March 2002 and any harm to the applicant's reputation. Even on the assumption that, on its being issued, OLAF's press release could have been understood by the public as referring to the applicant, *Stern*'s press release published the next day broke any causal link.

113 Lastly, as regards the findings of the Ombudsman, the Commission claims that the factual basis on which he made his recommendation in 2003 is different from that on which the Commission relies before the Court in these proceedings. In addition, the identification by the Ombudsman of an instance of maladministration does not

amount to a judicial determination of a breach of the applicant's rights by the Commission. In particular, the Ombudsman did not address the question whether OLAF had committed a sufficiently serious breach of a rule of law. Furthermore, the Ombudsman applied rules on the burden of proof which were different from those governing actions for non-contractual liability under Article 235 EC and the second paragraph of Article 288 EC. The Ombudsman and the Community Courts apply different criteria and methods of scrutiny, reflecting their quite different nature and function.

114 The IFJ argues that OLAF manifestly overstepped the limits of its discretion in forwarding information to the German and Belgian judicial authorities on the basis of nothing more than rumours and speculation. Such a discretion should have been exercised by having regard in particular to the provisions of Regulation No 1073/1999 and the rights and freedoms of those concerned.

115 The intervener considers that OLAF has contravened the freedom of the press, the right to respect for private life, the EC Treaty, the European Convention for the Protection of Human Rights and Fundamental Freedoms, Regulation No 1073/1999 and certain rules of procedure.

— Findings of the Court

116 It is settled case-law that the non-contractual liability of the Community for the unlawful acts of its bodies, for the purposes of the second paragraph of Article 288 EC, depends on fulfilment of a set of conditions, namely: the unlawfulness of the conduct alleged against the institutions, the fact of damage and the existence of a causal link between that conduct and the damaged complained of (Case 26/81 *Oleifici Mediterranei* v *EEC* [1982] ECR 3057, paragraph 16; Case T-175/94

International Procurement Services v *Commission* [1996] ECR II-729, paragraph 44; Case T-336/94 *Efisol* v *Commission* [1996] ECR II-1343, paragraph 30; and Case T-267/94 *Oleifici Italiani* v *Commission* [1997] ECR II-1239, paragraph 20).

117 As regards the first of those conditions, the case-law requires there to be a sufficiently serious breach of a rule of law intended to confer rights on individuals (Case C-352/98 P *Bergaderm and Goupil* v *Commission* [2000] ECR I-5291, paragraph 42). As regards the requirement that the breach must be sufficiently serious, the decisive test for determining whether that requirement is met is whether the Community institution concerned has manifestly and gravely disregarded the limits on its discretion. Where that institution has only a considerably reduced or even no discretion, the mere infringement of Community law may be sufficient to establish the existence of a sufficiently serious breach (Case C-312/00 P *Commission* v *Camar and Tico* [2002] ECR I-11355, paragraph 54, and Joined Cases T-198/95, T-171/96, T-230/97, T-174/98 and T-225/99 *Comafrica and Dole Fresh Fruit Europe* v *Commission* [2001] ECR II-1975, paragraph 134).

118 In relation to the condition concerning the causal link, the Community may be held responsible only for damage which is a sufficiently direct consequence of the misconduct of the institution concerned (Joined Cases 64/76 and 113/76, 167/78 and 239/78, 27/79, 28/79 and 45/79 *Dumortier Frères and Others* v *Council* [1979] ECR 3091, paragraph 21, and Case T-333/01 *Meyer* v *Commission* [2003] ECR II-117, paragraph 32). By contrast, it is not the responsibility of the Community to compensate for every harmful consequence, even one remote from the conduct of its bodies (see, to that effect, *Dumortier Frères and Others* v *Council*, paragraph 21).

119 If one of those conditions is not satisfied the action must be dismissed in its entirety without its being necessary to examine the other conditions (Case C-146/91 *KYDEP* v *Council and Commission* [1994] ECR I-4199, paragraphs 19 and 81, and Case T-170/00 *Förde-Reederei* v *Council and Commission* [2002] ECR II-515, paragraph 37).

120 It is in the light of that case-law that it needs to be assessed whether the various arguments raised by the applicant are well founded.

121 As a preliminary point, the protection of family life, the freedom of the press, the principle of the presumption of innocence and the right to a fair trial, which are fundamental rights, confer rights on individuals which are enforced by the Community Courts. In that regard, the applicant alleges two instances of misconduct of OLAF which, being distinct from one another, must be examined separately.

122 First, as regards the application for damages for the harm allegedly suffered as a result of OLAF's 'complaint', it has been found that it was the task of the judicial authorities to decide what action should be taken in respect of the information forwarded by OLAF on the basis of Article 10(2) of Regulation No 1073/1999, even though that forwarding of information is in no way binding upon them (see paragraph 70 above). Consequently, the conduct of the national judicial authorities, which decided, in the context of their own prerogatives, to initiate legal proceedings and then to carry out investigations, caused the harm allegedly suffered by the applicant.

123 In addition, the applicant does not explain how forwarding information, which is confidential in nature and in respect of which a breach of confidentiality is not alleged, to national judicial authorities could harm his professional reputation and standing in professional circles.

124 It follows that the applicant has not established the existence of a sufficiently direct causal link between the forwarding of the information by OLAF to the Belgian judicial authorities pursuant to Article 10(2) of Regulation No 1073/1999 and the damage claimed.

125 The condition requiring a causal link between the damage alleged and OLAF's conduct in order for the Community to incur non-contractual liability not having been satisfied in this case, the action for damages relating to OLAF's 'complaint' must be dismissed without it being necessary to examine the other conditions governing that liability.

126 Second, as regards the application for damages to make good the damage allegedly resulting from OLAF's press releases, the applicant refers to the draft recommendation of the Ombudsman of 10 June 2003 and the latter's recommendation of 20 November 2003, holding that there had been maladministration, and infers that the press release of 27 March 2002 constitutes 'as such', an 'unlawful administrative act' and that the press release of 30 September 2003 represents a new instance of maladministration, which, by reiterating the allegations made in the earlier press release, also infringes the principle of proportionality.

127 In that regard, first, the principle of sound administration, which is the only principle alleged to have been breached in this context, does not, in itself, confer rights upon individuals (Case T-196/99 *Area Cova and Others* v *Council and Commission* [2001] ECR II-3597, paragraph 43), except where it constitutes the expression of specific rights such as the right to have affairs handled impartially, fairly and within a reasonable time, the right to be heard, the right to have access to files, or the obligation to give reasons for decisions, for the purposes of Article 41 of the Charter of fundamental rights of the European Union, proclaimed on 7 December 2000 in Nice (OJ 2000 C 364, p. 1), which is not the case here.

128 For the sake of completeness, the classification as an 'act of maladministration' by the Ombudsman does not mean, in itself, that OLAF's conduct constitutes a sufficiently serious breach of a rule of law within the meaning of the case-law. In the institution of the Ombudsman, the Treaty has given citizens of the Union, and more particularly officials and other servants of the Community, an alternative remedy to that of an action before the Community Courts in order to protect their interests. That alternative non-judicial remedy meets specific criteria and does not necessarily have the same objective as judicial proceedings (Case T-209/00 *Lamberts v Ombudsman* [2002] ECR II-2203, paragraph 65).

129 Also, in view of the autonomy granted to OLAF by Regulation No 1073/1999 and of the general objective of press releases of providing information to the public, OLAF enjoys discretion as regards the appropriateness and content of its press releases in respect of its investigatory activities.

130 In addition, it is apparent from an examination of the wording of the press release of 27 March 2002 that the only passage which could possibly be deemed prejudicial is worded as follows:

'According to information received by [OLAF], a journalist has received a number of documents relating to the so-called "van Buitenen affair". It is not inconceivable that

payment may have been made to somebody within OLAF (or possibly another EU institution) for these documents. ...'

131 Even supposing that those with knowledge of the case could make the connection with the applicant, those allegations, formulated in a hypothetical way, without indicating the applicant's name or the name of the magazine for which he worked, do not constitute a manifest and grave disregard, by OLAF, of the limits of its discretion. Furthermore, it was *Stern* itself which, in its press release of 28 March 2002, cited the applicant's name. The applicant's identity, in relation to OLAF's investigations, was thus not revealed by OLAF but by his employer *Stern* magazine. Therefore, the damage that the applicant allegedly suffered to his professional reputation and standing in professional circles, in respect of that publication, cannot be attributed to OLAF. Consequently, the press release in dispute does not amount to a sufficiently serious breach of Community law by OLAF.

132 For its part, OLAF's press release of 30 September 2003, which was published following the European Ombudsman's draft recommendation of 18 June 2003, seeks to tone down the allegations contained in the press release of 27 March 2002. It thus states:

'... OLAF's enquiries have not yet been completed, but to date, [OLAF] has not obtained proof that such a payment was made.' Therefore, that press release does not constitute a sufficiently serious breach of a rule of law any more than the previous one.

133 The same conclusion must be drawn in relation to the statement of the OLAF spokesman which was cited in the *European Voice* magazine of 4 April 2002, according to which OLAF 'had prima facie evidence that a payment might have been

made', since the cautiousness of the words used does not establish the existence of a sufficiently serious breach of Community law. As for the statement of the Director of OLAF on Stern TV on 24 March 2004, the applicant does not provide any means of verifying its content.

134 Moreover, the applicant does not develop any legal arguments in his application which make it possible to assess how exactly the publication of the press releases and other public statements by OLAF could be classified as a 'sufficiently serious breach' of a rule of law.

135 It follows from the above that the applicant has failed to show the existence of a sufficiently serious breach of Community law attributable to OLAF capable of causing him harm. Therefore, his claim for damages in relation to the press releases and OLAF's other public statements must be dismissed without its being necessary to assess whether the applicant has actually suffered the damage alleged and the extent of that damage.

136 Consequently, the action for damages must be dismissed in its entirety.

The request for the production of documents

137 The applicant requests the Court to order the Commission to provide a complete copy of the 'complaints' forwarded by OLAF to the German and Belgian judicial authorities.

138 In that regard, during the proceedings before the Court, the Commission produced the letters addressed to the German and Belgian judicial authorities on 11 February 2004, in an unexpurgated version.

139 Therefore, there is no need to adjudicate on that request, which has become devoid of purpose.

140 It follows from all the foregoing that the action must be dismissed in its entirety.

Costs

141 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, and the Commission has applied for costs, the applicant must pay the costs incurred by the Commission, including those relating to the interlocutory proceedings, in addition to its own costs.

142 Under the third subparagraph of Article 87(4) of the Rules of Procedure, the IFJ, which has intervened in these proceedings, is to bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. **Dismisses the action;**

2. **Declares it unnecessary to give judgment on the request for the production of documents;**

3. **Orders the applicant to pay his own costs and the costs incurred by the Commission, including those relating to the interlocutory proceedings;**

4. **Orders the International Federation of Journalists to bear its own costs.**

Legal Lindh Vadapalas

Delivered in open court in Luxembourg on 4 October 2006.

E. Coulon H. Legal

Registrar President