

# The ice has been broken: access to OLAF files for “persons concerned”

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Almost under the radar, the European Court of Justice (*ECJ*) performed a U-turn in European case law with its ruling of 30 November 2023 (*C-787/22 P*) on access to OLAF files. In the appeal judgement, the Court confirmed that “persons concerned” should also have the opportunity to access documents in relation to an OLAF investigation.

## Who or rather what is OLAF?

But which authority - and whose files - are we talking about? The catchy name is not a reference to a popular sidekick from an equally well-known Disney movie, but the name of the European Anti-Fraud Office. “OLAF” is the acronym of the French name “*office européen de lutte antifraude*”. This means that OLAF, which investigates cases of fraud against the EU budget and deals with serious misconduct within the institutions and bodies of the Union, is an office of the European Commission based in Brussels.

BLOMSTEIN has already provided detailed information on its [organisational structure](#), the [course of an investigation](#) and [legal protection](#) against OLAF investigations and its reports.

## From biodiesel to access rights

The judgment at hand deals with the appeal against the judgment of the European General Court (*EGC*) of 19 October 2022 (*T-81/21*) by the Bosnian company “Sistem Ecologica”. The background to the first decision was OLAF’s investigation into suspected fraud involving biodiesel imported into the EU. Sistem Ecologica was accused of not having imported biodiesel, which originate from used cooking oil from Bosnia and Herzegovina but soy-based biodiesel from the US. Therefore, the import should have been subject to conventional, anti-dumping and countervailing duties. Within this investigation, OLAF refused to grant Sistem Ecologica’s request to access certain documents from the investigation files. OLAF argued that the actual relevant Regulation (EU) No. 883/2013 (*Reg 883/2013*) did not grant any right of access when the request was made by a “person concerned” during an investigation.

In this first judgement, the EGC confirmed OLAF’s decision. It also emphasized, that the outcome would not be different taking *Dragnea v Commission* (*C-351/20 P*) of 13 January 2022 into consideration. In this beforementioned case, the ECJ was concerned with the

access to OLAF files and declared it to be a procedural error that the EGC had dismissed the action for annulment as generally inadmissible in the context of OLAF's refusal to grant access. However, in *Dragnea* the access had not been requested by a "person concerned" during an investigation, which led the EGC to dismiss the applicability of the ECJ's decision in the current case.

## **The ECJ strengthens the rights of "persons concerned"**

In the appeal judgement, the ECJ states that OLAF is unquestionably competent to decide on the access to documents in the investigation files – any request must therefore be addressed to OLAF.

Decisive and groundbreaking is the Court's confirmation that this interpretation must also apply to "persons concerned" within the meaning of Reg 883/2013, as neither the regulation itself nor the frequently cited decision *Dragnea v Commission* (C-351/20 P) make a distinction between different applicants. The court emphasises verbatim: "It would in fact be paradoxical if, unlike any other person, a person concerned, within the meaning of that provision [Reg. 883/2013], could not benefit from a possible right of access to documents [...]."

## **And what does this decision mean in practice?**

Overall, the decision should be seen as a positive signal for those affected by an OLAF investigation. Now, they also have the legally confirmed opportunity to request access to certain documents during an investigation. However, one has to keep in mind that OLAF could still refuse to grant access on the grounds of otherwise undermining the purpose of the investigation – but not without proper reasoning. The clarification that these persons are not excluded from accessing OLAF files due to their status as a "person concerned" within the meaning of Reg 883/2013 strengthens their rights and increases the overall transparency of OLAF investigations.

BLOMSTEIN advises you on all questions relating to OLAF investigations and compliance. If you require legal support or have any other questions on this topic, [Dr Roland M. Stein](#), [Dr. Leonard von Rummel](#) and [Dr Laura Louca](#) will be more than happy to assist you at any time.