



Reports of Cases

OPINION OF ADVOCATE GENERAL
SAUGMANDSGAARD ØE
delivered on 27 September 2018¹

Joined Cases C-183/17 P and C-184/17 P

International Management Group

v

European Commission

(Appeal — Development cooperation — EU budget implementation by indirect management — Budget implementation task entrusted to an entity — Replacement by another entity of the entity chosen — Action for annulment — Admissibility — Challengeable acts — Doubts regarding the status as an international organisation of the entity which had been initially chosen — Exercise of the rights of defence before the adoption of the acts adversely affecting the person concerned — Confidentiality of OLAF investigations)

I. Introduction

1. Joined Cases C-183/17 P and C-184/17 P concern the appeals brought by International Management Group ('IMG') against the judgments of the General Court of the European Union of 2 February 2017, *International Management Group v Commission* (T-29/15)² and *IMG v Commission* (T-381/15)³ respectively.

2. Those two cases fall within the same factual context, that is to say the amendment of the Annual Action Programme in favour of Myanmar/Burma which removed IMG from the implementation of that programme by indirect management because of doubts regarding its status as an international organisation following an investigation conducted by the European Anti-Fraud Office (OLAF).

3. By the judgment in Case T-29/15, the General Court dismissed the action brought by IMG seeking the annulment of Implementing Decision C(2014) 9787 final adopted on 16 December 2014 by the European Commission.⁴ By the judgment in Case T-381/15, it dismissed the other action brought by IMG seeking, on the one hand, the annulment of a letter of 8 May 2015 by which the Commission, inter alia, informed IMG of its decision to refuse to allow IMG to conclude new agreements by the indirect management method applicable to international organisations⁵ and, on the other, compensation in respect of the harm which it allegedly suffered as a result of the measures taken.

¹ Original language: French.

² Judgment not published, EU:T:2017:56 ('the judgment in Case T-29/15' or 'the judgment under appeal').

³ Judgment not published, EU:T:2017:57 ('the judgment in Case T-381/15' or 'the judgment under appeal' and, taken together with the judgment in Case T-29/15, 'the judgments under appeal').

⁴ Decision amending Commission Implementing Decision C(2013) 7682 final on the Annual Action Programme 2013 in favour of Myanmar/Burma to be financed from the general budget of the European Union ('the decision of 16 December 2014' or the 'contested decision').

⁵ Referred to below as 'the letter of 8 May 2015' or 'the letter at issue'.

4. Moreover, the present cases concern the cross-appeals brought by the Commission seeking, in particular, the setting aside of the aforementioned judgments, in so far as the General Court, wrongly according to the Commission, found the actions brought at first instance by IMG to be admissible.

5. In accordance with the Court's request, this Opinion will be limited to an analysis of the principal new points of law raised in the present case, namely those raised, in particular, by the cross-appeals, by the second grounds of appeal raised in the present cases, and by the fourth ground of appeal raised in Case C-183/17 P and the third ground of appeal raised in Case C-184/17 P.

6. In that regard, before ruling on the substance, it will be necessary to examine whether acts such as those which have been the subject of an action for annulment constitute challengeable acts. Next, in order to assess the merits of the judgments, it will be necessary to examine the possible implications in the present case of the concept of 'international organisation' within the meaning of the relevant provisions of the EU Financial Regulation.⁶ Lastly, it will be necessary to consider the scope of the right of a person to submit his defence before any decision is taken concerning him and, more specifically, how that right should be structured in order to protect the confidentiality of OLAF investigations.

7. I will state at the outset that, for the reasons set out below, I believe that the Court should not only reject the pleas of inadmissibility raised by the Commission, but also the two groups of grounds of appeal raised by IMG which will be examined in this Opinion.

II. Background to the disputes

8. The background to the disputes has been set out in detail in the judgments under appeal, respectively, in the two present cases, to which reference is made in that regard.⁷ The facts essential to and necessary for an understanding of this Opinion may be summarised as follows.

9. On 7 November 2013, the Commission adopted Implementing Decision C(2013) 7682 final on the Annual Action Programme 2013 in favour of Myanmar/Burma to be financed from the general budget of the European Union.⁸ That decision provided, in particular in Annex 2 thereto,⁹ for the budget implementation tasks for that project to be entrusted to IMG which, according to that decision, may be regarded as an international organisation.¹⁰

10. On 17 February 2014, OLAF informed the Commission that it had opened an investigation relating to the legal status of IMG.

6 It being specified that the present appeals concern Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1), as amended by Regulation (EU, Euratom) No 1081/2010 of the European Parliament and of the Council of 24 November 2010 (OJ 2010 L 311, p. 9) ('Regulation No 1605/2002'); Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of [Regulation No 1605/2002] (OJ 2002 L 357, p. 1), as amended by Commission Regulation (EC, Euratom) No 478/2007 of 23 April 2007 (OJ 2007 L 111, p. 13) ('Regulation No 2342/2002') and, taken together with Regulation No 1605/2002, 'the 2002 Financial Regulation'; Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing [Regulation No 1605/2002] (OJ 2012 L 298, p. 1), and Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of [Regulation No 966/2012] (OJ 2012 L 362, p. 1) (Regulation No 966/2012 taken together with Regulation No 1268/2012, 'the 2012 Financial Regulation').

7 See paragraphs 1 to 15 of the judgment in Case T-29/15 and paragraphs 1 to 17 of the judgment in Case T-381/15.

8 Referred to below as 'the original implementing decision'.

9 Annex 2 describes the second action included in the annual action programme approved by that decision, stating that the action consists in a trade development programme entirely financed by an EU contribution and which is to be implemented through joint management with an international organisation.

10 See point 8.3.1 and footnote 2 of that annex.

11. On 26 February 2014, the Commission adopted precautionary measures on the basis of provisions concerning investigations conducted by OLAF,¹¹ justifying those measures by the existence of doubts regarding the status of IMG as an international organisation following objections from several EU Member States. By letter of 25 April 2014, it informed IMG of the adoption of those measures and the reasons behind them.

12. On 15 December 2014, the Commission received the final report of the OLAF investigation,¹² in which OLAF considered, in essence, that IMG could not be regarded as an ‘international organisation’ within the meaning of Regulation No 1605/2002.

13. On 16 December 2014, the Commission adopted a decision by which it designated an entity other than IMG to implement, under indirect management, the trade development programme provided for by the original implementing decision as amended.¹³ That decision is the subject of the appeal examined in Case C-183/17 P.

14. On 16 January 2015, the Commission’s Legal Service produced a note containing a legal analysis of the final OLAF report.

15. By letter of 8 May 2015, the Commission informed IMG of the action it intended to take on the different recommendations set out in the final OLAF report and, in particular, of the fact that its services would not conclude any new agreements with IMG pursuant to the special procedure laid down in Regulation No 966/2012 for international organisations until there is absolute certainty with regard to the legal status of IMG. That letter is the subject of the appeal examined in Case C-184/17 P.

III. The proceedings before the General Court and the judgments under appeal

A. Proceedings and judgment in Case T-29/15

16. By application lodged at the General Court Registry on 21 January 2015, IMG brought an action, registered under the number T-29/15, seeking the annulment of the decision of 16 December 2014 on the basis of Article 263 TFEU.

17. By document lodged at the Court Registry on 24 March 2015, the Commission raised an objection of inadmissibility. By order of the General Court of 30 June 2015, the decision on that objection and the decision on costs were reserved for the final judgment.

18. On 13 January 2016, IMG submitted an application requesting the General Court to order the Commission to produce the final OLAF report and the opinion of the Commission’s Legal Service concerning that report.¹⁴

11 Measures taken under Article 7(6) of Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by OLAF and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ 2013 L 248, p. 1).

12 Referred to below as ‘the final OLAF report’, summarised in paragraph 7 of the judgment in Case T-381/15.

13 Pursuant to the single article of the decision of 16 December 2014, the annex thereto replaces Annex 2 to the original implementing decision (see, in particular, point 4.3.1 of the new annex which refers to the entity substituted for IMG, namely Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH (‘GIZ’)).

14 The proceedings before the General Court are set out in detail in paragraphs 16 to 25 of the judgment in Case T-29/15.

19. On 2 February 2017, the General Court delivered its judgment in Case T-29/15. First of all, it found the two pleas of inadmissibility raised by the Commission to be unfounded on the grounds that the decision of 16 December 2014 produced binding legal effects vis-à-vis IMG and did not constitute a measure which merely confirms the precautionary measures of 26 February 2014, with the result that that decision constituted a challengeable act and, accordingly, the action brought by IMG was admissible.¹⁵

20. Next, ruling on the substance of the case, the General Court found the seven pleas in law raised by IMG¹⁶ to be unfounded and its action for annulment therefore had to be rejected.¹⁷ In addition, it rejected IMG's request for the production of documents and ordered IMG to pay the costs.¹⁸

B. Proceedings and judgment in Case T-381/15

21. By application lodged at the General Court Registry on 14 July 2015, IMG brought an action, registered under the number T-381/15, seeking the annulment of the letter of 8 May 2015, on the basis of Article 263 TFEU, and compensation in respect of the harm which it allegedly suffered as a result of the adoption of the measures envisaged in that letter, on the basis of Article 268 TFEU.

22. By document lodged at the Court Registry on 25 September 2015, the Commission raised an objection of inadmissibility. By order of the General Court of 29 January 2016, the decision on that objection and the decision on costs were reserved for the final judgment.

23. During the course of the written and oral procedure, the Commission requested that two documents submitted by IMG, namely the final OLAF report and the opinion of the Commission's Legal Service containing a legal analysis of that report, be withdrawn from the case file.¹⁹

24. On 2 February 2017, the General Court delivered its judgment in Case T-381/15. First of all, it ruled on the two pleas of inadmissibility raised by the Commission, to the effect that the action for annulment was admissible in so far as it concerned the measures envisaged in the letter at issue by which the Commission decided that IMG could no longer seek to implement programmes by indirect management as an 'international organisation' so long as doubts existed regarding its legal status and, as to the remainder, that either that action was inadmissible or there was no longer any legal interest in bringing proceedings.²⁰

25. Next, ruling on the substance of the case, the General Court found the eight pleas in law raised by IMG²¹ to be unfounded and its action for annulment therefore had to be rejected.²² In addition, it rejected IMG's application for damages and ordered IMG to pay the costs.²³

26. Lastly, the General Court upheld the Commission's request to withdraw the opinion of the Commission's Legal Service from the file, but rejected its request to withdraw the final OLAF report from the file.²⁴

¹⁵ See paragraphs 28 to 78 of the judgment in Case T-29/15.

¹⁶ Pleas in law set out in paragraph 26 of the judgment in Case T-29/15.

¹⁷ See paragraphs 79 to 169 of the judgment in Case T-29/15.

¹⁸ See paragraphs 170 to 175 of the judgment in Case T-29/15.

¹⁹ The proceedings before the General Court are set out in detail in paragraphs 18 to 25 of the judgment in Case T-381/15.

²⁰ See paragraphs 29 to 75 of the judgment in Case T-381/15.

²¹ Pleas in law set out in paragraph 76 of the judgment in Case T-381/15.

²² See paragraphs 76 to 160 of the judgment in Case T-381/15.

²³ See paragraphs 161 to 173 and 185 of the judgment in Case T-381/15.

²⁴ See paragraphs 174 to 184 of the judgment in Case T-381/15.

IV. Proceedings before the Court of Justice and forms of order sought

27. By applications lodged at the Registry of the Court of Justice on 11 April 2017, IMG brought two appeals, registered under the numbers C-183/17 P and C-184/17 P, by which, respectively, it requested the Court to:

- set aside the judgment in Case T-29/15 and give final judgment in the matter, by annulling the decision of 16 December 2014, and order the Commission to pay the costs;
- set aside the judgment in Case T-381/15 and give final judgment in the matter by, on the one hand, annulling the letter of 8 May 2015 and, on the other, ordering the Commission to pay compensation in respect of the harm allegedly suffered as a result of the adoption of the measures set out in that letter, and order the Commission to pay all of the costs in both sets of proceedings.

28. In its response and rejoinder in Cases C-183/17 P and C-184/17 P, the Commission asked the Court to dismiss both appeals and to order IMG to pay all of the costs.

29. Moreover, the Commission brought cross-appeals in those two cases, by which it asked the Court, first, to set aside the judgments in Cases T-29/15 and T-381/15, in so far as they rejected the pleas of inadmissibility raised at first instance, second, to give final judgment in the matter by finding the actions for annulment raised at first instance by IMG to be inadmissible and, third, to order IMG to pay the costs. In addition, in Case C-184/17 P, the Commission asked the Court to remove the final OLAF report from the case file and to delete any references to that report and its contents.²⁵

30. By decision of 20 March 2018, Cases C-183/17 P and C-184/17 P were joined for the purposes of the oral procedure and of the judgment.

31. At the hearing on 13 June 2018, oral argument was presented by IMG and by the Commission.

V. Analysis

32. In support of its appeals seeking, respectively, to have the judgments in Case T-29/15 and Case T-381/15 set aside, IMG raises four grounds of appeal in Case C-183/17 P²⁶ and five grounds of appeal in Case C-184/17 P²⁷, which overlap in part. In addition, in Case C-183/17 P, IMG challenges the decision of the General Court to reject its request for production of the final OLAF report. In Case C-184/17 P, it challenges the rejection of its application for damages and the decision of the General Court declaring the opinion of the Commission's Legal Service concerning that report inadmissible and not to include it in the case file.

²⁵ However, the last request is, in my opinion, devoid of purpose, in the light of the information provided by the parties at the hearing (see point 34 of this Opinion).

²⁶ Grounds of appeal summarised by IMG as follows: '1. Violation of the duty to state reasons — Violation of the duty to state reasons of the judge — Distortion of the file; 2. Violation of Regulation [No 1605/2002] and of Regulation [No 966/2012] — Violation of Regulation [No 2342/2002] and of Regulation [No 1268/2012] — Violation of the duty of the judge [to] state reasons — Distortion of the file; 3. Infringement of the principle of sound financial management — Infringement of the duty to state reasons — Infringement of the duty of the judge to state reasons — Infringement of Regulation [No 966/2012] (Articles 61(1) and 60(2)); 4. Infringement of the principle of good administration — Infringement of the right to be heard'.

²⁷ Grounds of appeal summarised by IMG as follows: '1. Infringement of the Rules of Procedure of the General Court, Practice rules for the implementation of the Rules of Procedure of the General Court and the rights of the defence — Infringement of the duty of the defendant to state reasons — Infringement of the duty of the first judge to state reasons — Distortion of the file; 2. Infringement of Regulation [No 966/2012] and of Regulation [No 1268/2012] — Infringement of the manifest error of assessment — Infringement of the duty of the first judge to state reasons — Distortion of the file; 3. Violation of the rights of the defence — Infringement of the duty of the first judge to state reasons — Distortion of the file; 4. Infringement of the principle of proportionality — Infringement of the duty of the first judge to state reasons — Distortion of the file; 5. Infringement of the principle of legal certainty — Infringement of the duty of the first judge to state reasons — Breach of Article 61 of Regulation [No 966/2012]'.

33. As for the Commission, in its cross-appeals brought in both cases, it complains that the General Court found that the acts which are the subject of actions for annulment brought by IMG constitute challengeable acts. Moreover, in Case C-184/17 P, it criticises the General Court, in the alternative, for not having withdrawn the final OLAF report from the case file.

34. In the latter regard, I note that the claims made by both parties relating to that report now appear to be devoid of purpose, in so far as it is apparent from the Commission's oral submissions that, a few days before the hearing, it spontaneously sent the report in question and the annexes thereto to IMG, which was confirmed by IMG at the hearing.

35. Moreover, I would point out that only the pleas of inadmissibility raised in the cross-appeals, in addition to certain aspects of the second grounds of appeal raised in both cases and the fourth ground of appeal raised in Case C-183/17 P and the third ground of appeal raised in Case C-184/17 P, will be the subject of this targeted Opinion concerning the main points of law which will be referred to below.²⁸

A. The challengeable nature of the acts at issue in the actions brought by IMG (cross-appeals in Joined Cases C-183/17 P and C-184/17 P)

36. The cross-appeals brought by the Commission raise procedural questions relating, in particular, to the admissibility of the actions brought before the General Court by IMG, which must be addressed at the outset before examining the substantive issues raised by the appeals brought by IMG.

37. As set out in its cross-appeals in Cases C-183/17 P and C-184/17 P,²⁹ the Commission seeks the annulment of the judgments under appeal, on the ground that the General Court committed errors of law by finding that the decision of 16 December 2014 and the letter of 8 May 2015, respectively, constituted challengeable acts within the meaning of Article 263 TFEU and that, accordingly, the actions for annulment brought by IMG against those acts were admissible.

38. In reply, IMG claims that the General Court's decision to reject the pleas of inadmissibility is well founded. I share that view for the following reasons.

1. The binding legal effects produced by the acts in question

39. In support of its claims, in the first place, the Commission criticises the General Court for finding that the decision of 16 December 2014 and the letter of 8 May 2015 produced binding legal effects affecting the interests of IMG, whereas, according to the Commission, that was not the case.

40. I would point out that, in accordance with the settled case-law of the Court of Justice and the General Court, any measures adopted by EU institutions the legal effects of which are binding on, and capable of affecting the interests of, the third parties concerned by bringing about a distinct change in their legal position may be the subject of an action for annulment on the basis of Article 263 TFEU. In order to determine whether an act produces such effects, importance must be given, in particular, to the purpose, contents and substance of that act, taking into account the factual and legal context in which it was adopted, it being observed that the form in which an act or decision is adopted is, in principle, irrelevant in that regard.³⁰

²⁸ See also points 5 and 6 of this Opinion.

²⁹ I note that it is not disputed that the cross-appeals comply with the requirements set out in Article 178 of the Rules of Procedure of the Court of Justice, in particular the second paragraph thereof.

³⁰ See, inter alia, judgment of 19 January 2017, *Commission v Total and Elf Aquitaine* (C-351/15 P, EU:C:2017:27, paragraphs 35 to 36); order of 11 October 2017, *Guardian Glass España, Central Vidriera v Commission* (T-170/16, EU:T:2017:722, paragraph 85 et seq.); and judgment of 8 May 2018, *Esso Raffinage v ECHA* (T-283/15, EU:T:2018:263, paragraphs 49 to 51).

41. In Case C-183/17 P relating to the decision of 16 December 2014, the Commission claims, in essence, that an entity to which it entrusted budget implementation tasks, such as IMG, would not have the right to challenge an act, such as the decision in question, which henceforth entrusts those tasks to another entity, in the present case GIZ.³¹

42. According to the Commission, the General Court committed an error of law by finding that the amendment made by the decision of 16 December 2014 had the legal effect of excluding the possibility provided for by the original implementing decision for IMG to conclude a delegation agreement. First, it submits that it follows from the wording of Article 84 of Regulation No 966/2012³² that a financing decision adopted on that basis, such as the decision of 16 December 2014, is, by its nature, a purely internal act preceding the possible budgetary and legal commitment of expenditure³³ and therefore produces no legal effects vis-à-vis third parties. Secondly, it claims that the mere mention of IMG's name in the original implementing decision did not confer any rights on IMG to conclude a delegation agreement,³⁴ with the result that the amendment made to that act, resulting from the substitution of GIZ as the entity designated to conclude such an agreement, could have produced only factual, not legal, effects vis-à-vis IMG's position. Thirdly, it maintains that the General Court wrongly applied case-law concerning public procurement to the present case, whereas the mechanism of indirect management provided for by the EU Financial Regulation is very specific.

43. However, I consider that the various grounds for complaint raised by the Commission are unfounded in part and inadmissible in part. On the one hand, the General Court found — correctly in my view — that the decision of 16 December 2014 cannot be considered to be an internal act,³⁵ since the specific purpose of that decision is to exclude the possibility for IMG to conclude a delegation agreement with the Commission pursuant to the provisions of Regulation No 966/2012,³⁶ and I consider that the case-law relied on by the Commission does not lead to a different conclusion.³⁷ On the other hand, even though it is common ground that IMG indeed never had an acquired right giving effect to that possibility, the fact remains that the contested decision had the legal effect of clearly and definitively excluding that possibility for IMG, since the substitution of GIZ for IMG caused the latter to lose its status as the entity entrusted, where appropriate, with budget

31 The Commission expressly refers here to paragraphs 46, 50 to 52, 57 and 59 to 63 of the judgment in Case T-29/15.

32 As set out in paragraphs 1 to 3 of Article 84, entitled 'Financing decisions':

'1. Every item of expenditure shall be committed ...

2. ... The commitment of expenditure shall be preceded by a financing decision adopted by the institution ...

3. The financing decision referred to in paragraph 2 shall specify the objective pursued, the expected results, the method of implementation and its total amount. It shall also contain a description of the actions to be financed and an indication of the amount allocated to each action, and an indicative implementation timetable.

In the case of indirect management, [it] shall also specify the entity ... entrusted pursuant to point (c) of Article 58(1), the criteria used to select the entity ... and the tasks entrusted to that entity ...'

33 According to the Commission, the legal commitment of expenditure corresponds to 'contracts, agreements, delegations, etc.' and the authorising officer enjoys a measure of discretion in this regard.

34 The Commission points out that Article 3 of the original implementing decision, unchanged by the contested decision, states that budget implementation tasks under joint management 'may' and not 'will' be entrusted to the entity designated in the annexes.

35 Namely, in accordance with settled case-law, an act having legal effects only within the internal sphere of the administration and not creating any right or obligation for the benefit of third parties (see, inter alia, judgments of 6 April 2000, *Spain v Commission*, C-443/97, EU:C:2000:190, paragraph 28, and of 22 April 2015, *Planet v Commission*, T-320/09, EU:T:2015:223, paragraph 63).

36 As stated in paragraph 50 of the judgment in Case T-29/15, 'the fact that it is not certain that the authorising officer will conclude a delegation agreement with GIZ has no bearing on the fact that that agreement could, in all events, be concluded only with GIZ, and not with [IMG]', which is no longer eligible following the contested decision.

37 In that regard, the Commission relies, principally, on the judgment of 25 February 1988, *Les Verts v Parliament* (190/84, EU:C:1988:94, paragraphs 7 and 8), although that judgment predates Regulation No 966/2012 and does not concern a decision of the same nature as that at issue in the present case.

implementation tasks.³⁸ Lastly, with regard to the last argument referred to above, alleging misapplication of case-law concerning, in particular public procurement, I take the view that it is sufficient to find that it has not been substantiated by the Commission to the requisite legal standard³⁹ to be taken into account by the Court.⁴⁰

44. In addition, *in Case C-184/17 P relating to the letter of 8 May 2015*, the Commission claims, in essence, that a delegated entity, such as IMG, is not entitled to challenge an act, such as that letter, by which the Commission informed IMG that it would not entrust IMG with budget implementation tasks until there was absolute certainty with regard to IMG's legal status.⁴¹

45. According to the Commission, the letter at issue produced purely factual, not legal, and only potential, not actual, effects vis-à-vis IMG. It claims that, in that letter, it merely stated its intention not to conclude agreements with IMG for indirect management applicable to international organisations as provided for in Regulation No 966/2012,⁴² so long as doubts existed regarding the legal status of IMG. It adds that the latter was not entitled to conclude agreements, which would have been dependent on the wishes of the Commission, let alone entitled to conclude agreements in accordance with the specific conditions in question, which are intended only for certain organisations.

46. However, in line with the analysis discussed above with regard to the decision of 16 December 2014, I consider that the letter of 8 May 2015 produced binding legal effects — and not merely factual or potential — vis-à-vis IMG's position, since the Commission stated, in that letter, its current intention not to conclude any new delegation agreements with IMG;⁴³ an act of a decision-making nature which immediately and definitively excluded any possibility of IMG, as an international organisation, being entrusted with budget implementation tasks until further notice.

47. Consequently, I take the view that the General Court did not commit any errors of law, in the two judgments under appeal, by finding that the decision of 16 December 2014 and the letter of 8 May 2015, respectively, produced binding legal effects capable of significantly affecting the interests of IMG and that, therefore, the two acts at issue in the actions brought by IMG were indeed acts challengeable on the basis of Article 263 TFEU.

38 I would point out that the original implementing decision designated IMG as the entity entrusted with budget implementation tasks 'subject to the conclusion of the relevant [delegation] agreement' (see paragraph 4 of the judgment in Case T-29/15). IMG rightly points out that, although not conferring any right on it to conclude such an agreement, that decision nevertheless had the legal effect that, in the event that the Commission subsequently wished to conclude such an agreement, it could have done so only with IMG, an effect that was terminated by the decision of 16 December 2014.

39 I will simply note that in the various paragraphs of the judgment under appeal which are expressly referred to by the Commission in the first part of its cross-appeal in Case C-183/17 P (namely paragraphs 46, 50 to 52, 57 and 59 to 63 of the judgment in Case T-29/15), the General Court referred only to one decision (interim order of 8 January 2014, *Stichting Sona and Nao v Commission*, T-505/13 R, not published, EU:T:2014:1), which was also relied on by the Commission before the General Court and appears to me to be irrelevant to the present case, for the reasons correctly set out by that Court (see paragraphs 61 to 63 of that judgment). With regard to the passages of the judgments referred to in paragraph 56 (not referred to) of the judgment in Case T-29/15, they reflect established case-law of general application (referred to in point 40 of this Opinion), which clearly goes beyond the field of public procurement.

40 It has repeatedly been held that an appeal must indicate precisely the contested elements of the judgment under appeal and also the legal arguments specifically advanced in support of the appeal, so as to be the subject of a legal assessment which would allow the Court of Justice to exercise its function and to carry out its review of legality, failing which the appeal or the ground of appeal in question will be declared inadmissible (in particular, judgment of 1 February 2018, *Panalpina World Transport (Holding) and Others v Commission*, C-271/16 P, not published, EU:C:2018:59, paragraph 17).

41 The Commission expressly refers to paragraphs 44 to 48 of the judgment in Case T-381/15.

42 More specifically, pursuant to Article 58(1)(c)(ii) of that regulation, which provides that 'the Commission shall implement the budget ... indirectly ("indirect management") ... by entrusting budget implementation tasks to ... international organisations and their agencies'.

43 So far as concerns the precise content of the letter at issue, see paragraphs 10 to 16 and 44 of the judgment in Case T-381/15, and especially those last two paragraphs with regard to the matter at issue in the cross-appeal brought by the Commission in the present case C-184/17 P.

2. Non-confirmatory nature of the acts at issue

48. In the second place, in Case C-183/17 P only, the Commission moreover complains that the General Court rejected the other plea of inadmissibility which it raised before that Court. In that regard, it criticises the General Court for having considered that the contested decision of 16 December 2014 did not constitute a measure which merely confirms the letter of 25 April 2014 by which the Commission informed IMG of the adoption of the precautionary measures of 26 February 2014. As for IMG, it considers that the General Court was right to reject that plea of inadmissibility. That is also my view.

49. *First*, according to the Commission, the General Court was wrong to consider that a ‘new factor’ had emerged, in so far as the decision of 16 December 2014 ‘definitively’ excluded the possibility for IMG of concluding a delegation agreement, whereas the letter of 25 April 2014 had ‘temporarily’ or ‘provisionally’ excluded that possibility.⁴⁴

50. In that regard, I would point out that it is apparent from the settled case-law, on the one hand, that an action for annulment brought against a measure that merely confirms another decision which has become final is inadmissible⁴⁵ and, on the other, that this is the case when the act at issue contains no new elements of fact or points of law in relation to the earlier decision.⁴⁶ Indeed, in those circumstances, the act in question is not intended to produce binding legal effects which are independent of those produced by the decision it confirms.⁴⁷

51. In the present case, it may, at first sight, contradict the judgment under appeal, as the Commission suggests, that the contested decision was adopted in the same factual circumstances as the precautionary measures adopted earlier, namely because of the doubts regarding the status of IMG as an international organisation, with the result that the contested decision contains no new elements.⁴⁸ However, I take the view that it is indisputable that a series of events, constituting new information, occurred during the intervening period between the acts in question and, in particular, the receipt by the Commission of the final OLAF report on 15 December 2014.⁴⁹

52. Above all, I consider that the General Court rightly found those precautionary measures to be independent of the decision of 16 December 2014 and this is so, in my view, in the light of both their legal nature and consequences. As pointed out by that Court, the precautionary measures had the effect of suspending, temporarily,⁵⁰ the possibility for IMG of concluding a delegation agreement with the Commission, whereas the contested decision had the effect of excluding, definitively, that

⁴⁴ In that regard, the Commission expressly refers to paragraphs 70 to 73 of the judgment in Case T-29/15.

⁴⁵ An action against a confirmatory decision is inadmissible only if the confirmed decision has become final because no action has been brought within the prescribed period (see, in particular, judgment of 31 May 2017, *DEI v Commission*, C-228/16 P, EU:C:2017:409, paragraph 35).

⁴⁶ See, inter alia, in addition to the case-law of the General Court referred to in paragraph 69 of the judgment in Case T-29/15, judgments of 15 July 2015, *Westfälische Drahtindustrie and Others v Commission* (T-393/10, EU:T:2015:515, paragraph 107), and of 13 October 2015, *Intrasoft International v Commission* (T-403/12, EU:T:2015:774, paragraphs 48 to 52); as regards the case-law of the Court of Justice, judgments of 19 January 2017, *Commission v Total and Elf Aquitaine* (C-351/15 P, EU:C:2017:27, paragraphs 37 to 49), and of 31 May 2017, *DEI v Commission* (C-228/16 P, EU:C:2017:409, paragraphs 33 and 34).

⁴⁷ See, inter alia, judgments of 19 January 2017, *Commission v Total and Elf Aquitaine* (C-351/15 P, EU:C:2017:27, paragraphs 37 to 49), and of 8 May 2018, *Esso Raffinage v ECHA* (T-283/15, EU:T:2018:263, paragraphs 50 and 81 to 83).

⁴⁸ The Commission adds that the contested decision is not the result of a ‘reconsideration’, referring to the judgment of 7 February 2001, *Inpesca v Commission* (T-186/98, EU:T:2001:42, paragraph 49). However, it seems to me that, in the case-law relied on, the General Court refers to a possible decision refusing to reconsider a decision opposed by an administration, circumstances which do not correspond to those of the present case C-183/17 P. Likewise, where, in paragraph 69 of the judgment in Case T-29/15, the General Court refers to a ‘re-examination’, citing the judgment of 22 May 2012, *Sviluppo Globale v Commission* (T-6/10, not published, EU:T:2012:245, paragraph 22), that passage must, in my opinion, be read in the light of paragraphs 21, 24, 31 and 37 of that judgment, where reference is made to such a re-examination. To that effect, see judgments of 26 October 2017, *Global Steel Wire and Others v Commission* (C-454/16 P to C-456/16 P and C-458/16 P, not published, EU:C:2017:818, paragraphs 30 to 35), and of 2 June 2016, *Moreda-Riviere Trefilerías and Others v Commission* (T-426/10 to T-429/10 and T-438/12 to T-441/12, EU:T:2016:335, paragraphs 545 to 549).

⁴⁹ See the events set out in paragraphs 7 to 13 of the judgment in Case T-29/15.

⁵⁰ With regard to the temporary and reversible nature of precautionary measures, see, by analogy, judgment of 5 October 2017, *Mabrouk v Council* (T-175/15, EU:T:2017:694, paragraph 147).

possibility by substituting GIZ for IMG.⁵¹ Accordingly, the contested decision does not merely confirm the substance of an earlier act, but presents new factors, within the meaning of the case-law referred to above, in so far as its purpose and legal scope differ from those of the precautionary measures,⁵² of which IMG was informed by the letter of 25 April 2014.

53. *Second*, the Commission claims that even though that letter and the decision of 16 December 2014 were adopted at the conclusion of different administrative procedures and have different legal bases, as noted by the General Court,⁵³ such a finding is irrelevant, since the second of those two acts is clearly a *direct and automatic consequence* of the first.

54. I do not share that view, since it appears to me that, in accordance with the assessment criteria repeatedly taken into account by both the Court of Justice and the General Court,⁵⁴ the contested decision was adopted within a non-equivalent legal framework and produced independent legal effects, in relation to the earlier measures, which cannot therefore be considered to have been merely confirmed by that decision.

55. In my opinion, the judgment under appeal in Case C-183/17 P rightly pointed out that the Commission adopted the precautionary measures in question in the context of the OLAF investigation concerning the status of IMG as an international organisation and on the basis of provisions of Regulation No 883/2013 relating to the conduct of investigations,⁵⁵ whereas the contested decision was adopted in the context of the Annual Action Programme 2013 in favour of Myanmar/Burma to be financed from the general budget of the European Union and on the basis of the provisions of Regulation No 966/2012 relating to the financial rules applicable to that budget. Next, the General Court rightly found that the decision in question contains a new factor⁵⁶ since only an action seeking the annulment of that decision would enable IMG to contest the legality of measures relating not to the OLAF investigation, under the provisions of Regulation No 883/2013, but to the possible grant of funds in the context of that action programme, in view of the provisions of Regulation No 966/2012.⁵⁷

56. Accordingly, I consider that, contrary to the Commission's submissions, the decision of 16 December 2014 does not constitute the direct and necessary extension of the precautionary measures, of which IMG was informed by the letter of 25 April 2014.⁵⁸

51 IMG points out, rightly in my opinion, that the decision of 16 December 2014 is not of a general and temporary nature, but specifically and definitively excludes it from one of the two actions provided for in the Annual Action Programme 2013 in favour of Myanmar/Burma.

52 See, to that effect, judgment of 3 April 2014, *Commission v Netherlands and ING Groep* (C-224/12 P, EU:C:2014:213, paragraphs 69 to 72), where it is pointed out, in particular, that 'an initial examination ... that required the adoption of emergency measures cannot meet the same criteria as those that must govern a final decision'.

53 In that regard, the Commission refers to paragraphs 74 to 76 of the judgment in Case T-29/15.

54 With regard to taking the specific normative framework and the independent legal effects of the act at issue into account when assessing the admissibility of an action for annulment, see, in addition to the case-law referred to in footnote 47 of this Opinion, in particular, judgments of 13 February 2014, *Hungary v Commission* (C-31/13 P, EU:C:2014:70, paragraph 57 et seq.), and of 8 December 2011, *Deutsche Post v Commission* (T-421/07, EU:T:2011:720, paragraph 49 et seq.).

55 See also footnote 11 of this Opinion.

56 In accordance with the case-law cited in connection with point 50 et seq. of this Opinion.

57 See, in particular, paragraph 76 of the judgment in Case T-29/15.

58 For the sake of completeness, I note that it seems contradictory to claim, as the Commission does, that the contested decision was the automatic consequence of the letter of 25 April 2014, even though it expressly stated that the Commission enjoys, in accordance with the original implementing decision, a measure of discretion to conclude an agreement with IMG (see the wording of that letter set out in paragraphs 8 and 85 of the judgment in Case T-29/15).

57. In the light of all the foregoing, I consider that the judgments under appeal in Cases C-183/17 P and C-184/17 P are not vitiated by an error of law, in that the General Court rejected the pleas of inadmissibility raised by the Commission at first instance. Since both the acts called into question before that Court can be challenged,⁵⁹ the actions for annulment brought by IMG against those acts should be declared admissible, as found, correctly in my view, by the General Court. I am therefore of the opinion that the cross-appeals brought by the Commission in the present cases should be dismissed.

B. The substance of the decisions adopted in relation to IMG's status in the light of the EU Financial Regulation (second grounds of appeal in Cases C-183/17 P and C-184/17 P)

58. By its second grounds of appeal brought, respectively, in Cases C-183/17 P and C-184/17 P, alleging infringement of the EU Financial Regulation, infringement of the obligation to state reasons and distortion of the file, IMG claims, in essence, that the General Court wrongly found that the Commission's decision of 16 December 2014 and its letter of 8 May 2015 were justified by the existence of doubts regarding IMG's status as an international organisation.

59. In defence, the Commission contends that those second grounds of appeal are inadmissible or, failing that, manifestly unfounded. I take the view that those grounds of appeal are admissible but unfounded in the light of the considerations set out below relating, first of all, to the arguments put forward by IMG which seem to me to be the most important,⁶⁰ followed by those which I believe to be secondary.

1. The main branch of the second grounds of appeal in Cases C-183/17 P and C-184/17 P

60. As set out in those second grounds of appeal, IMG complains above all that the General Court failed to carry out an adequate review of the irregularities it alleges the Commission committed in the two cases brought before that Court. First of all, IMG claims that the statement of reasons of the judgments under appeal is incorrect, since IMG was denied access, before the adoption of the two acts at issue, to the declarations of States gathered by OLAF.⁶¹ Next, it submits that the statement of reasons of those judgments is incomplete, in so far as the General Court does not explain why it is sufficient, in the light of the relevant provisions of the EU Financial Regulation,⁶² that five States expressed doubts regarding IMG's status as an 'international organisation' to justify denying IMG that status in the two acts at issue.⁶³

61. In defence, the Commission contends that those grounds for complaint are inadmissible at the appeal stage, on the grounds that, on the one hand, they raise questions of fact, not law, and, on the other, they are based on new arguments not raised at first instance. It adds that, on any view, in the event that those grounds for complaint are found to be admissible, they are manifestly unfounded,

⁵⁹ Namely the decision of 16 December 2014 and the letter of 8 May 2015.

⁶⁰ Given that the Commission focused its defence in its reply, rejoinder and oral submissions on the branch in question.

⁶¹ In this respect, IMG refers, more specifically, to paragraph 105 of the judgment in Case T-29/15 and paragraphs 102, 105 and 106 in the judgment in Case T-381/15.

⁶² See the instruments referred to in footnote 6 of this Opinion, given that the second ground of appeal in Case-183/17 P concerns both the 2002 Financial Regulation and the 2012 Financial Regulation, whereas the second ground of appeal in Case-184/17 P concerns only the latter. With regard to the provisions applicable *ratione temporis*, see paragraph 27 of the judgment in Case T-29/15.

⁶³ In that regard, IMG criticises, in particular, paragraphs 104 to 106, 109 and 110 of the judgment in Case T-29/15 (which appear in the section relating to the first and second pleas in law raised by it in that case) and paragraphs 102, 103 and 108 of the judgment in Case T-381/15 (which appear in the section relating to the third plea in law raised by it in that case). At the hearing, IMG argued, in particular, that the General Court was mistaken, to the extent that the fact that a State does not recognise an international organisation or declares that it is no longer a member does not call into question the existence in law of that organisation.

since the actions brought before the General Court did not concern whether or not IMG was an international organisation within the meaning of the EU Financial Regulation,⁶⁴ but sought to determine whether, given the doubts regarding its legal status, the acts at issue fell within the scope of the discretion enjoyed by the Commission for EU budget implementation.

62. I take the view, *first*, that the grounds for complaint set out in the branch in question of the second grounds of appeal are *admissible*, since, as IMG maintained in reply, the arguments put forward in that regard are neither factual nor new. On the one hand, those arguments are based on the alleged infringement of a rule of law, in so far as they challenge the legal merits, in the light of the EU Financial Regulation, of the reasoning adopted in the judgments under appeal to reject the actions brought by IMG. On the other hand, they repeat, in essence, the arguments put forward by IMG at first instance according to which the Commission failed to comply with that regulation when it adopted the acts at issue.⁶⁵

63. *Secondly*, as to the *substance*, I agree with the Commission that the argument put forward by IMG is *incorrect*, given that neither the Commission nor, therefore, the General Court has taken a position on whether IMG had the status of ‘international organisation’; a lack of classification in law which is critical in my opinion. In practice, the General Court examined whether, in the light of the existence of doubts in that regard, the Commission could lawfully decide, that is to say without committing a manifest error of assessment or an error of law, not to entrust budget implementation tasks to IMG in that capacity so long as those doubts continued to exist.⁶⁶ Accordingly, in the passages of the judgments under appeal challenged by the applicant, the General Court concentrates its analysis on whether the Commission, by considering there to be doubts regarding IMG’s status as an international organisation and by drawing therefrom the conclusions of the acts at issue, exceeded its discretion and infringed the conditions laid down in the relevant provisions of the EU Financial Regulation.⁶⁷ The General Court responds in the negative and, in my opinion, with sufficient certainty.

64. Having regard to the subject matter thus defined of the proceedings at first instance, I take the view that it is unnecessary, indeed irrelevant, to examine IMG’s complaint that the General Court failed to take account of the fact that it met the two conditions required to be considered an ‘international organisation’ within the meaning of that legislation,⁶⁸ notwithstanding the declarations of certain States alleged to be members or former members of that entity, since only 5 out of 16⁶⁹ of those States issued declarations in that regard.⁷⁰ In any event, I consider that those factors are not such as to establish that the Commission was legally wrong to cast doubts on IMG’s status as an

64 At the hearing, the Commission argued that IMG’s request for a declaration that it is an international organisation is not the subject of the present proceedings, since the Commission has not taken a definitive position but has expressed doubts in that regard and that the EU Courts are not in a position to certify that quality.

65 See, in particular, paragraphs 26, 79 and 95 of the judgment in Case T-29/15 and paragraph 76 of the judgment in Case T-381/15.

66 See, particularly, paragraphs 103 to 110 of the judgment in Case T-29/15 and paragraphs 98 (in particular) to 108 of the judgment in Case T-381/15, from which it is apparent that the General Court, on the one hand, held that, in the respective acts at issue, the Commission did not conclude that IMG did not constitute an international organisation, but decided not to entrust it with budget implementation by indirect management so long as doubts regarding its status continued to exist and, on the other, found that such a decision was neither manifestly inappropriate in circumstances such as those in question, nor contrary to the EU Financial Regulation.

67 In particular, in the light of Article 53d(1) of Regulation No 1605/2002 and Article 60(2) of Regulation No 966/2012 (paragraphs 95 to 110 of the judgment in Case T-29/15) and Article 60(2) of Regulation No 966/2012 and Article 43(1) of Regulation No 1268/2012 (paragraphs 96 to 108 of the judgment in Case T-381/15).

68 Namely an international public-sector organisation set up by an intergovernmental agreement, in accordance with Article 43(1)(a) of Regulation No 1268/2012, which defines ‘international organisations’ as referred to in Article 58(1)(c)(ii) of Regulation No 966/2012.

69 According to its applications in Cases C-183/17 P and C-184/17 P, IMG states that it was formed and established ‘in 1994 on the basis of an intergovernmental agreement signed by 16 States (Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Italy, the Netherlands, Norway, Portugal, the Russian Federation, Spain, Sweden and the United Kingdom) and the European Community Humanitarian Aid Office (ECHO)’.

70 In view of the fact that States supposed to be members or establishing members of IMG have, on the one hand, challenged its legal status and, on the other, expressed doubts regarding the powers of delegation of the persons representing their countries at the time when it was established (see, in particular, paragraphs 8, 85 and 105 of the judgment in Case T-29/15 and paragraphs 4, 85 and 98 of the judgment in Case T-381/15). At the hearing before the Court, the Commission claimed that the final OLAF report indicates that, in actual fact, all of the States surveyed — and not just five — appeared sceptical.

international organisation and to draw the aforementioned conclusions. In addition, I take the view that the General Court properly exercised its discretion when concluding that, having regard to the evidence in the file,⁷¹ it was legitimate and lawful for the Commission to decide not to entrust EU budget implementation tasks to IMG, as a sort of precautionary measure, so long as doubts regarding its legal continued to exist.

65. *Thirdly*, so far as concerns IMG's introductory arguments that the Commission's doubts are based on evidence from *the OLAF investigation*, even though IMG was not in a position to challenge it in sufficient time,⁷² I will merely observe that those arguments do not concern infringement of the EU Financial Regulation, which is at the heart of the present branch of the second grounds of appeal, but instead relate to the respect of the rights of defence, which will be examined in the context of the other grounds of appeal raised in the present cases,⁷³ in so far as that issue is the main cause of action in those grounds.

66. In the light of the foregoing considerations, I consider that the objections raised by IMG in the context of the branch examined above of the second grounds of appeal in Cases C-183/17 P and C-184/17 P are unfounded.

2. The additional branches of the second grounds of appeal in Cases C-183/17 P and C-184/17 P

67. *First*, at the beginning of the second grounds of appeal brought in Cases C-183/17 P and C-184/17 P, IMG claims, in essence, that the reasoning of the General Court in the judgments under appeal is based on *flawed considerations*, in so far as that Court committed an error of law and distorted the file.⁷⁴ It submits that that Court gave incorrect reasons for the acts at issue, respectively, in those cases, namely the decision of 16 December 2014 and the letter of 8 May 2015.

68. I note that, as stated by IMG and as contended by the Commission, it is an argument which repeats the grounds for complaint already raised in the context of the first grounds of appeal brought in those two cases, which are not addressed in this Opinion. I would merely point out that it seems to me that, in the passages referred to by IMG,⁷⁵ the General Court did not intend to set out the statement of reasons contained in the acts at issue themselves, as the applicant claims, but rather the context in which those acts were adopted, in particular to highlight the fact that the Commission had informed IMG, before the adoption of those acts, that it had doubts regarding its legal status.⁷⁶ The alleged irregularity of the grounds of the judgments under appeal challenged by IMG is therefore manifestly unfounded, in so far as, in my opinion, it is based on an incorrect reading of those judgments.

71 More specifically, in the light of the letter of 25 April 2014, in which the Commission stated, first, that 'several countries (Spain, Portugal, Norway, Italy and Belgium), which [have been] declared by IMG to be members or establishing members, do not consider themselves to be members or establishing members' of that organisation, second, that 'the Secretariat General of the United Nations had stated that IMG was not a specialised agency' and, lastly, that 'there were doubts regarding the powers of the persons who represented their countries at the time when IMG was established'. In my opinion, the answers provided by IMG to the Commission were not sufficient to dismiss those grounds for complaint.

72 IMG adds that the Commission itself did not have access to the final OLAF report before 15 December 2014, but does not raise clear objections, in my view, against the judgments under appeal.

73 Namely the fourth ground of appeal in Case C-183/17 P and the third ground of appeal in Case C-184/17 P, examined in point 78 et seq. of this Opinion.

74 In that regard, IMG expressly criticises paragraphs 103, 105, 106, 109 and 110 of the judgment in Case T-29/15 and paragraphs 98 and 99 of the judgment in Case T-381/15.

75 Namely an extract from paragraph 89 of the judgment in Case T-29/15 and an extract from paragraph 98 of the judgment in Case T-381/15.

76 Indeed, it is apparent from the wording of the passages cited by IMG that the General Court expressly referred to earlier paragraphs in the judgments under appeal (namely paragraphs 85 to 88 of the judgment in Case T-29/15 and paragraph 85 in the judgment in Case T-381/15) where it sets out the content of the letters received by IMG before the adoption of the acts at issue, and in particular the letter of 25 April 2014, in which the Commission informed it of the reasons for its doubts.

69. *Second*, under the second ground of appeal in Case C-184/17 P, IMG alleges *distortion of the file*,⁷⁷ criticising the General Court for finding that IMG had failed to submit evidence to counter the doubts raised by the Commission, even though it had produced, for the Commission and before the General Court, a series of documents intended to show that those doubts were unfounded. The applicant claims that it is apparent from the eight documents identified by it ‘that the five States in question [78] signed the act establishing IMG; that Norway signed the articles of association of IMG; and that Norway, Belgium and Portugal attended meetings of the governance body of IMG. In addition, it was established on two occasions by the chairperson of the meeting of 25 November 1994 that those five Member States had signed the act establishing IMG and, moreover, none of those States had informed IMG of their withdrawal from IMG’.⁷⁹ The Commission contests that ground for complaint, challenging not only the approach taken by the applicant, but also the analysis of those documents carried out by the latter.⁸⁰

70. It follows from settled case-law that, in the context of an appeal, the appraisal by the General Court of the probative value of the documents before it cannot, save where the rules on the burden of proof and the taking of evidence have not been observed or the evidence has been distorted, be challenged before the Court of Justice. In addition, an applicant cannot, under the guise of alleging distortion of the evidence adduced before the General Court, in reality seek to obtain a new assessment of that evidence, and in particular the value which should be attributed to it, which is outside the jurisdiction of the Court.⁸¹

71. In the present case, it seems to me that in paragraphs 102 and 106 of the judgment in Case T-381/15, which are specifically criticised, the General Court considered, in essence, that, in the light of the evidence provided by IMG, it had not demonstrated to the requisite legal standard that the States in question in fact continued to count themselves amongst its members, notwithstanding the declarations made to OLAF. I consider that the General Court’s assessment of that evidence in order to attribute its probative value does not amount to distortion of its content and that, in particular, IMG has not established any material inaccuracy in the General Court’s assessment of that evidence.

72. *Third*, still in Case C-184/17 P, IMG claims that the General Court failed to fulfil its *obligation to state reasons*, arguing that the judgment under appeal contains, on the one hand, contradictory grounds relating to the lack of impact of the position adopted by the Commission prior to the OLAF investigation and, on the other, questionable grounds, in so far as they call into question the *financial backing* of IMG following the objections raised by certain States.⁸²

77 The applicant refers, in particular to paragraphs 102 and 106 of the judgment in Case T-381/15.

78 Namely ‘Spain, Portugal, Norway, Italy and Belgium’ as set out in paragraphs 85 and 98 of the judgment in Case T-381/15.

79 IMG also submits that it ‘admittedly did not provide a declaration from the five States in question, but there was no such evidential requirement’. In that regard, it is sufficient to observe that, as IMG rightly acknowledged, the General Court referred to such a declaration only as an example.

80 In the passage of its reply relating to the first ground of appeal in Case C-184/17 P, to which it refers in respect of the second ground of appeal, the Commission contends that IMG ‘overlooks ... the fact that the General Court undertook an overall assessment of the evidence’ and ‘carried out an in-depth analysis of each document, distorting the rationale of the judgment’. So far as concerns the second ground of appeal, it claims that ‘the documents referred to in paragraph 51 [of the] appeal do not establish legal status as an international organisation, or serve to allay those doubts’.

81 See, inter alia, judgment of 9 June 2011, *Comitato ‘Venezia vuole vivere’ and Others v Commission* (C-71/09 P, C-73/09 P and C-76/09 P, EU:C:2011:368, paragraphs 152, 153 and 159); order of 30 June 2016, *Slovenská pošta v Commission* (C-293/15 P, not published, EU:C:2016:511, paragraphs 29 and 39); judgments of 26 January 2017, *Commission v Keramag Keramische Werke and Others* (C-613/13 P, EU:C:2017:49, paragraphs 26 to 27 and 37 to 39), and of 16 November 2017, *Ludwig-Bölkow-Systemtechnik v Commission* (C-250/16 P, EU:C:2017:871, paragraphs 38 and 39).

82 In that regard, IMG criticises, respectively, paragraph 105 and paragraphs 102 and 108 of the judgment in Case T-381/15.

73. I would point out that, in accordance with settled case-law, the General Court is not required to provide reasons for each of its choices where it relies on one item of evidence as opposed to another in support of its decision. However, the statement of the reasons on which a judgment of the General Court is based must clearly and unequivocally disclose that Court's reasoning in such a way as to enable the persons concerned to ascertain the reasons for the decision taken and the Court of Justice to exercise its power of review.⁸³

74. In the present case, with regard to the first ground for complaint referred to above, which concerns paragraph 105 of the judgment in Case T-381/15 and takes it out of its context, I note that, in the light of the preceding paragraphs,⁸⁴ it is patently clear that the General Court sought to dismiss IMG's argument that the Commission had previously regarded it as an international organisation, observing that such a position was taken before doubts were raised following the OLAF investigation, doubts which led to the Commission changing its position and which is a key element in the conclusions drawn by the General Court. The fact that that Court allegedly failed to take account of the evidence submitted by IMG during the course of the OLAF investigation, according to the complaint made by IMG, cannot, in my opinion, be considered contradictory, nor call into question the adequacy of the reasoning adopted in the paragraph in question.⁸⁵ Accordingly, the present ground for complaint must be dismissed.

75. So far as concerns the second ground for complaint referred to above, which concerns paragraphs 102 and 108 of that judgment, I observe that IMG criticises the General Court, in essence, for considering that the declarations made by the States which disputed being members of that entity should preclude it from being regarded as an international organisation because that would cause it to lose its financial support, even though, according to IMG, that parameter is not a requirement, under the 2012 Financial Regulation, for such a qualification to be obtained.⁸⁶ However, in my opinion, it follows from the examination of the two paragraphs at issue that the General Court set out no such considerations⁸⁷ and that the reasoning contained therein is clear and such as to justify the conclusion it seeks to substantiate, with the result that that complaint is manifestly unfounded.

76. In my opinion, it follows from the above that the paragraphs of the judgment under appeal referred to in those two grounds for complaint are not vitiated by a failure to state reasons.

77. In conclusion, I take the view that the second grounds of appeal raised by IMG in Cases C-183/17 P and C-184/17 P must be rejected as unfounded.

83 See, inter alia, judgments of 25 October 2017, *Slovakia v Commission* (C-593/15 P and C-594/15 P, EU:C:2017:800, paragraphs 73 and 74); of 7 March 2018, *SNCF Mobilités v Commission* (C-127/16 P, EU:C:2018:165, paragraph 34); and of 7 June 2018, *Equipolymers and Others v Council* (C-363/17 P, not published, EU:C:2018:402, paragraphs 44 to 46).

84 Paragraphs 103 and 104 of that judgment are, respectively, worded as follows: 'in those circumstances, it must be held that the Commission did not commit any error of law or manifest error of assessment in considering there to be doubts regarding [IMG's] status as an international organisation, taking into account the declarations made by those States' and 'the arguments put forward by the applicant in that regard cannot call that conclusion into question'.

85 Likewise, the Commission claims that the judgment in Case T-381/15 is not vitiated by a failure to state reasons in relation to the change in position adopted by that institution with regard to IMG.

86 In defence, the Commission contends that the financial support of the States in question could reasonably be called into question in the light of doubts regarding IMG's legal status.

87 Paragraphs 102 and 108 essentially state, respectively, that '[IMG] has provided neither the Commission, nor the General Court, with evidence, such as the declarations from the States in question, confirming that those States continue to count themselves amongst its members, notwithstanding the declarations made to OLAF. The fact that there is a presumption that member States of an international organisation should lend their financial support to it has no bearing in that regard' and that 'in so far as [IMG] argues that it meets the two conditions required to be an international organisation ... and that the Commission has misinterpreted the notion of international organisation ..., it must be found, in any event, that those arguments do not invalidate the conclusion that the Commission may have legitimate doubts regarding [IMG's] status as an international organisation, in view of the fact that the States supposed to be members or establishing members [of IMG] deny that fact' (see also footnote 71 of this Opinion).

C. The scope of the rights of the defence relied on by IMG (fourth ground of appeal in Case C-183/17 P and third ground of appeal in Case C-184/17 P)

78. In my opinion, it is appropriate that the arguments alleging infringement of the rights of the defence set out by IMG under the fourth ground of appeal in Case C-183/17 P and the third ground of appeal in Case C-184/17 P, respectively, should be the subject of a complementary yet separate analysis, in so far as the wording of those grounds of appeal has some similarities, but also some differences.

1. The fourth ground of appeal in Case C-183/17 P

79. By the fourth ground of appeal in Case C-183/17 P, IMG criticises the General Court for having infringed, in the judgment under appeal,⁸⁸ the principle of good administration and the right to be heard.⁸⁹ Like the Commission, which refutes that argument in its response,⁹⁰ I consider that ground of appeal to be unfounded, indeed manifestly unfounded, for the following reasons.

80. *In the first place*, referring to a judgment of the General Court concerning the *right of every person to be heard before* a decision which would affect him adversely is adopted,⁹¹ IMG claims that, in the present case, it was not informed of the exact reasons why the Commission had doubts regarding its status as an international organisation and it was not given an opportunity to present its point of view in that regard before the Commission adopted the contested decision, namely the decision of 16 December 2014.

81. I would point out that the right to be heard is enshrined in Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter'), which guarantees the right to good administration. Under Article 41(2)(a), the right to good administration includes, *inter alia*, the right of every person to be heard before any individual measure which would affect him or her adversely is taken. In accordance with settled case-law, the addressees of decisions which significantly affect their interests must be placed in a position in which they can effectively make known their views as regards the information on which the authorities intend to base their decision, so that their oral and written observations may influence the content of that decision, or even call into question the adoption of that decision.⁹²

82. In the present case, I take the view that it was after a thorough analysis of the facts and without committing any errors of law that the General Court held that the Commission had provided IMG with sufficient information on the reasons for its doubts regarding IMG's legal status and had given it the opportunity to make known its views at an earlier stage, in the context of the various letters which were exchanged in this regard before the adoption of the contested decision, and that the right of IMG to be heard had therefore been respected.⁹³

⁸⁸ Under the fourth ground of appeal, IMG expressly criticises paragraphs 134 to 143 of the judgment in Case T-29/15.

⁸⁹ For the sake of completeness, I observe that, in the context of its appeal, IMG establishes an express link between that ground of appeal and certain arguments put forward under the first ground of appeal in Case C-183/17 P, which is not, however, addressed in this Opinion.

⁹⁰ It being specified that the fourth ground of appeal is not referred to in IMG's reply nor, therefore, in the Commission's rejoinder relating to Case C-183/17 P and that it was the subject of brief comments at the hearing.

⁹¹ IMG refers to the judgment of 5 October 2016, *ECDC v CJ* (T-395/15 P, not published, EU:T:2016:598), to claim that it should have been given the opportunity to present its point of view, first, so far as concerns the evidence on which the Commission intended to base its decision and, second, with regard to the draft decision itself that the Commission intended to adopt, which was not the case.

⁹² See, *inter alia*, judgments of 11 December 2014, *Boudjlida* (C-249/13, EU:C:2014:2431, paragraphs 31, 36 to 38); of 20 December 2017, *Prequ' Italia* (C-276/16, EU:C:2017:1010, paragraphs 45 and 46); of 5 October 2016, *ECDC v CJ* (T-395/15 P, not published, EU:T:2016:598, paragraphs 54, 55, 57, 60, 62 and 73); of 15 December 2016, *Spain v Commission* (T-466/14, EU:T:2016:742, paragraphs 40 and 41); and of 8 February 2018, *Institute for Direct Democracy in Europe v Parliament* (T-118/17, not published, EU:T:2018:76, paragraphs 36 and 37).

⁹³ See, in particular, paragraphs 135 to 138, 141 and 142 of the judgment in Case T-29/15, in addition to paragraphs 85 to 89 of that judgment, relating to the first ground of appeal, which contain a more detailed summary of the content of those letters.

83. *In the second place*, IMG alleges that the General Court *failed to strike the right balance* between ensuring the *confidentiality of the OLAF investigation* and guaranteeing the fundamental right of the party concerned to be heard. According to IMG, the General Court was wrong to take the view that protecting the confidentiality of that investigation justified the Commission not making the final OLAF report, to which that institution had access immediately prior to the adoption of the decision of 16 December 2014, available to IMG.⁹⁴ IMG refers, more specifically, to paragraph 142 of the judgment in Case T-29/15, where reference is made to ‘new elements’, which were mentioned by the Commission.

84. In that regard, I would note that, in correlation with the right to be heard recalled above,⁹⁵ Article 41(2)(b) of the Charter guarantees the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy. Regulation No 883/2013, concerning investigations conducted by OLAF, provides in Article 10(1) to (3) that information transmitted or obtained in the course of such investigations is protected and that EU institutions are required to ensure the confidentiality of that information. Moreover, while Article 11(3) to (5) of that regulation provides for the transmission of the OLAF investigation report to the competent authorities of the Member States or the institutions concerned, there is nothing in that regulation which provides for its transmission to the person under investigation.⁹⁶ As the General Court has repeatedly held, rightly in my opinion, in cases concerning an issue similar to that examined here, it is apparent from the legislative framework applicable to OLAF that it is only if the authorities to whom the OLAF report is addressed intend to adopt acts which adversely affect the persons concerned on the basis of such a report that those authorities must, in accordance with the procedural rules which apply to them, provide access that report to those persons in order to enable them to exercise their rights of the defence.⁹⁷

85. In the present case C-183/17 P, I consider that, in so far as the Commission had intended to base its decision of 16 December 2014 — which adversely affects IMG⁹⁸ — directly on the final OLAF report,⁹⁹ it is true that it should have allowed IMG to access the contents of that report and enabled it to present its arguments in defence,¹⁰⁰ especially if that document contained new elements likely to be asserted against it by the Commission.

86. However, I observe first of all that, on reading the judgment under appeal, it appears that the General Court referred, on several occasions, to the balance to be struck between the possible communication by the Commission of ‘new elements’ contained in its file and the need to ensure the confidentiality of the OLAF investigation, not in the light of the final OLAF report, as IMG suggests in its appeal, but having regard to the letter of 25 April 2014.¹⁰¹ I note that that letter was sent to IMG by the Commission when the OLAF investigation was still ongoing and when the protection of that confidentiality was therefore particularly necessary. Moreover, it is apparent from the General

94 It should be noted that the Commission received that report on 15 December 2014, that is to say the day before the adoption of the contested decision.

95 See point 81 of this Opinion.

96 However, as stated in recital 24 thereof, Regulation No 833/2013 protects the rights of the person under investigation by giving that person the opportunity to comment on facts concerning him during the investigation. Accordingly, under the sixth subparagraph of Article 9(2), the person concerned has the right of access to the record of his interview with OLAF so that he may either approve the record or add observations.

97 To that effect, concerning the disclosure of OLAF documents in the course of the administrative activity of an EU institution, see, *inter alia*, judgments of 26 May 2016, *International Management Group v Commission* (T-110/15, EU:T:2016:322, paragraphs 22, 24 and 32 to 37); of 18 May 2017, *Panzeri v Parliament* (T-166/16, not published, EU:T:2017:347, paragraph 98); and of 19 June 2018, *Le Pen v Parliament* (T-86/17, not published, EU:T:2018:357, paragraphs 81 to 84).

98 With regard to the fact that the contested decision adversely affects IMG, see the arguments relating to the challengeable nature of that act set out in point 41 *et seq.* of this Opinion.

99 It must be stated that, in my opinion, it has not been established that this was the case here.

100 See, by analogy, the case-law of the General Court referred to in footnote 97 of this Opinion.

101 See, in particular, paragraph 142 of the judgment in Case T-29/15 (paragraph relating to the second branch of the third plea in law put forward before the General Court which is the subject of the fourth ground of appeal raised in the present case C-183/17 P analysed here), but also paragraphs 85 and 92 of that judgment (relating to the sixth plea in law put forward before the General Court).

Court's findings, on the one hand, that the letter of 25 April 2014 states that the 'new elements' resulting from that investigation merely supported the doubts regarding IMG's status already expressed by the Commission¹⁰² and, furthermore, on the other hand, that IMG did not dispute before that Court that the Commission was required, under Article 10 of Regulation No 883/2013, to ensure that confidentiality and, therefore, not to disclose the details of those new elements.¹⁰³

87. In addition and in any event, the General Court considered, rightly in my opinion, that despite the allegedly limited nature of the information that the Commission gave to IMG, the fact remains that IMG was well aware of the grounds on the basis of which the decision of 16 December 2014 was adopted, in particular, as a result of the letter of 25 April 2014,¹⁰⁴ and with a degree of precision sufficient to ensure that IMG had the opportunity to submit its defence before the adoption of that decision if it intended to do so.¹⁰⁵ Indeed, as has already been observed by other Advocates General,¹⁰⁶ access to the information held by an EU institution is not an end in itself, but is designed to allow the person concerned effectively to exercise his rights of defence, with the result that the act at issue should not be set aside when an alleged irregularity has not had any effect on the exercise of those rights. I add that the General Court's assessment of the factual circumstances cannot be called into question in the context of this appeal, in so far as no distortion is established or even claimed at this level.¹⁰⁷

88. Consequently, I consider that the judgment under appeal and, specifically, paragraph 142 which is, in particular, criticised by IMG in that regard, contains reasoning which is not vitiated by errors of law to the extent that it refers to the necessary balance between the confidentiality of the OLAF investigation and the possibility for the person concerned to exercise his rights of the defence.

89. *In the third place*, IMG specifically criticises the General Court's reasoning in *paragraph 143 of the judgment in Case T-29/15* from three angles. First, it alleges infringement of the principle of good administration with regard to the so-called direct link between the measures previously adopted by the Commission and the contested decision. Second, it repeats its argument that the Commission did not respect its right to be heard before the adoption of that decision regarding the alleged doubts. Third, IMG claims that it must establish, before the General Court, not that the outcome of the proceedings *would have been* different, but simply that it *could have been* different if IMG had been given the opportunity to present its point of view.

90. So far as concerns the first ground for complaint, I do not share IMG's point of view that the General Court was wrong to find that the decision of 16 December 2014 was the 'direct consequence' of the acts which preceded it,¹⁰⁸ even though, according to the applicant, the acts and decision in question were adopted several months apart, the final OLAF report was received by the Commission in the intervening period and the Commission could not have made its position clear at the stage of the precautionary measures adopted previously. Indeed, it seems to me that, in actual fact, in paragraph 143 of the judgment under appeal, the General Court merely considered, rightly in my opinion, that the contested decision was directly linked to the existence of doubts regarding IMG's

102 See the summary of the facts set out in paragraphs 6 to 8 of the judgment in Case T-29/15.

103 See paragraphs 92 *in fine* and 138 *in fine* of the judgment in Case T-29/15.

104 See paragraphs 85 to 89 of the judgment in Case T-29/15 (see also footnote 71 of this Opinion).

105 See also, by analogy, judgments of 18 May 2017, *Panzeri v Parliament* (T-166/16, not published, EU:T:2017:347, paragraphs 99 and 100), and of 19 June 2018, *Le Pen v Parliament* (T-86/17, not published, EU:T:2018:357, paragraphs 85 and 86).

106 See the Opinion of Advocate General Trstenjak in *C.A.S. v Commission* (C-204/07 P, EU:C:2008:175, point 100 et seq.) and the earlier opinions referred to therein.

107 It is apparent from settled case-law that the assessment of facts does not constitute, save where the clear sense of the evidence has been distorted, a question of law which is subject, as such, to review by the Court of Justice in the context of an appeal, it being specified that that distortion must be obvious from the documents in the Court's file, without any need to carry out a new assessment of the facts. See, *inter alia*, judgments of 16 November 2017, *Ludwig-Bölkow-Systemtechnik v Commission* (C-250/16 P, EU:C:2017:871, paragraph 39), and of 28 June 2018, *Andres (insolvency of Heitkamp BauHolding) v Commission* (C-203/16 P, EU:C:2018:505, paragraph 77).

108 Namely, according to IMG, the precautionary measures of 26 February 2014 and the letter of 25 April 2014, by which the Commission informed IMG of the adoption of those measures.

legal status, which had already been brought to IMG's attention,¹⁰⁹ and that IMG had therefore been informed that, in the absence of any information from it to allay those doubts, it could not be entrusted with budget implementation tasks for the project referred to in the original implementing decision.

91. With regard to the second ground for complaint, relating to IMG's right to exercise its rights of the defence, it is sufficient to note that that complaint is unfounded for the reasons set out above.¹¹⁰

92. With regard to the third ground for complaint, according to which the General Court allegedly required IMG to establish the real impact of the alleged infringement of its right to be heard on the outcome of the proceedings in question, whereas the case-law¹¹¹ requires only that evidence of potential impact be produced, I consider that that Court did not err in law. In accordance with the settled case-law referred to by the General Court, in the event of a procedural irregularity, it is for the court to verify whether, in the light of the factual and legal circumstances of the case, the proceedings in question could have resulted in a different outcome, in the absence of the irregularity, if the applicant had been better able to defend itself.¹¹² Consequently, in the judgment under appeal, the General Court was right to find,¹¹³ in its sovereign assessment of the facts, that it was not established, in the light both of the arguments put forward by IMG and of the elements in the file, that the outcome of the proceedings could have been different if the Commission had specifically informed IMG of its intention to adopt the decision of 16 December 2014.

93. In the light of the foregoing considerations, I take the view that the fourth ground of appeal raised in Case C-183/17 P must be rejected as unfounded.

2. The third ground of appeal raised in Case C-184/17 P

94. In Case C-184/17 P, the third ground of appeal raised by IMG¹¹⁴ overlaps in part with the fourth ground of appeal in Case C-183/17 P referred to above, since it alleges infringement of the rights of the defence on the basis of arguments similar to those set out in support of the latter, but it also alleges infringement of the obligation to state reasons and distortion of evidence not put forward in Case C-183/17 P.¹¹⁵ Like the Commission,¹¹⁶ I consider that the third ground of appeal is also unfounded, for the following reasons.

¹⁰⁹ I would point out that, as is apparent from paragraphs 8 and 135 of the judgment in Case T-29/15, before the letter of 25 April 2014, the Commission had exchanged a number of letters with IMG, from 16 December 2013 to 4 April 2014, regarding its status as an international organisation.

¹¹⁰ See point 80 et seq. of this Opinion.

¹¹¹ IMG relies on the case-law of the General Court referred to in paragraph 139 of the judgment in Case T-29/15, which refers to the judgment of 8 October 2015, *Secolux v Commission* (T-90/14, not published, EU:T:2015:772, paragraph 34 and the case-law cited).

¹¹² See, inter alia, judgments of 16 June 2016, *SKW Stahl-Metallurgie and SKW Stahl-Metallurgie Holding v Commission* (C-154/14 P, EU:C:2016:445, paragraphs 69 to 75); of 20 December 2017, *Prequ' Italia* (C-276/16, EU:C:2017:1010, paragraph 62); of 14 June 2018, *Makhlouf v Council* (C-458/17 P, not published, EU:C:2018:441, paragraphs 42 to 46); of 13 December 2013, *Hungary v Commission* (T-240/10, EU:T:2013:645, paragraphs 84 and 85); and of 19 June 2018, *Le Pen v Parliament* (T-86/17, not published, EU:T:2018:357, paragraphs 87 to 91).

¹¹³ In the following terms: 'even if the Commission should have informed it of the adoption of the contested decision, it is nevertheless the case that [IMG] has not put forward any argument, and nor does it appear from the case file before the Court, that, if the Commission had informed [IMG] of its intention to adopt the contested decision, the outcome of the procedure would have been different' (paragraph 143 *in fine* of the judgment in Case T-29/15; see also paragraph 139 *in fine* of that judgment). The last few words used are, admittedly, ambiguous; knowing that the phrase 'could have been' is usually used in the aforementioned case-law. Nevertheless, the reasoning behind that unfortunate wording establishes that the General Court did apply the appropriate test and did not therefore commit an error of law.

¹¹⁴ Under the third ground of appeal, IMG expressly criticises paragraphs 117 to 122 of the judgment in Case T-381/15.

¹¹⁵ IMG puts forward grounds for complaint in this regard in both its appeal and its reply.

¹¹⁶ However, I would point out that I disagree with the arguments put forward against that ground of appeal by the Commission, in the first place in its response, according to which there could not have been an infringement of the rights of the defence, in so far as the letter of 8 May 2015 did not constitute an act adversely affecting IMG (in that regard, see point 43 et seq. of this Opinion).

95. *First*, IMG criticises the General Court, in essence, for not dealing with the consequences of its own finding that the Commission should have adopted the decision resulting from the letter of 8 May 2015 only after IMG had been allowed to acquaint itself with the final OLAF report.

96. In the light of the aforementioned case-law relating to the opportunity to access confidential documents drawn up by OLAF,¹¹⁷ it is with no contradiction in the grounds or distortion of the facts,¹¹⁸ in my opinion, that the General Court was able to decide that the final OLAF report should have been brought to IMG's attention beforehand by the Commission,¹¹⁹ but that, in the circumstances of the case, the irregularity found nonetheless had no decisive impact on the rights of the defence of IMG, in so far as it had already been given the opportunity to make known its views, on several occasions and before the letter at issue, relating to the doubts regarding its legal status.¹²⁰

97. *Second*, IMG claims that it should have been given the opportunity to make known its views both with regard to the evidence on which the Commission intended to base its decision and the draft decision itself.¹²¹

98. However, contrary to what IMG insists in the present case C-184/17 P, in my opinion it is apparent from the relevant case-law that the right to be heard before the adoption of a decision adversely affecting the individual implies that IMG may make known its views as regards the information on which the authorities intend to base their decision, and not also with regard to the content of the envisaged decision, such that the draft decision should be submitted to it beforehand.¹²²

99. *Third*, IMG claims that it was for the Commission, not IMG itself, to establish that the outcome could have been different if the adoption of the contested decision had not been vitiated by the irregularity in question.¹²³

100. However, it follows, in my view, from the case-law mentioned in the judgment under appeal and referred to above¹²⁴ that, where it considers there to have been a procedural irregularity, the Court must determine if, without such an irregularity, the outcome of the procedure could have been different, taking account of the specific circumstances of the case and in the light of evidence put forward at the hearing, in particular the evidence adduced by the party invoking that irregularity.¹²⁵ However, it seems to me that the passage of the judgment under appeal which is particularly criticised

117 See, by analogy, so far as concerns the decision of 16 December 2014 at issue in Case C-183/17 P, point 83 et seq. of this Opinion, in addition to the case-law referred to therein.

118 In accordance with the case-law referred to in footnote 107 of this Opinion.

119 In my opinion, IMG's unauthorised access to that report which was made possible by a leak (see paragraphs 174 and 177 of the judgment in Case T-381/15), to which the Commission refers in its response, cannot remedy that procedural irregularity, given that, in any event, IMG had access to it only after the intervention of the letter at issue, namely 12 December 2015, according to the information provided by the Commission at the hearing.

120 See the analysis in paragraph 117 et seq. of the judgment in Case T-381/15. So far as concerns, more specifically, the grounds of appeal according to which IMG 'could not know of the reservations made by the Member States' and the General Court distorted the evidence in the file by considering (in paragraph 122) that nothing prevented IMG from 'directly questioning [those States] and asking them to provide it with a declaration that they were members of it', I would point out that it is apparent from the evidence in the file and examined by the General Court that the Commission had given it a series of information in this connection, in particular in the letter of 25 April 2014 (see paragraph 85), with the result that the alleged distortion has not been established in my opinion.

121 In this regard, IMG refers to the same case-law as that on which it relied in Case C-183/17 P (see footnote 91 of this Opinion).

122 See, inter alia, the case-law cited in footnote 92 of this Opinion. In my opinion, the judgment of the General Court of 5 October 2016, *ECDC v CJ* (T-395/15 P, not published, EU:T:2016:598), which is relied on by IMG, cannot lead (and, in particular, paragraph 55 et seq., in my opinion) to an approach other than that resulting from that predominant case-law.

123 To that effect, IMG relies on the judgment of the General Court of 5 October 2016, *ECDC v CJ* (T-395/15 P, not published, EU:T:2016:598, paragraph 72), and the judgment of the Civil Service Tribunal of 8 October 2015, *DD v FRA*, F-106/13 and F-25/14 (EU:F:2015:118, paragraphs 65 and 93).

124 In addition to the judgment of 8 October 2015, *Secolux v Commission* (T-90/14, not published, EU:T:2015:772, paragraph 34) referred to in paragraph 114 of the judgment in Case T-381/15, see the case-law cited in footnote 112 of this Opinion.

125 In that regard, see, inter alia, judgments of 4 February 2016, *C & J Clark International and Puma* (C-659/13 and C-34/14, EU:C:2016:74, paragraph 140); of 16 June 2016, *SKW Stahl-Metallurgie and SKW Stahl-Metallurgie Holding v Commission* (C-154/14 P, EU:C:2016:445, paragraph 69); and of 19 June 2018, *Le Pen v Parliament* (T-86/17, not published, EU:T:2018:357, paragraph 88 et seq.).

by IMG, in that regard, contains a detailed analysis of the arguments it submitted before the General Court and the evidence included in its file,¹²⁶ on the basis of which that Court could have deduced, without committing any error of law or distorting the evidence, that it had not been established that, without such an irregularity,¹²⁷ the Commission could have adopted a decision different to that resulting from the letter at issue.¹²⁸

101. Accordingly, I consider that the third ground of appeal raised by IMG in Case C-184/17 P must be rejected as unfounded.

VI. Conclusion

102. In the light of the foregoing considerations, I propose that the Court should:

- dismiss the cross-appeals brought by the European Commission in Joined Cases C-183/17 P and C-184/17 P as unfounded; and
- without prejudice to either the substance of the other grounds of appeal brought by International Management Group, or the fixing of the costs, reject the second and fourth grounds of appeal in Case C-183/17 P and the second and third grounds of appeal in Case C-184/17 P as unfounded.

¹²⁶ See, by analogy, on the scope and appropriateness of the analysis carried out by the General Court with regard to the possible impact of a procedural irregularity, Opinion of Advocate General Trstenjak in *C.A.S. v Commission* (C-204/07 P, EU:C:2008:175, points 107 to 109).

¹²⁷ That is to say if IMG had acquainted itself with the final OLAF report before the letter at issue.

¹²⁸ See, paragraphs 119 to 123 of the judgment in Case T-381/15, where the General Court notes, inter alia, that IMG laments the fact that it was not given the opportunity to allay the doubts regarding its financial soundness, even though the Commission did not base the letter of 8 May 2015 on such grounds; that, admittedly, IMG did not receive the final OLAF report beforehand, but that the Commission disregarded that fact in the letter at issue, considering there to be doubts, and not certainties, regarding the legal status of IMG; and that, whatever the purpose of the questions put to the member States by OLAF and the Commission, IMG had the opportunity effectively to exercise its rights of defence by directly questioning the States whose declarations gave rise to doubts regarding its status as an international organisation.