



## Reports of Cases

### JUDGMENT OF THE COURT (First Chamber)

25 February 2021 \*

(Appeal – Action for damages – Non-contractual liability of the European Union – Allegedly illegal conduct of the European Commission and the European Anti-Fraud Office (OLAF) – Termination of office of a Member of the Commission – Procedural rules governing the OLAF investigation – Opening of an investigation – Right to be heard – OLAF Supervisory Committee – Presumption of innocence – Assessment of the alleged damage)

In Case C-615/19 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 16 August 2019,

**John Dalli**, residing in St. Julian's (Malta), represented by L. Levi and S. Rodrigues, avocats,

applicant,

the other party to the proceedings being:

**European Commission**, represented by J.-P. Keppenne and J. Baquero Cruz, acting as Agents,

defendant at first instance,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, L. Bay Larsen (Rapporteur), C. Toader, M. Safjan and N. Jääskinen, Judges,

Advocate General: M. Szpunar,

Registrar: Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 22 September 2020,

gives the following

\* Language of the case: English.

## Judgment

- 1 By his appeal, Mr John Dalli seeks to have set aside the judgment of the General Court of the European Union of 6 June 2019, *Dalli v Commission* (T-399/17, not published, EU:T:2019:384; ‘the judgment under appeal’), by which the General Court dismissed his action seeking compensation for the damage he allegedly suffered as a result of allegedly unlawful conduct on the part of the European Commission and the European Anti-Fraud Office (OLAF) in connection with the termination of his office as a Member of the Commission on 16 October 2012.

### Legal context

#### *Regulation (EC) No 1073/1999*

- 2 Article 1(3) of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (OJ 1999 L 136, p. 1) provided:

‘Within the institutions, bodies, offices and agencies established by, or on the basis of, the Treaties (hereinafter “the institutions, bodies, offices and agencies”), the Office shall conduct administrative investigations for the purpose of:

- fighting fraud, corruption and any other illegal activity affecting the financial interests of the European Community,
- investigating to that end serious matters relating to the discharge of professional duties such as to constitute a dereliction of the obligations of officials and other servants of the Communities liable to result in disciplinary or, as the case may be, criminal proceedings, or an equivalent failure to discharge obligations on the part of members of institutions and bodies, heads of offices and agencies or members of the staff of institutions, bodies, offices or agencies not subject to the Staff Regulations of officials and the Conditions of employment of other servants of the European Communities (“the Staff Regulations”).’

- 3 Article 2 of that regulation stated:

‘Within the meaning of this Regulation, “administrative investigations” (hereinafter “investigations”) shall mean all inspections, checks and other measures undertaken by employees of [OLAF] in the performance of their duties, in accordance with Articles 3 and 4, with a view to achieving the objectives set out in Article 1 and to establishing, where necessary, the irregular nature of the activities under investigation. These investigations shall not affect the powers of the Member States to bring criminal proceedings.’

- 4 Articles 3 and 4 of that regulation set out the rules applicable, respectively, to external and internal investigations by OLAF.

- 5 Article 6 of that regulation stated that the Director of OLAF is to direct the conduct of investigations.

- 6 Article 9(1) of Regulation No 1073/1999 was worded as follows:

‘On completion of an investigation carried out by [OLAF] the latter shall draw up a report, under the authority of the Director, specifying the facts established, the financial loss, if any, and the findings of the investigation, including the recommendations of the Director of [OLAF] on the action that should be taken.’

7 Article 11(1) and (6) to (8) of that regulation provided:

‘1. The Supervisory Committee shall reinforce [OLAF]’s independence by regular monitoring of the implementation of the investigative function.

At the request of the Director or on its own initiative, the committee shall deliver opinions to the Director concerning the activities of [OLAF] without however interfering with the conduct of investigations in progress.

...

6. The Supervisory Committee shall appoint its chair. It shall adopt its own rules of procedure. ...

7. The Director shall forward to the Supervisory Committee each year [OLAF]’s programme of activities ... The Director shall inform the committee of cases requiring information to be forwarded to the judicial authorities of a Member State.

8. The Supervisory Committee shall adopt at least one report on its activities per year which it shall send to the institutions. The committee may submit reports to the European Parliament, the Council, the Commission and the Court of Auditors on the results of [OLAF]’s investigations and the action taken thereon.’

#### ***Decision 1999/396/EC, ECSC, Euratom***

8 The first paragraph of Article 4 of Commission Decision 1999/396/EC, ECSC, Euratom of 2 June 1999 concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities’ interests (OJ 1999 L 149, p. 57), provides:

‘Where the possible implication of a Member, official or servant of the Commission emerges, the interested party shall be informed rapidly as long as this would not be harmful to the investigation. In any event, conclusions referring by name to a Member, official or servant of the Commission may not be drawn once the investigation has been completed without the interested party’s having been enabled to express his views on all the facts which concern him.’

#### ***Rules of Procedure of the OLAF Supervisory Committee***

9 Article 13(5) of the Rules of Procedure of the OLAF Supervisory Committee (OJ 2011 L 308, p. 114), states:

‘Cases requiring information to be forwarded to the judicial authorities of a Member State shall be examined on the basis of the information provided by the Director-General of OLAF and in accordance with Regulation (EC) No 1073/1999. Follow-up shall also be carried out on this basis.

In particular, before the information is sent, the Supervisory Committee shall request access to the investigations in question in order to ascertain whether fundamental rights and procedural guarantees are being complied with. Once the Secretariat has obtained access to the documents within a time period guaranteeing compliance with this function, the rapporteurs appointed to examine the cases shall prepare their presentation at the Committee’s plenary session. ...

The Committee shall appoint rapporteurs to examine these investigations and, if necessary, issue an opinion.’

***Regulation (EU, Euratom) No 883/2013***

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

11 Article 7(4) of Regulation No 883/2013 is worded as follows:

‘Where an investigation combines external and internal elements, Articles 3 and 4 shall apply respectively.’

***The OLAF instructions to its staff and on investigative procedures***

12 Article 5 of the OLAF Instructions to Staff on Investigative Procedures, in the version applicable at the time of the facts (‘the OLAF Instructions’), provided:

‘1. The Investigation Selection and Review Unit may, where necessary, contact the source and the EU institution, body, office or agency concerned in order to obtain clarification and further documentation concerning the initial information. It may also consult databases and other relevant sources available to OLAF. Where it is necessary to collect additional information to support the selection process, the Investigation Selection and Review Unit may use, inter alia, the following means:

- (a) Collecting documents and information;
- (b) Collecting information in the framework of operational meetings;
- (c) Taking statements from any person able to provide relevant information;
- (d) Carrying out fact-finding missions in Member States.

2. Where the source is a whistleblower, the Investigation Selection and Review Unit shall inform him within 60 days, of the time needed to take appropriate action.

3. The opinion on the opening of an investigation or coordination case shall be based on whether the information falls within OLAF’s competency to act, the information is sufficient to justify the opening of an investigation or coordination case and falls within the Investigative Policy Priorities (IPP) established by the Director-General.

4. In assessing whether OLAF is competent to act, consideration must be given to relevant EU Regulations, Decisions, Interinstitutional Agreements and other legal instruments relating to the protection of the financial and other interests of the EU. In evaluating whether the information is sufficient to open an investigation or coordination case, consideration must be given to the reliability of the source and the credibility of the allegations. In addition, all information collected during the selection process must be taken into account in justifying the opening of an investigation or coordination case. The IPP set out the criteria to be applied in determining whether an information falls within an established investigative priority.

5. The Investigation Selection and Review Unit shall communicate to the Director General an opinion on the opening or rejection of a case within two months of the registration of an item of information received.’

13 Article 11(6) of the OLAF Instructions stated:

‘Members of the investigation unit carry out the following investigative activities upon production of the Director-General’s written act showing their identity and capacity, and the investigative activity they are authorised and mandated to carry out:

- (a) Interviews with persons concerned;
- (b) Inspections of premises;
- (c) On-the-spot checks;
- (d) Forensic operations;
- (e) Checks and inspections under sectoral rules.’

14 Article 12(3) of the OLAF Instructions stated:

‘Where the investigation unit envisages conducting an investigative activity outside the existing scope of the investigation or coordination case, it must submit a request for a decision to extend the scope to the Investigation Selection and Review Unit. The Investigation Selection and Review Unit must verify the proposed extension of the scope and provide an opinion to the Director-General on the basis of which he may take a decision.’

### **Background to the dispute**

- 15 By Decision 2010/80/EU of the European Council of 9 February 2010 appointing the European Commission (OJ 2010 L 38, p. 7), Mr Dalli was appointed a Member of the Commission for the period from 10 February 2010 to 31 October 2014. He was assigned by the President of the Commission the portfolio of Health and Consumer Protection.
- 16 On 25 May 2012, following the receipt by the Commission, on 21 May 2012, of a complaint from the company Swedish Match (‘the complainant’), containing allegations concerning Mr Dalli’s conduct, OLAF initiated an investigation (‘the OLAF investigation’).
- 17 On 16 July and 17 September 2012, Mr Dalli was heard by OLAF.
- 18 On 15 October 2012, the OLAF report was sent to the Secretary-General of the Commission, for the attention of the President of that institution. That report was accompanied by a letter signed by the Director-General of OLAF (‘the OLAF Director’), summarising the main findings of the investigation.
- 19 On 16 October 2012, Mr Dalli met with the President of the Commission. Later that same day, the latter informed the Prime Minister of the Republic of Malta and the Presidents of the European Parliament and of the Council of the European Union of Mr Dalli’s resignation. The Commission also issued a press release announcing that resignation.
- 20 By application lodged at the Registry of the General Court on 24 December 2012, Mr Dalli brought an action for annulment of the ‘oral decision of 16 October 2012 of termination of [his] office with immediate effect, taken by the President of the Commission’ and for compensation for damage suffered of a symbolic EUR 1 for non-material damage and, on a provisional basis, of EUR 1 913 396 for material damage.

- 21 That application was dismissed by the judgment of the General Court of 12 May 2015, *Dalli v Commission* (T-562/12, EU:T:2015:270).
- 22 As regards, first, the claim for annulment, the General Court found that Mr Dalli had submitted his resignation verbally, as no request for his resignation within the meaning of Article 17(6) TEU had been made by the President of the Commission. Since the existence of that request, which constituted the act contested by the appellant, had not been established, the General Court held that the application for annulment had to be dismissed as inadmissible.
- 23 As regards, secondly, the claims for compensation, the General Court considered that, since it had found that the existence of such a claim was not proven, no illegality on that ground could be found against that institution in that regard. As regards the allegation that the appellant's consent was vitiated, put forward as a subsidiary plea in the context of the claim for annulment, the General Court observed that it had not been established. It concluded that Mr Dalli's allegations of wrongful conduct on the part of the Commission or its President had not been established and therefore dismissed the claims for compensation as unfounded.
- 24 On 21 June 2015, Mr Dalli lodged an appeal against that judgment. That appeal was dismissed by order of 14 April 2016, *Dalli v Commission* (C-394/15 P, not published, EU:C:2016:262).

### **The action before the General Court and the judgment under appeal**

- 25 By application lodged at the Registry of the General Court on 28 June 2017, Mr Dalli brought an action for an order that the Commission pay him damages of an amount estimated, on a provisional basis, at EUR 1 000 000 as compensation for damage, in particular non-material damage, which he suffered as a result of allegedly illegal conduct of the Commission and OLAF, connected with the termination of his office as a Member of the Commission on 16 October 2012.
- 26 In support of that application, Mr Dalli put forward seven complaints relating to the unlawfulness of OLAF's conduct alleging, first, the unlawfulness of the decision to open the investigation, secondly, flaws in the characterisation of the investigation and the extension of that investigation, thirdly, breach of the principles governing the gathering of evidence and distortion and falsification of the evidence, fourthly, breach of the rights of the defence, of Article 4 of Decision 1999/396 and of Article 18 of the OLAF Instructions, fifthly, infringement of Article 11(7) of Regulation No 1073/1999 and of Article 13(5) of the Rules of Procedure of the OLAF Supervisory Committee, sixthly, breach of the principle of the presumption of innocence, infringement of Article 8 of Regulation No 1073/1999 and of Article 339 TFEU and breach of the right to the protection of personal data and, seventhly, infringement of Article 4 of that regulation, of Article 4 of Decision 1999/396 and of the Memorandum of Understanding concerning a code of conduct to ensure timely exchange of information between OLAF and the Commission with respect to OLAF internal investigations in the Commission. In addition, Mr Dalli put forward two complaints relating to the unlawfulness of the Commission's conduct.
- 27 By separate document lodged at the Registry of the General Court on 13 September 2017, the Commission raised a plea of inadmissibility.
- 28 By the judgment under appeal, the General Court, having dismissed that plea of inadmissibility, rejected all the complaints raised by Mr Dalli against OLAF and the Commission.
- 29 Moreover, for the sake of completeness, the General Court held that Mr Dalli had not established either the existence of a sufficiently direct causal link between the conduct complained of and the alleged damage, or the existence of the latter.



30 Consequently, the General Court dismissed the action brought by Mr Dalli in its entirety.

### **Forms of order sought**

31 By his appeal, Mr Dalli claims that the Court should:

- set aside the judgment under appeal;
- order compensation for the damage, in particular the non-material damage, suffered by him and which can be estimated, on a provisional basis, at EUR 1 000 000; and
- order the Commission to pay the costs of both sets of proceedings.

32 The Commission contends that the Court should:

- dismiss the appeal, and
- order Mr Dalli to pay the costs incurred before the Court of Justice and the General Court.

### **The appeal**

33 Mr Dalli raises seven grounds of appeal. The first to sixth grounds of appeal relate to the rejection of the first six complaints raised at first instance concerning OLAF's conduct. The seventh ground of appeal relates to the findings of the General Court concerning the reality of the damage alleged and the existence of a causal link between that institution's conduct and the damage relied on.

34 As a preliminary point, the Commission points out that, although it did not consider it useful, for reasons of procedural economy, to bring a cross-appeal, it nevertheless considers that the action at first instance should have been dismissed as inadmissible and that the Court of Justice could examine of its own motion the error committed in that regard by the General Court.

35 In that regard, in the present case, the Court considers it appropriate to rule from the outset on the merits of the case (see, by analogy, judgments of 23 October 2007, *Poland v Council*, C-273/04, EU:C:2007:622, paragraph 33, and of 7 March 2013, *Switzerland v Commission*, C-547/10 P, EU:C:2013:139, paragraph 47).

36 Furthermore, the Commission submits that all the grounds of appeal put forward by Mr Dalli are ineffective.

### ***The ineffectiveness of all of the grounds of appeal***

#### *Arguments of the parties*

37 The Commission notes that in order for the Union to incur non-contractual liability, three conditions must be met, namely the unlawfulness of the conduct of which the Union institution is accused, the occurrence of actual damage and the existence of a causal link between that conduct and that damage. Where one of those conditions is lacking, the claim for compensation should be dismissed without the need to examine the other two.

- 38 The first to sixth grounds relied on in support of the appeal relate to the conduct of which OLAF is accused, while the seventh ground concerns only the existence of non-material damage. The Commission considers that Mr Dalli thus does not put forward any ground relating to the condition that there must be a causal link between OLAF's conduct and the alleged damage. In the Commission's view, Mr Dalli cannot claim that the seventh ground of appeal also relates to that causal link since, in his appeal, he refers specifically, in the arguments developed in support of that plea, to paragraph 225 of the judgment under appeal, which relates only to the damage, and does not dispute the grounds relating to the absence of a causal link set out in paragraph 224 of the judgment under appeal.
- 39 It follows that the grounds of appeal submitted by Mr Dalli do not call into question the basis on which the General Court found that the causal link between OLAF's conduct and the damage alleged by Mr Dalli had not been established. Since that ground is sufficient to justify the operative part of the judgment under appeal, those grounds of appeal are ineffective and, for that reason, the appeal should be dismissed in its entirety.
- 40 Mr Dalli claims that that line of argument should be rejected.

#### *Findings of the Court*

- 41 It is apparent from the Court's settled case-law that the Union may incur non-contractual liability under the second paragraph of Article 340 TFEU only if a number of conditions are fulfilled, namely the unlawfulness of the conduct alleged against the Union institution, the fact of damage and the existence of a causal link between the conduct of that institution and the damage complained of (judgment of 5 September 2019, *European Union v Guardian Europe* and *Guardian Europe v European Union*, C-447/17 P and C-479/17 P, EU:C:2019:672, paragraph 147 and the case-law cited).
- 42 As the Court has previously held, if any one of those conditions is not satisfied, the action must be dismissed in its entirety and it is unnecessary to consider the other conditions for non-contractual liability on the part of the Union (judgment of 5 September 2019, *European Union v Guardian Europe* and *Guardian Europe v European Union*, C-447/17 P and C-479/17 P, EU:C:2019:672, paragraph 148 and the case-law cited).
- 43 In the present case, it is not disputed that the grounds put forward by Mr Dalli relate to the conditions relating to the unlawfulness of the conduct of which OLAF is accused and the reality of the damage relied on by Mr Dalli. By contrast, the parties disagree as to whether the seventh ground invoked in support of the appeal also relates, in part, to the condition that there must be a causal link between that conduct and that damage.
- 44 In that regard, in the first place, the Commission cannot infer from the fact that Mr Dalli referred only to paragraph 225 of the judgment under appeal in the arguments developed in support of the seventh ground of appeal that, by that ground, he does not call into question the findings of the General Court concerning the existence of a causal link between the conduct of OLAF and the damage invoked.
- 45 First, it should be noted that the General Court did not, in paragraph 224 of the judgment under appeal, carry out a full examination of that condition. The General Court confined itself, in that paragraph, to finding that Mr Dalli had not adduced any evidence to establish the existence of the non-material damage alleged and to ruling out the existence of a link between the termination of his duties within the Commission and the damage invoked. By contrast, it did not find, in general, that Mr Dalli had not established the existence of a link between OLAF's conduct and that damage.



- 46 Secondly, the General Court considered, in paragraph 225 of the judgment under appeal, that the appellant had not shown that ‘the conduct of which it complains was, by reason of its gravity, such as to cause [him] damage ...’. The General Court thus concluded that Mr Dalli had not proved either the reality of the damage or the existence of a causal link between that conduct and the damage.
- 47 The conclusion that the appellant had not established the existence of a sufficiently direct causal link between the conduct complained of and the alleged damage is, moreover, set out only in paragraph 226 of the judgment under appeal.
- 48 In the second place, by his seventh ground of appeal, Mr Dalli submits, inter alia, that the General Court erred in law by failing to take account of the case-law of the Courts of the Union, from which it follows that, where a person is publicly associated with a fault or where injurious assessments of him or her are widely disseminated, he or she suffers non-material damage by reason of the harm done to his or her reputation.
- 49 By that ground, therefore, Mr Dalli submits that it is sufficient to characterise the existence of such conduct on the part of the institutions in order to establish both the existence of damage and a causal link between that conduct and that damage.
- 50 In those circumstances, it must be considered that, by the seventh ground of appeal, Mr Dalli calls into question the finding of the General Court that the causal link between OLAF’s conduct and the damage alleged by the appellant was not established. Accordingly, the Commission’s argument that all the grounds put forward by Mr Dalli in support of his appeal are ineffective must be rejected.

***The first ground of appeal, concerning the decision to open the investigation***

*The first part of the first plea ground of appeal*

*– Arguments of the parties*

- 51 By the first part of the first ground of appeal, Mr Dalli submits that the General Court erred in law in holding, in paragraphs 56 to 58 of the judgment under appeal, that neither Article 1(3) of Regulation No 1073/1999 nor Article 5 of the OLAF Instructions constitute rules of Union law conferring rights on individuals.
- 52 The first of those provisions would establish in a clear and precise manner an obligation for OLAF to open an investigation only in the presence of ‘sufficiently serious suspicions’ and ‘serious matters’. The Court confirmed, in the judgments of 10 July 2003, *Commission v ECB* (C-11/00, EU:C:2003:395), and of 10 July 2003, *Commission v EIB* (C-15/00, EU:C:2003:396), the existence of such an obligation, which protects persons likely to be subject to an OLAF investigation.
- 53 As regards the second of those provisions, it makes the opening of an OLAF investigation subject to a series of clear and precise conditions. Since it thus produces effects on third parties, its status as a general or internal rule does not rule out the possibility that it could confer rights on individuals.
- 54 The Commission contends that the first part of the first plea should be rejected as unfounded or, in any event, ineffective.

– Findings of the Court

- 55 It should be recalled that the conditions that must be satisfied in order for the European Union to incur non-contractual liability, under the second paragraph of Article 340 TFEU, include the requirement of a sufficiently serious breach of a rule of law that is intended to confer rights on individuals (judgment of 30 May 2017, *Safa Nicu Sepahan v Council*, C-45/15 P, EU:C:2017:402, paragraph 29 and the case-law cited).
- 56 In that regard, it should be noted, in the first place, that the General Court held, in paragraph 56 of the judgment under appeal, that Article 1(3) of Regulation No 1073/1999 cannot be regarded as such a rule of law, since it merely sets out the objectives and functions of OLAF in the context of administrative investigations.
- 57 The argument put forward by Mr Dalli that this assessment is vitiated by an error of law, on the ground that it fails to take account of the fact that that provision makes the opening of an OLAF investigation subject to the fulfilment of two conditions, namely the existence of ‘sufficiently serious suspicions’ and the existence of ‘serious matters’, cannot succeed.
- 58 First, that provision specifies that OLAF administrative investigations are ‘for the purpose’ of ‘investigating ... serious matters’ liable to prosecution. Since, under the terms of the same provision, the purpose of an OLAF investigation is thus to investigate serious facts, the existence of such facts cannot be regarded as a precondition for the opening of such an investigation.
- 59 Secondly, while it is indeed clear from the Court’s case-law that an OLAF investigation can be opened only when there are sufficiently serious suspicions of fraud or corruption or other illegal activities likely to damage the financial interests of the Union (see, to that effect, judgments of 10 July 2003, *Commission v ECB*, C-11/00, EU:C:2003:395, paragraph 141, and of 10 July 2003, *Commission v EIB*, C-15/00, EU:C:2003:396, paragraph 164), that condition does not result, as noted by the Advocate General in point 50 of his Opinion, from Article 1(3) of Regulation No 1073/1999, which does not refer to the concept of ‘sufficiently serious suspicions’.
- 60 In the second place, the General Court held, in paragraph 57 of the judgment under appeal, that Article 5 of the OLAF Instructions does not constitute a rule of law intended to confer rights on individuals, relying on the classification of those instructions as ‘internal rules’ and on the fact that that article describes the selection procedure put in place within OLAF with a view to ensuring that its investigations are conducted in a logical and consistent manner.
- 61 It follows that the assessment made by the General Court in that paragraph is not based solely on the classification of that article as an ‘internal rule’, but is also based on its content.
- 62 It follows from the very terms of Article 5 of the OLAF Instructions that the purpose of the instructions is to define the conditions for issuing an opinion to the Director of OLAF in the context of a selection procedure and lists elements to be taken into account in that procedure, without laying down any preconditions for the opening of an investigation by OLAF.
- 63 In those circumstances, Mr Dalli cannot validly claim that the General Court erred in law in holding that that article does not constitute a rule of law intended to confer rights on individuals.
- 64 Consequently, the first part of the first ground of appeal must be rejected as unfounded.

*The second part of the first ground of appeal*

*– Arguments of the parties*

- 65 By the second part of the first ground of appeal, Mr Dalli claims that the General Court wrongly held that the duty of care had not been breached.
- 66 In the first place, in paragraph 68 of the judgment under appeal, the General Court distorted the facts by failing to specify that the ‘very short period of time’ or ‘short time’ between the transmission of the information contained in the complaint and the decision to open the investigation corresponded not to a day, but to a few hours.
- 67 In the second place, contrary to what is apparent from paragraph 68, it could not be inferred from the opinion of the Investigation Selection and Review Unit that that unit carried out investigations into the complainant and two other persons involved in the complaint, since the OLAF Supervisory Committee (‘the Supervisory Committee’) indicated that it did not find any evidence of the existence of any verifications, by OLAF, other than those relating to the existence of the persons and companies whose names appeared in the complaint. OLAF therefore did not carry out the scrutiny which it should have done.
- 68 In the third place, the judgment under appeal is insufficiently reasoned, in that it does not set out the reasons why the opinion expressed by the Supervisory Committee was not taken into account.
- 69 In the fourth place, the General Court erred in law in holding that OLAF had carried out a sufficient examination of the allegations set out in the complaint against Mr Dalli before deciding to open an investigation in that regard.
- 70 The General Court thus failed to set out sufficiently the factual elements referred to by Mr Dalli and the reason why they could not be assessed prior to the opening of the investigation, even though checks could have been carried out in particular as to the position adopted by the complainant in the files before Mr Dalli and as to the complainant’s relations with the Commission.
- 71 Furthermore, the General Court’s assessment in paragraph 73 of the judgment under appeal, according to which OLAF could open an investigation on the basis of information set out in a complaint where that information was precise and detailed, without carrying out the checks necessary to assess the credibility of those allegations, is erroneous. Similarly, the General Court should have held, in paragraph 74 of that judgment, that OLAF was under an obligation to satisfy itself that there was no conflict of interest, even if such a conflict did not clearly result from the information received.
- 72 The Commission contends that the second part of the first ground of appeal should be rejected as being, in part, inadmissible and, in part, unfounded.

*– Findings of the Court*

- 73 First, as regards Mr Dalli’s claim that, in paragraph 68 of the judgment under appeal, the General Court distorted the facts, it should be borne in mind that, as is clear from the second subparagraph of Article 256(1) TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union, the appeal is limited to questions of law. The General Court therefore has exclusive jurisdiction to find and appraise the relevant facts and to assess the evidence. The assessment of those facts and that evidence thus does not, save where they are distorted, constitute a point of law which is subject, as such, to review by the Court of Justice on appeal (judgment of 28 May 2020, *Asociación de fabricantes de morcilla de Burgos v Commission*, C-309/19 P, EU:C:2020:401, paragraph 10 and the case-law cited).

- 74 In paragraph 68 of the judgment under appeal, the General Court did not specifically mention the length of the period elapsing between the receipt of information from the Commission and the opening of the OLAF investigation.
- 75 However, since the applicable rules do not lay down any mandatory time limit in that regard, the General Court cannot be criticised for not having indicated the precise time which elapsed between those two events.
- 76 As for the expressions ‘very short period of time’ and ‘short time’ used by the General Court in that paragraph, they are in no way incompatible with the period of a few hours Mr Dalli refers to. Accordingly, it should be noted, without it being necessary to rule on the length of the period in question, that the use of those expressions cannot constitute a distortion of the facts.
- 77 Secondly, by his allegations that the General Court wrongly inferred from the opinion of the Investigation Selection and Review Unit that OLAF had carried out investigations into the complainant and two of the defendants, Mr Dalli calls into question the factual assessments made by the General Court in paragraph 68 of the judgment under appeal.
- 78 Since those allegations do not disclose any distortion of the facts which led to those assessments, they must, in accordance with the Court’s case-law referred to in paragraph 73 of the present judgment, be rejected as inadmissible. In any event, in so far as those allegations should be understood as denouncing a distortion of the opinion adopted by the Supervisory Committee, it should be noted that the extracts from that opinion cited in the appeal do not contradict the findings of the General Court in paragraph 68.
- 79 Thirdly, as regards the alleged failure to state reasons for the judgment under appeal, it is important to recall that, according to the settled case-law of the Court of Justice, the duty to state reasons does not require the General Court to provide an account which follows exhaustively and one by one all the arguments put forward by the parties to the case, the General Court’s reasoning may thus be implicit, on condition that it enables the persons concerned to know why it has not upheld their arguments and provides the Court of Justice with sufficient material for it to exercise its power of review (judgment of 25 June 2020, *SatCen v KF*, C-14/19 P, EU:C:2020:492, paragraph 96 and the case-law cited).
- 80 In the present case, the General Court referred, in paragraph 68 of the judgment under appeal, to the factors which led it to consider that OLAF had carried out investigations into the complainant and two of the defendants. In addition, it set out, in paragraphs 69 to 74 of that judgment, the reasons which led it to hold that OLAF was not required to carry out additional checks before opening its investigation.
- 81 That statement of reasons is sufficient to enable Mr Dalli to understand the reasons why his argument was rejected and for the Court of Justice to exercise its review, without the need for the General Court to take a specific position on the opinion adopted by the Supervisory Committee.
- 82 Fourthly, as regards the error of law relating to OLAF’s examination of the information forwarded allegedly committed by the General Court, it should be borne in mind that, as is clear from paragraph 59 of the present judgment, an OLAF investigation may be opened only where there are sufficiently serious suspicions relating to acts of fraud or corruption or other unlawful activities liable to damage the financial interests of the Union.
- 83 It follows from that condition that the mere transmission of a complaint to OLAF may justify the opening of an investigation only where OLAF has made an initial assessment of the allegations contained in that complaint.

- 84 However, as is clear from paragraph 58 of the present judgment, OLAF is not required to carry out checks to assess fully the merits of these allegations before opening an investigation, since it follows from Article 2 of Regulation No 1073/1999 that the purpose of the investigation is precisely to establish, where appropriate, the irregular nature of the activities monitored. In application of Articles 3 and 4 of that regulation, OLAF has the investigative means to carry out that inspection only after the opening of the investigation.
- 85 Consequently, the General Court did not err in law in holding, in paragraphs 70 and 71 of the judgment under appeal, that it was not for OLAF, prior to the opening of an investigation, to carry out a detailed assessment of the information received, but that it must, on the contrary, examine carefully and impartially all the elements at issue, and in particular the reliability of the source and the credibility of the allegations, in order to determine whether that information was sufficient to justify the opening of that investigation.
- 86 In paragraph 73 of the judgment under appeal, the General Court rightly held that the precise and detailed nature of the information received by OLAF was such as to demonstrate sufficiently, *prima facie*, the credibility of that information. Similarly, the General Court rightly held, in paragraph 74 of that judgment, that OLAF was not required to carry out investigations to verify the reliability of the source of that information in the absence of evidence in the file clearly showing the existence of manipulation or a conflict of interest.
- 87 It follows that the General Court did not err in law in considering, in paragraph 72 of the judgment under appeal, that OLAF was not required to take a position, prior to the opening of the investigation, on the elements invoked by Mr Dalli in his application at first instance, relating to the position adopted by the complainant in the cases before Mr Dalli and to that complainant's alleged relationship with the Commission.
- 88 Consequently, the second part of the first ground of appeal should be rejected as, in part, inadmissible and, in part, unfounded. It follows that the first ground of appeal must be rejected in its entirety.

***The second ground of appeal, concerning the extension of the investigation***

*The first part of the second ground of appeal*

*– Arguments of the parties*

- 89 By the first part of the second ground of appeal, Mr Dalli submits that the General Court erred in law in holding, in paragraphs 84 to 89 of the judgment under appeal, in disregard of Regulation No 1073/1999, that an internal investigation by OLAF could be extended to include matters falling within the scope of an external investigation by that body. He claims that, although the Union legislature expressly provided, in Article 7(4) of Regulation No 883/2013, which repealed Regulation No 1073/1999, for the possibility of combining in a single investigation the aspects of an external investigation and an internal investigation, such a possibility is not permitted by Regulation No 1073/1999, which would have required, in such a case, the opening of two separate investigations.
- 90 The Commission contends that the first part of the second ground of appeal should be rejected as unfounded or, in any event, ineffective.



– *Findings of the Court*

- 91 Regulation No 1073/1999 distinguishes between external investigations, carried out on the spot in Member States and third countries, and internal investigations, carried out within the Union institutions, bodies, offices and agencies. Those two types of investigations are governed by Articles 3 and 4 of that regulation respectively.
- 92 For the purposes of ruling on Mr Dalli's argument concerning the irregular extension of the scope of the OLAF investigation, the General Court found, in paragraph 84 of the judgment under appeal, that Regulation No 1073/1999 did not contain any provision relating to 'the possibility of extending the scope of an internal investigation to that of an external investigation and vice versa'. It added, in paragraph 86 of that judgment, that it would be contrary to the objectives assigned to OLAF and to its independence not to confer on the Director of OLAF the power to make such an extension. It also pointed out, in paragraph 87 of that judgment, that the possibility of such an extension was explicitly provided for in Article 12(3) of the OLAF Instructions.
- 93 In that regard, it should be noted, first of all, that the grounds of the General Court relating to the analysis of the wording of the provisions of Regulation No 1073/1999 are not vitiated by any error.
- 94 It must next be observed that the interpretation of those provisions in the light of the objectives assigned to OLAF, as adopted by the General Court, is such as to promote the effectiveness of OLAF's action, since it enables it to carry out, in the context of the same procedure, investigative activities both within the institutions, bodies, offices and agencies of the Union and outside them, with a view to gathering all the evidence enabling the lawfulness of conduct subject to OLAF's control to be assessed.
- 95 Finally, it cannot be considered that the combination of activities covered by an external investigation and an internal investigation within the same procedure is such as to deprive the persons concerned of procedural guarantees or, more generally, to obstruct the application to each of those activities of the rules governing OLAF's action.
- 96 Consequently, it does not follow from the fact that the Union legislature explicitly provided, in Article 7(4) of Regulation No 883/2013, that an OLAF investigation may combine external and internal elements that such a possibility was excluded by Regulation No 1073/1999. On the contrary, in the light of the considerations set out in the preceding paragraphs of the present judgment, it must be held that Article 7(4) of that regulation sets out, with greater clarity, the principles already applicable under Regulation No 1073/1999 and that the General Court did not err in law in holding that 'extensions to the scope of an investigation [were] not, in themselves, unlawful'.
- 97 It follows that the first part of the second ground of appeal must be rejected as unfounded.

*The second part of the second ground of appeal*

– *Arguments of the parties*

- 98 By the second part of the second ground of appeal, Mr Dalli claims that the General Court distorted the application at first instance by noting, in paragraph 80 of the judgment under appeal, that he had not identified precisely in that application a rule conferring rights on individuals which, in the present case, was allegedly infringed by OLAF. It is clear from the wording of paragraphs 92 to 96 of that judgment that the application concerned Articles 3 and 4 of Regulation No 1073/1999.
- 99 The Commission contends that the second part of the second ground of appeal should be rejected as unfounded.



– *Findings of the Court*

- 100 It follows from the examination of the first part of the present ground of appeal, carried out in paragraphs 91 to 97 of the present judgment, that the General Court rightly held, in paragraphs 84 to 89 of the judgment under appeal, that, pursuant to Regulation No 1073/1999, OLAF could lawfully extend the scope of an internal investigation to include elements falling within the scope of an external investigation.
- 101 Furthermore, Mr Dalli did not challenge either the examination of the procedure followed by OLAF for the purpose of extending its investigation, carried out in paragraphs 91 and 92 of the judgment under appeal, or the conclusion reached by the General Court in paragraph 93 of the judgment under appeal, that Mr Dalli had not shown that the extensions of OLAF's investigation were unlawful.
- 102 Consequently, even supposing, as Mr Dalli maintains, that the General Court distorted the application at first instance by holding, in paragraph 80 of the judgment under appeal, that that application did not identify precisely a rule conferring rights on individuals which had allegedly been infringed by OLAF, that error would not be such as to call into question the rejection of the second complaint submitted by Mr Dalli at first instance, alleging flaws in the characterisation of the investigation and in its extension.
- 103 It is apparent from the settled case-law of the Court of Justice that complaints directed against a ground included in a decision of the General Court purely for the sake of completeness cannot provide any basis for annulment of that decision and are therefore ineffective (judgment of 18 June 2020, *Dovgan v EUIPO*, C-142/19 P, not published, EU:C:2020:487, paragraph 92 and the case-law cited).
- 104 Therefore, the second part of the second ground of appeal must be rejected as ineffective and that ground rejected in its entirety.

***The third ground of appeal, concerning the collection of evidence***

*The first part of the third ground of appeal*

– *Arguments of the parties*

- 105 By the first part of the third ground of appeal, Mr Dalli submits that the General Court erred in law in its examination of the third complaint submitted at first instance concerning the collection of evidence by OLAF.
- 106 In the first place, the General Court erred in law by holding, in paragraph 103 of the judgment under appeal, that the Director of OLAF could participate directly in the investigation, whereas, first, Article 6(1) of Regulation No 1073/1999 provides only that it is for him or her to direct investigations and, secondly, that such direct participation would undermine his or her objective impartiality, in breach of Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 107 In the second place, the General Court wrongly considered, in paragraph 105 of the judgment under appeal, that the participation of representatives of a national authority in the investigation did not undermine OLAF's objective impartiality, even though one of those representatives was also a member of the Supervisory Committee. The fact that such participation was accepted by the person subject to the investigative activity in question and that it is not established that such participation had an impact on the conduct of the investigation is not sufficient to guarantee OLAF's impartiality.

- 108 In the third place, the General Court erred in law, in paragraph 119 of the judgment under appeal, in holding that the interference with privacy constituted by the collection, storage and use of a telephone conversation could be justified by the absence of challenge on the part of the Maltese authorities and by the principle of sincere cooperation.
- 109 In the fourth place, the General Court wrongly considered, in paragraph 124 of the judgment under appeal, that there was no need to rule on whether or not the recording of a telephone conversation was unlawful on the ground that Mr Dalli had not taken part in that conversation.
- 110 The Commission contends that the first part of the third ground of appeal should be rejected as unfounded and, in any event, in part ineffective.

– *Findings of the Court*

- 111 First, as regards the error of law allegedly committed by the General Court when it ruled on the participation of the Director of OLAF in the investigation, it should be recalled that Article 41(1) of the Charter states in particular that every person has the right to have his or her affairs handled impartially by the institutions, bodies, offices and agencies of the Union.
- 112 It follows that it is incumbent on those institutions, bodies and agencies to comply with the requirement of impartiality, in its two components, which are, on the one hand, subjective impartiality, whereby no member of the institution concerned may show personal bias or prejudice, and, on the other hand, objective impartiality, according to which that institution must offer sufficient guarantees to exclude any legitimate doubt as to possible bias on the part of the institution concerned (see, to that effect, judgments of 20 December 2017, *Spain v Council*, C-521/15, EU:C:2017:982, paragraph 91, and of 27 March 2019, *August Wolff and Remedía v Commission*, C-680/16 P, EU:C:2019:257, paragraph 27).
- 113 The role of the Director of OLAF in the conduct of an investigation is defined in Article 6(1) of Regulation No 1073/1999, which provides, as noted by the General Court in paragraph 103 of the judgment under appeal, that the Director of OLAF directs the conduct of investigations.
- 114 Although the actual exercise of this function is not specifically governed by that regulation, it follows from the nature of OLAF's activities that the exercise of that function necessarily implies that the Director of OLAF has the power to issue instructions to the agents of the unit responsible for the investigation with a view to directing their investigative work, including by ordering, where appropriate, the performance of certain investigative activities.
- 115 It follows moreover from Article 11(6) of the OLAF Instructions that certain investigative activities listed in that provision may be carried out only after presentation of a written act issued by the Director of OLAF certifying, inter alia, the investigative activity which OLAF agents are authorised to carry out. That is, in particular, the case for the hearing of persons concerned or witnesses as well as for the inspection of premises and on-the-spot checks.
- 116 The Director of OLAF is therefore required to play an active role in the conduct of investigations, as is also clear from Article 9(1) of Regulation No 1073/1999, which provides that the investigation report is to be drawn up under his or her authority.
- 117 Mr Dalli has not demonstrated that the direct participation of the Director of OLAF in certain investigative activities, which can be linked to the provisions attributing that active role to him, is such as to undermine his objective impartiality. Furthermore, he has not contested the validity of those provisions.

- 118 In those circumstances, it cannot be held that Mr Dalli has established that the General Court's assessment, set out in paragraph 103 of the judgment under appeal, according to which such direct participation does not undermine the impartiality of the investigation, is vitiated by an error of law.
- 119 As regards, secondly, the participation at a hearing of Mr Z of a representative of a national authority who is also a member of the Supervisory Committee, it is important to note that Article 11(1) of Regulation No 1073/1999 provides that that committee, through its regular monitoring of the implementation of the investigative function, reinforces OLAF's independence. Within the framework of that function it may, in particular, give opinions to the Director of OLAF concerning OLAF's activities.
- 120 It thus follows from that provision that the members of that committee are required to exercise a supervisory function over investigations conducted by OLAF.
- 121 In view of the role assigned to the Supervisory Committee, the fact that one of its members has been directly involved in carrying out an OLAF investigative activity is admittedly of such a nature as to give rise to legitimate doubt as to the existence of any prejudice, positive or negative, on his part, in the exercise of his supervisory functions within the committee, as to the conditions under which the investigative activity in question was carried out.
- 122 Nevertheless, although the objective impartiality of a member of the Supervisory Committee could thus be called into question in the exercise of the supervisory functions that he or she exercises in that capacity, the fact that that person may subsequently be called upon to exercise such supervision cannot, however, give rise to a legitimate doubt as to his or her impartiality when participating in an investigative activity.
- 123 Therefore, although the lack of objective impartiality raised by Mr Dalli could, where appropriate, be invoked with regard to the Supervisory Committee's opinion on the OLAF investigation, it is not capable of calling into question compliance with the principle of impartiality in the context of that investigation and, in particular, during the hearing in which a member of that committee took part.
- 124 Mr Dalli's argument to which paragraph 105 of the judgment under appeal relates was intended to challenge the legality of the collection of evidence by OLAF and not the legality of the Supervisory Committee's opinion. Accordingly, the argument alleging an error of law committed in that paragraph must be rejected as unfounded.
- 125 Thirdly, the argument directed against paragraph 119 of the judgment under appeal must be dismissed as ineffective pursuant to the case-law of the Court of Justice, referred to in paragraph 103 of the present judgment, in so far as it refers to findings made by the General Court for the sake of completeness.
- 126 The appellant takes the view that the General Court could not dismiss his argument that the collection of telephone records by the Maltese authorities constituted an interference with private life on the basis of the absence of a warning to OLAF by the Maltese authorities and the obligation on those authorities to cooperate with OLAF subject to the condition that their assistance must comply with national law. However, he does not call into question the finding of the General Court that Mr Dalli had not shown that OLAF could be held responsible for the manner in which the Maltese authorities collected the information in question.
- 127 Fourthly, as regards the alleged error of the General Court in considering, in paragraph 124 of the judgment under appeal, that Mr Dalli's right to respect for private life and the confidentiality of communications had not been infringed on the ground that he did not take part in the recorded telephone conversation of 3 July 2012, it should be recalled that it follows from the Court's settled

case-law cited in paragraph 55 of the present judgment that the Union's non-contractual liability can be incurred by reason not of any sufficiently serious breach of a rule of Union law, but only of a sufficiently serious breach of a rule intended to confer rights on individuals.

- 128 The purpose of that restriction is, without prejudice to the rules applicable to the assessment of the legality of a Union act, to limit liability to situations where the unlawful conduct of Union institutions, bodies, offices and agencies has caused damage to an individual by prejudicing his or her interests specifically protected by Union law.
- 129 The function of that restriction would therefore be disregarded if it were accepted that the non-contractual liability of the Union could be incurred in order to compensate for damage caused to an individual by the infringement of a rule of law which does not create any rights in his or her favour, but which has the object of conferring rights on a third party.
- 130 It follows that the General Court did not err in law in holding, in paragraph 124 of the judgment under appeal, that the Union could not be held liable vis-à-vis Mr Dalli for the possible infringement of the right to privacy and confidentiality of the communications of third parties whose conversations had been listened to and recorded.
- 131 Consequently, the first part of the third ground of appeal must be rejected as being, in part, ineffective and, in part, unfounded.

*The second part of the third ground of appeal*

*– Arguments of the parties*

- 132 By the second part of the third ground of appeal, Mr Dalli submits that the General Court erred in its assessment of the evidence.
- 133 In the first place, it is apparent from the very terms of the statements made by former employees of Mr Dalli during their interviews with Members of the European Parliament that OLAF agents asked them to maintain their version of the facts, contrary to what the General Court held in paragraph 108 of the judgment under appeal.
- 134 In the second place, the General Court distorted the evidence by holding, in paragraph 110 of that judgment, that there was only a 'slight difference' between two versions of the transcript of the same passage of a telephone conversation, whereas one of those versions referred to the fact that a certain prize was claimed by Mr Dalli while the other referred to a claim by a third party.
- 135 In the third place, the General Court could not validly exclude, in paragraph 111 of that judgment, the relevance of press articles the content of which had not been disputed by the Commission, even though they constituted, as such, evidence relating to the conditions in which Ms K's hearing had taken place. The fact that Ms K had signed minutes which do not call into question the conditions of her hearing is not decisive, since it is expressly apparent from those press articles that she had had to sign those minutes without being able to read them again.
- 136 In the fourth place, the General Court failed to take account of the evidence produced by Mr Dalli concerning the recording of a telephone conversation of 3 July 2012 by OLAF. It also contradicted itself by stating, in paragraph 125 of the judgment under appeal, that there was no evidence to suggest that that conversation was intended to implicate the appellant, whereas it had found, in paragraph 122 of that judgment, that that conversation had been organised in order to provide additional evidence with a view to confirming or denying the reality of the facts.

- 137 In the fifth place, the General Court wrongly omitted, in paragraph 126 of the judgment under appeal, to take account of Opinion 2/2012 of the Supervisory Committee, even though that opinion constitutes evidence.
- 138 The Commission contends that the second part of the third ground of appeal should be rejected as, in part, inadmissible, in part, ineffective and, in part, unfounded.

– *Findings of the Court*

- 139 First of all, since Mr Dalli claims that the General Court distorted evidence by misreading certain documents, it should be pointed out that, while a distortion of the evidence may consist in an interpretation of a document contrary to its content, it is not sufficient, in order to establish such a distortion, to show that that document could have been interpreted differently from the interpretation adopted by the General Court. To that end, it is necessary to establish that the General Court manifestly exceeded the limits of a reasonable assessment of that document, in particular by reading it in a manner contrary to its wording (see, to that effect, judgments of 10 February 2011, *Activision Blizzard Germany v Commission*, C-260/09 P, EU:C:2011:62, paragraph 54; of 7 April 2016, *Akhras v Council*, C-193/15 P, EU:C:2016:219, paragraph 72; as well as of 30 January 2020, *České dráhy v Commission*, C-538/18 P and C-539/18 P, not published, EU:C:2020:53, paragraph 60).
- 140 First, in paragraph 108 of the judgment under appeal, the General Court considered, inter alia, that it was apparent, in essence, from the transcript of the interview between former employees of Mr Dalli and Members of the European Parliament that OLAF agents had advised Mr G to be cautious in the manner in which he communicated information so as not to disturb the investigation under way in Malta, without asking him to stick to the original version. In particular, the General Court pointed out that Mr G had denied, in reply to a question, that the OLAF agents had asked him to keep that version.
- 141 Although the statements of Mr G set out in that transcript contain certain ambiguities as to the recommendations expressed by those OLAF agents, the fact remains that the General Court, in paragraph 108 of that judgment accurately referred to Mr G's answer to a question relating directly to the question whether the OLAF agents had induced him to make a false statement. Furthermore, it is clear from that transcript that Mr G also indicated that the same OLAF agents had urged him to be cautious, without ever explicitly asking him not to mention certain facts.
- 142 In those circumstances, Mr Dalli has not established that the General Court, in paragraph 108 of that judgment distorted the contested transcript by manifestly exceeding the limits of a reasonable assessment of that document.
- 143 Secondly, in paragraph 110 of the judgment under appeal, the General Court referred to a difference between the two versions of the transcript of the same passage from a telephone conversation of 29 March 2012. It considered that this was a minor difference which had no influence on OLAF's findings and that it could be implicitly inferred from those two versions that they both referred to a sum requested by Mr Dalli.
- 144 In that regard, it appears that the General Court accurately reported the terms used in each of the versions produced by Mr Dalli. Moreover, while Mr Dalli's proposed interpretation of the version provided by the Maltese authorities, according to which that version could be understood as referring to a sum claimed by Mr Z and not by Mr Dalli, is conceivable, it is not sufficiently obvious to consider that the General Court manifestly exceeded the limits of a reasonable assessment of that version.



- 145 Thirdly, it is apparent from paragraph 111 of the judgment under appeal that the General Court decided not to give decisive weight to the Maltese press articles produced by Mr Dalli for the purpose of challenging the conditions in which Ms K's first hearing had taken place.
- 146 However, it follows from the same paragraph that the General Court also relied, in the alternative, on the fact that it was not apparent from the minutes of Ms K's second hearing that she had questioned, on that occasion, the conditions under which her first hearing had been held, even though she had made additions, amendments and clarifications at that first hearing.
- 147 The latter, which Mr Dalli has in no way disputed in the context of the present appeal, is sufficient to justify the General Court's assessment that it was not established that the practices of the OLAF agents at the first hearing were contrary to the principles applicable to the administration of evidence.
- 148 In those circumstances, Mr Dalli's argument against paragraph 111 of the judgment under appeal must be regarded as ineffective pursuant to the case-law of the Court referred to in paragraph 103 of the present judgment, in so far as it refers to grounds for that judgment included for the sake of completeness.
- 149 Fourthly, while Mr Dalli contests various elements of the General Court's reasoning relating to the recording of a telephone conversation of 3 July 2012, it is important to note that such a recording could not give rise to the Union's non-contractual liability unless it had been made in breach of a rule of Union law intended to confer rights on individuals.
- 150 It follows from paragraphs 127 to 130 of the present judgment that the General Court rightly held, in paragraph 124 of the judgment under appeal, that the rules relied on in that regard by Mr Dalli were not intended to confer rights on him and that that finding was sufficient to exclude the Union's non-contractual liability arising from the making of that recording.
- 151 Accordingly, since the possible taking into account of additional evidence in relation to that recording or the establishment that that recording was intended to challenge Mr Dalli is not such as to call that assessment into question, the arguments put forward in that regard in the present appeal must be dismissed as ineffective.
- 152 Fifthly, in paragraph 126 of the judgment under appeal, the General Court held that it was for Mr Dalli to establish that the allegations contained in Opinion 2/2012 of the Supervisory Committee were established, but that it was not for the Commission to take a position on those allegations.
- 153 In so ruling, the General Court relied on the rules determining the burden of proof in an action seeking to establish the Union's non-contractual liability, but did not, in general, deny any probative value to that opinion.
- 154 It follows that Mr Dalli's argument that the General Court failed, in paragraph 126 of the judgment under appeal, to take account of that opinion is based on an erroneous reading of that point and must therefore be dismissed as unfounded.
- 155 In the light of the foregoing, the second part of the third ground of appeal must be rejected as, in part, ineffective and, in part, unfounded. Accordingly, the third ground of appeal must be rejected in its entirety.



***The fourth ground of appeal, concerning compliance with Article 4 of Decision 1999/396***

*The first part of the fourth ground of appeal*

*– Arguments of the parties*

- 156 By the first part of the fourth ground of appeal, Mr Dalli submits, in the first place, that it follows from Article 4 of Decision 1999/396 and from the judgment of the General Court of 8 July 2008, *Franchet and Byk v Commission* (T-48/05, EU:T:2008:257), that OLAF is required to hear the persons under investigation on all the facts concerning them. Therefore, the General Court should have determined whether Mr Dalli should be heard on a note transcribing the hearing of Mr G of 19 September 2012 ('the note relating to the hearing of Mr G') on the basis of the facts reported in that note and not by using, as it did in paragraph 143 of the judgment under appeal, other criteria relating to the nature of that note, the existence of other evidence or the fact that that note appears only in the annexes to the OLAF report.
- 157 In the second place, the General Court gave contradictory reasons by stating, in paragraph 143 of the judgment under appeal, that it cannot be inferred from the presence of evidence in the annexes to an OLAF report that that evidence was used by OLAF to prove certain allegations, whereas it found, in paragraph 109 of that judgment, that the evidence on which such a report is based is intended to appear, where appropriate, only in an annex to that report.
- 158 In the third place, the General Court erred in law by holding, in paragraph 144 of the judgment under appeal, that the interested party did not have the right to be heard on the findings of OLAF's final report. The decisive question is whether that person had been heard on all the facts on which those findings were based.
- 159 The Commission contends that the first part of the fourth ground of appeal should be rejected as unfounded.

*– Findings of the Court*

- 160 First, as regards the error of law allegedly committed by the General Court in paragraph 143 of the judgment under appeal, it should be noted that, in that paragraph, the General Court rejected the argument put forward by Mr Dalli that OLAF had infringed Article 4 of Decision 1999/396 by not allowing him to express his views on the note relating to the hearing of Mr G.
- 161 For the purposes of ruling in that way, the General Court held, first, that OLAF was obliged to ask the person concerned to submit his or her observations on the facts concerning him or her, but not to offer him or her the opportunity to take a position on each piece of evidence taken. It then pointed out that the note relating to the hearing of Mr G had been used in the OLAF report for various purposes, without, however, OLAF drawing any conclusions about the appellant on the basis of that note alone. Finally, the General Court found that it could not be inferred from the mere fact that that note appeared in the annexes to that report that it had been used as evidence of the allegations made against Mr Dalli.
- 162 In that regard, it is important to point out that Article 4 of Decision 1999/396, which governs the terms and conditions of internal investigations, provides, as the General Court pointed out in paragraph 130 of the judgment under appeal, that conclusions referring by name to a Member of the Commission may not be drawn once the investigation has been completed without 'the interested party having been enabled to express his views on all the facts which concern him'.

- 163 It follows from the very wording of that article that OLAF is obliged to allow the ‘interested party’ to express himself or herself not on each piece of evidence gathered in the course of the investigation which could be used to draw conclusions concerning him or her, but only on the facts concerning him or her which emerge from that evidence.
- 164 It follows that OLAF would have been obliged to hear Mr Dalli on the facts reported in the note relating to the hearing of Mr G if those facts were considered to concern him. Accordingly, in relying on the limited use made by OLAF of that note in the investigation report in order to reject the argument submitted at first instance by Mr Dalli concerning an alleged infringement of Article 4 of Decision 1999/396, the General Court erred in law.
- 165 That being so, even if the grounds of a judgment of the General Court reveal an infringement of Union law, but its operative part appears well founded on other grounds of law, the appeal must be dismissed (see, to that effect, judgment of 4 June 2020, *Terna v Commission*, C-812/18 P, not published, EU:C:2020:437, paragraph 55 and the case-law cited).
- 166 That is the case here.
- 167 It appears from the note relating to the hearing of Mr G that, during his hearing, he referred to a meeting on 10 February 2012 between Mr Dalli and Mr Z and to exchanges between Mr Z, Ms K and Mr G concerning the possibility that Mr Dalli might adopt certain positions in exchange for the payment of a large sum of money.
- 168 It follows from the transcripts of Mr Dalli’s hearings on 16 July and 17 September 2012 that Mr Dalli was given the opportunity to express his views on the existence of that meeting and on the exchanges which took place during it, as well as on Mr Z’s offer, which was the main subject of the exchanges referred to in the note relating to the hearing of Mr G.
- 169 Furthermore, Mr Dalli did not mention any new facts which were allegedly mentioned for the first time in that note and on which he would therefore not have been in a position to give an opinion during his hearings by OLAF.
- 170 Accordingly, the argument submitted at first instance that he had not been heard, in breach of Article 4 of Decision 1999/396, on the facts set out in the note relating to the hearing of Mr G must be rejected as unfounded. It follows that the argument put forward in support of the present appeal alleging an error of law committed by the General Court in paragraph 143 of the judgment under appeal is ineffective.
- 171 As regards, secondly, the alleged contradiction in reasoning between paragraphs 109 and 143 of the judgment under appeal, it should be noted that the General Court held, in paragraph 109 of that judgment, for the purposes of rejecting the argument based on the non-reproduction of certain evidence in the OLAF report, that the evidence on which that report is based need not be reproduced in full in that report and is intended to appear, where appropriate, in an annex to that report.
- 172 In paragraph 143 of the judgment under appeal, the General Court held that the mere fact that the note relating to the hearing of Mr G appears in the annexes to the OLAF report does not make it possible to establish that it was used as evidence of the allegations made against Mr Dalli.
- 173 No contradiction can be found between the grounds set out in paragraph 109 of that judgment and those set out in paragraph 143 thereof. It does not follow from paragraph 109 thereof that the annexes to an OLAF report may contain only evidence which has been used against the defendants or, a fortiori, against one of them where that report contains, as in the present case, findings relating to the conduct of several persons.

- 174 Thirdly, as regards the error of law allegedly committed by the General Court in paragraph 144 of the judgment under appeal, it should be noted that, in that paragraph, the General Court found, *inter alia*, that Mr Dalli had not indicated the facts underlying the finding in question which he intended to deny or explain.
- 175 It follows that, in that paragraph, the General Court did not hold that OLAF was not required to hear Mr Dalli on the facts on which one of its findings was based but, on the contrary, implicitly accepted that such an obligation is imposed on OLAF, while making it clear that it was for Mr Dalli, in order to demonstrate the infringement of Union law on which he relied, to indicate the facts on which he was not heard by OLAF.
- 176 Mr Dalli's argument concerning the error of law allegedly vitiating paragraph 144 of the judgment under appeal must therefore be rejected as unfounded, in so far as it is based on an erroneous reading of that judgment.
- 177 Consequently, the first part of the fourth ground of appeal must be rejected as, in part, ineffective and, in part, unfounded.

*The second part of the fourth ground of appeal*

*– Arguments of the parties*

- 178 By the second part of the fourth ground of appeal, Mr Dalli claims that the General Court distorted the note relating to the hearing of Mr G by considering, in paragraph 143 of the judgment under appeal, that it did not set out facts implicating the appellant, whereas it is clear from that note that that is the case. That error was repeated in paragraph 145 of that judgment, in which the General Court stated that the appellant had been able to express his views on the facts concerning him.
- 179 The Commission contends that the second part of the fourth ground of appeal should be rejected as unfounded.

*– Findings of the Court*

- 180 In paragraph 143 of the judgment under appeal, the General Court stated that the note relating to the hearing of Mr G was evoked in the OLAF report 'only in order to present the interviews of witnesses which were conducted ..., in order to record a fact not concerning [Mr Dalli] and confirming what the witness had already stated during a first interview ... and in order to record the subjective understanding, by a witness, of offers made by Mr Z *inter alia* to the complainant'. It concluded that it did not follow from that report 'that OLAF drew any conclusions relating to [Mr Dalli] on the basis solely of that note'.
- 181 However, as is clear from paragraph 164 of the present judgment, those various findings of the General Court all relate to OLAF's use of the note relating to the hearing of Mr G in its report. Moreover, it is not apparent from any other element of paragraph 143 of the judgment under appeal that the General Court held, as Mr Dalli maintains, that that note did not contain any facts concerning him.
- 182 In those circumstances, it cannot be considered that the General Court's finding, in paragraph 145 of the judgment under appeal, that Mr Dalli was given the opportunity to express his views on the facts concerning him is, even in part, based on an assessment by the General Court that the note relating to the hearing of Mr G did not contain such facts.

183 Moreover, as is apparent from paragraphs 167 to 170 of the present judgment, even if that note had not been brought to his attention, the appellant had nevertheless had the opportunity to state his position on the facts to which it refers.

184 Therefore, the second part of the fourth ground of appeal is based on an erroneous reading of the judgment under appeal and must, for that reason, be rejected as unfounded. Consequently, the fourth ground of appeal must be rejected in its entirety.

### ***The fifth ground of appeal, concerning the referral to the Supervisory Committee***

#### *Arguments of the parties*

185 By his fifth ground of appeal, Mr Dalli argues that the General Court made several errors when it dismissed the fifth complaint submitted at first instance, relating to the intervention of the Supervisory Committee.

186 In the first place, according to the working arrangement concluded between the Supervisory Committee and OLAF ('the working arrangement'), a five-day time limit should be respected between the referral to the Supervisory Committee and the transmission of information to the national judicial authorities. Even if, in exceptional circumstances, that period could be less than five days, an agreement with the Supervisory Committee should always be sought by OLAF before such transmission. Furthermore, the General Court wrongly held that OLAF should be allowed a margin of discretion in that regard, although such an approach would deprive the control vested in that Committee by Article 11(7) of Regulation No 1073/1999 of its effectiveness. The sensitive nature of the present case requires, contrary to what the General Court held, strict compliance with the applicable procedural guarantees.

187 In the second place, the General Court allegedly distorted the file by stating, in paragraph 160 of the judgment under appeal, that the Chair of the Supervisory Committee agreed to the transmission of the OLAF report to the Maltese judicial authorities before the expiry of a period of five days. The existence of that agreement, which was contested by Mr Dalli at the hearing before the General Court, is not apparent from any evidence in the file. Moreover, several items of evidence in the file contain indications to the contrary.

188 In the third place, the General Court infringed Article 11(7) of Regulation No 1073/1999, as interpreted by its own case-law, by holding, in paragraph 161 of the judgment under appeal, that OLAF could transmit its report to the national judicial authorities before the Supervisory Committee had completed its examination of it. The checks carried out by the Supervisory Committee do not constitute prohibited interference with the conduct of the investigation and are indispensable for the effective protection of the rights of the persons concerned.

189 In the present case, that obligation was not complied with, since, first, on 18 October 2012, OLAF granted the Supervisory Committee access to the file and, secondly, on 19 October 2012, transmitted the file to the Maltese authorities, even though the Supervisory Committee warned OLAF that a longer period of examination was necessary. The fact that that committee could not obstruct the transmission of OLAF's report was, moreover, not sufficient to justify depriving it of any effective possibility of carrying out its checks.

190 The Commission contends that the fifth ground of appeal is unfounded.

*Findings of the Court*

- 191 First of all, it is necessary to clarify the function of the Supervisory Committee, in respect of which Mr Dalli and the Commission are in disagreement.
- 192 Article 11(1) of Regulation No 1073/1999 defines that function in a general way by specifying that the Supervisory Committee is to support OLAF's independence by regularly monitoring the performance of its investigative function.
- 193 To that end, the Supervisory Committee is required, under Article 11(8) of that regulation, to adopt at least one report on its activities per year. In addition, it may also, pursuant to Article 11(1) and (8) of that regulation, deliver opinions to the Director of OLAF concerning OLAF's activities and submit reports to the European Parliament, the Council, the Commission and the Court of Auditors on the results of and action taken following OLAF investigations.
- 194 While it cannot be excluded that an opinion delivered by the Supervisory Committee may relate to a particular case, the fact remains that the Union legislature has required that such an opinion may not have the object of influencing the choices to be made by OLAF in a given case, since, as the General Court rightly pointed out in paragraph 162 of the judgment under appeal, Article 11(1) of that regulation provides that the Supervisory Committee's opinions are to be delivered without interfering with the conduct of investigations in progress.
- 195 It follows from the above that, as the Advocate General noted in point 103 of his Opinion, the function of the Supervisory Committee is to exercise systemic supervision of OLAF's activities. While the Supervisory Committee is thus called upon to verify that those activities are carried out in a manner which respects the rights, including procedural rights, of the interested parties, it is not for the Supervisory Committee to carry out a prior check of OLAF's acts for that purpose.
- 196 That understanding of the functions of the Supervisory Committee is corroborated, as regards more specifically the transmission of information to the judicial authorities of a Member State, by the absence of power conferred on that Committee, when it is informed of the need for such transmission pursuant to Article 11(7) of Regulation No 1073/1999, to object to such transmission, which was referred to by the General Court in paragraph 162 of the judgment under appeal.
- 197 The fact that certain provisions of the Rules of Procedure of the OLAF Supervisory Committee could possibly be interpreted, as argued by Mr Dalli, as being intended to confer a more extensive function on the Supervisory Committee is, in any event, not such as to call into question the foregoing considerations, since those rules of procedure, adopted on the basis of Article 11(6) of Regulation No 1073/1999, cannot amend the provisions of that regulation.
- 198 In that context, as regards, first, the argument that OLAF was obliged to await the completion of the Supervisory Committee's mission before forwarding its report to the national judicial authorities, it is important to stress that such an obligation does not arise from the provisions of Regulation No 1073/1999.
- 199 Moreover, that obligation would be likely to delay the consideration of the findings by the national judicial authorities without appearing necessary to enable the Supervisory Committee to fulfil its specific function, since it is not incumbent on it to oppose the transmission of information to the national judicial authorities, but only to carry out a systemic control of OLAF's practices on the matter.



- 200 Consequently, it was without committing an error of law that the General Court held, in paragraph 162 of the judgment under appeal, that the transmission of the report to the Maltese judicial authorities before the Supervisory Committee had given its opinion on the matter did not constitute an infringement of a rule of Union law.
- 201 Secondly, as regards the period elapsing between the referral to the Supervisory Committee and the transmission of the report to the Maltese authorities, the General Court rightly found, in paragraph 153 of the judgment under appeal, that Article 11(7) of Regulation No 1073/1999 provides for an obligation to inform the committee of cases requiring information to be forwarded to the national judicial authorities without setting the period of time within which the committee is to carry out a check before that transmission.
- 202 While the working arrangement does provide that the documents to be submitted to the Supervisory Committee in that context must ‘as a general rule’ be communicated to it five working days before information is forwarded to the national judicial authorities, it follows from the terms themselves of that arrangement, as the General Court pointed out in that paragraph, that that time limit is indicative and that OLAF may therefore depart from it.
- 203 Since, in view of the specific function of the Supervisory Committee, it is, in any event, not necessary for it to take a decision before such transmission, OLAF must be given a wide margin of discretion in determining the date on which it forwards such information to the national judicial authorities. It may, therefore, decide to forward such information before the expiry of the time limit referred to in the working arrangement without the prior agreement of the Chair of the Supervisory Committee.
- 204 In those circumstances, it cannot be considered that the General Court erred in its legal characterisation of the facts in holding that, having regard to the importance and sensitivity of the investigation and the fact that Mr Dalli had already resigned as Commissioner, OLAF could, without manifestly exceeding the margin of discretion available to it, consider it appropriate to forward its report to the Maltese authorities as from 19 October 2012, although the Supervisory Committee had had access to the complete file only the day before.
- 205 Thirdly, Mr Dalli’s claim in relation to a distortion of the file on the ground that, contrary to the General Court’s finding in paragraph 160 of the judgment under appeal, the Chair of the Supervisory Committee did not agree to the transmission of the OLAF report to the Maltese judicial authorities before the expiry of a period of five days must be dismissed as ineffective, in so far as it follows from paragraph 203 of the present judgment that, even if the General Court had erroneously held that the Chair of the Supervisory Committee had approved the need for the report to be forwarded rapidly to the Maltese authorities, that error is not such as to call into question the assessment in paragraph 164 of the judgment under appeal that it could have been possible for OLAF to forward the report without infringing the applicable rules of Union law.
- 206 Accordingly, the fifth ground of appeal must be rejected as, in part, ineffective and, in part, unfounded.

***The sixth ground of appeal, concerning the presumption of innocence***

*The second part of the sixth ground of appeal*

*– Arguments of the parties*

- 207 By the second part of the sixth ground of appeal, which should be examined first, Mr Dalli submits that the grounds of the General Court relating to the assessment of the statements made by the Director of OLAF at a press conference are contradictory, in so far as the General Court found, in



paragraph 176 of the judgment under appeal, first, that the Director of OLAF had stated that Mr Dalli had not reacted to the conduct at issue of which he was aware and, secondly, that the statements of the Director of OLAF did not reflect the appellant's guilt.

208 In addition, the General Court allegedly omitted a number of items of evidence by failing to take account of a series of negative allegations made by the Director of OLAF at his press conference.

209 The Commission contends that the second part of the sixth ground of appeal is unfounded.

*– Findings of the Court*

210 In paragraph 176 of the judgment under appeal, the General Court, first, noted that the factual findings set out by the Director of OLAF related, in particular, to '[Mr Dalli's] awareness of the conduct at issue and his failure to respond in that regard'. Secondly, it considered that 'it cannot be considered that those findings are referred to in order to reflect guilt on the part of the [appellant] or to encourage the public to believe in his guilt'.

211 The General Court thus described in that paragraph the factual elements which the Director of OLAF had presented at the press conference of 17 October 2012, before making an assessment of the manner in which the Director of OLAF had presented those elements. In paragraph 176 of that judgment, the General Court moreover developed that second idea by describing the precautions taken by the Director of OLAF to prevent his remarks from being construed as a declaration of guilt by Mr Dalli.

212 Consequently, the claim that that paragraph of the judgment under appeal is vitiated by a contradiction in reasoning must be rejected as unfounded.

213 As regards the argument alleging an omission of certain items of evidence, it should be noted that, by that argument, Mr Dalli maintains that the General Court did not ignore evidence, but distorted one of those elements actually assessed by the General Court, namely the transcript of the press conference of the Director of OLAF of 17 October 2012. The second part of the sixth ground of appeal is moreover presented under the heading 'Distortion of the evidence'.

214 In that regard, it follows admittedly from that transcript that the Director of OLAF, during that press conference, critically presented Mr Dalli's behaviour as a member of the Commission and suggested that he could be linked to certain fraudulent activities.

215 However, it does not appear from that transcript that the Director of OLAF clearly stated that Mr Dalli had committed criminal offences.

216 In those circumstances, although the transcript of the press conference in question may legitimately be interpreted in different ways, it cannot be held that the General Court distorted that transcript by manifestly exceeding the limits of a reasonable assessment of that document.

217 Consequently, the second part of the sixth ground of appeal must be rejected as unfounded.

*The first part of the sixth ground of appeal*

*– Arguments of the parties*

218 By the first part of the sixth ground of appeal, Mr Dalli claims that the General Court erred in law as regards the scope of the principle of the presumption of innocence.

- 219 In the first place, the General Court misunderstood the criteria for ensuring a balance between that principle and freedom of expression by referring, in paragraph 175 of the judgment under appeal, to OLAF's right to inform the public as accurately as possible, even though such a right has not been enshrined in the case-law of the European Court of Human Rights ('the ECtHR').
- 220 In the second place, the General Court wrongly held that the fact that certain elements expressed at the press conference organised by OLAF had already appeared in press releases previously published by Mr Dalli or by the Commission was such as to justify certain infringements of the presumption of innocence or of the principle of confidentiality under Article 339 TFEU. Furthermore, the General Court could not consider, in paragraph 177 of the judgment under appeal, that the press release published by Mr Dalli related to OLAF's findings, since that press release was issued before the publication of the OLAF report.
- 221 In the third place, the General Court also erred in law by acknowledging the relevance, in paragraph 179 of the judgment under appeal, of the fact that the press release subsequently issued by OLAF was intended to correct incorrect information disseminated by the media.
- 222 The Commission contends that the first part of the sixth ground of appeal should be rejected as, in part, inadmissible and, in part, unfounded.

– *Findings of the Court*

- 223 As regards, first, the criteria laid down by the General Court with a view to ensuring a balance between the presumption of innocence and freedom of expression, it should be recalled that the presumption of innocence is enshrined in Article 48 of the Charter, which corresponds to Article 6(2) and (3) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), as is apparent from the explanations relating to the Charter. It follows that, in accordance with Article 52(3) of the Charter, Article 6(2) and (3) of the ECHR must be taken into account for the purposes of interpreting Article 48 of the Charter as a minimum threshold of protection (judgment of 5 September 2019, *AH and Others (Presumption of innocence)*, C-377/18, EU:C:2019:670, paragraph 41 and the case-law cited).
- 224 As the General Court noted, in essence, in paragraph 173 of the judgment under appeal, it follows from the case-law of the ECtHR, first, that the presumption of innocence is infringed if a judicial decision or official statement concerning an accused person reflects the feeling that he or she is guilty, although his or her guilt has not previously been established in accordance with the law and, secondly, while the authorities may inform the public about ongoing criminal investigations, they must do so with all the discretion and reserve required by respect for the presumption of innocence (see, to that effect, ECtHR, 22 May 2014, *Ilgar Mammadov v. Azerbaijan*, CE:ECHR:2014:0522JUD001517213, §§ 125 and 126).
- 225 In that regard, it should admittedly be noted that, as Mr Dalli pointed out, that case-law did not recognise the power of the public authorities to inform the public, as accurately as possible, of the actions taken in the context of possible failures or fraud.
- 226 However, in paragraph 175 of the judgment under appeal, the General Court held not that OLAF benefited from that power, but that, in seeking to strike a fair balance between the interests involved, account should be taken of the fact that OLAF had an interest in ensuring that the public was so informed.

- 227 Furthermore, in paragraph 175 of that judgment, in its assessment of the remarks made by the Director of OLAF at the press conference of 17 October 2012, the General Court also stated that those remarks were measured and that the Director of OLAF had shown the necessary reserve. The General Court thus applied the criteria deriving from the case-law of the ECtHR referred to in paragraph 224 of the present judgment.
- 228 Consequently, the General Court did not err in law in paragraph 175 of the judgment under appeal as regards the criteria to be applied in order to examine whether OLAF had infringed the principle of the presumption of innocence.
- 229 Secondly, the other arguments put forward by Mr Dalli in support of the first part of the sixth ground of appeal must be rejected as ineffective, in accordance with the case-law of the Court of Justice referred to in paragraph 103 of the present judgment, in so far as they relate to findings made by the General Court for the sake of completeness.
- 230 It follows from the foregoing that, first, the rejection of the complaint submitted at first instance alleging breach of the presumption of innocence is based, *inter alia*, on the ground that the Director of OLAF showed the necessary reserve in the presentation of OLAF's findings and, secondly, that the elements set out in paragraph 176 of the judgment under appeal, which underpin that ground, are not validly disputed by Mr Dalli.
- 231 Therefore, since that ground is sufficient to establish, in accordance with the case-law referred to in paragraphs 223 and 224 of the present judgment, that the statements of the Director of OLAF did not infringe Article 48 of the Charter, the additional grounds relied on by the General Court in paragraphs 175 and 177 of the judgment under appeal, relating essentially to the fact that certain items of information had already been disseminated by the Commission or by Mr Dalli, are not necessary to justify the assessment made by the General Court in paragraph 178 of the judgment under appeal.
- 232 Thirdly, the argument that the General Court erred in law in paragraph 179 of the judgment under appeal must also be rejected as ineffective.
- 233 It is thus apparent from paragraph 180 of the judgment under appeal that the General Court considered, having regard to the content of the press release of 19 October 2012, that, by that press release, OLAF had legitimately informed the public with all due discretion and reserve.
- 234 Since that ground is sufficient to establish, in accordance with the case-law referred to in paragraphs 223 and 224 of the present judgment, that OLAF had complied with the presumption of innocence in issuing that press release, and is not disputed in the present appeal, the other arguments put forward by the General Court on that matter must be regarded as having been made for the sake of completeness.
- 235 Consequently, the first part of the sixth ground of appeal must be rejected as, in part, ineffective and, in part, unfounded. It follows that the sixth ground of appeal must be rejected in its entirety.

### ***The seventh ground of appeal, concerning the assessment of non-material damage***

#### *Arguments of the parties*

- 236 By the seventh ground of appeal, Mr Dalli claims that, in paragraph 225 of the judgment under appeal, the General Court erred in law and distorted the application at first instance by considering that he had failed to establish that the conduct of the Commission or OLAF complained of was, by reason of its gravity, such as to cause him damage.
- 237 The Commission contends that the seventh ground of appeal should be rejected as ineffective or, in the alternative, unfounded.

#### *Findings of the Court*

- 238 It follows expressly from paragraph 218 of the judgment under appeal that the alleged damage and the causal link were examined in the alternative by the General Court, since the latter considered, in paragraph 217 of that judgment, that Mr Dalli had not proved the existence of unlawful conduct on the part of OLAF or the Commission.
- 239 Since the first to sixth grounds in the present appeal have been rejected, it must be held that the finding made by the General Court in paragraph 217 of that judgment is not validly contested by Mr Dalli.
- 240 Moreover, it follows from the Court's case-law referred to in paragraph 42 of the present judgment that, where it is not established that unlawful conduct may be attributed to an institution of the Union, the action for damages must be dismissed in its entirety without it being necessary to examine the reality of the damage or the existence of a causal link between that institution's conduct and the damage invoked.
- 241 It follows that the seventh ground of appeal must be rejected as ineffective, pursuant to the case-law of the Court of Justice referred to in paragraph 103 of the present judgment, in so far as it refers to grounds stated by the General Court for the sake of completeness.
- 242 Having regard to all of the foregoing considerations, the appeal must be dismissed in its entirety.

#### **Costs**

- 243 In accordance with the Article 184(2) of the Rules of Procedure of the Court, where the appeal is unfounded, the Court is to make a decision as to costs.
- 244 Under Article 138(1) of those rules, which is applicable to the procedure on appeal by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.
- 245 Since the Commission has applied for costs and Mr Dalli has been unsuccessful, the latter must be ordered to bear his own costs and to pay those incurred by the Commission.

On those grounds, the Court (First Chamber) hereby:

#### **1. Dismisses the appeal;**

**2. Orders Mr John Dalli to bear his own costs and to pay those incurred by the European Commission.**

Bonichot

Bay Larsen

Toader

Safjan

Jääskinen

Delivered in open court in Luxembourg on 25 February 2021.

A. Calot Escobar  
Registrar

J.-C. Bonichot  
President of the First Chamber