Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

22 September 2022 *

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(Appeal – Development cooperation – Implementation of the EU budget under indirect management by an international organisation – Decision to not entrust any new budget implementation tasks to an entity due to doubts as to its status as an international organisation – Action for annulment – Compliance with a judgment annulling a measure – *Res judicata* – Obligations and powers of the author of the annulled act – Preparatory act – Admissibility – Claim for damages – Rule of law intended to confer rights on individuals – EU financial regulations – Duty of diligence – Existence of a sufficiently serious infringement of that obligation – Specific examination on a case-by-case basis – Non-material harm – Appropriate and sufficient compensation by the annulment of the unlawful act – Material harm – Dispute not in a condition to be adjudicated upon – Referral back to the General Court)

In Joined Cases C-619/20 P and C-620/20 P,

TWO APPEALS under Article 56 of the Statute of the Court of Justice of the European Union, lodged on 19 November 2020,

International Management Group (IMG), established in Brussels (Belgium), represented by J.-Y. de Cara and L. Levi, lawyers,

appellant,

the other party to the proceedings being:

European Commission, represented by J. Baquero Cruz and J. Norris, acting as Agents,

defendant at first instance,

THE COURT (Second Chamber),

composed of A. Prechal, President of the Chamber, J. Passer (Rapporteur), F. Biltgen, N. Wahl and M.L. Arastey Sahún, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment of Case C-619/20 P without an Opinion,

after hearing the Opinion of the Advocate General in Case C-620/20 P at the sitting on 3 March 2022,

gives the following

Judgment

1 By its appeal in Case C-619/20 P, International Management Group ('IMG') seeks to have set aside the order of the General Court of the European Union of 9 September 2020, *IMG* v *Commission* (T-645/19, not published, EU:T:2020:388; 'the order under appeal'), by which the General Court dismissed IMG's action seeking, first, annulment of the letter of the European Commission of 18 July 2019 requesting it to produce certain documents in the context of compliance with the judgment of 31 January 2019, *International Management Group* v *Commission* (C-183/17 P and C-184/17 P, EU:C:2019:78; 'the judgment in Case C-183/17 P and C-184/17 P'), and, second, to obtain compensation for the harm caused by that letter and by the decisions which were annulled by that judgment.

2 By its appeal in Case C-620/20 P, IMG seeks to have set aside the judgment of the General Court of 9 September 2020, *IMG* v *Commission* (T-381/15 RENV, EU:T:2020:406; 'the judgment under appeal'), by which the General Court dismissed IMG's action seeking compensation for the harm caused by the Commission's decision, contained in its letter of 8 May 2015, not to conclude any new delegation agreements for indirect management with IMG 'until there was absolute certainty regarding [its] status as an international organisation'.

I. Legal context

A. The 2002 Financial Regulation

1. The 2002 Financial Regulation

3 Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1), as amended by Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 (OJ 2006 L 390, p. 1) ('the 2002 Financial Regulation'), was repealed with effect from 1 January 2013 by Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Regulation No 1605/2002 (OJ 2012 L 298, p. 1) ('the 2012 Financial Regulation'). However, Article 212(a) of the 2012 Financial Regulation provided, inter alia, that Article 53 and Article 53d of the 2002 Financial Regulation would continue to apply to all commitments made up to 31 December 2013.

4 Article 53 of the 2002 Financial Regulation provided:

'The Commission shall implement the budget in accordance with the provisions set out in Articles 53a to 53d in any of the following ways:

(a) on a centralised basis;

(b) by shared or decentralised management;

(c) by joint management with international organisations.'

5 Article 53d of that regulation provided, inter alia:

'1. Where the Commission implements the budget by joint management, certain implementation tasks shall be delegated to international organisations …

…

2. Individual agreements concluded with international organisations for the award of financing shall contain detailed provisions for the implementation of the tasks entrusted to such international organisations.

…'

2. The 2002 Financial Implementing Regulation

6 Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Regulation No 1605/2002 (OJ 2002 L 357, p. 1), as amended by Commission Regulation (EC, Euratom) No 478/2007 of 23 April 2007 (OJ 2007 L 111, p. 13) ('the 2002 Financial Implementing Regulation', and, together with the 2002 Financial Regulation, 'the 2002 Financial Regulations'), was repealed, with effect from 1 January 2013, by Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation No 966/2012 (OJ 2012 L 362, p. 1) ('the 2012 Financial Delegated Regulation', and, together with the 2012 Financial Regulation, 'the 2012 Financial Regulations').

7 Article 43 of the 2002 Financial Implementing Regulation, entitled 'Joint management', provided, in paragraph 2 thereof, as follows:

'The international organisations referred to in Article 53d of [the 2002 Financial] Regulation shall be:

(a) international public-sector organisations set up by intergovernmental agreements, and specialised agencies set up by such organisations;

…'

B. The 2012 Financial Regulations

1. The 2012 Financial Regulation

8 The 2012 Financial Regulation entered into force on 27 October 2012, in accordance with the first paragraph of Article 214 thereof. It had been applicable since 1 January 2013 by virtue of the second paragraph of that article, without prejudice to the specific dates of application provided in that paragraph for certain provisions of that regulation.

9 Among those provisions was Article 58 of that regulation, entitled 'Methods of implementation of the budget', which contained paragraph 1, worded as follows, which was applicable only to commitments made as from 1 January 2014:

'The Commission shall implement the budget in the following ways:

(a) directly ("direct management"), by its departments, …

(b) under shared management with Member States ("shared management"); or

(c) indirectly ("indirect management") … by entrusting budget implementation tasks to:

…

(ii) international organisations and their agencies;

…'

10 Articles 84 to 86 of that regulation were applicable since 1 January 2013.

11 Pursuant to Article 84 of that regulation, entitled 'Financing decisions':

'1. Every item of expenditure shall be committed, validated, authorised and paid.

2. Except in the case of appropriations which can be implemented without a basic act … the commitment of the expenditure shall be preceded by a financing decision adopted by the institution or the authorities to which powers have been delegated by the institution.

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

In the case of indirect management, the financing decision shall also specify the entity or person entrusted pursuant to point (c) of Article 58(1), the criteria used to select the entity or person and the tasks entrusted to that entity or person.

…'

12 Article 85 of the 2012 Financial Regulation, entitled 'Types of commitments', stated in the first and second subparagraphs of paragraph 1:

'A budgetary commitment is the operation by which the appropriation necessary to cover subsequent payments to honour legal commitments is reserved.

A legal commitment is the act whereby the authorising officer enters into or establishes an obligation which results in a charge.'

13 Article 86 of that regulation, entitled 'Rules applicable to commitments', provides, in paragraph 1 thereof:

'In respect of any measure which may give rise to expenditure chargeable to the budget, the authorising officer responsible shall make a budgetary commitment before entering into a legal commitment with third parties …'

2. The 2012 Delegated Financial Regulation

14 Article 43 of the 2012 Delegated Financial Regulation, entitled 'Specific provisions for indirect management with international organisations', stated in paragraph 1:

'The international organisations referred to in point (ii) of Article 58(1)(c) of the [2012 Financial] Regulation shall be:

(a) international public-sector organisations set up by intergovernmental agreements, and specialised agencies set up by such organisations;

…'

C. The 2018 Financial Regulations

15 Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014 and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018 L 193, p. 1) ('the 2018 Financial Regulation') entered into force on 2 August 2018 and has been applicable since that date, without prejudice to the specific application dates laid down for certain of its provisions.

16 The first subparagraph of Article 62(1) of that regulation, entitled 'Methods of budget implementation', provides:

'The Commission shall implement the budget in any of the following ways:

(a) directly ("direct management") …;

(b) under shared management with Member States ("shared management") …;

(c) indirectly ("indirect management") as set out in Articles 125 to 149 and 154 to 159, where this is provided for in the basic act or in the cases referred to in points (a) to (d) of Article 58(2), by entrusting budget implementation tasks to:

…

(ii) international organisations or their agencies, within the meaning of Article 156;

…'

17 Article 156 of that regulation, entitled 'Indirect management with international organisations', is worded as follows:

'1. The Commission may, in accordance with point (c)(ii) of the first subparagraph of Article 62(1), implement the budget indirectly with international public-sector organisations set up by international agreements ('international organisations') and with specialised agencies set up by such organisations. Those agreements shall be transmitted to the Commission as part of the assessment carried out by the Commission in accordance with Article 154(3).

…

4. Where international organisations implement funds under indirect management, verification agreements concluded with them shall apply.'

II. Background to the dispute

A. Appellant

18 As is apparent from paragraph 1 of the judgment under appeal, IMG, according to its statute, was established on 25 November 1994 as an international organisation named '*International Management Group – Infrastructure for Bosnia and Herzegovina*', with its headquarters in Belgrade (Serbia), in order to provide the States participating in the reconstruction of Bosnia and Herzegovina with an entity specifically created for that purpose. Since then, IMG has gradually broadened the scope of its activities and, on 13 June 2012, concluded an agreement concerning the seat of the organisation with the Kingdom of Belgium.

B. Administrative background

19 The administrative background to the present disputes, as set out previously in paragraphs 17 to 28 of the judgment in Case C-183/17 P and C-184/17 P, are, in essence, as follows.

1. The decision of 7 November 2013

20 On 7 November 2013, the Commission adopted Implementing Decision C(2013) 7682 final on the Annual Action Programme 2013 in favour of Myanmar/Burma to be financed from the general budget of the European Union ('the decision of 7 November 2013') on the basis of Article 84 of the 2012 Financial Regulation.

21 Article 1 of that decision provided that the Annual Action Programme 2013 in favour of Myanmar/Burma, as set out in Annexes 1 and 2 to the decision, is approved.

22 Article 3 of the decision provided that budget tasks implemented by joint management may be entrusted to the entities referred to in Annexes 1 and 2 to the decision, subject to the conclusion of a delegation agreement.

23 Annex 2 to the decision described the second action constituting the Annual Action Programme 2013 in favour of Myanmar/Burma. Sections 5 and 8 of that annex stated, in essence, that the action was to take the form of a programme for trade development the cost of which, estimated at EUR 10 million, would be financed by the European Union and implemented by joint management with IMG. Point 8.3.1 of the annex stated that IMG is an international organisation already established in Myanmar/Burma and associated with the implementation of projects financed by the European Union in that State.

2. The decision of 16 December 2014

24 On 17 February 2014, the European Anti-Fraud Office (OLAF) informed the Commission that it had opened an investigation into IMG's status.

25 On 24 February 2014, the Secretary-General of the Commission sent that information to the Director-General for International Cooperation and Development of that institution, drawing his attention to the possibility of adopting precautionary measures on the basis of Article 7(6) of Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by 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).

26 On 26 February 2014, that Director-General adopted, on the basis of that provision, precautionary measures, justifying them by the fact that OLAF's initial analysis had raised doubts as to IMG's status. Those measures consisted, in essence, of a temporary prohibition on (i) concluding any new delegation agreement with IMG for indirect management of the EU budget on the basis of the 2012 Financial Regulation and (ii) extending any delegation agreement previously concluded with IMG for joint management of the EU budget on the basis of the 2002 Financial Regulation.

27 On 25 April 2014, the Director-General for International Cooperation and Development of the Commission sent a letter to IMG ('the letter of 25 April 2014'), in which he informed it of three new items of information in the Commission's file, relating to the fact that (i) five EU Member States presented by IMG as being its members did not consider themselves to be members, (ii) the Secretary-General of the United Nations (UN) had stated that IMG was not a specialist UN agency, and (iii) there was some doubt regarding the powers of the persons who had represented certain States when the act establishing IMG was signed. The Director-General also stated that, in view of the doubts raised by those factors concerning IMG's status, he had instructed his departments to suspend temporarily the use of the procedures established by the 2002 and 2012 Financial Regulations in order to enable the Commission to entrust budget implementation tasks to international organisations in the context of indirect or joint management of the EU budget.

28 On 15 December 2014, the Commission received the report drawn up by OLAF following its investigation ('the OLAF report'), together with a number of recommendations. In that report, OLAF stated, in essence, that IMG was not an international organisation within the meaning of the 2002 and 2012 Financial Regulations, and recommended that the Commission impose penalties on IMG and recover the sums paid to IMG in that capacity.

29 On 16 December 2014, the Commission adopted Implementing Decision C(2014) 9787 final on the basis of Article 84 of the 2012 Financial Regulation ('the decision of 16 December 2014'). Under Article 1 of that decision, Annex 2 to the decision of 7 November 2013 was replaced by a new annex, Sections 1 and 4.3 of which provided, in essence, that the implementation of the trade development programme provided for in that decision would be implemented by indirect management by an entity other than IMG.

3. The decision of 8 May 2015

30 On 16 January 2015, the Legal Service of the Commission drew up a note entitled 'Legal analysis of the [OLAF report] [in the] investigation … concerning [IMG]'.

31 On 8 May 2015, the Commission sent IMG a letter informing it of the action it intended to take in response to the OLAF report. It stated, in particular, that, while failing to act on most of the recommendations contained in that report, which it had not communicated to IMG, it had decided, inter alia, that 'until there was absolute certainty regarding [its] status as an international organisation', its department would no longer enter into any new delegation agreement with IMG under the provisions allowing budget implementation tasks to be entrusted to international organisations by way of indirect management of the EU budget ('the decision of 8 May 2015').

C. Legal background

1. Case T-29/15

32 By application lodged at the General Court Registry on 21 January 2015, IMG brought an action for annulment of the decision of 16 December 2014.

33 The Commission raised a plea that the action was inadmissible, claiming that the decision of 16 December 2014 did not constitute a challengeable act, on account of the fact that it produced no binding legal effects and merely confirmed the letter of 25 April 2014, which had informed IMG of the existence of the precautionary measures of 26 February 2014.

34 By order of 30 June 2015, the General Court reserved its decision on that objection to the final judgment.

35 By judgment of 2 February 2017, *International Management Group* v *Commission* (T-29/15, not published, EU:T:2017:56; 'Case T-29/15'), the General Court dismissed IMG's action. In paragraphs 28 to 78 of that judgment, it held that the plea of inadmissibility raised by the Commission was unfounded in so far as the decision of 16 December 2014 had produced binding legal effects in that it had definitively deprived IMG of the possibility of concluding the delegation agreement to which it related and in so far as it was not merely confirmatory in relation to the

letter of 25 April 2014. However, in paragraphs 79 to 169 and 174 of that judgment, the General Court rejected the seven pleas in law relied on by IMG and, consequently, dismissed the action as unfounded.

2. Case T-381/15

36 By application lodged at the General Court Registry on 14 July 2015, IMG brought an action seeking annulment of the decision of 8 May 2015 and compensation for the harm caused by that decision.

37 The Commission raised a plea of inadmissibility, claiming that the decision of 8 May 2015 did not constitute a challengeable act, on account, inter alia, of the fact that it produced no binding legal effects.

38 By order of 29 January 2016, the General Court reserved its decision on that objection to the final judgment.

39 By judgment of 2 February 2017, *IMG* v *Commission* (T-381/15, not published, EU:T:2017:57; 'Case T-381/15'), the General Court held that there was no longer any need to adjudicate on part of IMG's action and dismissed the action as to the remainder.

40 In paragraphs 41 to 53 and 75 of that judgment, the General Court held, first of all, that the decision of 8 May 2015 had produced binding legal effects as it had deprived IMG of the possibility of being entrusted with new budget implementation tasks based on the indirect management with an international organisation model laid down in Article 58(1) of the 2012 Financial Regulation, such that IMG's action for annulment was admissible. Next, in paragraphs 76 to 160 of that judgment, the General Court rejected the eight pleas in law relied on by IMG and, consequently, dismissed the action as unfounded. In that regard, the General Court held, inter alia, in essence, that, although it was not reasoned in a very precise and detailed manner, the decision of 8 May 2015 had to be understood and reviewed in the light of the three elements of fact and of law listed in paragraph 27 of the present judgment, which the Commission had brought to IMG's attention in order to justify its doubts as to IMG's status as an international organisation. Lastly, in paragraphs 170 to 173 of that judgment, the General Court rejected IMG's claim for damages as unfounded.

3. Case C-183/17 P and C-184/17 P

41 By two appeals brought on 11 April 2017, IMG requested the Court of Justice to set aside Cases T-29/15 and T-381/15 and to give final judgment in the disputes by annulling the decisions of 16 December 2014 and of 8 May 2015 and ordering the European Union to compensate for the harm caused by the second of those decisions.

42 While contending that those two appeals should be dismissed in their entirety, the Commission brought two cross-appeals at the same time, in which it asked the Court, in essence, to set aside the judgments in Cases T-29/15 and T-381/15 in so far as they had rejected its pleas of inadmissibility and to give final judgment in the disputes by dismissing the actions as inadmissible.

43 By the judgment in Case C-183/17 P and C-184/17 P, the Court, in the first place, dismissed the Commission's two cross-appeals on the ground that the General Court had not committed any of the errors of law alleged by that institution in finding that IMG's two actions were admissible in so far as they concerned acts intended to produce binding legal effects capable of affecting IMG's interests by bringing about a distinct change in IMG's legal position.

44 The Court of Justice held, in paragraphs 55 to 60 of the judgment in Case C-183/17 P and C-184/17 P, that the decision of 16 December 2014 constituted a financing decision adopted on the basis of Article 84 of the 2012 Financial Regulation and intended to amend an earlier decision, with a view to entrusting to a third party a budget implementation task previously entrusted to IMG. It also noted that that financing decision had the effect of depriving IMG of the legal status of entity entrusted with that budget implementation task and, consequently, of depriving IMG of any possibility of subsequently concluding, with the European Union, a delegation agreement relating to the European Union giving concrete expression to a legal commitment within the meaning of Articles 85 and 86 of that regulation.

45 In addition, the Court of Justice held, in paragraphs 61 to 63 of that judgment, that the decision of 8 May 2015 prohibited the conclusion of any other delegation agreement for indirect management of the EU budget with IMG 'until there was absolute certainty regarding [its] status as an international organisation', that it thereby deprived IMG of any real chance of being entrusted with budget implementation tasks in that capacity and that it was apparent from the case-law that that effect had to be regarded as a binding legal effect of that decision, as the General Court had correctly held.

46 In the second place, the Court of Justice upheld, in paragraphs 84 to 97 of that judgment, the grounds of appeal by which IMG complained that the General Court held that the Commission had not erred in law and had not made a manifest error of assessment by justifying the decisions of 16 December 2014 and of 8 May 2015 by the existence of doubts relating to IMG's status as an international organisation within the meaning of the 2002 and 2012 Financial Regulations.

47 In that regard, the Court of Justice held that the General Court had erred in law by merely stating that the arguments and evidence submitted by IMG did not call into question the Commission's doubts as to its status as an international organisation, instead of reviewing the legality of the decisions of 16 December 2014 and of 8 May 2015 in the light of the concept of an 'international organisation' within the meaning of the 2002 and 2012 Financial Regulations, which refer, in that regard, to 'international public-sector organisations set up by intergovernmental agreements'.

48 In that context, the Court of Justice noted, inter alia, that none of the three factors listed in paragraph 27 of the present judgment was capable of giving rise to doubts as to IMG's status as an international organisation, since they related only to the status of five States presented by IMG as forming part of, or having formed part of, its members and the powers of the persons who had represented those States when the act establishing IMG was signed, and not to all the States which were members of IMG, or to the status of IMG itself.

49 In the third and last place, the Court of Justice held, in paragraphs 98 to 106 of the judgment in Case C-183/17 P and C-184/17 P, first, that the finding of errors of law made by the General Court implied that the judgments in Cases T-29/15 and T-381/15 should be set aside in their entirety, secondly, that the two disputes were in a state of readiness for adjudication in so far as IMG sought annulment of the decisions of 16 December 2014 and of 8 May 2015, thirdly, that those two decisions were unlawful in the same way as the judgments in Cases T-29/15 and

T-381/15, so that they also had to be set aside in their entirety, and fourthly, that the claim for damages for the harm caused to IMG by the decision of 8 May 2015 was, in contrast, not ready for adjudication and should therefore be referred back to the General Court.

4. Order C-183/17 P-INT

50 By application lodged at the Court Registry on 10 January 2020, IMG asked the Court to interpret points 1 to 3 of the operative part of the judgment in Case C-183/17 P and C-184/17 P, in conjunction with paragraphs 91 to 105 of the grounds of that judgment, as meaning that the Commission was not justified in maintaining doubts as to its status as an international organisation within the meaning of the EU Financial Regulations.

51 By order of 9 June 2020, *International Management Group* v *Commission* (C-183/17 P-INT, EU:C:2020:507; 'order C-183/17 P-INT'), the Court of Justice dismissed that application for interpretation as being manifestly inadmissible in so far as it concerned a point not resolved by that judgment. In particular, in paragraphs 22 and 23 of that order, the Court stated, in essence, that, whereas it had found that the doubts expressed by the Commission as to IMG's status as an international organisation were erroneous on the basis of a series of factors that could not be considered to justify such doubts, it had in no way decided the issue of whether, on the basis of an analysis not vitiated by any errors of law and account being taken of all the relevant factors of law and fact, it should be found that IMG had such a status or, on the contrary, the possibility that it had such a status should be excluded.

D. The cases at first instance

1. Case T-381/15 RENV

52 Following delivery of the judgment in Case C-183/17 P and C-184/17 P, the General Court invited the parties to submit written observations, before putting questions to them in writing, to which they replied within the prescribed period. The General Court also heard them at an oral hearing held on 12 March 2020.

53 By the judgment under appeal, the General Court dismissed the claim for damages referred to in paragraph 49 above.

54 In the first place, in paragraphs 49 to 68 of the judgment under appeal, the General Court considered, in essence, that that claim, as clarified by IMG in its written observations following the Court of Justice's partial referral back of the case, was inadmissible in so far as it sought compensation for a series of harm which was either additional to that set out in the application initiating proceedings or had changed its nature in relation to that harm. In particular, the General Court dismissed as inadmissible the heads of claim in that application by which IMG sought to obtain compensation in kind, by means of injunctions to act and public statements together with interest for late payment, for various material losses which it claimed to have suffered as a result of the decision of 8 May 2015. In addition, that court dismissed as inadmissible a head of claim by which IMG sought compensation for non-material harm quantified at EUR 10 million and no longer the symbolic EUR 1, as was the case in that application.

55 By contrast, the claim for damages was held to be admissible in so far as it related to certain material harm and the non-material harm for which IMG had sought compensation in that application.

56 In the second place, in paragraphs 75 to 93 of the judgment under appeal, the General Court held, in essence, that, although it was unlawful for the reasons given by the Court of Justice in the judgment in Case C-183/17 P and C-184/17 P, the decision of 8 May 2015 had not infringed any rule of law intended to confer rights on individuals.

57 In that regard, it rejected as unfounded, in paragraphs 76 to 88 of that judgment, IMG's argument that the provisions of the 2002 and 2012 Financial Regulations, in breach of which that decision had been adopted, had to be interpreted, in the light of certain rules of public international law relating to the concept of 'international organisation' in those provisions, as being intended to confer on the entities which the Commission has recognised as being an international organisation, within the meaning of those provisions, the right to remain recognised as such.

58 Similarly, in paragraphs 89 to 93 of the judgment under appeal, the General Court rejected as unfounded IMG's argument that the unlawfulness vitiating the decision of 8 May 2015, as found by the Court of Justice in Case C-183/17 P and C-184/17 P, had to be categorised as a breach of a rule of law stemming from the principle of good administration and intended to confer rights on individuals, namely the obligation under which the Commission was required to examine carefully and impartially IMG's situation and whether it was an international organisation in the light of the relevant provisions of the 2002 and 2012 Financial Regulations.

59 In reaching that conclusion, the General Court relied on three sets of considerations. First of all, it observed that it followed from its settled case-law that the principle of sound administration, now enshrined in Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter'), did not in itself confer rights on individuals, except where it constitutes the expression of specific rights, such as that of an individual to have his or her affairs dealt with by the administration of the European Union impartially, fairly and within a reasonable time. Next, it recalled that it followed from the legal assessments made in the judgment under appeal that the status of IMG as an international organisation, within the meaning of the 2002 and 2012 Financial Regulations, could lawfully be called into question by the Commission, with the result that the Commission could not validly be criticised for not concluding new delegation agreements with that entity for indirect management. Lastly, the General Court stated that, apart from that argument, IMG did not establish how the unlawfulness which had led the Court of Justice to annul the decision of 8 May 2015 constituted an infringement of the Commission's obligation to examine its situation impartially, in the light of all the relevant information.

60 In the third and last place, in paragraphs 94 to 97 of the judgment under appeal, the General Court held, in essence, that the infringement of the 2002 and 2012 Financial Regulations alleged by IMG did not, in any event, appear sufficiently serious, since IMG had failed to establish that the Commission had no discretion to comply with that legislation.

61 On the basis of those grounds, the General Court held, in paragraphs 98 to 101 of the judgment under appeal, that IMG's claim for damages had to be rejected in its entirety.

2. Case T-645/19

62 In parallel with the conduct of the proceedings in Case T-381/15 RENV, the Commission and IMG exchanged correspondence relating to compliance with the judgment in Case C-183/17 P and C-184/17 P. It is apparent from that exchange that the Commission initially took the view that the annulment of the decisions of 16 December 2014 and of 8 May 2015 was based on the failure to state reasons for those decisions whereas IMG considered that their annulment on the merits had the consequence of requiring the Commission to accord it the status of an international organisation, within the meaning of the 2002 and 2012 Financial Regulations.

63 In the context of that exchange of correspondence, the Commission sent IMG, on 18 July 2019, a letter of which paragraph 31 of the order under appeal, which was not challenged before the Court of Justice, gives the following description:

'By letter of 18 July 2019 … the Commission first of all maintained that, in Case [C-183/17 P and C-184/17 P], the Court had not concluded that [IMG] was an international organisation, so that execution of that judgment did not require "automatic recognition of IMG as an international organisation, but rather the reassessment of its legal status in the light of available information and the applicable financial rules". Next, the Commission reiterated its request to [IMG] to produce the documents referred to in [its] letter of 6 May 2019 … and stated that, in the event of a refusal by [IMG], it would turn directly to the States which the latter considers to be its members … Lastly, the Commission reaffirmed that the assessment of the status of [IMG] as an international organisation was an issue prior to compliance with the judgment in Case [C-183/17 P and C-184/17 P] also in so far as it had annulled the decision of 16 December 2014.'

64 By application lodged at the General Court Registry on 26 September 2019, IMG brought an action seeking, first, annulment of the letter of 18 July 2019, on the ground that the Commission was not entitled either to carry out a new assessment of IMG's status as an international organisation or to request its members for information in that regard. Secondly, IMG sought compensation, first, for the non-material harm caused to it by that letter, secondly, for various material harm which, although arising from the decision of 8 May 2015, would be perpetuated by that letter and, thirdly, for the harm which it suffered as a result of the decision of 16 December 2014, but only in so far as it was also perpetuated by that letter.

65 By the order under appeal, the General Court dismissed that action. As regards the head of claim seeking annulment of the letter of 18 July 2019, it considered, in paragraphs 45 to 76 of that order, that that head of claim was inadmissible on the ground, in essence, that that letter constituted a measure preparatory to the decision which the Commission was required to take in order to execute the judgment in Case C-183/17 P and C-184/17 P.

66 As regards the head of claim seeking compensation for the harm caused by the letter of 18 July 2019, the General Court held that it was manifestly inadmissible for three reasons relating, first, to the close link between the non-material harm alleged by IMG and the head of claim seeking annulment of that letter, which is itself inadmissible (paragraphs 80 and 81 of the order under appeal), second, to the existence of a situation of *lis pendens* arising from the relationship of some of the material harm alleged by IMG with those forming the subject matter of Case T-381/15 RENV (paragraphs 82 to 85 of that order), and, third, the lack of clarity and precision in IMG's pleadings with regard to the other material harm for which compensation was sought (paragraphs 86 to 93 of that order).

III. Forms of order sought by the parties and the procedure before the Court

A. Forms of order sought by the parties

67 By its appeal in Case C-619/20 P, IMG claims that the Court should:

– set aside the order under appeal;

– refer Case T-645/19 back to the General Court; and

– order the Commission to pay the costs incurred both at first instance and at the appeal stage.

68 By its appeal in Case C-620/20 P, IMG claims that the Court should:

– set aside the judgment under appeal;

– give final judgment in the matter by ordering the European Union to make good the harm caused by the decision of 8 May 2015; and

– order the Commission to pay the costs incurred both at first instance and at the appeal stage.

69 In each of those cases, the Commission contends that the Court should dismiss the appeal and order IMG to pay the costs.

B. Procedure before the Court

70 On 16 June 2021, that is to say, after the close of the written part of the procedure in each of the two present cases, the Commission informed the Court that it had communicated to IMG, by letter of 8 June 2021 ('the letter of 8 June 2021'), the definitive assessment of IMG's status in order to comply with the judgment in Case C-183/17 P and C-184/17 P. The Commission stated that it followed from that assessment, contained in a document entitled 'Final assessment of [IMG's] legal status for the purposes of its eligibility for indirect management' that IMG could not be categorised as an international organisation, within the meaning of the 2002, 2012 and 2018 Financial Regulations, and that, as a consequence, it could not be entrusted with budgetary implementation tasks as an international organisation. The Commission also stated, in essence, that that assessment had to be regarded as applicable retroactively, with effect from the decisions of 16 December 2014 and of 8 May 2015, with the result that it had or could have the effect, as regards Case C-619/20 P and Case C-620/20 P respectively, of rendering the dispute devoid of purpose or causing IMG to lose its interest in bringing proceedings.

71 In response to a question from the Court, the Commission stated that, by referring to that information, it intended to raise, in each of those cases, a new plea, within the meaning of Article 127(1) of the Rules of Procedure of the Court of Justice, applicable to appeals in accordance with Article 190(1) of those rules.

72 Pursuant to Article 127(2) of those rules, IMG was given a period within which it could adopt a position on the Commission's arguments, which it did in good time.

IV. The appeals

73 In view of the connection between the present cases, it is appropriate, after hearing the Advocate General and the parties, to join them for the purposes of the judgment, pursuant to Article 54 of the Rules of Procedure.

A. The subject matter of the disputes and the interest in bringing proceedings

1. Arguments of the parties

74 In support of the arguments set out in paragraphs 70 and 71 above, the Commission produced the letter of 8 June 2021, to which is attached a document entitled 'Final assessment of the legal status of [IMG] for the purposes of its eligibility for indirect management', referred to in paragraph 70 of the present judgment.

75 It is apparent from that document, first, that the provisions of the 2002 and 2012 Financial Regulations referred to in the judgment in Case C-183/17 P and C-184/17 P were replaced, during the procedure leading to that judgment, by new provisions contained in the 2018 Financial Regulation, which, according to the Commission, should be taken into account for the purposes of carrying out the new assessment of IMG's situation and its legal status required for compliance with that judgment.

76 Secondly, the Commission expresses the view that the provisions of the 2018 Financial Regulation which provide for the possibility of entrusting budget implementation tasks to international organisations created by means of 'international agreements' must be interpreted, first, as having the same meaning as the reference to international organisations set up by means of 'intergovernmental agreements' which appeared in the 2002 and 2012 Financial Regulations and, second, that those two expressions refer, in an identical manner, to treaties formally concluded by several States, which are themselves represented by persons validly entitled to express their consent.

77 Thirdly, the Commission states therein that, with the aim of complying with the judgment in Case C-183/17 P and C-184/17 P, it questioned each of the States presented by IMG as being or as having been a member of IMG as to whether, first, IMG was an international organisation of which they were or had been members and whether, second, they could produce the international agreement which had created such an international organisation and any other relevant document in that regard.

78 Fourthly, the Commission states, in essence, that it is apparent from the responses sent to it by those States that none of them acknowledges having concluded, in the required forms, an international agreement creating IMG as an international organisation of which it is a member. Those replies show that, in reality, the various States for which it is established that they either signed the memorandum or the statutes of IMG, or took part in the meeting during which it was created, or were part of its steering committee or provided funding to it, set up that entity in 1994 by means of a document of a political and non-legally binding nature, as a dedicated and temporary international vehicle intended to coordinate the financing of the reconstruction of the infrastructures of Bosnia and Herzegovina.

79 Fifthly, the Commission concludes that, in the light of those factors, the various observations submitted to it in that regard by IMG and its assessment of them, it has not been established that IMG was created, as an organisation of public international law, by an agreement concluded by at least two States validly represented for that purpose, even though it has existed for more than 20 years and significantly extended its scope of activity since its creation. Consequently, that entity could not be entrusted with budget implementation tasks under the provisions of the 2002, 2012 and 2018 Financial Regulations which allow such tasks to be entrusted to international organisations.

80 IMG contends that the Commission's line of argument is unfounded.

2. Findings of the Court

81 As is clear from the settled case-law of the Court of Justice, any natural or legal person who brings an appeal must, as well as when he or she brings an action for annulment, have an interest in bringing proceedings, the existence of which must be assessed in the light of the subject matter of that appeal or that action, on the one hand, and the date on which it is brought, on the other. Failure to comply with this essential requirement constitutes a ground of inadmissibility of public policy which may, at any time, be raised *ex officio* by the EU judicature of its own motion (see, to that effect, judgments of 3 September 2009, *Moser Baer India* v *Council*, C-535/06 P, EU:C:2009:498, paragraph 24, and of 21 January 2021, *Germany* v *Esso Raffinage*, C-471/18 P, EU:C:2021:48, paragraph 101 and the case-law cited).

82 Furthermore, that interest in bringing proceedings must, like the purpose of the dispute itself, continue until the final decision. Consequently, the disappearance of that interest or that subject matter during the proceedings may lead the EU judicature to find, if necessary of its own motion, that there is no longer any need to adjudicate on the action (see, to that effect, judgments of 19 October 1995, *Rendo and Others* v *Commission*, C-19/93 P, EU:C:1995:339, paragraph 13; of 3 September 2009, *Moser Baer India* v *Council*, C-535/06 P, EU:C:2009:498, paragraph 24; and of 4 September 2018, *ClientEarth* v *Commission*, C-57/16 P, EU:C:2018:660, paragraph 43).

83 Finally, both the existence and the continuing existence of an interest in bringing proceedings presuppose that the action or the appeal is liable, if successful, to procure an advantage to the natural or legal person who brought it (see, to that effect, judgments of 28 May 2013, *Abdulrahim* v *Council and Commission*, C-239/12 P, EU:C:2013:331, paragraphs 61 to 64, and of 4 September 2018, *ClientEarth* v *Commission*, C-57/16 P, EU:C:2018:660, paragraph 43). In all cases, that question must be assessed specifically (see, to that effect, judgment of 28 May 2013, *Abdulrahim* v *Council and Commission*, C-239/12 P, EU:C:2013:331, paragraph 65).

84 In the present case, in the first place, it is not disputed that, at the date on which the present appeals were lodged, they had a purpose and that IMG had an interest in bringing proceedings. By contrast, the Commission submits that that purpose and that interest no longer exist in the course of the present proceedings, because of its decision, contained in the letter of 8 June 2021, not to classify IMG as an international organisation, within the meaning of the 2002, 2012 and 2018 Financial Regulations, in the light of its definitive assessment of IMG's status for the purposes of compliance with the judgment in Case C-183/17 P and C-184/17 P.

85 In the second place, that decision constitutes the culmination of an assessment process, the starting point of which is the letter of 18 July 2019, referred to in paragraph 63 above, the annulment of which is sought by IMG. In addition, that decision is based, as is apparent from the

Commission's arguments summarised in paragraphs 76 to 78 of that judgment, on a body of evidence which was gathered by the Commission in the context of the assessment process in question. Lastly, the purpose of the action in Case T-645/19 brought by IMG against that letter, and the appeal in Case C-619/20 P brought by IMG following the dismissal of that action by the order under appeal, are, inter alia, to challenge the very possibility of the Commission carrying out such an assessment process, as is apparent from paragraph 64 of that judgment.

86 Those circumstances, taken together, preclude the conclusion that that appeal has become devoid of purpose or that IMG has lost its interest in bringing proceedings since that appeal is not liable, if successful, of procuring an advantage for IMG. If it were established, following the review which the Court is called upon to carry out, that the appeal is well founded and that the order under appeal must be set aside, that annulment would lead to the disappearance of the letter of 18 July 2019 from the legal order and could, in view of the links between that letter and that of 8 June 2021, have consequences for the lawfulness of the latter letter, in relation to which both parties indicate that it is being challenged by IMG in an action which was lodged at the General Court Registry under number T-509/21 and which was still pending before the General Court on the date that the present appeals were brought.

87 In the third and last place, the letter of 8 June 2021, as presented by the Commission, does not appear capable of having any effect whatsoever on the subject matter of the appeal in Case C-620/20 P or on IMG's interest in bringing proceedings in that context.

88 That appeal and the action in Case T-381/15 RENV, which preceded it, seek compensation for the material and non-material harm which IMG claims to have suffered as a result of the decision of 8 May 2015, by which the Commission had, as stated in paragraph 31 of the present judgment, informed IMG of its decision to no longer conclude a new delegation agreement with IMG under the provisions of the 2002 and 2012 Financial Regulations which allow budget implementation tasks to be entrusted to international organisations, given the existence of doubts as to IMG's status as an international organisation within the meaning of those provisions.

89 However, in so far as, as is apparent from paragraphs 46 to 49 and 51 of the present judgment, the Court of Justice found that that decision was unlawful in the judgment in Case C-183/17 P and C-184/17 P, in view of the unfounded nature, in law and in fact, of the reasoning which led the Commission to entertain such doubts, and since the grounds on which that finding was based have, in accordance with settled case-law (judgments of 14 September 1999, *Commission* v *AssiDomän Kraft Products and Others*, C-310/97 P, EU:C:1999:407, paragraph 54, and of 19 April 2012, *Artegodan* v *Commission*, C-221/10 P, EU:C:2012:216, paragraph 87), the force of *res judicata* in so far as they constitute the necessary support for the operative part of that annulment judgment, the question whether that unlawful decision may have caused harm of a non-material and material nature in respect of which IMG has an interest in seeking compensation cannot be affected by the fact that the Commission, in a decision adopted six years later and based on a different legal and factual assessment, came to the conclusion that IMG cannot be regarded as an international organisation. In an action for damages, illegality of an act or of conduct that may give rise to non-contractual liability of the European Union must be assessed on the basis of the facts and the law as they stood at the time when the act or conduct was adopted (judgment of 10 September 2019, *HTTS* v *Council*, C-123/18 P, EU:C:2019:694, paragraph 39).

90 It follows from the foregoing that the Commission's line of argument concerning the loss of purpose of the present appeals or the loss of interest in bringing proceedings on the part of IMG is unfounded.

B. Appeal C-619/20 P

91 In support of its claims, IMG relies on two grounds of appeal alleging errors of law vitiating, respectively, the rejection as inadmissible of its action for annulment of the letter of 18 July 2019 (paragraphs 43 to 76 of the order under appeal) and the rejection as manifestly inadmissible of its claim for damages for the harm allegedly caused to it by that letter (paragraphs 77 to 93 of that order).

1. The first ground of appeal

(a) Arguments of the parties

92 IMG submits that the reasoning which led the General Court to find that the letter of 18 July 2019 did not constitute an act against which an action for annulment could be brought is vitiated by several errors of law.

93 That letter contains a final decision of the Commission to comply with the judgment in Case C-183/17 P and C-184/17 P by reassessing IMG's status having regard to the provisions of the 2002 and 2012 Financial Regulations, in the light of additional information to be provided by IMG or, failing that, by the States which it describes as being or as having been its members. An express decision of that kind is supplemented, implicitly but necessarily, by a decision to not comply with that judgment by placing IMG in the situation of an international organisation recognised, inter alia, by the Commission, which it would have been in prior to the adoption of the two acts annulled by the Court of Justice.

94 By failing to accept that those decisions are open to challenge, the General Court first of all erred in law in refusing to censure the infringement, by the Commission, of the first paragraph of Article 266 TFEU, which requires the EU institutions, in the event of annulment of an act of which they are the author, to take the necessary measures to comply with the judgment annulling that act. More specifically, paragraphs 53 to 59, 61 to 66, 68 to 70 and 73 to 76 of the order under appeal disregard the principle of *res judicata* attaching to the judgment in Case C-183/17 P and C-184/17 P, the decisive grounds of which (paragraphs 92 to 96 and 104) show that the Commission was required to restore IMG to its previous status as a recognised international organisation, within the meaning of the 2002 and 2012 Financial Regulations.

95 Next, by disregarding the fact that that recognition had to remain granted to IMG, unless its members amend its status or put an end to its existence, the General Court infringed various rules of public international law relating to the concept of 'international organisation' to which that legislation refers, compliance with which, in view of their primacy over secondary EU law, was required of both that court and the Commission in the context of compliance with the judgment in Case C-183/17 P and C-184/17 P.

96 Finally, the General Court misapplied the principles established by the settled case-law of the Court of Justice relating to the concept of a 'challengeable act' by not classifying as such the letter of 18 July 2019, despite its wording, the context in which it occurred and the legal effects of the express and implicit decisions contained therein.

97 The Commission contends that that ground of appeal is unfounded.

(b) Findings of the Court

98 An action for annulment may be brought, on the basis of the first paragraph of Article 263 TFEU, against any provision or act adopted by the EU institutions, bodies, offices and agencies, whatever form they may take, the legal effects of which are binding on, and capable of affecting the interests of, a natural or legal person by bringing about a distinct change in their legal position (judgment of 31 January 2019, *International Management Group* v *Commission*, C-183/17 P and C-184/17 P, EU:C:2019:78, paragraph 51 and the case-law cited).

99 In order to determine, in a given case, whether the contested act is intended to produce binding legal effects, it is necessary, in the first place and as is apparent from the settled case-law of the Court, to examine the substance of the act and to assess its effects in the light of objective criteria, such as the content of the act in question, taking into account, as appropriate, the context in which it was adopted and the powers of the EU institution, body, office or agency which adopted it. Those powers should not be understood in the abstract, but should be regarded as factors that inform the specific analysis of the content of the act in question, which is central and indispensable (judgment of 21 January 2021, *Germany* v *Esso Raffinage*, C-471/18 P, EU:C:2021:48, paragraph 64 and the case-law cited).

100 In the second place, it follows from the settled case-law of the Court that, where, as in the present case, the contested measure was adopted following the annulment of an earlier measure, account must be taken of the specific legal features of such a situation.

101 In that regard, it follows from Article 266 TFEU that the institution, body, office or agency whose act has been declared void is required to take the necessary measures to comply with the judgment annulling that act and, in order to comply with that judgment and to comply with it fully, to have regard not only to its operative part but also to the grounds which constitute the essential basis for it, in so far as they are necessary to determine the exact meaning of what is stated in that operative part (judgment of 14 June 2016, *Commission* v *McBride and Others*, C-361/14 P, EU:C:2016:434, paragraph 35 and the case-law cited).

102 However, since Article 266 TFEU does not specify the nature of the measures to be taken by the author of the annulled act in order to comply with that obligation, it is for the author to identify those measures (see, to that effect, judgment of 14 June 2016, *Commission* v *McBride and Others*, C-361/14 P, EU:C:2016:434, paragraphs 52 and 53), whilst having, in the choice of those measures, a wide discretion, provided that it complies with the operative part of the judgment which annulled that act and with the grounds that constitute its essential basis (see, to that effect, judgment of 15 March 2018, *Deichmann*, C-256/16, EU:C:2018:187, paragraph 87 and the case-law cited).

103 In the third and last place, it is settled case-law that, in the case of acts drawn up in several procedural stages, only the measure definitively laying down the position of the competent EU institution, body, office or agency at the end of the procedure, to the exclusion of intermediate

measures whose aim is to prepare that final measure, in particular by expressing a provisional opinion, is capable of forming the subject matter of an action for annulment (judgments of 11 November 1981, *IBM* v *Commission*, 60/81, EU:C:1981:264, paragraphs 10 and 20; and of 3 June 2021, *Hungary* v *Parliament*, C-650/18, EU:C:2021:426, paragraphs 43 and 44).

104 An action for annulment against measures expressing a provisional opinion might make it necessary for the EU judicature to arrive at a decision on questions on which the relevant institution, body, office or agency has not yet had an opportunity to state its position, which would be incompatible with the system of division of powers and remedies provided for in the TFEU (see, to that effect, judgments of 13 October 2011, *Deutsche Post and Germany* v *Commission*, C-463/10 P and C-475/10 P, EU:C:2011:656, paragraph 51, and of 15 March 2017, *Stichting Woonlinie and Others* v *Commission*, C-414/15 P, EU:C:2017:215, paragraph 45).

105 Moreover, in so far as the illegalities which may vitiate an intermediate measure may be relied upon in the action for annulment which may be brought against the final measure to which it contributes, that action ensures sufficient judicial protection for the persons concerned (see, to that effect, judgments of 13 October 2011, *Deutsche Post and Germany* v *Commission*, C-463/10 P and C-475/10 P, EU:C:2011:656, paragraphs 53 and 54, and of 6 October 2021, *Poggiolini* v *Parliament* (C-408/20 P, EU:C:2021:806, paragraph 43).

106 In the present case, the General Court reached the conclusion that, in the light of its content, as set out in paragraph 63 above, the letter of 18 July 2019 was not an act against which an action for annulment could be brought in so far as it constituted a preparatory measure.

107 More specifically, that court held, first of all, in paragraphs 51 and 52 of the order under appeal, that that letter had to be analysed as expressing the Commission's position that it considered it necessary to obtain information to enable it to assess IMG's status as an international organisation, within the meaning of the applicable provisions, and to determine its final position in that regard in order to comply with its obligation to comply with the judgment in Case C-183/17 P and C-184/17 P.

108 Next, the General Court found, in essence, in paragraphs 54, 59 to 69 and 71 to 75 of the order under appeal, that, in view of the context in which that letter had been made, the operative part and grounds of the judgment in Case C-183/17 P and C-184/17 P and the discretion enjoyed by the Commission in order to meet its obligation to comply with that judgment, the Commission had the power, or even the obligation, to carry out a new assessment of IMG's status as an international organisation having regard to the applicable provisions and to seek to obtain, for that purpose, the information which it considered necessary to enable it to adopt its final position on the matter.

109 Finally, the General Court concluded, in paragraph 76 of the order under appeal, that the letter of 18 July 2019 constituted a preparatory measure for the decision which the Commission was required to take in order to comply with the judgment in Case C-183/17 P and Case C-184/17 P.

110 In that regard, it should be noted, as regards, in the first place, IMG's arguments summarised in paragraph 94 of the present judgment, that, account being taken of the case-law principles referred to in paragraphs 100 to 102 of that judgment, the General Court did not err in law when it determined, in the manner summarised in paragraph 108 of that judgment, the legal consequences to be drawn, in the context of the analysis of the challengeable nature of the letter of 18 July 2019, first, from the existence of the judgment in Case C-183/17 P and C-184/17 P, second,

from the discretion available to the Commission to comply with its obligation to take the measures necessary to comply with that judgment and, third, from the *res judicata* effect which attaches, as recalled in paragraph 89 of the present judgment, both to the operative part of that annulment judgment and to the grounds which constitute the necessary basis for it.

111 In particular, as the referring court has rightly pointed out, it is clear from paragraphs 57 to 59, 61 and 88 to 90 of the judgment in Case C-183/17 P and C-184/17 P, first, that the Commission is under an obligation to ensure that the entities to which it has entrusted or intends to entrust budget implementation tasks, pursuant to the provisions of the 2002 and 2012 Financial Regulations relating to the indirect management of the EU budget by international organisations, have that status within the meaning of those provisions. Second, in the event of doubts in that regard, the Commission is under an obligation to dispel those doubts and to gather all of the information necessary to justify its legal decision as well as in fact, having regard to the legal consequences of that decision for the entity concerned.

112 Furthermore, it is clear from paragraphs 92 to 97 and 104 of the judgment in Case C-183/17 P and C-184/17 P, the content of which was set out in paragraphs 22 and 23 of the order in Case C-183/17 P-INT, that, in the present case, the decisions which have been annulled by the Court were not justified in law or in fact.

113 In the light of those assessments and findings, which constitute the basis of the operative part of that judgment, the Commission was not required to restore IMG to the previous position of a recognised international organisation which IMG claimed to be, but could meet its obligation to comply with the judgment in Case C-183/17 P and C-184/17 P by adopting procedural measures designed to enable it to remedy the irregularity found by the Court and, potentially, to adopt a new act, intended to replace the decisions annulled by the Court, after having obtained the information which it considered necessary to substantiate that new act in law and in fact.

114 As regards, in the second place, IMG's arguments summarised in paragraph 96 of the present judgment, it should be noted that, having regard to the legal consequences which it had validly drawn from the judgment in Case C-183/17 P and C-184/17 P, the General Court did not make an error in the legal categorisation of the facts when it concluded, in paragraph 76 of the order under appeal, that the letter of 18 July 2019 had to be regarded, in the light of its content, as a preparatory measure expressing a provisional position of the Commission as to IMG's status as an international organisation, within the meaning of the applicable provisions.

115 Since the competent institution intended to carry out an assessment of that status, such a measure could legitimately be categorised as a preparatory measure in the light of the case-law principles referred to in paragraphs 103 and 104 of the present judgment.

116 As regards, in the third place, IMG's arguments summarised in paragraph 95 above, it should be noted that they relate to the conclusions to be drawn, according to IMG, from certain rules of public international law relating to the concept of an 'international organisation' in the context of the assessment of IMG's possible status as an international organisation within the meaning of the applicable provisions, and therefore to a question which the Commission had indicated, in the letter of 18 July 2019, that it sought to assess before adopting a definitive position. In the light of the case-law referred to in paragraphs 104 and 105 of that judgment, such arguments, even if well founded, cannot lead to that letter being held to be challengeable.

117 For all the foregoing reasons, the present ground of appeal is unfounded and must therefore be rejected.

2. The second ground of appeal

(a) Arguments of the parties

118 IMG submits, first of all, that, since the head of claim seeking annulment of the letter of 18 July 2019 was admissible, the head of claim seeking compensation for the non-material harm caused by that letter was also admissible, contrary to what the General Court held in paragraphs 80 and 81 of the order under appeal.

119 Next, it submits that the head of claim seeking compensation for the material harm caused by the decision of 8 May 2015 could also not be dismissed as inadmissible on the ground of *lis pendens* with respect to Case T-381/15 RENV, as the General Court wrongly held in paragraphs 82 to 85 of that order. While originating in that decision, the harm in question was specifically and exclusively covered in that that harm was perpetuated by that letter.

120 Finally, and in the same way, the head of claim seeking compensation for the material harm arising from the decision of 16 December 2014 related specifically and exclusively to that harm in so far as it was perpetuated by the letter of 18 July 2019, with the result that the General Court also erred in law in rejecting it as inadmissible in paragraphs 86 to 93 of that order.

121 The Commission contends that this ground of appeal is in part unfounded and ineffective as to the remainder.

(b) Findings of the Court

122 In that regard, concerning, in the first place, IMG's argument relating to the General Court's assessment in paragraphs 80 and 81 of the order under appeal, it is sufficient to note that, whereas IMG merely claims, in essence, that that assessment should be regarded as vitiated by an error of law if it transpires that the head of claim seeking annulment of the letter of 18 July 2019 was wrongly rejected as inadmissible, it is apparent from paragraph 117 of the present judgment that the General Court was justified in rejecting that head of claim as inadmissible.

123 Concerning, in the second place, the head of claim seeking compensation for material harm which, while originating in the decision of 8 May 2015, was perpetuated by the letter of 18 July 2019, it must be observed that, as the General Court rightly pointed out in paragraph 82 of the order under appeal, it follows from the settled case-law of the Court of Justice that an action for annulment or damages which is brought subsequently to another between the same parties, with the same purpose and being based on the same pleas in law or complaints, must be dismissed as being inadmissible on the ground of *lis pendens* (order of 1 April 1987, *Ainsworth and Others* v *Commission*, 159/84, 267/84, 12/85 and 264/85, EU:C:1987:172, paragraphs 3 and 4, and judgment of 5 April 2017, *Changshu City Standard Parts Factory and Ningbo Jinding Fastener* v *Council*, C-376/15 P and C-377/15 P, EU:C:2017:269, paragraph 29).

124 The General Court was correct to apply that case-law in the present case, in paragraphs 83 to 85 of the order under appeal, in so far as IMG's claim for damages had been brought after that forming the subject matter of Case T-381/15 RENV, which was between IMG and the same party, which

had the same purpose of seeking damages and in so far as it related to material harm which, although perpetuated by the letter of 18 July 2019, had its source, according to IMG itself, in the decision at issue in that earlier case.

125 In the third and last place, as regards IMG's analogous argument relating to its head of claim seeking compensation for the harm which, although caused by the decision of 16 December 2014, was perpetuated by the letter of 18 July 2019, it is sufficient to note that that head of claim is ineffective. In dismissing that head of claim as inadmissible, the General Court relied, in paragraphs 91 to 93 of the order under appeal, not on considerations of substance or procedure relating to the nature or origin of the alleged harm, but on the failure to comply with the formal requirements applicable to the applications initiating proceedings laid down in Article 76(d) of its Rules of Procedure, taking the view, in essence, that the arguments seeking to substantiate that head of claim were too brief and imprecise to enable it to adjudicate.

126 Since the present ground of appeal is therefore no more well founded than the first, the appeal must be dismissed.

C. The appeal in Case C-620/20 P

127 In support of its claims, IMG relies on two grounds of appeal alleging errors of law vitiating, respectively, the dismissal as unfounded of part of its heads of claim for damages (paragraphs 69 to 100 of the judgment under appeal) and as inadmissible as regards the remainder of those heads of claim (paragraphs 40 to 68 of that judgment).

1. The first ground of appeal

(a) Arguments of the parties

128 As regards the heads of claim for damages which were rejected on the merits in the judgment under appeal, IMG submits, first, that, by failing to draw the appropriate inferences from the annulment of the decision of 8 May 2015 by the judgment in Case C-183/17 P and C-184/17 P, the General Court infringed the principle of *res judicata*, as enshrined in the second paragraph of Article 61 of the Statute of the Court of Justice of the European Union, according to which, in the event of a case being referred back to the General Court, that court is to be bound by the decision of the Court of Justice on points of law. Although the Court of Justice found that the Commission's doubts concerning IMG's status as an international organisation were unjustified, the General Court refused to accept, in paragraphs 82 to 86 of the judgment under appeal, that the Commission was no longer entitled to raise doubts in that regard.

129 Secondly, IMG claims that the General Court made a series of errors of law, in paragraphs 86 to 88 of the judgment under appeal, by refusing to accept that the unlawfulness found by the Court of Justice should be categorised, in the light of the relevant provisions of the 2002 and 2012 Financial Regulations and of the rules of public international law which it is necessary to take into account in order to understand the concept of 'international organisation' to which those provisions refer, as a breach of a rule of law intended to confer rights on the entities to which the European Union has entrusted budgetary tasks.

130 In that regard, IMG claims, first of all, that once an entity has been recognised as an international organisation, it can no longer be denied such status because of the finality and enforceability of that recognition under public international law, as long as the Member States have not themselves decided to alter its status or to put an end to its existence. Consequently, such an entity has, under that right and for as long as it exists, the right to remain recognised as such.

131 Next, calling into question the status of an international organisation which has thus been accorded to a particular entity cannot be justified by the specific or autonomous nature of the concept of 'international organisation' within the meaning of the 2002 and 2012 Financial Regulations, since they must be interpreted in accordance with the relevant rules of public international law given the higher rank of those rules within the hierarchy of norms.

132 Lastly, IMG submits, in essence, that consideration of all the relevant legal and factual circumstances in the present case should have led the General Court to conclude that IMG's status as an international organisation did not give rise to any justified doubt.

133 Thirdly, IMG claims that the General Court erred in law, in paragraphs 89 to 93 of the judgment under appeal, by refusing to find that there had been an infringement of the right to good administration of such a kind as to render the European Union liable, account being taken of the unlawfulness identified by the Court of Justice in the judgment in Case C-183/17 P and C-184/17 P. Having regard to the unjustified nature of the doubts which led the Commission to freeze its contractual relations with IMG, in the decision of 8 May 2015, and having regard to the manifest error of law and the manifest error of assessment which vitiate that decision, it is clear that that unlawfulness constitutes a breach of the right to good administration, as enshrined in Article 41 of the Charter, and, more specifically, of the obligation which that institution had under that article, to exercise due diligence in examining its situation, in accordance with the case-law of the Court of Justice arising from the judgment of 21 November 1991, *Technische Universität München* (C-269/90, EU:C:1991:438, paragraph 14).

134 Fourthly, the General Court erred in law when it concluded, in paragraphs 96 and 97 of the judgment under appeal, that the infringement of the 2002 and 2012 Financial Regulations alleged by IMG was not, in any event, sufficiently serious.

135 In response, the Commission submits, first, that the complaint that the General Court infringed the second paragraph of Article 61 of the Statute of the Court of Justice of the European Union is inadmissible, ineffective and unfounded. It concerns assessments by the General Court relating to the absence of infringement of rules of law intended to confer rights on individuals, which cannot be called into question in the context of an appeal. Furthermore, that court concluded, in any event, that such a breach, assuming it to be established, was not sufficiently serious. Finally, it follows both from the judgment in Case C-183/17 P and C-184/17 P and from the order in Case C-183/17 P-INT that the Commission was not required to accord IMG the status of an international organisation within the meaning of the 2002 and 2012 Financial Regulations.

136 Secondly, the complaint that the unlawfulness found by the Court of Justice should have been categorised as an infringement of a rule of law intended to confer rights on international organisations to which the Commission has entrusted budget implementation tasks, account being taken of certain rules of public international law relating to the concept of 'international organisation' referred to in the provisions of the 2002 and 2012 Financial Regulations, is also ineffective and unfounded.

137 The question to be resolved in the present case is not whether the Commission may carry out a new assessment of IMG's status but whether the provisions of the 2002 and 2012 Financial Regulations, on the basis of which that institution expressed doubts in that regard, constitute rules of law intended to confer rights on entities in IMG's situation. The findings of the General Court in that regard are not vitiated by any error of law.

138 Thirdly, the complaint alleging infringement of the right to good administration may be a new ground of appeal and therefore inadmissible, since it was not raised in a sufficiently perceptible manner and developed in the pleadings at first instance. In any event, in the Commission's view it is unfounded. IMG does not even attempt to show that, beyond the unlawfulness found by the Court of Justice, the Commission displayed a lack of diligence, as the General Court found in paragraph 92 of the judgment under appeal. Furthermore, in paragraph 91 of that judgment, the General Court correctly inferred from the judgment in Case C-183/17 P and C-184/17 P that the Commission could not be criticised for freezing its contractual relationships with IMG since IMG's status was the subject of doubts.

139 Fourthly, IMG has not demonstrated that the General Court was wrong to rule out the existence of a sufficiently serious breach of the 2002 and 2012 Financial Regulations.

(b) Findings of the Court

140 As is apparent from the account of the arguments of the preceding parties, this ground of appeal is divided into four separate complaints.

(1) The first complaint, alleging infringement of the principle of res judicata

141 As regards, in the first place, the complaint summarised in paragraph 128 of the present judgment, it should be recalled that, after setting aside in their entirety the judgments in Cases T-29/15 and T-381/15 and ruling on part of the actions giving rise to those judgments, the Court of Justice did indeed state, in paragraph 104 of the judgment in Case C-183/17 P and C-184/17 P, that the three factors on which the Commission had relied in its decisions of 16 December 2014 and of 8 May 2015, as analysed in paragraphs 92 to 96 of that judgment, were not such as to cast doubt on IMG's status as a financial organisation, within the meaning of the 2002 and 2012 Financial Regulations.

142 However, that statement cannot be read without taking into account the grounds of the judgment in Case C-183/17 P and C-184/17 P of which it is the logical consequence and the meaning and scope of which the Court recalled in order C-183/17 P-INT, in the terms set out in paragraph 51 of the present judgment. It is clear from those grounds that the Commission was not precluded from subsequently conducting a new assessment of IMG's status as an international organisation, taking into account all the relevant elements of fact and of law.

143 Therefore, in paragraphs 82 to 86 of the judgment under appeal, the General Court did not err in law with regard to the second paragraph of Article 61 of the Statute of the Court of Justice of the European Union.

(2) The second and fourth complaints, alleging a sufficiently serious breach of the 2002 and 2012 Financial Regulations

144 As regards, in the second place, the complaints summarised in paragraphs 129 to 132 and 134 of the present judgment, according to which the General Court erred in law, in paragraphs 86 to 88 and 96 to 97 of the judgment under appeal, by refusing to accept that the unlawfulness found by the Court of Justice in the judgment in Case C-183/17 P and C-184/17 P could be categorised as a sufficiently serious breach of a rule of law intended to confer rights on individuals, whereas the provisions of the 2002 and 2012 Financial Regulations in relation to which that manifest unlawfulness has been found had to be regardedhaving such an object, account being taken of the rules of public international law relevant to the case, the following should be noted.

145 Firstly, it follows from the settled case-law of the Court that, in order for the non-contractual liability of the European Union to be capable of being incurred in a given case, it is necessary, among other conditions, for the person seeking compensation for the loss or harm which he or she considers to have suffered as a result of conduct or an act of the European Union establishes the existence of a breach of a rule of law intended to confer rights on individuals (judgments of 4 July 2000, *Bergaderm and Goupil* v *Commission*, C-352/98 P, EU:C:2000:361, paragraphs 41 and 42, and of 4 April 2017, *Ombudsman* v *Staelen*, C-337/15 P, EU:C:2017:256, paragraph 31).

146 Furthermore, that breach must be sufficiently serious, a requirement which itself depends on the discretion enjoyed by the EU institution, body, office or agency which allegedly breached this rule and on whether it has manifestly and gravely disregarded the limits set on its discretion, in view, in particular, of the degree of clarity and precision of that rule, of the difficulties of interpretation or application which may ensue therefrom as well as the complexity of the situation to be settled (see, to that effect, judgments of 4 July 2000, *Bergaderm and Goupil* v *Commission*, C-352/98 P, EU:C:2000:361, paragraphs 40, 43 and 44, and of 30 May 2017, *Safa Nicu Sepahan* v *Council*, C-45/15 P, EU:C:2017:402, paragraph 30).

147 Secondly, in the present case, it is clear from the wording and scheme of the relevant provisions of the 2002 and 2012 Financial Regulations, read in the light of the objectives pursued by those regulations, that those provisions cannot be regarded, in themselves, as being intended to confer rights on the entities in respect of which they may be implemented.

148 Article 53(c) and Article 53d of the 2002 Financial Regulation and Article 58(1)(c) of the 2012 Financial Regulation confer on the Commission the responsibility for implementing the EU budget, whilst providing for several methods of implementing that budget, one of which, referred to as 'joint management with international organisations' in the first of those regulations, then 'indirect management' in the second, allows that institution to 'entrust budget implementation tasks' to such organisations, an option within the framework of which it enjoys broad discretionary powers.

149 In addition, Article 53d of the 2002 Financial Regulation expressly states in paragraphs 1 and 2 that it is only where the Commission implements the budget by joint management, and therefore where it has decided to make use of its power to implement that budgetary method, that certain tasks are entrusted to an international organisation, in which case the individual agreement concluded with that organisation is to contain detailed provisions concerning those tasks. Similarly, the second subparagraph of Article 84(3) of the 2012 Financial Regulation states that, where the Commission has decided to implement the EU budget using indirect management, the

financing decision is to specify, inter alia, the entity or person entrusted, the criteria used to select the entity or person and the tasks entrusted to it. A similar mechanism, from that point of view, is now provided for in Article 62(1)(c) and Article 156(1) of the 2018 Financial Regulation.

150 Lastly, those various provisions must be understood, as the General Court correctly pointed out in paragraphs 79 and 80 of the judgment under appeal and as the Advocate General observed in point 51 of his Opinion, in the light of the principle of sound financial management referred to in Article 310(5) TFEU and the first paragraph of Article 317 TFEU.

151 In view of the role and responsibility which those provisions of primary EU law and the Financial Regulations confer on the Commission in connection with the implementation of the EU budget, that institution has the task of ensuring compliance with that principle. It follows that, in the event that the Commission chooses to use a method of implementing the budget involving recourse to a third party, it is, in any event, required to ensure, during that implementation and then throughout the performance of the budgetary tasks concerned, compliance with the applicable conditions, in particular those governing the grant of the corresponding funds and their subsequent use (see, to that effect, judgments of 28 February 2019, *Alfamicro* v *Commission*, C-14/18 P, EU:C:2019:159, paragraphs 65 and 66, and of 16 July 2020, *ADR Center* v *Commission*, C-584/17 P, EU:C:2020:576, paragraphs 100 and 101).

152 Consequently, the provisions at issue must be regarded as having the purpose of establishing an option for the Commission to entrust, by virtue of a broad discretion and in compliance with a set of legal, administrative, technical and financial conditions and with the principle of sound financial management, budget implementation tasks to international organisations, and not by virtue of conferring on them rights such as those of being entrusted with or retaining such tasks.

153 Thirdly, as regards IMG's argument that the infringement of a rule of law intended to confer rights on individuals resulted from the obligation on the EU judicature to take account, in its analysis of the provisions referred to in paragraphs 148 and 149 of the present judgment, of various rules of public international law relating to the recognition of international organisations and to the enforceability of that recognition, it should, first, be recalled that, where the Commission has entrusted budget implementation tasks to a given entity, as an international organisation, such grant may always be subsequently reviewed in accordance with the formal and procedural requirements, whether that review decision is justified in law and in fact, as is apparent from paragraph 111 of that judgment.

154 Moreover, it should be noted that, irrespective of any analysis of their possible content and of the possibility for an entity such as IMG to rely on them before the courts, the rules to which IMG refers could not in any circumstances be taken into consideration for the purposes of ruling on the present action for damages based on the unlawfulness of the decision of 8 May 2015 as established by the Court of Justice in the judgment in Case C-183/17 P and C-184/17 P.

155 First of all, the decision of 8 May 2015 is specifically based, as is apparent in particular from paragraphs 31 and 46 of the present judgment, on the existence of doubts as to IMG's status as an international organisation, within the meaning of the 2002 and 2012 Financial Regulations, and not on a definitive assessment, in one way or another, of that status.

156 Next, although those decisions were set aside because they were not legally and factually justified, in the judgment in Case C-183/17 P and C-184/17 P, the Court did not in any event rule on the question, which was unrelated to the disputes before it, of whether, on the basis of an analysis

which was not vitiated by an error of law and taking account of all the relevant elements of fact and law, it had to be considered or, on the contrary, ruled out, that IMG had such a status, as is apparent from paragraphs 51 and 142 of the present judgment.

157 Finally, that question is now capable of being decided by the General Court in the context of the action for annulment brought before it against the decision of 8 June 2021, by which the Commission gave a definitive view on that matter.

158 As the Advocate General noted in point 57 of his Opinion, IMG cannot rely, for the purposes of establishing whether there has been an infringement of a rule of law intended to confer rights on individuals, on a rule which, to be taken into consideration, necessarily presupposes that initially it settles, in the sense that it is recommended, a question which is at the same time external to the disputes of which the present appeal is an extension, having regard to the unlawfulness established by the Court of Justice in the judgment in Case C-183/17 P and C-184/17 P, and which is capable of being raised in the context of the action for annulment which the interested party brought in parallel before the General Court and which was still pending before the General Court on the date that the present appeal was lodged.

159 In the light of all those factors, the General Court did not err in law in holding, in paragraphs 86 to 88 of the judgment under appeal, that the unlawfulness found by the Court of Justice in the judgment in Case C-183/17 P and C-184/17 P could not be characterised as an infringement of a rule of law intended to confer rights on individuals, by reference to the provisions of the 2002 and 2012 Financial Regulations having regard to which that unlawfulness was found. It is therefore not necessary to examine IMG's arguments that the General Court also erred in law by stating, for the sake of completeness, in paragraphs 96 and 97 of the judgment under appeal, that that breach was not, in any event, sufficiently serious.

(3) The third complaint, alleging breach of the duty of diligence

160 As regards, in the third and last place, the complaint summarised in paragraph 133 of the present judgment, which claims that the General Court erred in law in paragraphs 90 to 93 of the judgment under appeal, by refusing to find that there was, in the present case, an infringement of the Commission's obligation to exercise due diligence when examining IMG's situation, the following should be noted.

161 As regards admissibility, although it is true that the main complaint raised by IMG against the Commission in its claim for damages relates to the existence of a sufficiently serious breach of the 2002 and 2012 Financial Regulations, it is nonetheless clear that IMG also complained that the Commission had simultaneously infringed, in a serious manner, other principles and rules of law, including those relating to legal certainty, the protection of legitimate expectations, the right to be heard and the right to good administration, as enshrined in Article 41 of the Charter.

162 In particular, IMG specifically referred, in its pleadings at first instance, to certain judgments of the EU judicature in which it clarified the scope of the EU administration's duty of diligence under that article of the Charter, namely the judgments of the Court of Justice of 21 November 1991, *Technische Universität München* (C-269/90, EU:C:1991:438, paragraph 94); and of 16 December 2008, *Masdar (UK)* v *Commission* (C-47/07 P, EU:C:2008:726, paragraph 92); and the judgment of the General Court of 29 April 2015, *Staelen* v *Ombudsman* (T-217/11, EU:T:2015:238, paragraph 88). In addition, it repeatedly argued, both in the initial proceedings and in the proceedings following the partial referral of the case back to the General

Court, that the doubts to which the Commission had referred in the decision of 8 May 2015 were based on a manifestly incorrect and incomplete analysis of the concept of 'international organisation' in the 2002 and 2012 Financial Regulations, its situation in the light of that concept and the numerous factual elements, in particular of a documentary nature, which were to be taken into consideration in order to categorise that situation from a legal point of view. The complaints alleging infringement of those regulations and of the duty of diligence were therefore intrinsically linked in the present case and could therefore be dealt with together (see, to that effect, judgment of 16 June 2022, *SGL Carbon and Others* v *Commission*, C-65/21 P and C-73/21 P to C-75/21 P, EU:C:2022:470, paragraph 35).

163 Moreover, the Commission properly grasped the scope of the present complaint by arguing, in its initial defence and in its observations subsequent to the partial referral of the case back to the General Court, that, even if the decision of 8 May 2015 were unlawful, that unlawfulness was not one of those types 'which an administrative authority exercising ordinary care and diligence would not have committed in analogous circumstances', since its action had exercised, on the contrary, 'ordinary care and diligence'.

164 As regards the substance, it must be borne in mind, first, that the unlawfulness of the decision of 8 May 2015, which constitutes the EU act in respect of which its non-contractual liability is sought in the present case, has already been found by the Court of Justice in paragraphs 92 to 96 and 104 of the judgment in Case C-183/17 P and C-184/17 P, which have the force of *res judicata*, as was pointed out in paragraph 89 of the present judgment.

165 In that regard, as has been pointed out in paragraphs 22 and 23 of the order in Case C-183/17 P-INT and recalled in paragraphs 46 and 49 of the present judgment, the Court held that the Commission had vitiated the decision of 8 May 2015 with unlawfulness by finding that there were doubts as to IMG's status as an international organisation, within the meaning of the 2002 and 2012 Financial Regulations, on the basis of reasoning which was vitiated by an error of law and a manifest error of assessment in that the three factors which were taken into account by that institution were not capable of justifying those doubts.

166 In addition, it follows from the paragraphs in question of the judgment in Case C-183/17 P and C-184/17 P and from paragraphs 85 to 87 of that judgment, in the light of which those paragraphs must be read, that that assessment by the Commission is not based, either in the decision of 8 May 2015 itself or in other documents brought to IMG's attention by the Commission and forming part of the file of the court proceedings at first instance, on any analysis of the relevance of the three factors at issue having regard to the categorisation as an 'international organisation' within the meaning of the 2002 and 2012 Financial Regulations or of the scope of that very concept.

167 Lastly, it follows that IMG submitted a body of evidence to establish its status as an international organisation, which the Commission failed to assess.

168 As regards, second, the question whether the duty of diligence constitutes a rule of law intended to confer rights on individuals, the breach of which is capable of giving rise to non-contractual liability on the part of the European Union in a given case, if it is established that it is sufficiently serious, it should be noted, first of all, that that obligation, which is inherent in the right to good administration enshrined in Article 41 of the Charter and which applies generally to the action of

the EU administration in its relations with the public, requires it to act with care and caution (see, to that effect, judgment of 16 June 2022, *SGL Carbon and Others* v *Commission*, C-65/21 P and C-73/21 P to C-75/21 P, EU:C:2022:470, paragraph 30 and the case-law cited).

169 Next, it is apparent from the case-law of the Court that such a duty of diligence constitutes a rule of law the purpose of which is to confer rights on individuals, breach of which is liable, in certain circumstances, to give rise to the non-contractual liability of the European Union (see, to that effect, judgments of 27 March 1990, *Grifoni* v *Commission*, C-308/87, EU:C:1990:134, paragraphs 6, 7 and 14; of 16 December 2008, *Masdar (UK)* v *Commission*, C-47/07 P, EU:C:2008:726, paragraph 91; and of 4 April 2017, *Ombudsman* v *Staelen*, C-337/15 P, EU:C:2017:256, paragraphs 38 and 41), namely whether it is established, in a given case, that that breach is sufficiently serious, in accordance with the case-law recalled in paragraph 146 of the present judgment.

170 Lastly, compliance with that obligation is of fundamental importance where the EU institution, body, office or agency whose conduct or an act is at issue in a given case has a wide discretion (judgment of 21 November 1991, *Technische Universität München*, C-269/90, EU:C:1991:438, paragraph 14), such as that enjoyed by the Commission in the present case, as is apparent from paragraphs 148 to 152 of the present judgment. It follows, in particular, that, where a party claims that there has been a manifest error of assessment by that institution, body, office or agency, the EU judicature must review whether that institution, body, office or agency has examined carefully and impartially all the relevant aspects of the individual case. Only in that way can it be ascertained whether the factual and legal elements upon which the exercise of the power in question depends were present (judgments of 21 November 1991, *Technische Universität München*, C-269/90, EU:C:1991:438, paragraph 14, and of 16 June 2022, *SGL Carbon and Others* v *Commission*, C-65/21 P and C-73/21 P to C-75/21 P, EU:C:2022:470, paragraph 31).

171 Accordingly, in the light of the nature of that obligation, which is intrinsically linked to the context in which the EU administration acts in a given case, the existence of a sufficiently serious breach of that obligation can be identified only from a case-by-case examination of all the relevant issues of fact and law, taking into consideration the area, the conditions and the context in which that obligation is imposed on the institution, body, office or agency concerned, as well as the specific circumstances enabling it to be established that there has been a failure to fulfil obligations (see, to that effect, judgment of 4 April 2017, *Ombudsman* v *Staelen*, C-337/15 P, EU:C:2017:256, paragraphs 40 and 41).

172 As regards, third, the question whether the existence of a sufficiently serious breach of that obligation was established in the present case, it must be held that the reasoning by which the General Court held, in paragraphs 91 to 97 of the judgment under appeal, that that was not the case is incorrect in law.

173 In ruling on IMG's arguments, the General Court held, first, that the existence of such an infringement had to be ruled out in so far as 'the Commission cannot be criticised for not concluding new delegation agreements for indirect management with an entity where that entity's international organisation status can be called into question as a result of relevant factors of which that institution has been made aware'. Such a ground was irrelevant, in so far as it had been definitively held, in the judgment in Case C-183/17 P and C-184/17 P, that the decision of 8 May 2015 was unlawful in that it called into question IMG's status as an international organisation following an analysis which was vitiated by an error of law and a manifest error of assessment of some of the factors to which it related, and where it was in relation to that past

decision and to that specific unlawfulness, and not in relation to the general power of the Commission to question the status of IMG on the basis of other factors that might be brought to its knowledge in the future, that it was necessary to characterise the possible existence of an infringement capable of giving rise to the non-contractual liability of the European Union.

174 Moreover, the General Court stated that IMG did not indicate how the error of law and the manifest error of assessment which had led the Court of Justice to annul the decision of 8 May 2015 constituted a breach of the Commission's duty of diligence. IMG's line of argument identified, clearly, precisely and specifically, the existence of such an infringement, resulting from the adoption, by that institution, of a decision which had cast doubt on IMG's status as an international organisation, within the meaning of the 2002 and 2012 Financial Regulations, on the basis of fragmentary factors which had led the Court to find that they were incapable of justifying those doubts, from both a factual and a legal point of view, and that the Commission had taken them into account in a manner which was vitiated by both an error of law and by a manifest error of assessment.

175 The General Court therefore erred in law by failing to find that there had been a breach of the duty of diligence incumbent on the Commission in the present case. Moreover, since the General Court did not take a position on whether that breach was sufficiently serious within the meaning of the case-law of the Court of Justice, that error of law entails the judgment under appeal being set aside in so far as it rejected IMG's claim for damages as unfounded in paragraph 100 of the judgment under appeal.

2. The second ground of appeal

(a) Arguments of the parties

176 As regards those heads of claim for damages which were rejected as inadmissible by the General Court, IMG claims, first, that the General Court failed to fulfil its duty to state reasons and made a series of errors of law, in paragraphs 49 to 59 and 68 of the judgment under appeal, by rejecting as such its claims seeking an order directing the Commission to compensate in kind, by way of obligations to act, for part of the harm resulting from the decision of 8 May 2015. A person seeking compensation for the harm caused to him or her by a measure or conduct attributable to the European Union is entitled and justifiable to claim that such compensation is in kind in cases where appropriate, as in the present case. Next, IMG confined itself, in its written observations following the partial referral of the case back to the General Court, to specifying to that effect, in order to update it, the claim for damages which had already appeared in the application initiating proceedings. Finally, the General Court did not refer, in the judgment under appeal, to any valid reason for not acceding to that request.

177 Second, the General Court also failed in its duty to state reasons and made a series of errors of law, in paragraphs 60 and 68 of the judgment under appeal, in finding that some of the material harm claimed by IMG was new and in rejecting the corresponding heads of claim as inadmissible on that ground. Those heads of claim merely reproduce, in a validly adapted and developed form, heads of claim which were already contained in the application initiating proceedings.

178 Third, the General Court also failed to fulfil its duty to state reasons and erred in law by rejecting as inadmissible, in paragraphs 63 and 68 of the judgment under appeal, its claim for damages for non-material harm resulting from harm to its reputation and quantified at EUR 10 million, on the

ground that that claim had changed in nature compared to the symbolic claim for damages of EUR 1 which had been submitted in the application initiating proceedings. Indeed, the latter included a reference to the fact that that symbolic figure was presented subject to refinement, which IMG did in a reasoned and detailed manner in the observations submitted after the partial referral of the case by the Court of Justice. Moreover, the General Court has unlimited jurisdiction in disputes of a financial nature, which precludes it from concluding that a claim such as that made to it in the present case is inadmissible.

179 The Commission disputes the merits of all those arguments.

(b) Findings of the Court

180 It should be noted at the outset that the claim for damages on which the General Court was both competent and obliged to adjudicate in Case T-381/15 RENV was the claim which had been referred back to it by the Court of Justice in the judgment in Case C-183/17 P and C-184/17 P, to the exclusion of all other claims.

181 As is apparent from paragraph 4 of the operative part of that judgment and from paragraphs 1, 33, 39, 100 and 105 of that judgment, which constitute the necessary support for that operative part, the claim for damages thus referred back by the Court of Justice to the General Court corresponded to that submitted by IMG in its application initiating proceedings in Case T-381/15, which had as its sole purpose compensation, first, for harm of a material nature which IMG had assessed at EUR 28 million and, secondly, for harm of a non-material nature for harm to its reputation, for which compensation of a symbolic EUR 1 was sought, as the General Court recalled in paragraphs 22, 46 and 48 of the judgment under appeal, which are not challenged before the Court of Justice.

182 However, as is apparent from the findings correctly made by the General Court in paragraphs 40 to 42, 46, 48, 53, 54, 60 and 63 of the judgment under appeal, the claim for damages on which IMG invited the General Court to rule in its observations submitted to the General Court after the partial referral back of the case was manifestly and significantly extended beyond its initial subject matter, in so far as it has been supplemented by a set of claims seeking, first, the issuance of a wide range of injunctions to act, second, compensation for new or different material harm than that which had been solely initially alleged, and, third, non-material harm now quantified not as a token of EUR 1 but as EUR 10 million.

183 It cannot be accepted that, following the referral back of a dispute to the General Court in whole or in part by the Court of Justice, the applicant may amend, by new forms of order or claims, the subject matter of that dispute, as initially submitted to the General Court, that subject matter being, as is apparent from settled case-law, delimited solely by the form of order sought or claims submitted in the application initiating proceedings (judgments of 25 September 1979, *Commission* v *France*, 232/78, EU:C:1979:215, paragraph 3, and of 7 November 2019, *Rose Vision* v *Commission*, C-346/18 P, not published, EU:C:2019:939, paragraphs 43 and 46), as adapted or clarified, where appropriate, in compliance with the applicable conditions or requirements, in the course of the court proceedings at first instance.

184 In the present case, IMG was therefore not entitled to alter the claim for damages which it had submitted to the General Court in Case T-381/15 and on which that court was called upon to rule again following the partial referral back made by the judgment in Case C-183/17 P and C-184/17 P, as the General Court correctly held in paragraph 49 of the judgment under appeal.

185 Accordingly, the General Court not only stated reasons to the requisite legal standard but also legally justified its decision to reject as inadmissible, in paragraph 68 of the judgment under appeal, the heads of claim which had been submitted to it in breach of that requirement.

186 Consequently, the present ground of appeal must be rejected as unfounded, without it being necessary to rule on the arguments by which IMG challenges the grounds of the judgment under appeal included purely for the sake of completeness relating to the possibility, for an appellant, to submit, in a claim for damages, heads of claim seeking an injunction to act.

V. The action in Case T-381/15 RENV

A. The decision

187 When the dispute is, in whole or in part, in a state where judgment can be given, the Court of Justice may, pursuant to the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, give judgment itself definitively, as the case may be, on the dispute or on the part of it which is ready to be adjudicated on, while referring, if necessary, that which is not before the General Court (see, to that effect, judgment in Case C-183/17 P and C-184/17 P, paragraph 103, as well as judgment of 28 October 2021, *Vialto Consulting* v *Commission*, C-650/19 P, EU:C:2021:879, paragraph 139).

188 In the present case, in so far as some of the aspects of the claim for damages referred to in paragraph 181 of the present judgment have been the subject of an adversarial debate before the General Court and since the examination of those aspects does not require the adoption of any additional measure of organisation of procedure or investigation of the file, the Court of Justice considers that they are ready to be adjudicated on and that it is necessary to rule definitively on them (see, by analogy, judgments of 8 September 2020, *Commission and Council* v *Carreras Sequeros and Others*, C-119/19 P and C-126/19 P, EU:C:2020:676, paragraph 130, and of 2 December 2021, *Commission and GMB Glasmanufaktur Brandenburg* v *Xinyi PV Products (Anhui) Holdings*, C-884/19 P and C-888/19 P, EU:C:2021:973, paragraph 104), within the following limits.

B. The existence of a sufficiently serious breach of the Commission's duty of diligence in the present case

189 In the first place, the state of the proceedings permits judgment to be given as regards the question whether the Commission's breach of its duty of diligence with regard to IMG at the time when that institution adopted the decision of 8 May 2015, as established in paragraphs 173 to 175 of the present judgment, is sufficiently serious, within the meaning of the case-law referred to in paragraph 146 of the present judgment, to give rise to non-contractual liability on the part of the European Union.

190 In that regard, it should be noted, first of all, that, as the Commission rightly submits, the concept of 'international organisation' to which the 2002 and 2012 Financial Regulations refer is a general concept the interpretation of which, for the purposes of that legislation, may give rise to difficulties in the absence, in particular, of case-law on that subject.

191 Next, the Commission is also justified in pointing out that the application of that concept could also, in the present case, prove to be complex and give rise to difficulties in the legal categorisation of the facts, in view of IMG's specific situation, as summarised in paragraph 18 of the present judgment.

192 However, it follows from the Court's case-law that, although such difficulties of interpretation and application may be such as to explain the conduct of an institution, body, office or agency where it turns out that it acted as an ordinarily careful and diligent administration would have done in similar circumstances (see, to that effect, judgment of 10 September 2019, *HTTS* v *Council* (C-123/18 P, EU:C:2019:694, paragraph 43), they cannot, in contrast, qualify as excusable a manifest lack of diligence in the context of an examination such as that which the Commission was called upon to conduct with regard to IMG's situation (see, to that effect, judgment of 4 April 2017, *Ombudsman* v *Staelen*, C-337/15 P, EU:C:2017:256, paragraph 41 and the case-law cited), in particular when that lack of diligence consists in failure to address the questions that are at the heart of that examination or in drawing conclusions from it that are clearly inappropriate, deficient, unreasonable or unsubstantiated (see, to that effect and by analogy, judgment of 4 April 2017, *Ombudsman* v *Staelen* (C-337/15 P, EU:C:2017:256, paragraphs 104 to 106, 109, 112, 114 and 117).

193 In the present case, the possible difficulties of interpretation and application referred to in paragraphs 190 and 191 above are not capable of explaining the adoption of a decision as manifestly lacking legal and factual justification as the decision of 8 May 2015, in relation to which, in the judgment in Case C-183/17 P and C-184/17 P, it was definitively found that it did not contain any legal analysis of the concept of 'international organisation' within the meaning of the 2002 and 2012 Financial Regulations, and, moreover, that the evidence relied on to support it was incapable of casting doubt on IMG's status as an international organisation.

194 It follows that the existence of a sufficiently serious breach of the Commission's duty of diligence in the present case has been established.

C. The harm claimed and the causal link with the infringement established

195 As regards, in the second place, the conditions to be met in order for the European Union to incur non-contractual liability in a given case, other than that established in the preceding paragraph, it should be recalled that, as is apparent from the settled case-law of the Court of Justice, they relate, first, to the fact of the harm claimed and, second, to the existence of a causal link between the conduct of the European Union which is at issue, on the one hand, and that or that harm, on the other hand (judgment of 28 October 2021, *Vialto Consulting* v *Commission*, C-650/19, EU:C:2021:879, paragraph 138 and the case-law cited).

196 In the present case, IMG seeks compensation for the non-material and material harm caused to it by the decision of 8 May 2015. As is apparent from paragraphs 55 and 185 of the present judgment, those claims for damages were held to be inadmissible in part, correctly, by the General Court. At this stage of the judicial proceedings, therefore, remaining in dispute are solely the claims which concern (i) the non-material harm relating to the harm to IMG's reputation, for a

symbolic amount of EUR 1, and (ii) the material harm consisting, in essence, of a possible loss of opportunity, for the interested party, of being awarded new delegation agreements by the Commission as an international organisation responsible for budget implementation tasks in the context of indirect management of the EU budget, and to receive in that connection, as an 'indirect costs envelope', a sum corresponding to a flat-rate percentage of the general administrative costs which may be regarded as real costs eligible for financing by the European Union.

197 In that regard, it should be noted, first, that it follows from the settled case-law of the Court of Justice that non-material harm or material harm may, in certain situations, be regarded as being remedied appropriately and sufficiently by the annulment of the unlawful act which caused it (judgments of 9 July 1987, *Hochbaum and Rawes* v *Commission*, 44/85, 77/85, 294/85 and 295/85, EU:C:1987:348, paragraph 22; of 28 February 2008, *Neirinck* v *Commission*, C-17/07 P, EU:C:2008:134, paragraph 98; of 28 May 2013, *Abdulrahim* v *Council and Commission*, C-239/12 P, EU:C:2013:331, paragraph 72; and of 30 May 2017, *Safa Nicu Sepahan* v *Council*, C-45/15 P, EU:C:2017:402, paragraph 49).

198 In the present case, it is indeed established that the sufficiently serious breach by the Commission of its duty of diligence caused IMG non-material harm in the form of harm to its reputation, in that it led that institution to adopt a decision expressing doubts as to IMG's status as an international organisation on the basis of factors that could not justify such doubts in law or in fact. In particular, IMG produced, in good time, before the General Court, a number of items of documentary evidence which demonstrated, to the requisite standard, the resonance of that decision in the institutional and professional circles concerned at European and national level.

199 However, the Court found that that decision was unlawful and annulled it in the judgment in Case C-183/17 P and C-184/17 P. In addition, the clear terms in which that finding is worded are such as to ensure, in accordance with the case-law cited in paragraph 197 of the present judgment, appropriate and sufficient compensation for the non-material harm suffered by IMG, having regard to the context in which they are made.

200 Accordingly, IMG's claim for damages must be dismissed as unfounded in so far as it relates to the non-material harm resulting from the unlawfulness of the decision of 8 May 2015.

201 Secondly, the state of the proceedings does not, however, permit the Court to give final judgment in so far as it relates to the material harm for which IMG is entitled to seek compensation.

202 Although IMG's claim for damages was, as a whole, the subject of a written and oral exchange of arguments before the General Court, that court did not analyse the merits of IMG's claims relating to that material harm. In addition, an examination of the documents in the file relating to the court proceedings at first instance shows that, as matters stand, the Court of Justice does not have all the facts necessary to enable it to carry out, with a sufficient degree of certainty, the complex factual assessments which that analysis entails, having regard, in particular, to the fact, referred to both in the judgment in Case C-183/17 P and C-184/17 P and in paragraph 45 of the present judgment, that that material harm could consist solely of a possible loss of opportunity, for IMG, to be entrusted with budget implementation tasks as an international organisation.

203 Consequently, the case must be referred back to the General Court for a ruling on the existence of and, as the case may be, the extent of the material harm alleged and, in the event that it is established to the requisite legal standard, on the existence of a causal link between that harm and the sufficiently serious breach of the Commission's duty of diligence in the present case, as definitively established by the Court of Justice in the present judgment.

VI. Costs

204 Under Article 138(1) of the Rules of Procedure of the Court of Justice, which applies to appeal proceedings 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.

205 In the present case, since IMG has been unsuccessful in Case C-619/20 P, it must be ordered to pay the costs in that case, in accordance with the form of order sought by the Commission.

206 In contrast, as regards Cases C-620/20 P and T-381/15 RENV, it should be recalled that, although IMG and the Commission have both been unsuccessful in some of their heads of claim, IMG's claim for damages must be referred back in part to the General Court. Consequently, the costs in those cases must be reserved, in accordance with Article 137 of the Rules of Procedure, applicable to appeal proceedings by virtue of Article 184(1) of those rules.

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

1. **Joins Cases C-619/20 P and C-620/20 P for the purposes of the judgment;**

2. **Dismisses the appeal in Case C-619/20 P;**

3. **Sets aside the judgment of the General Court of the European Union of 9 September 2020, *IMG* v *Commission* (T-381/15 RENV, EU:T:2020:406), in so far as it dismissed as unfounded the claim for damages brought by International Management Group (IMG) relating to the harm that was caused to it by the decision of the European Commission to no longer enter into new delegation agreements for indirect management with it, contained in the letter from that institution of 8 May 2015;**

4. **Dismisses the appeal in Case C-620/20 P as to the remainder;**

5. **Dismisses the action in Case T-381/15 RENV in so far as it relates to the claim for damages for the non-material harm that the decision referred to in point 3 of this operative part has caused to International Management Group (IMG);**

6. **Refers Case T-381/15 RENV back to the General Court of the European Union for a ruling on the claim referred to in point 3 of this operative part, in so far as it relates to the material harm relied on by International Management Group (IMG);**

7. Orders International Management Group (IMG) to pay the costs in Case C-619/20 P;

8. Reserves the costs in Cases C-620/20 P and T-381/15 RENV.

[Signatures]