



Court of Justice of the European Union

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Opinions of the Advocates General in Joined Cases C-8/15 P Ledra Advertising v Commission and ECB, C-9/15 P Eleftheriou and others v Commission and ECB and C-10/15 P Theophilou v Commission and ECB as and in Joined Cases C-105/15 P Mallis and Malli v Commission and ECB, C-106/15 P Tameio Pronoias Prosopikou Trapezis Kyprou v Commission and ECB, C-107/15 P Chatzithoma v Commission and ECB, C-108/15 P Chatziioannou v Commission and ECB and C-109/15 P Nikolaou v Commission and ECB

Press and Information

According to Advocates General Wathelet and Wahl, the General Court was fully entitled to dismiss the actions for annulment and damages concerning the restructuring of the Cypriot banking sector

Neither the Eurogroup statement nor the Memorandum of Understanding finalised between the ESM and Cyprus can be imputed to the Commission or to the ECB, so that the EU Courts have no jurisdiction to hear the actions for annulment brought against these texts and the non-contractual liability of the EU cannot be incurred

In the first few months of 2012, certain banks established in Cyprus, including Cyprus Popular Bank ('Laïki') and Trapeza Kyprou Dimosia Etaireia (Bank of Cyprus, 'BoC'), encountered financial difficulties. The Cypriot Government therefore requested financial assistance from the Eurogroup, a body composed of the finance ministers of the Eurozone Member States. The Eurogroup indicated that the financial assistance requested would be provided by the European Stability Mechanism (ESM) in the context of a macroeconomic adjustment programme to be defined in a Memorandum of Understanding. The negotiation of this memorandum was carried out by the European Commission in liaison with the European Central Bank (ECB) and the International Monetary Fund (IMF), on the one hand, and with the Cypriot authorities on the other hand. By a statement of March 2013, the Eurogroup indicated that the negotiation had resulted in a draft Memorandum of Understanding on the restructuring of the banks BoC and Laïki. The ESM therefore finalised the memorandum with Cyprus and granted financial assistance to the country.

Several Cypriot individuals and a company established in Cyprus also held deposits with BoC or with Laïki. The application of the measures agreed with the Cypriot authorities resulted in a substantial reduction in the value of those deposits. The individuals and the company affected brought actions before the General Court with a view to the Commission and the ECB paying them damages equivalent to the reduction in value of their deposits for the loss suffered on account of the adoption of the Memorandum of Understanding and to the annulment of the contested measures set out in the memorandum. At the same time, seven Cypriot individuals brought actions before the General Court to set aside the Eurogroup statement of March 2013 concerning the restructuring of the Cypriot banking sector.

By five orders of 16 October 2014¹ and by three orders of 10 November 2014² the General Court dismissed all the actions as inadmissible. In this regard, the General Court held that the adoption of the Memorandum of Understanding did not originate from the Commission or the ECB, that the ESM could not be regarded as one of the institutions of the EU and that the Eurogroup statement could not be imputed to the Commission or to the ECB, nor was it capable of producing legal

¹ [T-327/13](#) Mallis and Malli v Commission and ECB, [T-328/13](#) Tameio Pronoias Prosopikou Trapezis Kyprou v Commission and ECB, [T-329/13](#) Chatzithoma v Commission and ECB, [T-330/13](#) Chatziioannou v Commission and ECB and [T-331/13](#) Nikolaou v Commission and ECB.

² [T-289/13](#) Ledra Advertising v Commission and ECB, [T-291/13](#) Eleftheriou and others v Commission and ECB) and [T-293/13](#) Theophilou v Commission and ECB.

effects with respect to third parties. For the rest, the General Court dismissed the actions as manifestly lacking any foundation in law: according to the General Court, the individuals bringing the actions failed to prove with certainty that the loss they claim to have suffered was in fact caused by inaction of the Commission. The individuals and the company have therefore appealed to the Court of Justice seeking to have the orders of the General Court set aside.

In their Opinions delivered today, **Advocates General Melchior Wathelet and Nils Wahl**, responsible for examining the appeals brought against the orders of 16 October 2014 and of 10 November 2014 respectively, **suggest that the Court should uphold the orders of the General Court.**

Concerning the appeal relating to the **actions for annulment brought against the Eurogroup statement of March 2013**, Advocate General Wathelet considers that the General Court did not err in law in holding that the Eurogroup statement could not be imputed to the Commission or to the ECB. In fact, the Commission and the ECB do not intervene in their own name in the financial assistance procedure, but simply act as agents of the ESM in negotiating, monitoring and signing by proxy the Memorandum of Understanding. Furthermore, the General Court was correct in holding that the Eurogroup has not received any delegation of powers from the Commission or the ECB and those institutions have no power of review with regard to the Eurogroup or to issue recommendations to it or, still less, to give it binding instructions.

Similarly, Advocate General Wathelet considers, like the General Court, that the Eurogroup statement is not capable of producing legal effects with respect to third parties and therefore cannot be contested before the Court. According to the Advocate General, the words used in the contested statement show that there is no decision having binding legal effects and make the purely informative nature of the statement clear.

Concerning the appeal relating to the **actions for damages**, Advocate General Wahl considers that the loss claimed to have been suffered by the individuals on account of the finalisation of the Memorandum of Understanding between the ESM and Cyprus was not caused by an institution of the EU since, firstly, the ESM is not an institution of the EU and, secondly, the adoption of the Memorandum of Understanding cannot be regarded as originating from the Commission or the ECB (the duties conferred on the Commission and the ECB within the ESM Treaty entail no power to make decisions of their own and commit the ESM alone). Nevertheless, the Advocate General makes it clear that, since the ESM and, in short, the Member States comprising it are responsible for the Memorandum of Understanding, the individuals who consider themselves to be prejudiced by this memorandum may bring actions before national courts or tribunals for the purpose of having the States concerned held liable.

Concerning the appeal relating to the **actions for annulment brought against the Memorandum of Understanding**, Advocate General Wahl considers that the General Court did not err in declaring these actions inadmissible, since the Court has jurisdiction only to review the legality of acts of the institutions, bodies, offices or agencies of the EU and neither the ESM nor Cyprus constitutes such bodies of the EU.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

The full texts [C-8/15 P - C-10/15 P](#) and [C-105/15 P - C-109/15 P](#) of the Opinions are published on the CURIA website on the day of delivery.

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