



Court of Justice of the European Union

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Judgments 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 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

The Court of Justice confirms the dismissal of the actions for annulment and dismisses on the merits the actions for compensation concerning the restructuring of the Cypriot banking sector

While setting aside the orders of the General Court relating to the actions for compensation, it nevertheless decides to dismiss those actions, finding that the Commission did not contribute to a breach of the right to property of the persons bringing the actions that is guaranteed by the Charter of Fundamental Rights of the European Union

During the first few months of 2012, a number of banks established in Cyprus, including Cyprus Popular Bank ('Laiki') and Trapeza Kyprou Dimosia Etaireia (Bank of Cyprus, 'BoC'), encountered financial difficulties. The Cypriot Government therefore made a request for financial assistance to the Eurogroup, a body composed of the finance ministers of the euro area Member States. The Eurogroup indicated that the financial assistance requested would be provided by the ESM (European Stability Mechanism) in the framework of a macroeconomic adjustment programme to be set out in the form of a memorandum of understanding. This memorandum was negotiated by the Commission together with the European Central Bank (ECB) and the International Monetary Fund (IMF), on the one hand, and by the Cypriot authorities, on the other. In a statement of 25 March 2013, the Eurogroup indicated that the negotiations had resulted in a draft memorandum of understanding on the restructuring of the banks BoC and Laiki. The Commission, on behalf of the ESM, and Cyprus then signed the memorandum and the ESM granted financial assistance to that country.

A number of Cypriot individuals and a company established in Cyprus had funds on deposit at BoC or Laiki. The application of the measures agreed with the Cypriot authorities resulted in a substantial reduction in the value of the deposits. The individuals and the company concerned thus brought actions before the General Court, in particular for an order requiring the Commission and the ECB to pay them compensation equivalent to the diminution in value of their deposits allegedly suffered on account of the adoption of the memorandum of understanding and for the annulment of the relevant paragraphs of that memorandum. Also, seven Cypriot individuals brought actions before the General Court for annulment of the Eurogroup statement of 25 March 2013 concerning the restructuring of the Cypriot banking sector.

By five orders of 16 October 2014,¹ the General Court dismissed the actions for annulment of the statement of 25 March 2013 as inadmissible. It held that the ESM could not be regarded as forming part of the institutions of the European Union and that the Eurogroup statement could not be imputed to the Commission or the ECB, nor was the statement capable of producing legal effects with respect to third parties. Also, by three orders of 10 November 2014,² the General Court

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.

dismissed the actions for annulment and for compensation that were connected with the adoption of the memorandum of understanding, holding that they were in part inadmissible and in part unfounded. The General Court pointed out that the Commission signed the memorandum merely on behalf of the ESM and that the activities pursued by the Commission and the ECB in the context of the ESM commit the ESM alone. It also held that the persons bringing the actions had failed to establish with certainty that the damage they claimed to have suffered had in fact been caused by inaction of the Commission. The individuals and the company then appealed to the Court of Justice seeking to have the orders of the General Court set aside.

In today's judgments, the Court upholds the orders of 16 October 2014 concerning the actions for annulment of the Eurogroup statement of 25 March 2013. On the other hand, it sets aside the orders of 10 November 2014 concerning the actions for compensation, but decides, on the merits, not to uphold those actions.

As regards the appeals relating to the **actions for annulment of the Eurogroup statement of 25 March 2013** (Joined Cases C-105/15 P to C-109/15 P), the Court considers that the General Court correctly held that **the Eurogroup statement could not be regarded as a joint decision of the Commission and the ECB**. The duties conferred on the Commission and ECB within the ESM Treaty do not entail the exercise of any power to make decisions of their own, particularly as the activities pursued by those two EU institutions within the ESM Treaty commit the ESM alone. The fact that the Commission and the ECB participate in the meetings of the Eurogroup does not alter the nature of the latter's statements, so that the Eurogroup statement of March 2013 cannot be regarded as the expression of a decision-making power of those two institutions. Finally, the Court observes that the adoption, by the Cypriot authorities, of the legal framework necessary for the restructuring of the banks cannot be regarded as having been imposed by an alleged joint decision of the Commission and the ECB that was given concrete expression in the Eurogroup statement of March 2013. **The Court therefore dismisses the appeals and upholds the General Court's orders of 16 October 2014.**

As regards the appeals relating to the **actions for compensation** (Joined Cases C-8/15 P to C-10/15 P), the Court holds that the fact that the activities entrusted to the Commission and the ECB within the ESM Treaty do not entail any power to make decisions of their own and commit the ESM alone does not prevent damages from being claimed from the Commission and the ECB on account of their allegedly unlawful conduct in connection with the adoption of a memorandum of understanding on behalf of the ESM. The tasks conferred on the Commission and the ECB within the ESM Treaty do not alter the essential character of the powers conferred on those institutions by the EU and FEU Treaties. Thus, the Commission retains, within the framework of the ESM Treaty, its role of guardian of the Treaties as resulting from Article 17(1) TEU, so that it must refrain from signing a memorandum of understanding whose consistency with EU law it doubts. The Court concludes that **the General Court erred in law by holding that it did not have jurisdiction to consider the actions for compensation based on the illegality of certain provisions of the memorandum of understanding. It therefore sets aside the orders of 10 November 2014.**

The Court decides to give judgment itself on the actions for compensation, as it is permitted to do in these proceedings. The Court recalls that the European Union may incur non-contractual liability only if a number of conditions are fulfilled, namely (i) the unlawfulness of the conduct alleged against the EU institution, (ii) the fact of damage and (iii) the existence of a causal link between the conduct of the institution and the damage complained of.

As regards the first condition, a sufficiently serious breach of a rule of law intended to confer rights on individuals must be established. The Court points out that in the present instance this rule of law is Article 17(1) of the Charter of Fundamental Rights of the European Union, which states that everyone has the right to own his or her lawfully acquired possessions. Whilst the Member States do not implement EU law in the context of the ESM Treaty, so that the Charter is not addressed to them in that context,³ the Charter is addressed to the EU institutions, including when they act outside the EU legal framework. The Commission is therefore bound to ensure that such a

³ [C-370/12](#) Pringle, see also press release No [154/12](#).

memorandum of understanding is consistent with the fundamental rights guaranteed by the Charter. Nonetheless, the first condition for establishing non-contractual liability of the EU is not satisfied in this instance: the adoption of the memorandum of understanding at issue corresponds to an objective of general interest pursued by the EU, namely the objective of ensuring the stability of the banking system of the euro area as a whole. In view of that objective and of the nature of the measures under examination, and having regard to the imminent risk of financial losses to which depositors would have been exposed if the two banks concerned had failed, those measures do not constitute a disproportionate and intolerable interference impairing the very substance of the depositors' right to property guaranteed by Article 17(1) of the Charter. Consequently, they cannot be regarded as unjustified restrictions on that right. The Commission therefore did not contribute to a breach of the right to property of the persons bringing the actions. **As the first condition for establishing non-contractual liability of the European Union is not satisfied, the Court dismisses the actions for compensation.**

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The full texts [C-8/15 P](#), [C-9/15 P et C-10/15 P](#) and joined cases [C-105/15 P](#), [C-106/15 P](#), [C-107/15 P](#), [C-108/15 P et C-109/15 P](#) of the judgments are published on the [CURIA](#) website on the day of delivery.

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