



Press and Information

General Court of the European Union
PRESS RELEASE No 5/17
Luxembourg, 24 January 2017

Judgment in Case T-749/15
Nausicaa Anadyomène SAS and Banque d'escompte v ECB

The ECB is not bound to make good the loss allegedly sustained in 2012 by commercial banks holding Greek debt instruments in connection with the restructuring of Greek debt

The ECB has committed no unlawful act in implementing its scheme for the exchange of Greek debt instruments

Faced with the financial crisis and the risk of Greek default, the ECB and national central banks (NCBs) of the Member States in the euro area (the Eurosystem) and Greece concluded an agreement on 15 February 2012 for the exchange of the Greek debt instruments held by the ECB and NCBs for new securities whose nominal value, interest rate and interest payment and repayment dates were identical to those of the original securities, but which bore different serial numbers and dates.

At the same time, the Greek authorities and the private sector agreed on a voluntary exchange and a 'haircut' of 53.5% of the instruments held by the private creditors (Private Sector Involvement (PSI)). The Eurogroup relied on strong participation by private creditors in that voluntary exchange of securities.¹ By law of 23 February 2012, Greece exchanged all those instruments, including those held by creditors refusing the voluntary exchange offer, thanks to the application of a 'Collective Action Clause' (CAC). The private holders then saw the nominal value of the securities exchanged fall by 53.5% compared with the nominal value of the original securities.

In addition, by decision of 5 March 2012,² the ECB decided to make the use, as collateral for Eurosystem credit operations, of Greek debt instruments which did not fulfil the Eurosystem's minimum requirements for credit quality thresholds conditional on Greece providing national central banks with collateral enhancement in the form of a buy-back scheme.

A company and a bank holding Greek debt instruments, both established in France, applied to the General Court for an order that the ECB make good the damage amounting to €11 million caused to them by the ECB measures, in particular, the decision of 5 March 2012. They criticise the ECB for infringing the legitimate expectations of the private holders, the principle of legal certainty and the principle of equal treatment of private creditors.

By today's judgment, the General Court dismisses the action and thus excludes all liability on the part of the ECB, confirming what it had already stated in respect of natural persons holding Greek debt instruments.³

The General Court finds **that commercial banks may not rely upon the principle of the protection of legitimate expectations or upon the principle of legal certainty** in a field such as that of monetary policy, the objective of which involves constant adjustment to reflect changes in economic circumstances. According to the General Court, none of the ECB's acts or statements can be interpreted as having encouraged investors to acquire or retain Greek debt instruments, the

¹ Eurogroup statement of 21 February 2012.

² Decision 2012/153/EU of 5 March 2012 on the eligibility of marketable debt instruments issued or fully guaranteed by the Hellenic Republic in the context of the Hellenic Republic's debt exchange offer (OJ 2012 L 77, p. 19).

³ Case: [T-79/13](#) Accorinti and Others v ECB, see Press Release No [119/15](#).

ECB having merely restored the nature of collateral security of those instruments in order to safeguard provisionally the stability and proper functioning of the Eurosystem in response to the exceptional circumstances prevailing in the financial market and to the disruption in the normal assessment of Greek debt instruments. The ECB policy did not, therefore, include specific, unconditional and consistent assurances seeking to guarantee that there would be no Greek default, nor did it include any invitation, even implicit, to acquire or retain Greek debt instruments. In addition, as careful and circumspect operators, commercial banks were deemed to have knowledge of the highly unstable economic circumstances determining the fluctuation in value of the Greek debt instruments, as well as the not insignificant risk of Greek default. Consequently, they could not count on the ECB provisionally maintaining the eligibility of those instruments, with the result that they made high-risk investments.

The General Court also considers that **the general principle of equal treatment cannot apply**, since the commercial banks acquiring Greek debt instruments, on the one hand, and the ECB and the NCBs, on the other, were not in a comparable situation: by purchasing Greek debt instruments, the ECB and the national central banks acted in the exercise of their basic duties, with the aim of safeguarding price stability and the sound administration of monetary policy. The obligation for Greece to provide the national central banks with collateral enhancement in form of a buy-back scheme safeguarded the scope for manoeuvre of the Eurosystems' central banks and thus concerned a situation not comparable to that of private investors. The same applies to the situation of commercial banks or companies acquiring and holding Greek debt instruments for profit (that is to say, to obtain maximum return on their investment).

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

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.

Unofficial document for media use, not binding on the General Court.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery

Press contact: Holly Gallagher 📞 (+352) 4303 3355