



Press and Information

General Court of the European Union  
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Judgment in Case T-107/17  
Frank Steinhoff and Others v European Central Bank (ECB)

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**The General Court rejects the action for compensation brought against the ECB by private investors who suffered losses as a result of the restructuring of the Greek public debt in 2012**

*That restructuring was not a disproportionate and intolerable infringement of the right to property of those investors, even if they had not consented to that measure*

Following the start of the Greek public debt crisis in October 2009, Greece proposed, with the aim of returning to a viable financial situation, a restructuring of its public debt in the context of which Greece's private creditors would contribute to the reduction in the burden of that debt. To that end, Greece opened negotiations with private investors holding bonds issued or guaranteed by the Greek State with a view to exchanging them for new bonds.

On 2 February 2012, Greece requested an Opinion<sup>1</sup> from the European Central Bank ('the ECB') on a draft law concerning the means of reducing the amount of the Greek public debt. In its request, Greece stated that it wished to extend the effects of any agreement with a certain number of creditors as to an exchange of bonds to creditors who did not give their consent to that agreement.

By its Opinion of 17 February 2012, the ECB did not make any objection to the proposed Greek law.

Following the adoption of the law at issue, the creditors holding the vast majority (85.8%) of the bonds in question agreed to the exchange of bonds proposed by Greece, which meant, pursuant to that law, that those creditors who did not give their consent to that exchange were compelled to participate in that exchange.

Subsequently, some of those creditors brought an action before the General Court of the European Union against the ECB for compensation, seeking restitution of the financial losses which they allegedly suffered as a result of that institution's alleged failure to draw the attention of Greece to the unlawful nature of the proposed restructuring of the Greek public debt.

By today's judgment, the General Court recalls, first, that for the ECB to be non-contractually liable, three cumulative conditions must be satisfied, namely that the rule of law infringed confers rights on individuals and that the infringement be sufficiently serious, that the fact of the damage suffered be established and, finally, that there be a direct causal link between the infringement of the obligation on the author of the act and the damage suffered. In that context, the General Court points out that the broad discretion enjoyed by the ECB in adopting its Opinions means that only a manifest and serious disregard of the limits of that discretion can render it non-contractually liable.

Secondly, with regard to whether, by adopting the contested Opinion, the ECB committed a sufficiently serious infringement of EU law in manifest and serious disregard of the limits of its discretion, the General Court notes that the objective of the competence of the ECB to issue Opinions is not to assess the rights and obligations of the parties to the contracts underlying the bonds at issue, but that that competence forms part of its basic tasks in monetary policy and is

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<sup>1</sup> On the basis of Article 127(4) TFEU, read in conjunction with Article 282(5) TFEU.

connected with its duty to ensure that price stability is maintained. Consequently, in the context of the adoption of the contested Opinion, **the ECB was not bound to give its view on whether Greece had fulfilled its obligations flowing from the contracts in question.**

In addition, the General Court notes that the **restructuring of the Greek public debt did not give rise to any infringement of the principle of compliance with contractual obligations<sup>2</sup>**, since investment in State bonds always carries the risk of financial loss because of the great length of time which elapses after the issue of the bonds during which unforeseen circumstances may arise which significantly restrict, or even completely remove, the State's financial capacities as issuer or guarantor of those bonds. **If such unforeseen circumstances should arise, the issuing State is entitled to attempt to renegotiate those obligations** on the basis of<sup>3</sup> the fundamental change in the essential circumstances which justified the conclusion of the contract which forms part of those obligations.

Thirdly, the General Court considers that, having regard to the fundamental nature of the right to property guaranteed in Article 17(1) of the Charter of Fundamental Rights of the European Union and the fact that that right protects individuals, the ECB is required to declare any infringement of that right when exercising its powers. Consequently, a failure to fulfil that obligation may render the ECB non-contractually liable where that failure constitutes a sufficiently serious breach of that article. Nonetheless, the General Court notes that the enjoyment of that right may be subject to restrictions with the aim of pursuing objectives of public interest.

In that regard, the General Court notes that **the extension, not provided for in the contracts underlying the bonds at issue, of the effects of the agreement reached with some creditors on the reduction in the nominal value of those bonds to creditors who had not given their consent to that agreement gave rise to an infringement of the right to property of the latter creditors. However, such an extension is in line with the public interest objective of ensuring the stability of the Euro-zone banking system as a whole and is not a disproportionate and intolerable infringement of that right.**

In those circumstances, **in the absence of any evidence demonstrating that the ECB committed a sufficiently serious breach of EU law, the General Court dismisses the action for compensation.**

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**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.

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

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<sup>2</sup> The *pacta sunt servanda* principle.

<sup>3</sup> On the basis of the *clausula rebus sic stantibus* doctrine.