



Court of Justice of the European Union

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Advocate General's Opinion in Joined Cases C-597/18 P Council v K. Chrysostomides & Co. and Others, C-598/18 P Council v Bourdouvali and Others, C-603/18 P K. Chrysostomides & Co. and Others v Council and C-604/18 P Bourdouvali and Others v Council

Press and Information

According to Advocate General Pitruzella, the Courts of the European Union do not have jurisdiction to hear actions for damages brought against the Euro Group

The Euro Group is an informal body which reflects a particular form of the intergovernmentalism present within the constitutional architecture of Economic and Monetary Union and functions as a 'bridge' between the national, EU and intergovernmental authorities

Over the course of the first months of 2012, several banks established in Cyprus, including the Cyprus Popular Bank (Laïki) and the Trapeza Kyprou Dimosia Etaireia (Bank of Cyprus or BoC), experienced financial difficulties. The Cypriot Government then submitted a request for financial assistance to the president of the Euro Group,¹ which stated that the financial assistance requested would be provided by the European Stability Mechanism (ESM) in the context of a macroeconomic adjustment programme to be set out in a memorandum of understanding. That memorandum was negotiated by the European Commission together with the European Central Bank (ECB) and the International Monetary Fund (IMF), on the one hand, and by Cyprus, on the other. By a statement in March 2013, the Euro Group indicated that the negotiations had resulted in a draft memorandum of understanding on the restructuring of BoC and Laïki. The Commission, on behalf of the ESM, and Cyprus then signed the memorandum and the ESM granted financial assistance to that Member State. On 25 April 2013, the Council adopted Decision 2013/236 on specific measures to restore financial stability and sustainable growth.²

Several individuals and companies were at the time depositors in Laïki or BoC or shareholders or bondholders of those banks. The individuals and companies concerned contend that the implementation of the measures agreed with the Cypriot authorities caused a substantial reduction in the value of their deposits, their shares or their bonds. Those individuals and companies thus brought actions in non-contractual liability before the General Court against, inter alia, the Euro Group, in order to be compensated for losses they claim to have sustained as a result of those measures.

By its judgments of 13 July 2018, the General Court dismissed those actions for compensation, on the ground that the condition that the conduct alleged against the EU had to be unlawful was not fulfilled.³ The General Court also rejected the pleas of inadmissibility raised by the Council concerning actions for damages brought, inter alia, against the Euro Group, holding that the Euro Group is a body of the EU formally established by the Treaties and intended to contribute to achieving the EU's objectives.

The appeals brought by the Council before the Court of Justice raise the question of whether the Euro Group may be classified as an 'institution' within the meaning of EU law⁴ and, therefore, of whether the Courts of the European Union have jurisdiction to hear actions for damages brought against the Euro Group, in respect of losses caused by allegedly harmful acts of that body.

¹ Informal meeting of the ministers of the Member States whose currency is the euro.

² Council Decision 2013/236/EU of 25 April 2013 addressed to Cyprus on specific measures to restore financial stability and sustainable growth (OJ 2013 L 141, p. 32).

³ Cases: [T-680/13](#) K. Chrysostomides & Co. and Others v Council and Others and [T-786/14](#) Bourdouvali and Others v Council and Others, see Press Release No [108/18](#).

⁴ The second paragraph of Article 340 TFEU.

In today's Opinion today, **Advocate General Giovanni Pitruzzella proposes that the Court should set aside the judgments of the General Court, in so far as they dismiss the pleas of inadmissibility raised by the Council in respect of the Euro Group.**

According to the Advocate General, in order to determine whether or not the Euro Group may be classified as an 'EU institution', it is necessary to understand the legal nature of the Euro Group and its place within the institutional framework of Economic and Monetary Union (EMU).⁵

To that end, **analysing the constitutional architecture of EMU in the light of the Court's case-law**, he recalls, first of all, that **the Euro Group cannot be classified as a body, office or agency of the EU for the purposes of bringing an action for annulment.**⁶

Next, **analysing the Euro Group's inception, its functions and its *modus operandi***, the Advocate General emphasises that **its influence remains purely political. Being an informal body**, not only does the Euro Group have no competences of its own, it also has no power to penalise any failure on the part of participants to implement agreed policy objectives.

As regards the **Euro Group's legal nature and its constitutional classification, the Euro Group operates as a 'bridge' between the national level, the EU level and the intergovernmental level external to EU law.** It must be considered the embodiment of a particular form of intergovernmentalism that is present within the constitutional architecture of EMU. **Created as a purely intergovernmental body within the complex EMU framework for the coordination of Member States' economic policies, it provides a 'bridge' between the State sphere and the EU sphere.** The Treaty of Lisbon recognised the existence of the Euro Group outside the EU legal framework and formalised the involvement of the Commission and the ECB in its work, but did not, however, intend to alter its legal nature, which is closely linked to its function as a 'bridge' between the Member States and the European Union.

In that regard, the Courts of the European Union do not have jurisdiction to hear actions for damages brought against the Euro Group, in respect of losses caused by allegedly harmful acts of that body. Consequently, **the actions brought, at first instance, by K. Chrysostomides & Co. and Others and Bourdouvali and Others, are inadmissible in so far as they were brought against the Euro Group.**

However, as regards the **requirements of compliance with the principle of effective judicial protection, the fact that the Euro Group should not be categorised as an institution within the meaning of EU law does not preclude liability on the EU's part for measures whereby the Council or the Commission has implemented a decision of the Euro Group.** The individuals and companies concerned are able to bring an action for damages against the EU authority, in most cases the Council, which implements an agreement concluded within the Euro Group. In the present case, proceedings could have brought against the Council seeking compensation in respect of the adoption of Decision 2013/236, and against the Commission and the ECB in respect of their monitoring of the implementation of the macroeconomic adjustment programme for Cyprus. In addition, it is not precluded that, in exceptional circumstances, the harmful consequences ensuing from a failure on the Commission's part to check the consistency with EU law of a decision adopted by the Euro Group may be attributed to the Commission.

⁵ EMU is characterised by an 'asymmetrical' constitutional architecture in relation to its two constituent elements, namely monetary policy and economic policy. While, on the one hand, responsibility for monetary policy for the Member States whose currency is the euro has been vested exclusively in the European Union, on the other hand, the conduct of economic policies remains within the competence of the Member States. The coordination of the economic policies of the Member States takes place in a sphere that necessarily involves three distinct operational levels: a national level, an EU level and an intergovernmental level. It can, therefore, become somewhat difficult to draw a clear boundary between actions undertaken at intergovernmental level and actions taken at EU level and, consequently, also between intergovernmental bodies and EU bodies. In its case-law, the Court has always sought to maintain the delicate constitutional and institutional balance.

⁶ Paragraph 61 of the judgment of the Court of 20 September 2016 in Joined Cases [C-105/15 to C-109/15](#) Mallis and Malli v Commission and ECB, see Press Release No [102/16](#).

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.

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

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