



Court of Justice of the European Union

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Judgment 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

The Court of Justice upholds the judgments of the General Court in so far as it dismissed the actions for damages brought by a number of individuals and companies on account of acts and conduct adopted by the EU institutions in connection with financial assistance granted to Cyprus that was conditional upon the restructuring of its banking sector

On the other hand, the General Court erred in law in holding that the Euro Group constitutes an EU body established by the Treaties whose acts or conduct might give rise to non-contractual liability of the European Union

During the first months of 2012, several banks established in Cyprus, including Cyprus Popular Bank ('Laïki') and Trapeza Kyprou Dimosia Etaireia (Bank of Cyprus; 'BoC'), encountered financial difficulties. On 25 June 2012, Cyprus therefore presented a request for financial assistance to the President of the Euro Group, which stated that such assistance would be provided by either the European Financial Stability Facility or the European Stability Mechanism (ESM) in the context of a macroeconomic adjustment programme that was to be defined in a memorandum of understanding. The negotiation of such a memorandum was conducted by the European Commission together with the European Central Bank (ECB) and the International Monetary Fund (IMF), on the one hand, and the Cypriot authorities, on the other. On 26 April 2013, a memorandum of understanding was thus signed by the Commission on behalf of the ESM, the Cypriot Minister for Finance and the Governor of the Central Bank of Cyprus, and this enabled the ESM to grant financial assistance to Cyprus.

A number of individuals and companies that held deposits with Laïki or BoC or were shareholders or bondholders of those banks took the view that the Council of the European Union, the Commission, the ECB and the Euro Group had, in the context of that memorandum of understanding, required the Cypriot authorities to adopt, maintain or continue to implement measures that caused a substantial reduction in the value of their deposits, shares or bonds. They therefore brought actions to establish non-contractual liability before the General Court of the European Union, in order to be compensated for the losses which they claim to have suffered because of those measures.

By two judgments of 13 July 2018, *K. Chrysostomides & Co. and Others v Council and Others* and *Bourdouvali and Others v Council and Others*,¹ the General Court, first of all, dismissed the pleas of inadmissibility raised by the Council concerning the actions for damages brought by the individuals and companies concerned against the Euro Group. Next, as regards the first condition which must be met in order for the European Union to incur non-contractual liability pursuant to the second paragraph of Article 340 TFEU, a condition which relates to the unlawfulness of the conduct alleged against the EU institution and requires that a sufficiently serious breach of a rule of law intended to confer rights on individuals be established, it held that the individuals and companies that had brought those actions had not succeeded in demonstrating an infringement of their right to property, of the principle of the protection of legitimate expectations or of the principle

¹ Judgments of the General Court of 13 July 2018, *K. Chrysostomides & Co. and Others v Council and Others*, [T-680/13](#), and *Bourdouvali and Others v Council and Others*, [T-786/14](#) ('the judgments under appeal'); see Press Release No [108/18](#).

of equal treatment. As the first condition for establishing non-contractual liability of the European Union was not met in this instance, the General Court dismissed the actions.

Hearing appeals brought by the Council (Cases C-597/18 P and C-598/18 P) and by the individuals and companies concerned (Cases C-603/18 P and C-604/18 P) and cross-appeals brought by the Council (in Cases C-603/18 P and C-604/18 P), the Court of Justice, sitting as the Grand Chamber, sets aside the judgments under appeal inasmuch as the General Court dismissed the pleas of inadmissibility raised by the Council in so far as those pleas relate to the actions brought by those individuals and companies directed against the Euro Group and against Article 2(6)(b) of Decision 2013/236. ² On the other hand, it dismisses the appeals of those individuals and companies.

Findings of the Court of Justice

As regards, in the first place, the **appeals brought by the Council in Cases C-597/18 P and C-598/18 P**, the Court points out that, in order for the European Union to incur non-contractual liability under the second paragraph of Article 340 TFEU, there must be unlawful conduct by an 'EU institution', a concept which encompasses not only the EU institutions listed in Article 13(1) TEU but also all the EU bodies, offices and agencies that have been established by or under the Treaties and are intended to contribute to the achievement of the European Union's objectives.

In that connection, the Court observes, first, that the Euro Group is an intergovernmental body for coordinating the economic policies of the Member States whose currency is the euro ('MSCE'). Second, the Euro Group cannot be equated with a configuration of the Council and is characterised by its informality. Third, it does not have any competence of its own or the power to punish a failure to comply with the political agreements concluded within it. The Court of Justice concludes from this that **the General Court was wrong in holding that the Euro Group is an 'EU' body established by the Treaties, whose conduct would be capable of giving rise to non-contractual liability of the European Union.**

It adds that, since the political agreements concluded within the Euro Group are given concrete expression and are implemented by means, in particular, of acts and action of the EU institutions, inter alia of the Council and the ECB, **individuals are not denied their right, enshrined in Article 47 of the Charter of Fundamental Rights of the European Union, to effective judicial protection**, given that, as indeed happened in this instance, they may bring an action to establish non-contractual liability of the European Union against those institutions in respect of the acts or conduct that the latter adopt following such political agreements. The Court points out, in particular, that it is for the Commission, as guardian of the Treaties, to ensure that such political agreements are in conformity with EU law, and that any inaction on the part of the Commission in that regard is liable to result in non-contractual liability of the European Union being invoked.

So far as concerns, in the second place, the **Council's cross-appeals in Cases C-603/18 P and C-604/18 P**, the cross-appeals were intended to contest the determination of the General Court that, first, the Council, by means of Article 2(6)(b) of Decision 2013/236, required the Cypriot authorities to maintain or continue to implement the conversion of uninsured deposits in BoC into shares and, second, those authorities had no margin of discretion for that purpose.

The Court of Justice observes that Article 2(6)(b) of Decision 2013/236 does not lay down specific rules for the implementation of that conversion, with the result that the Cypriot authorities had a significant margin of discretion in that regard, in particular for the purpose of determining the number and value of the shares to be allocated to BoC's depositors in exchange for their uninsured

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). That decision provides for a series of measures and outcomes with a view to correcting Cyprus's budget deficit and to restoring the soundness of its financial system. The cross-appeals brought by the Council related specifically to Article 2(6)(b) of the decision, which states that the macroeconomic adjustment programme for Cyprus is to provide for 'establishing an independent valuation of the assets of [BoC] and [Laiki] and quickly integrating the operations of [Laiki] into [BoC]. The valuation shall be completed quickly so as to enable the completion of the deposit-equity swap at [BoC]'.

deposits with that bank. Consequently, it holds that **the General Court erred in law in finding that Cyprus had no margin of discretion, under that provision, for the purpose of defining the specific rules for that conversion.**

So far as concerns, in the third place, the **appeals brought by the individuals and companies concerned in Cases C-603/18 P and C-604/18 P**, those individuals and companies contended that a sufficiently serious breach of their right to property, of the principle of the protection of legitimate expectations, and of the principle of equal treatment was attributable to the acts and conduct of the EU institutions, with the result that the first condition for the incurrence of non-contractual liability by the European Union was met.

In that regard, the Court points out, first of all, that the right to property³ is not an absolute right and may be subject to limitations.⁴ It takes the view, in particular, that, as already held by it in its judgment in *Ledra Advertising and Others v Commission and ECB*,⁵ **the measures referred to in the memorandum of understanding of 26 April 2013 cannot be regarded as constituting a disproportionate and intolerable interference impairing the right to property of the individuals and companies concerned.**

Next, the Court holds that **the fact that, during the early phases of the international financial crisis, the grant of financial assistance to other MSCE was not subject to the adoption of specific measures cannot be regarded as an assurance capable of having engendered a legitimate expectation on the part of the shareholders, bondholders and depositors of Laïki and BoC that that would also be the case in the context of the grant of the financial assistance to Cyprus.**

Finally, after noting that **the general principle of equal treatment** requires comparable situations not to be treated differently and different situations not to be treated in the same way, unless such treatment is objectively justified, **the Court hold that there is no infringement of this principle.** It finds that **the companies and individuals concerned were not in a situation comparable** to that of the Central Bank of Cyprus, whose action is guided exclusively by public interest objectives, to that of depositors in the Greek branches of Laïki and BoC, to that of depositors in those two banks whose deposits did not exceed €100 000, to that of the depositors and shareholders of banks of other MSCE which benefited from financial assistance before Cyprus or to that of members of the Cypriot cooperative banking sector.

In conclusion, **the Court dismisses in their entirety the appeals brought by the companies and individuals concerned (Cases C-603/18 P and C-604/18 P), sets aside the judgments under appeal inasmuch as the General Court dismissed the pleas of inadmissibility raised by the Council in so far as those pleas relate to the actions directed against the Euro Group and against Article 2(6)(b) of Decision 2013/236 and, giving final judgment on those pleas,⁶ upholds them.**

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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³ Article 17 of the Charter of Fundamental Rights.

⁴ Article 52 of the Charter of Fundamental Rights.

⁵ Judgment of the Court of 20 September 2016 in Joined Cases *Ledra Advertising and Others v Commission and ECB*, [C-8/15 P to C-10/15 P](#); see Press Release No [102/16](#).

⁶ Pursuant to the second sentence of the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union.

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

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