Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

12 December 2024*

(Appeal – Economic and monetary policy – Prudential supervision of credit institutions – Regulation (EU) No 1024/2013 – Specific supervisory tasks assigned to the European Central Bank (ECB) – Article 24 – Decision to withdraw a credit institution's authorisation – Administrative review procedure – Decision repealing an earlier decision – Action for annulment – Continuing interest in bringing proceedings – Actions for damages – Manifest inadmissibility)

In Case C-181/22 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 9 March 2022,

Nemea Bank plc, established in San Ġiljan (Malta), represented by A. Meriläinen, asianajaja,

appellant,

the other parties to the proceedings being:

Heikki Niemelä, residing in Ohain (Belgium),

Mika Lehto, residing in Espoo (Finland),

Nemea plc, established in San Ġiljan,

Nevestor SA, established in Ohain,

applicants at first instance,

European Central Bank (ECB), represented by D.M. Brinkman, C. Hernández Saseta and A. Witte, acting as Agents,

defendant at first instance,

European Commission, represented initially by A. Nijenhuis and A. Steiblytė, and subsequently by A. Steiblytė, acting as Agents,

intervener at first instance,

* Language of the case: English.

THE COURT (Fifth Chamber),

composed of K. Lenaerts, President of the Court of Justice, acting as President of the Fifth Chamber, I. Jarukaitis (Rapporteur) and E. Regan, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 30 November 2023,

gives the following

Judgment

1 By its appeal, Nemea Bank plc seeks to have set aside the order of the General Court of the European Union of 20 December 2021, *Niemelä and Others* v *ECB* (T-321/17, EU:T:2021:942; 'the order under appeal'), by which the General Court declared that there was no longer any need to adjudicate on the application for annulment of Decision ECB/SSM/2017 – 213800JENPXTUY75VSO/1 WHD-2017-0003 of the European Central Bank (ECB) of 23 March 2017 withdrawing Nemea Bank's authorisation to operate as a credit institution ('the decision at issue'), and dismissed as manifestly inadmissible the claim for compensation for the damage allegedly suffered as a result of the withdrawal of that authorisation.

Legal context

The SSM Regulation

2 Recital 64 of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ 2013 L 287, p. 63; 'the SSM Regulation') states as follows:

'The ECB should provide natural and legal persons with the possibility to request a review of decisions taken under the powers conferred on it by this Regulation and addressed to them, or which are of direct and individual concern to them. The scope of the review should pertain to the procedural and substantive conformity with this regulation of such decisions while respecting the margin of discretion left to the ECB to decide on the opportunity to take those decisions. For that purpose, and for reasons of procedural economy, the ECB should establish an administrative board of review to carry out such internal review. To compose the board, the Governing Council of the ECB should appoint individuals of a high repute. … The procedure laid down for the review should provide for the Supervisory Board to reconsider its former draft decision as appropriate.'

3 Article 4(1)(a) of that regulation provides:

‘Within the framework of Article 6, the ECB shall, in accordance with paragraph 3 of this Article, be exclusively competent to carry out, for prudential supervisory purposes, the following tasks in relation to all credit institutions established in the participating Member States:

(a) to authorise credit institutions and to withdraw authorisations of credit institutions subject to Article 14’.

4 Article 14(5) of that regulation is worded as follows:

‘Subject to paragraph 6, the ECB may withdraw the authorisation in the cases set out in relevant Union law on its own initiative, following consultations with the national competent authority of the participating Member State where the credit institution is established, or on a proposal from such national competent authority. These consultations shall in particular ensure that before taking decisions regarding withdrawal, the ECB allows sufficient time for the national authorities to decide on the necessary remedial actions, including possible resolution measures, and takes these into account.

Where the national competent authority which has proposed the authorisation in accordance with paragraph 1 considers that the authorisation must be withdrawn in accordance with the relevant national law, it shall submit a proposal to the ECB to that end. In that case, the ECB shall take a decision on the proposed withdrawal taking full account of the justification for withdrawal put forward by the national competent authority.’

5 Article 24 of that regulation provides:

‘1. The ECB shall establish an Administrative Board of Review [‘the ABoR’] for the purposes of carrying out an internal administrative review of the decisions taken by the ECB in the exercise of the powers conferred on it by this Regulation after a request for review submitted in accordance with paragraph 5. The scope of the internal administrative review shall pertain to the procedural and substantive conformity with this Regulation of such decisions.

…

5. Any natural or legal person may in the cases referred to in paragraph 1 request a review of a decision of the ECB under this Regulation which is addressed to that person, or is of a direct and individual concern to that person. …

…

7. After ruling on the admissibility of the review, the [ABoR] shall express an opinion within a period appropriate to the urgency of the matter and no later than two months from the receipt of the request and remit the case for preparation of a new draft decision to the Supervisory Board. The Supervisory Board shall take into account the opinion of the [ABoR] and shall promptly submit a new draft decision to the Governing Council. The new draft decision shall abrogate the initial decision, replace it with a decision of identical content, or replace it with an amended decision. The new draft decision shall be deemed adopted unless the Governing Council objects within a maximum period of ten working days.

8. A request for review pursuant to paragraph 5 shall not have suspensory effect. However, the Governing Council, on a proposal by the [ABoR] may, if it considers that circumstances so require, suspend the application of the contested decision.

…

11. This Article is without prejudice to the right to bring proceedings before the [Court of Justice of the European Union] in accordance with the Treaties.'

Regulation (EU) No 468/2014

6 It follows from Article 2(8) of Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (OJ 2014 L 141, p. 1) that a 'less significant supervised entity in a euro area Member State' is an entity that '[inter alia] does not have the status of a significant supervised entity within the meaning of Article 6(4) of the SSM Regulation'.

7 Article 80 of that regulation provides that

'1. If the relevant [national competent authority (NCA)] considers that a credit institution's authorisation should be withdrawn in whole or in part in accordance with relevant Union or national law, including a withdrawal at the credit institution's request, it shall submit to the ECB a draft decision proposing the withdrawal of the authorisation …, together with any relevant supporting documents.

2. The NCA shall coordinate with the national authority competent for the resolution of credit institutions … with regard to any draft withdrawal decision that is relevant to the national resolution authority.'

Background to the dispute

8 The background to the dispute, as set out in paragraphs 1 to 7 of the order under appeal, can be summarised as follows.

9 Nemea Bank is a credit institution governed by Maltese law, coming within the concept of a 'less significant supervised entity in a euro area Member State' within the meaning of the SSM Framework Regulation, which provided financial services under an authorisation granted to it by the NCA – namely the Awtorità għas-Servizzi Finanzjarji ta'Malta (Malta Financial Services Authority, Malta; 'the MFSA') – and which was subject to direct prudential supervision by the MFSA.

10 Nemea plc and Nevestor SA are two direct shareholders in Nemea Bank. Mr H. Niemelä and Mr M. Lehto are members of the Board of Directors of Nemea Bank and are its beneficial owners through their shareholdings in Nemea and Nevestor.

11 On 25 January 2017, after consulting the national resolution authority, the MFSA submitted to the ECB, pursuant to Article 80 of the SSM Framework Regulation, a draft decision withdrawing the authorisation granted to Nemea Bank to take up the business of a credit institution.

12 On 13 March 2017, the ECB's Supervisory Board approved the draft decision withdrawing the authorisation concerned and gave Nemea Bank a period of three days to submit comments on that draft decision.

13 On 15 March 2017, Nemea Bank submitted its comments.

14 On 23 March 2017, the ECB adopted the decision at issue in accordance with Article 4(1)(a) and Article 14(5) of the SSM Regulation.

The facts subsequent to the decision at issue

15 On 22 April 2017, the ABoR received a request from Nemea Bank and the other applicants at first instance for review of the decision at issue.

16 On 19 June 2017, the ABoR adopted an opinion in which it proposed that the decision at issue be replaced by an identical decision. On 30 June 2017, the Governing Council of the ECB, following that opinion and on the basis of a draft from the Supervisory Board, adopted, in accordance with Article 24(7) of the SSM Regulation, Decision ECB/SSM/2017 – 213800JENPXTUY75VS 07/2 ('the decision of 30 June 2017') which, as stated in its operative part, replaced the decision at issue.

The action before the General Court and the order under appeal

17 By application lodged at the Registry of the General Court on 22 May 2017, Nemea Bank and the other applicants at first instance brought an action for annulment of the decision at issue and for compensation in respect of the damage which they allegedly suffered as a result of the adoption of that decision. In support of that action, they relied on six pleas in law.

18 By a separate document lodged at the Registry of the General Court on 25 October 2017, the ECB raised a plea of inadmissibility under Article 130 of the Rules of Procedure of the General Court. By order of 13 July 2018, the General Court reserved its decision on the plea of inadmissibility until it ruled on the substance of the case, on the basis of Article 130(7) of the Rules of Procedure of the General Court.

19 By document lodged at the Registry of the General Court on 18 October 2017, the European Commission lodged an application to intervene in support of the form of order sought by the ECB, which was granted by decision of 23 July 2018.

20 By a measure of organisation of procedure of 30 April 2018, the General Court put a number of questions to the parties in order to determine, inter alia, whether, following the appointment of a person competent to exercise most of the powers normally conferred on the management bodies of Nemea Bank as regards the specific activities and assets of that bank, the applicants at first instance had the power to bring an action for annulment against a decision of the ECB and an action for compensation seeking reparation for damage suffered as a result of such a decision.

21 On 1 April 2019, the General Court stayed the proceedings pending delivery of the judgment of 5 November 2019, *ECB and Others* v *Trasta Komercbanka and Others* (C-663/17 P, C-665/17 P and C-669/17 P, EU:C:2019:923), and, by a new measure of organisation of procedure of 10 December 2019, requested that the parties submit to it their observations on the consequences to be drawn, in their view, from that judgment for the resolution of the case pending before it.

22 By other measures of organisation of procedure of 30 January 2020, of 23 December 2020, and of 19 January 2021, the General Court asked the parties about the developments in the proceedings brought before the Tribunal dwar Servizzi Finanzjarji (Financial Services Tribunal, Malta) in order to restore the effective representation of Nemea Bank.

23 By point 1 of the operative part of the order under appeal, the General Court decided that there was no longer any need to adjudicate on the application for annulment because it had become devoid of purpose and the applicants at first instance no longer had an interest in bringing proceedings. By point 2 of the operative part, it dismissed the claim for compensation as manifestly inadmissible. By point 3 of the operative part, it ordered the applicants at first instance and the ECB each to bear their own costs in relation to the application for annulment. By point 4 of the operative part, it ordered the applicants at first instance to bear their own costs and to pay those incurred by the ECB in relation to the claim for compensation. Lastly, by point 5 of the operative part of the order under appeal, it ordered the Commission to bear its own costs.

Forms of order sought by the parties to the appeal

24 Nemea Bank claims that the Court should:

– set aside the order under appeal;

– refer the case back to the General Court, with the case having to attributed to a chamber composed of entirely different judges from those who comprised the chamber that issued the order under appeal; and

– order the ECB to pay the costs.

25 The ECB contends that the Court should dismiss the appeal and order the appellant to pay the costs.

26 The Commission also contends that the Court should dismiss the appeal and order the appellant to pay the costs.

The application requesting that the oral part of the procedure be reopened

27 By document lodged at the Registry of the Court of Justice on 27 November 2024, Nemea Bank asked the Court to issue an order reopening the oral part of the procedure in application of Article 83 of the Rules of Procedure of the Court of Justice.

28 In support of its application, it stated, in essence, that it wished to make submissions regarding the judgments of 8 February 2024, *Pilatus Bank* v *ECB* (C-750/21 P, EU:C:2024:124) and *Pilatus Bank* v *ECB* (C-256/22 P, EU:C:2024:125), which were not debated between the parties.

29 In that regard, the Court notes that, under Article 83 of its Rules of Procedure, it may at any time, after hearing the Advocate General, order the opening or reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court.

30 However, in the present case, the Court finds that it has all the information it needs to issue a ruling and that the elements relied on by Nemea Bank in support of its application requesting that the oral part of the procedure be reopened are not new facts that are of such a nature as to be a decisive factor for the decision that the Court is called upon to issue.

31 In those circumstances, after hearing the Advocate General, the Court of Justice concludes that there is no need to issue an order reopening the oral part of the procedure.

The appeal

32 In support of its appeal, the appellant raises five grounds of appeal. The first three grounds of appeal, which are directed against the decision of the General Court to find that there was no longer any need to adjudicate on the application for annulment, allege, respectively, infringement of the first paragraph of Article 263 TFEU, infringements of essential procedural requirements and failure to take into account the infringement of the appellant's rights under Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'). The last two grounds of appeal, directed against the General Court's decision dismissing the claim for compensation as manifestly inadmissible, allege that the General Court failed to take into account the infringement of the appellant's rights enshrined, respectively, in Article 41 of the Charter and in Article 340 TFEU.

The first ground of appeal

Arguments of the parties

33 By its first ground of appeal, which concerns paragraphs 29 to 55 of the order under appeal, the appellant submits that the General Court erred in law in finding that there was no longer any need to adjudicate on its application for annulment, on the ground that it no longer had any interest in bringing proceedings against the decision at issue. The General Court thus failed to discharge its obligation under Article 263 TFEU to review the legality of acts of the ECB intended to produce legal effects vis-à-vis third parties and its obligation to protect the appellant's legal and fundamental rights.

34 The appellant submits, moreover, that the *ex tunc* effect attributed by the General Court to the decision of 30 June 2017 is contrary to Article 263 TFEU, since it deprives the appellant of its right to have the decision at issue examined by the EU Courts. That *ex tunc* effect is purely fictitious, since, even if the decision at issue had been annulled on that date, the appellant would not be returned to the situation it was in prior to that withdrawal. The real effect of the decision of 30 June 2017 can only be *ex nunc*, with the same going for the effect created if the authorisation in question were to be restored. The appellant's situation remained unchanged during the period between the adoption of the decision at issue and the adoption of the decision of 30 June 2017 as regards that authorisation. The decision at issue therefore continued to produce its legal effects

vis-à-vis the appellant in an unaltered and uninterrupted manner, from the time it was adopted, with the result that annulling it could have legal consequences and procure advantages for the appellant.

35 The ECB submits that the General Court was correct in so far as it found that the action for annulment of the decision at issue had become devoid of purpose. It submits, in that regard, that that finding does not infringe the rights that Article 263 TFEU confers on the appellant, since, after the decision of 30 June 2017 replaced the decision at issue, an action for annulment of the decision of 30 June 2017 was admissible within the period laid down by that provision. Such an action would have constituted an effective remedy within the meaning of Article 47 of the Charter. Nor is the requirement for the applicant still to have an interest in bringing proceedings, as enshrined in the settled case-law of the General Court, contrary to Article 263 TFEU.

36 Furthermore, after the decision of 30 June 2017 replaced the decision at issue, it is no longer possible to bring an action for annulment of the latter decision. Such an action is devoid of purpose, since the decision at issue has been abrogated and any detrimental effects it may have had are now attributable to the decision of 30 June 2017, against which the appellant has not brought an action and which has therefore become final. Thus, even if the decision at issue were to be annulled, the appellant's authorisation would remain withdrawn by the decision of 30 June 2017, with the result that such annulment would not procure any advantage for it. That situation does not, however, deprive the appellant of its right under EU law to bring an action for compensation in respect of the withdrawal of its authorisation without being required to bring an action for annulment beforehand.

Findings of the Court

37 It is apparent from the file submitted to the Court that Nemea Bank is a credit institution governed by Maltese law which has the status of a 'less significant supervised entity in a euro area Member State' within the meaning of the SSM Framework Regulation. On 23 March 2017, at the request of the national competent authority – namely the MFSA – the ECB adopted the decision at issue by which it withdrew the authorisation granted to Nemea Bank to take up the business of a credit institution. On 22 April 2017, Nemea Bank, together with the other applicants at first instance, submitted a request to the ABoR for administrative review of the decision at issue, pursuant to Article 24(5) of the SSM Regulation. Following that review, the ECB adopted the decision of 30 June 2017 which abrogated and replaced the decision at issue; the content of the decision of 30 June 2017 is identical to that of the decision at issue.

38 On 22 May 2017, during the administrative review procedure, Nemea Bank and the other applicants at first instance also brought an action against the decision at issue before the General Court, by which they sought the annulment of that decision and compensation for the damage which they claimed to have suffered as a result of that decision. However, they did not bring an action before the General Court against the decision of 30 June 2017 in the form prescribed.

39 The General Court held, in essence, in paragraphs 41, 45, 47 and 52 of the order under appeal, that Article 24(7) of the SSM Regulation lays down an obligation on the ECB to adopt a decision, following the administrative review procedure, that is retroactive to the time at which the original decision took effect and that the replacement of the latter decision by an identical or amended decision results in the definitive disappearance of the original decision from the legal order. It held that the decision of 30 June 2017 had repealed and replaced the decision at issue

with effect from the date on which it was adopted, namely 23 March 2017, with the result that the applicants at first instance no longer had any interest in having it annulled, and concluded that their action for annulment had become devoid of purpose.

40 In that regard, it is true, as the General Court noted in paragraph 35 of the order under appeal, that, according to settled case-law, an interest in bringing proceedings must, in the light of the purpose of the action, exist at the stage of lodging the action, failing which the action will be inadmissible. That purpose must, like the interest in bringing proceedings, continue until the final decision, failing which there will be no need to adjudicate; this presupposes that the action must be capable, if successful, of procuring an advantage for the party bringing it (judgments of 7 June 2007, *Wunenburger* v *Commission*, C-362/05 P, EU:C:2007:322, paragraph 42, and of 21 January 2021, *Leino-Sandberg* v *Parliament*, C-761/18 P, EU:C:2021:52, paragraph 32 and the case-law cited).

41 However, the Court has recognised that an applicant's interest in bringing proceedings does not necessarily disappear by reason of the fact that the act contested by him or her has ceased to have effect in the course of the proceedings. An applicant may retain an interest in obtaining a declaration that the act in question is unlawful for the period during which it was applicable and had effect, and such a declaration continues to be at least of interest as a basis for a possible action for damages (judgments of 28 May 2013, *Abdulrahim* v *Council and Commission*, C-239/12 P, EU:C:2013:331, paragraph 62, and of 6 May 2021, *Bayer CropScience and Bayer* v *Commission*, C-499/18 P, EU:C:2021:367, paragraph 40 and the case-law cited).

42 Furthermore, the question whether an applicant retains his or her interest in bringing proceedings must be assessed in the light of the specific circumstances, taking account, in particular, of the consequences of the alleged unlawfulness and of the nature of the damage claimed to have been sustained (judgments of 30 April 2020, *Izba Gospodarcza Producentów i Operatorów Urządzeń Rozrywkowych* v *Commission*, C-560/18 P, EU:C:2020:330, paragraph 41, and of 7 September 2023, *Versobank* v *ECB*, C-803/21 P, EU:C:2023:630, paragraph 160 and the case-law cited).

43 In that regard, it is indeed clear from the wording of Article 24(7) of the SSM Regulation that, where the ECB finds, following an administrative review procedure, that the decision under review should not be amended, it is to abrogate that decision and replace it with a decision of identical content. It cannot, however, be inferred from the above that abrogating the former decision and replacing it with the latter has retroactive effect comparable to that of the annulment of an act of an EU institution by an EU Court.

44 As is apparent from the case-law of the Court, the abrogation of an act of an EU institution does not amount to recognition of its illegality and takes effect *ex nunc*, unlike a judgment annulling an act, by virtue of which the act annulled is removed retroactively from the EU legal order and is deemed never to have existed (see, to that effect, judgment of 28 May 2013, *Abdulrahim* v *Council and Commission*, C-239/12 P, EU:C:2013:331, paragraph 68). The fact that that abrogation was followed by the replacement of the initial act by a new act cannot give the latter retroactive effect.

45 Therefore, as the Advocate General observed in point 72 of her Opinion, it follows from Article 24(7) of the SSM Regulation that the initial decision is not removed with retroactive effect from the EU legal order by the adoption of the second decision which abrogates and

replaces the initial decision, the content of which is identical. Since the initial decision had the effect of withdrawing the authorisation of a credit institution, that second decision had the effect of extending the effects of the initial decision, without removing those already produced by it.

46 In the present case, as the appellant correctly submits, it was the decision at issue which had the effect of withdrawing from the appellant the authorisation which had been granted to it to take up the business of a credit institution. It is therefore that decision which may have had the detrimental consequences to which it refers.

47 In addition, since, in principle, in accordance with Article 24(8) of the SSM Regulation, the request for review of an initial decision did not have suspensory effect, the decision at issue continued to produce its effects until the decision of 30 June 2017 took effect, namely when it was notified to the appellant. It was therefore only from the point when the appellant was notified that the latter decision abrogated and replaced the decision at issue, as is clear from the wording itself of the operative part of the decision of 30 June 2017.

48 The General Court therefore erred, in essence, in finding, in paragraphs 41, 42 and 47 of the order under appeal, that the decision of 30 June 2017 had replaced the decision at issue with retroactive effect from the date on which the latter decision was adopted.

49 It follows from the foregoing that the General Court erred in law in holding, in paragraphs 53 and 55 of the order under appeal, that the decision at issue had been replaced with retroactive effect and that the action for annulment of that decision had become devoid of purpose.

50 Consequently, the first ground of appeal must be upheld and points 1 and 3 of the operative part of the order under appeal must be set aside, without it being necessary to examine the second and third grounds of appeal.

The fourth and fifth grounds of appeal

Arguments of the parties

51 By its fourth and fifth grounds of appeal, which relate to paragraphs 56 to 63 of the order under appeal and which it is appropriate to examine together, the appellant submits that, in finding that the claim for compensation was inadmissible, the General Court failed to take into account the ECB's infringement of the appellant's rights under Article 41 of the Charter and Article 340 TFEU the subject of which is compensation from the European Union for damage caused by the institutions or by their servants in the performance of their duties. In doing so, the General Court deprived the appellant of its rights, despite the ECB and its servants having caused substantial damage to the appellant. The General Court allegedly used its decision not to adjudicate on the application for annulment as a basis for its analysis of the claim for compensation, in order to enable the ECB to be exempted from liability for its acts.

52 Furthermore, the General Court erred in law by ignoring the connection between the substance of the application for annulment and the substance of the claim for compensation, since the claim for compensation cannot be examined without taking into account the substance of the application for annulment.

53 Moreover, the General Court's assertion, in paragraph 60 of the order under appeal, that the claim for compensation is formulated in too abstract a manner and does not contain any pleas or arguments or a summary of those pleas or arguments is incorrect, since the application for annulment which serves as the basis for the claim for compensation contains all those elements.

54 The appellant goes on to argue that, if the General Court had not erred in deciding that there was no longer any need to adjudicate on the application for annulment and if it had acknowledged that there was a connection between the latter and the claim for compensation, it would have found that a number of irregularities had vitiated the procedure for the adoption of the decision at issue, which were sufficient in themselves to form a basis for the claim for compensation. It relies, in that regard, on the lack of genuine representation of Nemea Bank during that procedure, on the failure to state reasons for the decision at issue and on the ECB's unlawful conduct during the administrative review procedure in respect of that decision by the ABoR.

55 Furthermore, the applicant submits that the conduct of the ECB and, in particular, the withdrawal of the authorisation that had been granted to it to take up the business of a credit institution is the direct cause of the damage which it has suffered, which it claims that it has established. The amount of that damage, which it assesses to be EUR 100 million, does not, however, cover the damage to its reputation, commercial relations and business or lost revenue incurred by Nemea Bank, but rather covered solely the direct loss of value suffered by the bank as a result of the ECB's conduct.

56 The appellant also claims that, when it criticised the shortcomings of the application at first instance, the General Court failed to take into consideration the fact that they were caused by the fact that the appellant did not have genuine representation or access to evidence, since it was unable to dispose of its resources and did not have access to the ECB's file.

57 The ECB and the Commission contend that those two grounds should be rejected.

Findings of the Court

58 As regards, first, the appellant's line of argument, summarised in paragraphs 51 to 53 of the present judgment, that, in essence, the General Court deprived it of its rights enshrined in Articles 41 and 47 of the Charter and in Articles 263 and 340 TFEU, by using its decision that there was no need to adjudicate on the application for annulment as a basis for its analysis of the claim for compensation and by failing to take into consideration the connection between that application and that claim, in order to enable the ECB to avoid liability for its allegedly harmful acts, the Court of Justice finds that the General Court cited, in paragraphs 59 to 61 of the order under appeal, the relevant case-law concerning the conditions under which the European Union incurs non-contractual liability and the requirement, arising from the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union – which is applicable to the procedure before the General Court, in accordance with the first paragraph of Article 53 of that statute – that the application contain the subject matter of the proceedings, the pleas in law and arguments relied on and a summary of those pleas in law. It then held, correctly, in paragraph 62 of that order, that the applicants at first instance had not substantiated to the requisite legal standard the conduct of the ECB which they claim gives rise to unlawfulness capable of rendering the European Union liable or the causal link between the alleged damage and the effects which the decision at issue might have produced.

59 It follows that the basis for rejecting the claim for compensation at issue is not the General Court's decision not to rule on the application for annulment, but the incomplete nature of that claim for compensation.

60 It is clear from the Court's settled case-law that it is the party seeking to establish the European Union's non-contractual liability that must adduce conclusive proof as to the existence and extent of the damage it alleges and as to the existence of a sufficiently direct causal nexus between the conduct of the institution concerned and the damage alleged (judgment of 3 May 2018, *EUIPO* v *European Dynamics Luxembourg and Others*, C-376/16 P, EU:C:2018:299, paragraph 92 and the case-law cited).

61 In the present case, it appears that the application at first instance clearly did not meet the requirements laid down in that case-law, since it merely sought an order that the ECB compensate the applicants at first instance in the amount of EUR 10 million, plus interest, in respect of damage allegedly caused by the decision at issue, a sum which, moreover, the appellants increased to EUR 100 million in their reply at first instance. However, no argument had been put forward identifying the causal link between the allegedly unlawful conduct of the ECB and the damage alleged; no submissions were made to establish that that damage actually occurred, and no evidence was adduced in that regard.

62 The General Court therefore did not err in law in holding, in paragraphs 62 and 63 of the order under appeal, that the claim for compensation was manifestly inadmissible on account of its shortcomings.

63 Moreover, the appellant does not explain how the General Court's decision deprived it of its right to seek compensation for any damage caused by the ECB. In principle, it still has the right to bring a new claim for compensation remedying the shortcomings identified by the General Court in the order under appeal, in the circumstances envisaged in Article 46 of the Statute of the Court of Justice of the European Union, which is applicable to the procedure before the General Court by virtue of the first paragraph of Article 53 of that statute, according to which proceedings against the European Union in matters arising from non-contractual liability are to be barred after a period of five years from the occurrence of the event giving rise thereto, that limitation period having been interrupted, inter alia, by the application brought before the Court of Justice.

64 As regards, second, the appellant's line of argument, recalled in paragraph 55 of the present judgment, that, in the first place, the ECB's conduct is the direct cause of Nemea Bank's loss in value and, in the second place, the amount of EUR 100 million covers only part of the damage suffered by the appellant, the Court of Justice notes that, by that line of argument, the appellant does not rely on any error of law that may have been made by the General Court, but merely reiterates the factual considerations raised in the action at first instance.

65 In accordance with settled case-law, it follows from the second subparagraph of Article 256(1) TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union that the General Court has exclusive jurisdiction, first, to establish the facts, except where the substantive inaccuracy of its findings is apparent from the documents submitted to it, and, second, to assess those facts. It follows that the appraisal of the facts by the General Court does not constitute, save where the clear sense of the evidence produced before it is distorted, a question of law which is subject, as such, to review by the Court of Justice (judgment of 11 January 2024, *Wizz Air Hungary* v *Commission*, C-440/22 P, EU:C:2024:26, paragraphs 57 and 58 and the case-law cited).

66 Third, as regards the appellant's line of argument, recalled in paragraph 56 of the present judgment, that, in criticising the shortcomings of the application at first instance, the General Court failed to take into consideration the fact that they were caused by the appellant not having access to genuine representation and evidence, the Court of Justice recalls that, as is apparent from paragraph 62 of the present judgment, the General Court was fully entitled to find that the claim for compensation was manifestly inadmissible on account of its incomplete nature. It is apparent from the application at first instance that the appellant had not provided any of the evidence required to establish the non-contractual liability of the European Union and had not explained how specifically the alleged lack of access to institutional resources and evidence could have prevented it from setting out, with the requisite degree of clarity and precision, its line of argument concerning the existence of those elements, in the light, in particular, of the fact that, in the first place, it was represented by a lawyer and, in the second place, it had not submitted an application for legal aid for that purpose.

67 Consequently, the fourth and fifth grounds of appeal must be rejected as being manifestly inadmissible in part and unfounded in part.

68 In the light of all the findings above, points 1 and 3 of the operative part of the order under appeal must be set aside.

The action before the General Court

69 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, if the Court of Justice quashes the decision of the General Court, it may itself give final judgment in the matter, where the state of the proceedings so permits.

70 That is not the case here. Since the General Court found that there was no longer any need to adjudicate without having examined the admissibility of the application for annulment or the substance of the dispute, the state of the proceedings do not permit final judgment to be given in the matter and it is therefore appropriate to refer the case back to the General Court so that it can adjudicate on that application.

71 Furthermore, the appellant's request that the case be referred back to a chamber of the General Court composed of judges other than those who made up the chamber which delivered the order under appeal must be refused. The Rules of Procedure of the Court of Justice make no provision for the Court of Justice, following the examination of an appeal, to give instructions to the General Court as regards the composition of the chamber to which the case will be assigned after it has been referred back to the General Court by the Court of Justice. It will be for the President of the General Court, where appropriate, to decide whether the case should be assigned to another chamber sitting with the same number of judges, pursuant to Article 192(1) of the Rules of Procedure of the General Court.

Costs

72 Since the case is being referred back to the General Court, it is appropriate to reserve the costs relating to the present appeal.

On those grounds, the Court (Fifth Chamber) hereby:

1. **Sets aside points 1 and 3 of the operative part of the order of the General Court of the European Union of 20 December 2021, *Niemelä and Others* v *ECB* (T-321/17, EU:T:2021:942);**

2. **Dismisses the appeal as to the remainder;**

3. **Refers the case back to the General Court of the European Union for it to rule on the action for annulment brought by Nemea Bank plc;**

4. **Reserves the costs.**

Lenaerts Jarukaitis Regan

Delivered in open court in Luxembourg on 12 December 2024.

A. Calot Escobar
Registrar

K. Lenaerts
President