Reports of Cases

JUDGMENT OF THE GENERAL COURT (Third Chamber)

23 May 2019*

(Non-contractual liability – Economic and monetary policy – ECB – National central banks – Restructuring of the Greek public debt – Involvement of the private sector – Collective action clauses – Mandatory exchange of Greek bonds – Private creditors – Opinion of the ECB – Sufficiently serious breach of a rule of law conferring rights on individuals – Principle of *pacta sunt servanda* – Article 17(1) and (2) of the Charter of Fundamental Rights – Article 63(1) TFEU – Article 124 TFEU)

In Case T-107/17,

Frank Steinhoff, residing in Hamburg (Germany),

Ewald Filbry, residing in Dortmund (Germany),

Vereinigte Raiffeisenbanken Gräfenberg-Forchheim-Eschenau-Heroldsberg eG, established in Gräfenberg (Germany),

Werner Bäcker, residing in Rodgau (Germany),

EMB Consulting SE, established in Mühltal (Germany),

represented by O. Hoepner and D. Unrau, lawyers,

applicants,

v

European Central Bank (ECB), represented by O. Heinz and G. Várhelyi, acting as Agents, and H.-G. Kamann, lawyer,

defendant,

APPLICATION on the basis of Article 268 TFEU seeking restitution of the loss allegedly suffered by the applicants due to the fact that the ECB failed, in its Opinion of 17 February 2012 (CON/2012/12), to draw the attention of the Hellenic Republic to the unlawful nature of the proposed restructuring of the Greek public debt by a mandatory exchange of bonds,

THE GENERAL COURT (Third Chamber),

composed of S. Frimodt Nielsen, President, V. Kreuschitz (Rapporteur) and N. Półtorak, Judges,

Registrar: S. Bukšek Tomac, Administrator,

* Language of the case: German

having regard to the written part of the procedure and further to the hearing on 29 May 2018,

gives the following

Judgment

Background to the dispute

1 In October 2009, the Greek public debt crisis was triggered when the Greek Government announced that the public deficit stood at 12.5% of the gross domestic product (GDP), not 3.7% as had been previously stated. That announcement severely compounded the uncertainties surrounding the Hellenic Republic's economic fundamentals and therefore precipitated several successive downgrades of its financial rating and a steady increase in interest rates charged by the financial markets to finance the Greek public debt.

2 At the end of April 2010, a rating agency downgraded the rating of Greek bonds from BBB– to BB+, a category regarded by the markets as indicating a high-risk debt. Accordingly, on 27 April 2010, the rating agency Standard & Poor's (S&P) warned the holders of Greek bonds that their chance of recovering their money in the event of a restructuring of the Greek public debt or of a payment default on the part of the Greek State was on average only 30 to 50%.

3 Having regard to the fact that the Greek debt crisis threatened to affect other Member States in the euro area and endangered the stability of that area as a whole, at the European Council summit of 25 March 2010, the Heads of State or Government of the euro area agreed to put into place an intergovernmental mechanism to assist the Hellenic Republic, consisting of bilateral loans coordinated with non-concessionary interest rates, that is to say, without any element of subsidy. The disbursement of the loans was subject to strict conditions and its activation was to take place following a request from the Hellenic Republic. The aid mechanism also included a substantial level of participation by the International Monetary Fund (IMF).

4 On 2 May 2010, under the abovementioned aid mechanism, the euro area Member States agreed to supply the Hellenic Republic with EUR 80 billion as part of a financial package of EUR 110 billion allocated together with the IMF.

5 On 9 May 2010, in the context of the ECOFIN Council, a decision was taken to adopt a package of measures, including the adoption of Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism (OJ 2010 L 118, p. 1), based on Article 122(2) TFEU, and the creation of the European Financial Stability Facility (EFSF). On 7 June 2010, the EFSF was created and the euro area Member States and the EFSF signed a framework agreement laying down the conditions under which the EFSF would provide stability support.

6 In mid-2011, the Hellenic Republic, the euro area Member States and various creditors of the Greek State entered into discussions with a view to establishing a new financial assistance programme. The overarching objective of those discussions was to enable the Hellenic Republic to regain financial viability. One of the planned measures was to restructure the Greek public debt, under which the Hellenic Republic's private creditors would contribute to reducing the burden of that debt, thereby avoiding a payment default.

7 In June and July 2011, the euro area Member States and various private creditors of the Greek State submitted proposals for the restructuring of the Greek public debt.

8 In a press release of 1 July 2011, the Institute of International Finance (IIF) stated, inter alia:

'The Board of Directors of the Institute of International Finance is committed to working with its membership and other financial sectors, the public sector, and the Greek authorities to deliver substantial cash-flow to [the Hellenic Republic], as well as to lay the basis for a more sustainable debt position.

The private financial community is ready to engage in a voluntary, cooperative, transparent and broad-based effort to support [the Hellenic Republic] given its unique and exceptional circumstances …

The involvement of private investors will complement parallel official financing and liquidity support and will be based on a small number of options …'

9 On 21 July 2011, the Heads of State or Government of the euro area and EU institutions met to consider measures to be taken in order to overcome the difficulties facing the euro area.

10 Their joint statement of 21 July 2011 includes, in particular, the following:

'1. We welcome the measures undertaken by the Greek Government to stabilise public finances and [to] reform the economy as well as the new package of measures including privatisation recently adopted by the Greek Parliament. These are unprecedented, but necessary, efforts to bring the Greek economy back on a sustainable growth path. We are conscious of the efforts that the adjustment measures entail for the Greek citizens, and are convinced that these sacrifices are indispensable for economic recovery and will contribute to the future stability and welfare of the country.

2. We agree to support a new programme for [the Hellenic Republic] and, together with the IMF and the voluntary contribution of the private sector, to fully cover the financing gap. The total official financing will amount to an estimated [EUR] 109 billion … This programme will be designed, notably through lower interest rates and extended maturities, to decisively improve the debt sustainability and refinancing profile of [the Hellenic Republic]. We call on the IMF to continue to contribute to the financing of the new Greek programme. We intend to use the EFSF as the financing vehicle for the next disbursement. We will monitor very closely the strict implementation of the programme based on the regular assessment by the [European] Commission in liaison with the ECB and the IMF.

…

5. The financial sector has indicated its willingness to support [the Hellenic Republic] on a voluntary basis through a menu of options further strengthening overall sustainability. The net contribution of the private sector is estimated at [EUR] 37 billion …'

11 As regards private sector involvement, point 6 of the joint statement of 21 July 2011 indicates that:

'As far as our general approach to private sector involvement in the euro area is concerned, we would like to make it clear that [the Hellenic Republic] requires an exceptional and unique solution.'

12 At their summit of 26 October 2011, the Heads of State or Government of the euro area declared, in particular, as follows:

'12. The Private Sector Involvement (PSI) has a vital role in establishing the sustainability of the Greek debt. Therefore we welcome the current discussion between [the Hellenic Republic] and its private investors to find a solution for deeper PSI. Together with an ambitious reform programme for the Greek economy, the PSI should secure the decline of the Greek debt to GDP ratio with an objective of reaching 120% by 2020. To this end, we invite [the Hellenic Republic], private investors and all

parties concerned to develop a voluntary bond exchange with a nominal discount of 50% on notional Greek debt held by private investors. The euro [area] Member States would contribute to the PSI package up to [EUR] 30 [billion]. On that basis, the official sector stands ready to provide additional programme financing of up to [EUR] 100 [billion] until 2014, including the required recapitalisation of Greek banks. The new programme should be agreed by the end of 2011 and the exchange of bonds should be implemented at the beginning of 2012. We call on the IMF to continue to contribute to the financing of the new Greek programme.

…

15. As far as our general approach to private sector involvement in the euro area is concerned, we reiterate our decision taken on 21 July 2011 that [the Hellenic Republic] requires an exceptional and unique solution.'

13 According to a press release of the Greek Ministry of Finance of 17 November 2011, that ministry had commenced consultations with holders of Greek bonds in preparation for a voluntary exchange of those bonds with a notional haircut of 50% of the nominal value of Greek debt held by private investors, as provided for in point 12 of the statement of 26 October 2011.

14 On 2 February 2012, the Hellenic Republic submitted to the European Central Bank (ECB), pursuant to Article 127(4) TFEU, read in conjunction with Article 282(5) TFEU, a request for an opinion on draft Greek Law No 4050/2012 introducing rules amending the terms applicable to marketable securities issued or guaranteed by the Greek State under agreements with their holders for the purpose of restructuring the Greek public debt, based, in particular, on the application of collective action clauses ('CACs').

15 On 17 February 2012, the ECB issued Opinion CON/2012/12 on the terms of securities issued or guaranteed by the Greek State ('the contested opinion'). It is apparent from that opinion, inter alia, that, first, 'it is important that the Member States preserve their ability to honour at all times their commitments, also with a view to ensuring financial stability'; secondly, 'the case of the Hellenic Republic is exceptional and unique' (point 2.1); thirdly, the aim of the draft law is to promote private sector involvement and in particular to introduce a procedure to facilitate, in accordance with CACs, negotiation with holders of Greek bonds and the securing of their agreement to an exchange offer by the Hellenic Republic for its bonds and, therefore, a possible restructuring of the Greek public debt (point 2.2); fourthly, 'the ECB welcomes that the terms of such exchange is the result of negotiations held between the Hellenic Republic and the institutions representing its bondholders' (point 2.3); fifthly, 'the use of CACs as a procedure to achieve an exchange of bonds is broadly aligned with general practice …' (point 2.4); and sixthly, 'it remains the sole responsibility of the Government of the Hellenic Republic to take the necessary action that will ultimately ensure its debt sustainability' (point 2.6).

16 In a press release of 21 February 2012, the Greek Ministry of Finance disclosed the essential characteristics of the proposed voluntary bond exchange operation and announced that legislation would be prepared and adopted for that purpose. That transaction was to include a consent solicitation and an invitation to private holders of certain Greek bonds to exchange those bonds for new bonds having a face value equal to 31.5% of the face value of the debt exchanged and for notes of the EFSF maturing within 24 months having a face value equal to 15% of the face value of the debt exchanged, each to be delivered by the Hellenic Republic at settlement. In addition, each participating private holder would also receive detachable GDP-linked securities of the Hellenic Republic with a notional amount equal to the face amount of the new bonds.

17 Also on 21 February 2012, the Eurogroup issued a statement in which it 'acknowledge[d] the common understanding … reached between the Greek authorities and the private sector on the general terms of the PSI exchange offer, covering all private sector bondholders' and stated that 'a successful PSI

operation [wa]s a necessary condition for a successor programme'. In addition, the Eurogroup confirmed the provision of further financial assistance from the euro area Member States via the EFSF and pointed out that 'the respective contributions from the private and the official sector should ensure that [the Hellenic Republic]'s public debt ratio is brought on a downward path reaching 120.5% of GDP by 2020'.

18 On 23 February 2012, the Greek Parliament adopted nomós 4050, Kanónes tropopoiíseos títlon, ekdóseos í engyíseos tou Ellinikoú Dimosíou me symfonía ton Omologioúchon (Law No 4050/2012 on the amendment of bonds issued or guaranteed by the Greek State with the consent of their holders and introducing the CACs mechanism) (FEK A' 36 of 23 February 2012). Under the CACs mechanism, the proposed amendments would become legally binding on all holders of bonds governed by Greek law issued before 31 December 2011, as identified in the act of the Ministerial Council approving private sector involvement ('PSI') invitations, if the amendments were, collectively and without distinction by series, approved by a quorum of bondholders representing at least two thirds of the face value of those bonds. Furthermore, the preamble to Law No 4050/2012 states, in particular, that 'the [ECB] and the other members of the Eurosystem have concluded special agreements with [the Hellenic Republic] in order to ensure that their task and their institutional role, and the [ECB's] role in drawing up monetary policy, as laid down in the Treaty, are not compromised'.

19 In a press release of 24 February 2012, the Greek Ministry of Finance specified the conditions governing the voluntary bond exchange transaction involving private investors, referring to Law No 4050/2012. Public invitations to participate in bond exchanges were subsequently issued.

20 In a press release dated 9 March 2012, the Greek Ministry of Finance stated that, in principle, the conditions laid down by Law No 4050/2012 had been fulfilled and announced the proportions in which private creditors had accepted the exchange offer. In that regard, the press release stated, inter alia:

'Holders of approximately [EUR] 172 billion principal amount of bonds issued or guaranteed by the [Hellenic] Republic have tendered their bonds for exchange or consented to proposed amendments in response to the invitations and consent solicitations announced by the [Hellenic] Republic on 24 February 2012.

Of the approximately [EUR] 177 billion of bonds issued by the [Hellenic] Republic and governed by Greek law and subject to the invitations, the [Hellenic] Republic has received tenders for exchange and consents from holders of approximately [EUR] 152 billion face amount of bonds, representing 85.8% of the outstanding face amount of these bonds. Holders of 5.3% of the outstanding face amount of these bonds participated in the consent solicitation and opposed the proposed amendments. The [Hellenic] Republic has advised its official sector creditors that upon confirmation and certification by the [Central] Bank of Greece as process manager under … Law [No] 4050/2012 …, it intends to accept the consents received and amend the terms of all of its Greek law governed bonds, including those not tendered for exchange pursuant to the invitations, in accordance with the terms of [Law No 4050/2012]. Accordingly the [Hellenic] Republic will not extend the invitation period for its bonds governed by Greek law.

… If the consents to the proposed amendments to the [Hellenic] Republic's Greek law bonds are accepted, the sum of the face amount of those bonds that will be exchanged and of the other bonds [governed by law other than Greek law] subject to the invitations for which the [Hellenic] Republic has received tenders for exchange and consents to the proposed amendments will total approximately [EUR] 197 billion, or 95.7% of the total face amount of the bonds subject to the invitations.'

21 The applicants, Mr Frank Steinhoff, Mr Ewald Filbry, Vereinigte Raiffeisenbanken Gräfenberg-Forchheim-Eschenau-Heroldsberg eG, Mr Werner Bäcker and EMB Consulting SE, as holders of Greek bonds, participated in the restructuring of the Greek public debt in accordance with the PSI and the CACs implemented pursuant to Law No 4050/2012, having refused the offer to exchange their bonds.

Procedure and forms of order sought

22 By application lodged at the Court Registry on 16 February 2017, the applicants brought the present action.

23 On a proposal from the Judge-Rapporteur, the General Court (Third Chamber) decided to open the oral part of the procedure.

24 At the hearing on 29 May 2018, the parties presented oral argument and replied to oral questions put by the Court.

25 The applicants claim that the Court should:

– order the ECB to pay EUR 314 000 to Mr Steinhoff, EUR 54 950 to Mr Filbry, EUR 2 355 000 to Vereinigte Raiffeisenbanken Gräfenberg-Forchheim-Eschenau-Heroldsberg, EUR 303 795 to Mr Bäcker and EUR 750 460 to EMB Consulting;

– increase those sums by a rate of interest of 5% above the base rate from the date on which the action was commenced.

26 The ECB contends that the Court should:

– dismiss the action as inadmissible or, in the alternative, as unfounded;

– order the applicants to pay the costs.

Law

Admissibility

27 The ECB submits that the applicants' action is inadmissible on four grounds: (i) the action is time-barred; (ii) the Court does not have jurisdiction to grant the forms of order sought; (iii) the ECB cannot be held liable in the absence of a power to adopt a legally binding act; and (iv) there is no non-contractual liability for omission where there is no duty to act.

28 The applicants deny that their action is inadmissible.

Time bar of the action and admissibility of the annexes

29 The ECB states that the damage alleged by the applicants derives from the PSI, published on 9 March 2012, and that the applicants' action, lodged at the Court Registry on 16 February 2017, was the subject of requests for regularisation which they complied with on 15 March 2017. The ECB infers from this that the applicants' action was not brought before the Court until 15 March 2017, with the result that it is time-barred under Article 46 of the Statute of the Court of Justice of the European Union, read in conjunction with Article 76 of the Rules of Procedure of the General Court.

30 Article 46 of the Statute of the Court of Justice of the European Union provides that proceedings against the Union in matters arising from non-contractual liability are barred after a period of five years from the occurrence of the event giving rise thereto. The period of limitation is interrupted by the lodging of an application before the Court. Article 46 of the Statute states that that article also applies to actions against the ECB regarding non-contractual liability.

31 In the instant case, the applicants argue that the contested opinion, delivered on 17 February 2012, is the event giving rise to the non-contractual liability of the ECB. On 16 February 2017, the applicants brought their action for damages. Consequently, their action was brought within five years from the adoption of that opinion and cannot be regarded as time-barred.

32 That conclusion is not called into question by the fact that the application was subject to requests for regularisation from the Court Registry concerning, first, the production of annexes with consecutive page numbering, but separately from the procedural document to which they are annexed (see Annex 2(k) to the Practice Rules for the Implementation of the Rules of Procedure of the General Court (OJ 2015 L 152, p. 1), in the version applicable when those requests were made ('the practice rules')), and, secondly, the production of a certified copy of the procedural document and the annexes thereto (see Annex 2(h), (j) and (m) to the practice rules), or by the fact that the applicants did not rectify those irregularities until 15 March 2017.

33 Contrary to the ECB's claims, the regularisation of an application does not, in principle, affect either the date on which the matter was brought before the Court or the assessment that the application was lodged within the time limits laid down in the sixth paragraph of Article 263 TFEU or Article 46 of the Statute of the Court of Justice of the European Union. Under point 111 of the practice rules, an application vitiated by procedural irregularities as referred to in Annex 2 of those rules may result only in a delay in its service. Where an application is rectified, the date of its lodging before the Court thus remains unchanged. An application should be regarded as inadmissible only when it does not contain the essential elements mentioned in Article 76 of the Rules of Procedure and those elements are not produced before the expiry of the period allowed for bringing an action (see, to that effect, judgments of 27 November 1984, *Bensider and Others* v *Commission*, 50/84, EU:C:1984:365, paragraph 8, and of 16 December 2011, *Enviro Tech Europe and Enviro Tech International* v *Commission*, T-291/04, EU:T:2011:760, paragraph 95), or where it is the subject of a request for regularisation in so far as it does not comply with the requirements laid down in Annex I to the practice rules and the applicant does not carry out the requested regularisation (see point 110 of the practice rules).

34 The ECB also noted that several annexes to the application had not been translated from Greek into the language of the case, German. At the hearing, in response to a question from the Court, the ECB stated that it inferred from the lack of translation of those annexes into the language of the case that they had to be rejected as inadmissible.

35 It should be recalled that, under Article 46(2) of the Rules of Procedure, any material produced or annexed that is expressed in another language must be accompanied by a translation into the language of the case. Paragraph 3 of that article provides, however, that in the case of lengthy documents, translations may be confined to extracts. The translation of annexes to the application into the language of the case is not, therefore, a requirement that must be met as a matter of course. Consequently, the fact that those annexes were not translated may not automatically entail their inadmissibility.

36 Moreover, it is apparent from point 108 of the practice rules (now point 99 following the Amendments to the Practice Rules for the Implementation of the Rules of Procedure of the General Court (OJ 2018 L 294, p. 40)), that where the material annexed to a procedural document is not accompanied by a translation into the language of the case, the Registrar is to require the party concerned to make good

the irregularity if such a translation appears necessary for the purposes of the efficient conduct of the proceedings. No such demand was made in this case, so that the lack of translation was not considered to affect the efficient conduct of the proceedings.

37 In the light of the above clarifications, it must be concluded that the fact that the annexes at issue were not translated into the language of the case does not constitute an irregularity entailing their inadmissibility and, furthermore, does not affect the date of lodging of the application or, therefore, the absence of time bar.

38 For all of the above reasons, the ECB's claims that the applicants' action is time-barred and the annexes which were not translated into the language of the case are inadmissible must be rejected.

Jurisdiction of the Court

39 The ECB contends that the alleged loss was caused by a purely national measure. Consequently, its non-contractual liability cannot be incurred and the Court does not have jurisdiction.

40 In support of that assertion, the ECB argues, first, that the losses which the applicants claim to have sustained are the result not of its conduct, but the conduct of the Greek Parliament, which adopted Law No 4050/2012, and the decision of a majority of holders of the bonds concerned. Secondly, the restructuring of the public debt of a Member State falls exclusively within the competence of the Member States. Thus, by adopting Law No 4050/2012, the Hellenic Republic was not implementing Union law within the meaning of Article 51(1) of the Charter of Fundamental Rights of the European Union ('the Charter'). Thirdly, irrespective of whether Law No 4050/2012 implements Union law, responsibility for compensating the applicants for all of the alleged losses lies with the Hellenic Republic, not the ECB, since, under Article 4(3) TEU, Member States are to take all appropriate measures to ensure fulfilment of their obligations under EU law, including the obligation to nullify the unlawful consequences of a breach of EU law. Fourthly, the contested opinion does not – and could not – concern the specific characteristics of the PSI. The decision to propose the PSI and its design was exclusively a matter for the authorities of the Hellenic Republic. Moreover, the decision to accept the terms of the PSI was taken by a qualified majority of private creditors.

41 The applicants submit that the contested opinion was a decisive factor in the adoption and implementation by the Greek State of Law No 4050/2012.

42 In the light of those arguments, it should be recalled that under Article 268 TFEU, read in conjunction with the third paragraph of Article 340 TFEU, the Court has jurisdiction to hear disputes relating to damage caused by the ECB, in accordance with the general principles common to the laws of the Member States.

43 Since the applicants claim that the damage caused to them was the result of the ECB adopting the contested opinion, the Court has jurisdiction to examine that claim on the basis of Articles 268 and 340 TFEU.

44 The fact that the ECB contends that such damage was caused not by the contested opinion, but by the conduct of the Hellenic Republic and the other holders of Greek bonds, does not invalidate that conclusion.

45 That question relates to the examination of the conditions necessary for the non-contractual liability of the Union to be incurred, namely, in this case, the existence of an event giving rise to liability and of a causal link between that event and the alleged damage, which fall to be reviewed when the substance of

the case is considered (see, to that effect, judgments of 29 January 1998, *Dubois et Fils* v *Council and Commission*, T-113/96, EU:T:1998:11, paragraph 34, and of 3 May 2017, *Sotiropoulou and Others* v *Council*, T-531/14, not published, EU:T:2017:297, paragraphs 58 to 61).

46 If the Court finds that the alleged damage was not caused by the contested opinion, that finding will not alter either the scope of the subject matter of the present action, which seeks an order against the ECB requiring it to compensate the applicants, or the Court's jurisdiction to hear the case. In that situation, the Court has jurisdiction to rule that the ECB cannot be held liable for the loss at issue and to dismiss the action as unfounded.

47 Consequently, the ECB's argument that the Court does not have jurisdiction to rule on the non-contractual liability alleged by the applicants must be rejected.

No non-contractual liability in the absence of a power to issue legally binding instructions

48 The ECB submits that the applicants' action is inadmissible because, by issuing its opinion pursuant to Article 127(4) and Article 282(5) TFEU, it did not exercise a power entitling it to give legally binding instructions. Therefore, it could not incur non-contractual liability by issuing such an opinion.

49 In support of that claim, the ECB asserts that it is apparent from settled case-law that the European Union cannot incur non-contractual liability towards individuals on the basis of cooperation between the EU institutions and national authorities or non-binding technical assistance provided by the EU institutions. An action for damages is inadmissible where the measure taken by the EU institution is purely political. Moreover, in the instant case, the Hellenic Republic acted in a purely national sphere of competence. Finally, the ECB denies, first, that according to more recent case-law, non-binding legal acts of EU institutions may incur the non-contractual liability of the European Union where those acts have resulted in unlawful conduct on the part of national authorities and, secondly, that its opinions are legally binding on Member States.

50 The applicants dispute those arguments.

51 It should be recalled that an action for damages is an autonomous form of action, with a particular purpose to fulfil within the system of legal remedies and subject to conditions of use dictated by its specific purpose. Whereas actions for annulment and for failure to act seek a declaration that a legally binding measure is unlawful or that such a measure has not been taken, an action for damages seeks compensation for damage resulting from a measure or from unlawful conduct, attributable to an EU institution or body (judgment of 7 October 2015, *Accorinti and Others* v *ECB*, T-79/13, EU:T:2015:756, paragraph 61).

52 According to settled case-law on the European Union's non-contractual liability for damage caused to individuals by a breach of EU law attributable to an EU institution or body, which is applicable *mutatis mutandis* to the non-contractual liability of the ECB provided for in the third paragraph of Article 340 TFEU, a right to reparation is afforded where three conditions are met: the rule of law infringed must be intended to confer rights on individuals and the breach must be sufficiently serious; actual damage must be shown to have occurred; and there must be a direct causal link between the breach of the obligation resting on the author of the act and the damage sustained by the injured parties (see, to that effect, judgments of 10 July 2003, *Commission* v *Fresh Marine*, C-472/00 P, EU:C:2003:399, paragraph 25; of 23 March 2004, *Ombudsman* v *Lamberts*, C-234/02 P, EU:C:2004:174, paragraph 49 and the case-law cited; and of 4 April 2017, *European Ombudsman* v *Staelen*, C-337/15 P, EU:C:2017:256, paragraph 31).

53 Therefore, only the unlawful conduct of an institution constituting a sufficiently serious breach is capable of establishing the non-contractual liability of the European Union. The decisive test for finding that a breach of EU law is sufficiently serious is whether the institution manifestly and gravely disregarded the limits on its discretion (see judgments of 4 July 2000, *Bergaderm and Goupil* v *Commission*, C-352/98 P, EU:C:2000:361, paragraph 43 and the case-law cited, and of 4 April 2017, *European Ombudsman* v *Staelen*, C-337/15 P, EU:C:2017:256, paragraph 31 and the case-law cited). It is solely where that institution or body has only considerably reduced, or even no, discretion, that the mere infringement of EU law may suffice to establish the existence of a sufficiently serious breach (judgment of 7 October 2015, *Accorinti and Others* v *ECB*, T-79/13, EU:T:2015:756, paragraph 67 and the case-law cited). Moreover, the criterion of a sufficiently serious breach of a rule of law applies not only in the case of an individual act, but also in the case of an individual omission (see, to that effect, judgment of 16 November 2017, *Acquafarm* v *Commission*, T-458/16, not published, EU:T:2017:810, paragraph 44 and the case-law cited).

54 Consequently, in order to establish whether an institution has incurred non-contractual liability, it is necessary to assess its conduct causing the alleged damage (see, to that effect, judgment of 23 March 2004, *Ombudsman* v *Lamberts*, C-234/02 P, EU:C:2004:174, paragraph 60), in other words, in this case, whether the adoption by the ECB of the contested opinion constitutes a sufficiently serious breach of a rule of EU law causing the damage claimed by the applicants.

55 Unlike actions for annulment, the admissibility of actions for damages does not depend on whether the measure causing the alleged damage was in the nature of a decision or was binding. All conduct causing damage is capable of establishing non-contractual liability (see, to that effect, judgment of 23 March 2004, *Ombudsman* v *Lamberts*, C-234/02 P, EU:C:2004:174, paragraphs 50 to 52 and 60; see also, concerning the breach of an obligation to do or to refrain from doing something, judgment of 20 September 2016, *Ledra Advertising and Others* v *Commission and ECB*, C-8/15 P to C-10/15 P, EU:C:2016:701, paragraphs 55 to 59, 67 and 68; concerning a reasoned opinion, judgment of 18 December 2009, *Arizmendi and Others* v *Council and Commission*, T-440/03, T-121/04, T-171/04, T-208/04, T-365/04 and T-484/04, EU:T:2009:530, paragraphs 66 to 69; and, concerning an individual omission, judgment of 16 November 2017, *Acquafarm* v *Commission*, T-458/16, not published, EU:T:2017:810, paragraph 44 and the case-law cited). Indeed, if an EU Court were unable to assess the legality of the conduct of an EU institution or body, the procedure provided for in Article 268 and the second and third paragraphs of Article 340 TFEU would be rendered ineffective (see, to that effect, judgment of 23 March 2004, *Ombudsman* v *Lamberts*, C-234/02 P, EU:C:2004:174, paragraph 61).

56 Consequently, the ECB cannot rely on the case-law prior to the judgment of 23 March 2004, *Ombudsman* v *Lamberts* (C-234/02 P, EU:C:2004:174, paragraphs 31 to 94), in which the EU Courts had dismissed actions for damages as inadmissible on the sole ground that the unlawfulness pleaded was based on a measure with no legal effects (orders of 13 June 1991, *Sunzest* v *Commission*, C-50/90, EU:C:1991:253, paragraphs 17 to 20; of 4 October 1991, *Bosman* v *Commission*, C-117/91, EU:C:1991:382, paragraph 20; and of 10 December 1996, *Söktas* v *Commission*, T-75/96, EU:T:1996:183, paragraph 49). The admissibility of an action for damages brought against an opinion of the ECB cannot therefore depend on whether or not that opinion was legally binding. To declare an action for damages to be inadmissible solely on the ground that the measure causing the alleged damage is not binding would be at odds with the purpose and effectiveness of that remedy.

57 Similarly, the fact that the contested opinion is of a political nature and that the ECB was not bound to adopt such an opinion does not affect the admissibility of the present action. The discretion conferred on an institution does not have the consequence of releasing it from its obligation to act in conformity both with the higher rules of law, such as the Treaty and the general principles of EU law, and with the applicable secondary legislation. Where the legality of that measure is challenged in an action for compensation, the measure is therefore capable of being assessed against the yardstick of the obligations borne by that institution (judgment of 18 December 2009, *Arizmendi and Others* v *Council and Commission*, T-440/03, T-121/04, T-171/04, T-208/04, T-365/04 and T-484/04,

EU:T:2009:530, paragraph 66). Finally, the ECB's claim that the Hellenic Republic acted in a purely national sphere of competence does not affect the fact that the applicants are challenging the conduct of the ECB in this case and that the Court has jurisdiction to examine the substance of that complaint.

58 Accordingly, the Court must reject the ECB's argument that the applicants' action is inadmissible because, by adopting the contested opinion, it did not exercise a power entitling it to issue legally binding instructions to the Hellenic Republic.

No non-contractual liability for omission in the absence of a legal duty to act

59 The ECB states that the applicants' action is inadmissible because, by means of the alleged failure to act, it did not infringe a duty to act capable of triggering its non-contractual liability. In particular, it denies that it has any duty to protect the applicants' right to property for the following reasons. First, in accordance with Article 127(4) TFEU, read in conjunction with the fifth paragraph of Article 288 TFEU, opinions issued by the ECB are not legally binding. Since Member States are not bound by its opinions, the ECB cannot ensure, by means of that mechanism, the effective protection of the fundamental rights of the applicants. Furthermore, those provisions do not require it to publish its opinions. Secondly, the ECB states that, under Article 17(1) TEU, it has no duty to promote the general interest of the Union and to oversee the application of EU law. According to the ECB, the purpose of the consultation and contested opinion was not to determine whether or not the PSI as such was desirable; rather, it was concerned with the technical details for introducing CACs applicable to Greek bonds. Thirdly, neither the Hellenic Republic nor, by analogy, the ECB is subject to any obligation to protect the investments and property of the applicants.

60 The applicants dispute that assessment.

61 In the light of those arguments, it is clear that the question whether or not the ECB could be held liable for failing, in the contested opinion, to notify the Hellenic Republic of possible illegalities vitiating draft Law No 4050/2012 on the ground that it had no duty to act concerns the substance of the action for damages, not its admissibility.

62 Indeed, the question whether the ECB committed a wrongful act by not informing the Hellenic Republic of the alleged unlawfulness of draft Law No 4050/2012 relates to the requirement of the existence of a sufficiently serious breach by the ECB of a rule of law conferring rights on individuals on account of that omission.

63 Consequently, the ECB's claim that the applicants' action is inadmissible in the absence of a legal duty to act and of non-contractual liability for failure to act must be rejected.

Substance

Preliminary observations

64 According to the applicants, the ECB is bound to respect fundamental rights in all its activities, so that it is required, in an opinion on a draft law of a Member State, to highlight breaches of fundamental rights associated with the adoption and implementation of the proposed law. In the present case, the applicants assert that the ECB failed to state in the contested opinion that Law No 4050/2012 infringed, first, the principle of *pacta sunt servanda*; secondly, Article 17(1) and (2) of the Charter; thirdly, Article 63 TFEU; and, fourthly, Article 124 TFEU. Those omissions caused damage in the amount of EUR 314 000 to Mr Steinhoff, EUR 54 950 to Mr Filbry, EUR 2 355 000 to Vereinigte Raiffeisenbanken Gräfenberg-Forchheim-Eschenau-Heroldsberg, EUR 303 795 to Mr Bäcker, and EUR 750 460 to EMB Consulting.

65 The ECB contends that none of the necessary conditions for establishing its non-contractual liability is met in the present case.

66 Before examining each of those alleged breaches and the causal link between them and the alleged damage, it should be borne in mind that the non-contractual liability of the ECB provided for in the third paragraph of Article 340 TFEU presupposes that three cumulative conditions are satisfied: the rule of law infringed must be intended to confer rights on individuals and the breach must be sufficiently serious; actual damage must be shown to have occurred; and there must be a direct causal link between the breach of the obligation resting on the author of the act and the damage sustained by the injured parties (see paragraphs 52 to 54 above).

67 Furthermore, it is important to draw attention to the scope of the ECB's power to issue opinions.

68 Article 127(4) TFEU provides that the ECB is to be consulted by national authorities regarding any draft legislative provision in its fields of competence, within the limits and under the conditions set by the Council of the European Union. Similarly, Article 282(5) TFEU states that in the areas falling within its responsibilities, the ECB is to be consulted on all proposed Union acts, and all proposals for regulation at national level, and may give an opinion.

69 Recital 3 of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ 1998 L 189, p. 42) makes clear that this obligation on the authorities of the Member States to consult the ECB must not prejudice the responsibility of those authorities for the matters which are the subject of such provision and that Member States must consult the ECB on any draft legislation in its fields of competence. Furthermore, according to recital 6 of Decision 98/415, consultation of the ECB must not unduly lengthen procedures for adopting legislative provisions in the Member States and the time limits within which the ECB must deliver its opinion must, nevertheless, enable it to examine the texts referred to it with the required care.

70 The content of those recitals is reproduced in the provisions of Decision 98/415. Thus, under Article 2 of Decision 98/415, the authorities of the Member States are to consult the ECB on any draft legislative provision within its field of competence pursuant to the TFEU and in particular on currency matters; means of payment; national central banks; the collection, compilation and distribution of monetary, financial, banking, payment systems and balance of payments statistics; payment and settlement systems; and rules applicable to financial institutions in so far as they materially influence the stability of financial institutions and markets. Furthermore, Article 4 of Decision 98/415 provides that each Member State is to ensure that the ECB is consulted at an appropriate stage enabling the authority initiating the draft legislative provision to take into consideration the ECB's opinion before taking its decision on the substance and that the opinion received from the ECB is brought to the knowledge of the adopting authority if the latter is an authority other than that which prepared the legislative provisions concerned.

71 In the first place, it is clear from those provisions that the ECB's opinions are not binding on national authorities. Indeed, according to recital 3 and Article 4 of Decision 98/415, national authorities are required only to take those opinions into account and they do not prejudice the responsibility of those authorities for the matters which are the subject of the draft legislative provisions concerned. It follows that in order to comply with the obligation to consult the ECB, the ECB must be able to make its views known effectively to the national authorities, but it cannot compel those authorities to abide by them. If the legislature had intended to make the ECB's intervention legally binding as to its content, it would have conferred on it a power of authorisation, not a power to issue opinions. For the reasons given in paragraph 55 above, the fact that the ECB's opinions are not binding on national authorities does not automatically preclude those opinions from rendering the ECB liable.

72 In the second place, the ECB enjoys a broad discretion when adopting its opinions. The Court has previously held, to that effect, that Articles 127 and 282 TFEU and Article 18 of the Statute of the European System of Central Banks (ESCB) confer a broad discretion on the ECB, the exercise of which entails complex evaluations of an economic and social nature and of rapidly changing situations, which must be carried out in the context of the Eurosystem, or even of the European Union as a whole. In particular, it has been held that the exercise of that discretion implies the need for the ECB to foresee and evaluate complex and uncertain economic developments, such as the development of capital markets, the monetary mass and the rate of inflation, which affect the proper functioning of the Eurosystem and payment and credit systems, and also to make political, economic and social choices in which it is required to weigh up and decide between the different objectives referred to in Article 127(1) TFEU, the main objective of which is the maintenance of price stability (see, to that effect, judgment of 24 January 2017, *Nausicaa Anadyomène and Banque d'escompte* v *ECB*, T-749/15, not published, EU:T:2017:21, paragraph 70 and the case-law cited, and Opinion of Advocate General Cruz Villalón in *Gauweiler and Others*, C-62/14, EU:C:2015:7, point 111 and the case-law cited).

73 The broad discretion enjoyed by the ECB when adopting its opinions therefore means that its non-contractual liability may be incurred only if it manifestly and gravely disregards the limits on that discretion (see the case-law cited in paragraphs 53 and 72 above).

Infringement of the principle of pacta sunt servanda

74 According to the applicants, the Hellenic Republic could not legitimately insert, by means of Law No 4050/2012, review clauses into the terms governing existing bonds. It is precluded from doing so by the international law principle of *pacta sunt servanda*, enshrined in Article 26 of the Vienna Convention on the Law of Treaties of 23 May 1969, to which the Hellenic Republic has acceded and which is recognised by the Bundesgerichtshof (Federal Court of Justice, Germany) and the Court. The applicants therefore submit that the ECB should have acknowledged in the contested opinion that the Hellenic Republic infringed that principle by adopting a law providing for the mandatory exchange of Greek bonds for private creditors opposed to the exchange. The fact that the ECB did not do so amounts to an omission contrary to its obligations.

75 Moreover, the applicants deny that the Hellenic Republic is entitled to rely in the instant case on the principle of *rebus sic stantibus* to justify the variation of their contractual rights. In support of that argument, the applicants state, first, that the bonds in dispute were issued at a time when the international monetary community had unanimously called for State bonds to include CACs. Secondly, despite the applicants' requests, the Hellenic Republic deliberately decided not to use CACs when issuing the bonds concerned. Thirdly, in April 2003, Member States agreed on the need to include CACs in international debt issuance (see Annex 1 of the report of the Economic and Financial Committee ECFIN/CEFCPE (2004) REP 50483 final of 12 November 2004, p. 7) and, in September 2003, the Economic and Financial Committee approved a set of clauses that were deemed to apply in the terms governing the issuance of debt. Fourthly, since November 2004, the 'Governors of the Central Banks of the G20 countries' have recommended the inclusion of CACs in bond contracts in order to promote the implementation of majority decisions (see the recommendation of 26 October 2004 entitled 'Report to the EFC – Implementation of the EU commitment on Collective Action Clauses in documentation of International Debt Issuance'). Fifthly, the fears that CACs might lead to higher risk premiums and thereby increase the cost of financing the State were not borne out by the studies conducted in 2003 by A. Richards and M. Gugiatti ('The Use of Collective Action Clauses in New York Law Bonds of Sovereign Borrowers', *Journal of International Law*, 2004, p. 815 et seq.; Szodruch, A., *Staateninsolvenz und private Gläubiger*, BWV Verlag, 2008, p. 226). The applicants therefore submit that since the Hellenic Republic decided not to insert CACs into Greek bonds even

though their inclusion in State bonds had been the subject of discussion, it was not entitled, when the changed circumstances arose which CACs were precisely designed to address, to seek to impose a restructuring by coercion.

76 The ECB disputes those claims. It submits that it was not required to point out in the contested opinion that Law No 4050/2012 potentially infringed the principle of *pacta sunt servanda*; it could not itself infringe that principle; and that principle had not been infringed in the light of the principle of *rebus sic stantibus*.

77 As noted in paragraph 52 above, only a sufficiently serious breach of a rule of law which confers rights on individuals is capable of establishing the non-contractual liability of the ECB. In order to ensure the effectiveness of the condition relating to the breach of a rule of law conferring rights on individuals, the protection offered by the rule invoked must be effective vis-à-vis the person who invokes it and that person must therefore be among those on whom the rule in question confers rights. A rule which does not protect the individual against the unlawfulness invoked by him, but protects another individual, cannot be accepted as a source of compensation (see, to that effect, judgments of 19 October 2005, *Cofradía de pescadores 'San Pedro de Bermeo' and Others* v *Council*, T-415/03, EU:T:2005:365, paragraph 96, and of 3 December 2015, *CN* v *Parliament*, T-343/13, EU:T:2015:926, paragraph 86 and the case-law cited).

78 In the case in point, the applicants' subscription to the disputed bonds which were issued and guaranteed by the Hellenic Republic created a contractual relationship between them and the Hellenic Republic. That contractual relationship is not governed by the principle of *pacta sunt servanda* under Article 26 of the Vienna Convention on the Law of Treaties. Pursuant to Article 1 thereof, the Convention applies only to treaties between States. Consequently, Article 26 of the Vienna Convention on the Law of Treaties is not a rule of law conferring rights on the applicants.

79 Nevertheless, the Court has held that the principle of *pacta sunt servanda* constitutes a fundamental principle of any legal order (judgment of 16 June 1998, *Racke*, C-162/96, EU:C:1998:293, paragraph 49). Thus, the principle of *pacta sunt servanda* is also a general principle of EU law applicable to contracts under which a contract that has been validly entered into is binding upon the parties (see, to that effect, Opinion of Advocate General Trstenjak in *Dominguez*, C-282/10, EU:C:2011:559, point 96, and Opinion of Advocate General Kokott in *Pujante Rivera*, C-422/14, EU:C:2015:544, point 55).

80 However, as a rule, the rights and obligations of the parties to a contract bind only those parties. The general principles of contract law such as the principle of *pacta sunt servanda* do not call into question that relative scope of the rights held by a contracting party.

81 In addition, the opinions of the ECB are not addressed to individuals nor do they have as their main purpose contractual relations between an individual and a Member State following the issuance of bonds by that Member State. Under Article 2 of Decision 98/415, the addressees of the ECB's opinions are the authorities of the Member States which are required to consult the ECB, not individuals. In addition, the ECB's power to issue opinions is not designed to assess the rights and obligations of contracting parties, but is part of its core tasks in the field of monetary policy and is related in particular to its duty to maintain price stability within the meaning of Article 127(1) and (2) TFEU.

82 Consequently, where, as in the present case, the ECB is consulted by the Hellenic Republic regarding draft legislative provisions concerning national banks and the rules applicable to financial institutions in so far as they materially influence the stability of such institutions and the financial markets, it is not required to take a view on whether that Member State has complied with the general principle of contract law, *pacta sunt servanda*, vis-à-vis holders of State bonds.

83 Thus, the ECB's power to issue opinions does not confer on the applicants a right to have the ECB draw attention to a breach of a contractual right they enjoy vis-à-vis the Hellenic Republic following the subscription by them to Greek bonds issued and guaranteed by that Member State. In the absence of a right enjoyed by the applicants to have the ECB take a view on that matter, the ECB cannot have acted unlawfully by failing to take a view in the contested opinion on compliance with the principle of *pacta sunt servanda* following the request for consultation by the Hellenic Republic.

84 Furthermore and in any event, it has not been shown that the adoption of Law No 4050/2012 entailed a breach of the principle of *pacta sunt servanda*. Investing in State bonds was not free from risk of economic loss, even though the law governing such bonds did not provide for the possibility, before their maturity, of renegotiating certain terms such as the face value, accrued interest or maturity. As pointed out by the Symvoulio tis Epikrateias (Council of State, Greece), that risk is notably due to the long length of time that elapses from the issuance of the bonds, during which unforeseen events may substantially curtail or even wipe out the financial capacities of the State, issuer or guarantor of those bonds. As the European Court of Human Rights ('the ECtHR') has held, if unforeseen events of that kind occur, such as the Greek public debt crisis in this case, the issuing State is entitled to attempt a renegotiation based on the principle of *rebus sic stantibus* (see judgment of the Symvoulio tis Epikrateias (Council of State), as summarised in § 29 of the judgment of the ECtHR of 21 July 2016, *Mamatas and Others v. Greece*, CE:ECHR:2016:0721JUD006306614).

85 Accordingly, the applicants are incorrect to claim that the ECB committed a wrongful act capable of triggering its non-contractual liability by failing to draw attention in the contested opinion to the breach of the principle of *pacta sunt servanda* allegedly caused by the adoption of Law No 4050/2012 in respect of them.

Infringement of Article 17(1) and (2) of the Charter

86 The applicants submit that the ECB should have acknowledged in the contested opinion that, by adopting draft Law No 4050/2010, the Hellenic Republic committed an infringement tantamount to the expropriation of the rights of dissenting creditors established abroad. The fact that it did not do so amounts to an omission contrary to its obligations.

87 In support of this complaint, first, the applicants state that Law No 4050/2010 was intended to force private creditors, who had expressly refused to give their consent to the restructuring, to participate in the reduction of the Greek public debt by means of the subsequent introduction of CACs.

88 Secondly, the applicants argue that Greek bonds fall within the definition of property as protected by Article 17 of the Charter. Those bonds constitute claims with a sufficient foundation in national law to be entitled to such protection. According to the applicants, the insolvency of the Greek State was inconceivable from a legal perspective and the bonds concerned were generally considered to be safe, particularly where they did not contain review clauses. In addition, they were considered to be safe under the Solvabilitätsverordnung (Regulation on solvency) of 14 December 2006 (BGBl. 2006 I, p. 2926) (see, in particular, Paragraph 26(2)(b) of the Regulation on solvency), even when the rating agencies downgraded the Hellenic Republic's rating and the price of Greek bonds fell, because – their performance falling as it did to a foreign government or a foreign central bank – they had to be assigned to the 'central governments' exposure class. That last aspect is confirmed by Article 15 of nomós 2469, Periorismós kai veltíosi tis apotelesmatikótitas ton kratikón dapanón kai álles diatáxeis (Law No 2469/1997 concerning the limits on and improved effectiveness of public spending) of 14 March 1997 (FEK A' 38/14.3.1997, p. 592). Since the protection of property forms part of the general principles of EU law which the Court has recognised in its case-law, the applicants argue that they are entitled to the protection of property as regards State bonds.

89 Thirdly, the applicants claim that the interference with their right to property is the result of acts of the State. According to the applicants, in its judgment of 22 March 2014, Symvoulio tis Epikrateias (ref. 1117/2014), the Symvoulio tis Epikrateias (Council of State) described the whole process of restructuring the Greek public debt as a covert act of the State.

90 Fourthly, the applicants assert that the requirement to pay fair compensation in good time is not satisfied by the receipt of 15% of the face value of the bonds previously held in the form of two notes issued by the EFSF and, for the 31.5% of the outstanding face value of those bonds, the receipt of new bonds issued by the Hellenic Republic with a maturity date between 2022 and 2042 and which include a CAC, with the consequence that the terms of issue of those bonds might be subsequently amended to the detriment of creditors without it, prima facie, being possible to mount a legal challenge to such modification. According to the applicants, this is in addition to the aggravating circumstance that, from an economic perspective, the reduction of the claim is not 46.5%, but 78.5%, as determined by the Symvoulio tis Epikrateias (Council of State) in its judgment of 22 March 2014, since less interest is paid and, in addition, the bonds transferred under the mandatory exchange do not mature until between 2022 and 2042, with the exception of the EFSF's notes which matured in 2013 and 2014. That assessment by the Greek State is fully in line with that of the rating agency Moody's.

91 The applicants therefore contend that the adoption of Law No 4050/2010 entails an interference that is tantamount to expropriation from them. That is the only interpretation satisfying the requirement of effective legal protection which the ECtHR laid down in its judgment of 23 September 1982, *Sporrong and Lönnroth v. Sweden* (CE:ECHR:1982:0923JUD 000715175, § 63 and the case-law cited), which is also decisive for the interpretation of Article 17 of the Charter in the light of the first sentence of Article 52(3) thereof.

92 Finally, the applicants claim that the ECtHR's judgment of 21 July 2016, *Mamatas and Others v. Greece* (CE:ECHR:2016:0721JUD 006306614), is not relevant because it does not concern expropriation from foreign private creditors not established in Greece and, for that reason alone, the proportionality of the interference must be assessed differently than in the case of an interference by the State with the property of its own citizens. Furthermore, in that judgment, in assessing proportionality in the context of the calculation of loss, the ECtHR referred to the face value of 46.5% received in exchange, not the actual loss of economic value of 78.5%.

93 The ECB disputes the complaints put forward by the applicants. It contends, first, that those complaints should be directed against the Hellenic Republic since the PSI was designed and introduced exclusively by the Greek authorities and, secondly, that there was no breach of the applicants' right to property because the restrictions imposed on that right were necessary and justified by general interest objectives recognised by the European Union.

94 In the light of those arguments, it should be recalled that under Article 17(1) of the Charter, everyone has the right to own, use, dispose of and bequeath his lawfully acquired possessions. No one may be deprived of his possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.

95 Furthermore, under Article 51 of the Charter, the Charter's provisions are addressed, among others, to the EU institutions, including the ECB (see Article 13 TEU), which are required to respect the rights, observe the principles and promote the application of the Charter.

96 The right to property as enshrined in Article 17(1) of the Charter is a fundamental right of EU law (see judgment of 18 July 2013, *Schindler Holding and Others* v *Commission*, C-501/11 P, EU:C:2013:522, paragraph 124 and the case-law cited), respect for which is a condition of the lawfulness of EU acts (see, to that effect, judgment of 3 September 2008, *Kadi and Al Barakaat International Foundation* v *Council and Commission*, C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 284 and the

case-law cited). Furthermore, that provision, which states that everyone has the right to own his lawfully acquired possessions, is a rule of law intended to confer rights on individuals (see, to that effect, judgment of 20 September 2016, *Ledra Advertising and Others* v *Commission and ECB*, C-8/15 P to C-10/15 P, EU:C:2016:701, paragraph 66).

97 It follows that, in principle, a sufficiently serious breach of Article 17(1) of the Charter by the ECB is capable of giving rise to its non-contractual liability under the third paragraph of Article 340 TFEU.

98 In addition, the fundamental nature of that rule protecting individuals and the corresponding obligation for the ECB to promote compliance with it means that those individuals are entitled to expect the ECB to draw attention to the breach of such a rule when exercising its powers. It has already been held in the context of a financial assistance facility provided by the European Stability Mechanism to the Republic of Cyprus that Article 17(1) of the Charter can be infringed by the European Commission not only by positive action, but also by 'passive' conduct or the failure to take a measure where the Commission is under a specific obligation to do something (see, to that effect, judgment of 20 September 2016, *Ledra Advertising and Others* v *Commission and ECB*, C-8/15 P to C-10/15 P, EU:C:2016:701, paragraphs 57, 59 and 66 to 75). Similarly, the special status conferred on the ECB within the institutional framework of the Treaties does not exempt it from the requirement to respect the fundamental rights of the Union or from its duty to contribute to the attainment of the objectives of the Union as set out in Articles 2, 3 and 6 TEU (see, to that effect, judgment of 10 July 2003, *Commission* v *ECB*, C-11/00, EU:C:2003:395, paragraph 91).

99 It must also be recalled, however, that the right to property guaranteed by Article 17(1) of the Charter is not absolute and its exercise may be subject to restrictions justified by objectives of general interest pursued by the European Union (see judgment of 20 September 2016, *Ledra Advertising and Others* v *Commission and ECB*, C-8/15 P to C-10/15 P, EU:C:2016:701, paragraph 69 and the case-law cited).

100 Consequently, as is apparent from Article 52(1) of the Charter, restrictions may be imposed on the exercise of the right to property, provided that the restrictions genuinely meet objectives of general interest and do not constitute, in relation to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of the right guaranteed (see judgment of 20 September 2016, *Ledra Advertising and Others* v *Commission and ECB*, C-8/15 P to C-10/15 P, EU:C:2016:701, paragraph 70 and the case-law cited).

101 In the present case, it is common ground that Law No 4050/2012, forming the subject matter of the contested opinion, made it possible to reduce the face value of the bonds in dispute held by the applicants and, therefore, diminished their right to repayment of that value upon the maturity of the bonds.

102 Bonds that have reached maturity must, in principle, be repaid at their face value. In principle, therefore, the applicants held, upon the maturity of their bonds, a pecuniary claim against the Greek State in an amount equivalent to the bonds' face value. The adoption of Law No 4050/2012 amended those terms by introducing CACs. As stated in paragraph 18 above, CACs were applicable to certain Greek bonds and specifically provided for the possibility of amending the terms governing them by means of an agreement between the Greek State and a majority of bondholders representing at least two thirds of the face value of the bonds concerned. Under the relevant provisions of that law, an amendment made in pursuance of such an agreement becomes legally binding on all holders of Greek bonds, including those who have not consented to the proposed amendment.

103 Law No 4050/2012 thus made it possible to force the holders of Greek bonds to participate in the reduction of the Greek public debt by devaluing the value of the bonds as soon as that reduction had been approved by the quorum of their holders. That law thus varied the rights of the holders of Greek bonds even though the terms governing their issuance did not contain review clauses.

104 Following the adoption of Law No 4050/2012, the Greek authorities published the characteristics of a PSI in the reduction of the Greek public debt and invited the holders of the bonds concerned to participate in a bond exchange. Since the quorum and the majority required for the planned bond exchange to go ahead were reached, all holders of Greek bonds, including those who opposed the exchange, had their bonds exchanged pursuant to Law No 4050/2012, with the result that the value of those bonds fell.

105 Although the adoption of Law No 4050/2012 thereby gave rise to an inference with the applicants' right to property, that law meets general interest objectives, including that of ensuring the stability of the banking system of the euro area as a whole. Indeed, without restructuring of the Greek public debt, there was an appreciable risk of a further deterioration in the economic situation at the time, and even the possible insolvency of the Hellenic Republic, whose potentially defaulting bonds would no longer be acceptable to the ECB and the national central banks as collateral in Eurosystem credit operations. Moreover, such a development could entail risks for the stability of the financial system and the functioning of the Eurosystem as a whole.

106 Both the ECtHR and the Court have recognised those objectives of general interest. Thus, in its judgment of 21 July 2016, *Mamatas and Others v. Greece* (CE:ECHR:2016:0721JUD 006306614, § 103), the ECtHR held, in its examination of whether the right to property had been respected following a devaluation of the value of Greek bonds pursuant to Law No 4050/2012, that the Hellenic Republic was legitimately entitled to take measures to achieve the objectives of maintaining economic stability and restructuring debt in the general interest of the community. Similarly, in its judgment of 20 September 2016, *Ledra Advertising and Others* v *Commission and ECB* (C-8/15 P to C-10/15 P, EU:C:2016:701, paragraph 71), concerning the Cypriot public debt crisis, the Court found that ensuring the stability of the banking system of the euro area as a whole was an objective of general interest pursued by the European Union.

107 As to whether or not the reduction in the value of the disputed bonds held by the applicants constituted, in relation to the aim pursued, a disproportionate and intolerable interference impairing the very substance of the right guaranteed, the following matters must be borne in mind.

108 First, as the Court has already held, every creditor must bear the risk of his debtor's insolvency, including a State debtor. The purchase by an investor of State bonds is, by definition, a transaction entailing a certain financial risk, because it is subject to the hazards of movements in the capital markets. In addition, the applicants had to be aware that the purchase of Greek bonds entailed a risk even before the beginning of the financial crisis, as the issuing Greek State was already faced with high indebtedness and a high deficit (see, to that effect, judgment of 7 October 2015, *Accorinti and Others* v *ECB*, T-79/13, EU:T:2015:756, paragraphs 82 and 121).

109 Furthermore, in the instant case, the applicants acquired Greek bonds during the period when the Hellenic Republic was in financial crisis. As stated in paragraph 1 above, the Greek public debt crisis began in October 2009 and Greek bonds were acquired by Mr Steinhoff in September 2011, by Mr Filbry as from July 2011, by Vereinigte Raiffeisenbanken Gräfenberg-Forchheim-Eschenau-Heroldsberg in December 2009, and by Mr Bäcker as from April 2011. Those applicants therefore had to be aware at the time of purchase of the highly unstable economic situation that determined the fluctuation of the value of Greek bonds and also the appreciable risk of at least a selective default by the Hellenic Republic. As for EMB Consulting, in 2017, it acquired the rights of holders of Greek bonds who had themselves acquired those rights previously. The pleadings make clear that the rights transferred to EMB Consulting had been acquired for the most part before the idea of a forced exchange was floated. At the hearing, the applicants' representative stated that those rights had been acquired in 2011 and 2012. As successor to the rights of those holders of Greek bonds, EMB Consulting cannot argue that it was not aware of the highly unstable economic situation at the time those bonds were purchased.

110 Moreover, the differences of opinion within the euro area Member States and the other bodies involved, such as the Commission, the IMF and the ECB, concerning a restructuring of the Greek public debt, could not have been overlooked by private creditors such as the applicants. In such circumstances, a prudent and circumspect economic operator could not have ruled out the risk of a restructuring of the Greek public debt (see, to that effect, judgments of 7 October 2015, *Accorinti and Others* v *ECB*, T-79/13, EU:T:2015:756, paragraphs 82 and 121, and of 24 January 2017, *Nausicaa Anadyomène and Banque d'escompte* v *ECB*, T-749/15, not published, EU:T:2017:21, paragraph 97).

111 Finally, the circumstances that led to Law No 4050/2012 were genuinely exceptional. The Greek public debt crisis was extraordinary and, without restructuring, at least a selective default in the short term by the Hellenic Republic was a credible prospect (see, to that effect, judgment of 24 January 2017, *Nausicaa Anadyomène and Banque d'escompte* v *ECB*, T-749/15, not published, EU:T:2017:21, paragraph 97).

112 Secondly, the Greek and EU authorities as well as the vast majority of the private sector assessed the measures to reduce the Greek public debt forming the subject matter of this case and agreed to them. As the ECtHR essentially stated in its judgment of 21 July 2016, *Mamatas and Others v. Greece* (CE:ECHR:2016:0721JUD 006306614, § 116), one of the conditions imposed by international institutional investors for the reduction of their claims was the existence and activation of CACs. The absence of CACs would have resulted in the application of a higher reduction percentage to the Greek bonds held by those who were willing to accept a 'haircut' and would have contributed to deterring a large number of holders of such bonds from participating in the deleveraging process. It thus appears that CACs and the restructuring of the Greek public debt achieved as a result of them represented an appropriate and necessary means of reducing that debt and saving the Greek State from bankruptcy. In any event, apart from the argument, which is accordingly unfounded, that the private sector's involvement in the restructuring of the Greek public debt could have been limited to bondholders who had consented to the bond exchange, the applicants have not claimed that Law No 4050/2012 was manifestly inappropriate or disproportionate for that purpose or that there was an equally effective but less onerous means of achieving the public interest objectives pursued.

113 Thirdly, it is true that the mandatory exchange of Greek bonds as a result of Law No 4050/2012 and the approval by a majority of the holders of such bonds caused their face value to fall very significantly. The applicants, who did not consent to the proposed amendment of the terms governing their bonds, had the new terms set out in that law and, in particular, a lowering of the face value of those bonds imposed on them. However, as the ECtHR pointed out in its judgment of 21 July 2016, *Mamatas and Others v. Greece* (CE:ECHR:2016:0721JUD 006306614, § 112), the benchmark for assessing the level of loss sustained by the applicants cannot be the amount they expected to receive when their bonds matured. Although the face value of a bond gives an indication of the quantification of the bondholder's claim on the maturity date, it does not represent the true market value on the date the Greek State adopted the disputed legislation, in this case 23 February 2012, when Law No 4050/2012 was adopted. That value had undoubtedly already been affected by the declining solvency of the Greek State, a decline which began in mid-2010 and continued until the end of 2011. That fall in the market value of the applicants' bonds held out the prospect that, as of 20 August 2015, the State would be unable to honour its obligations under the contractual clauses included in the old bonds, that is to say, before the adoption of Law No 4050/2012.

114 In the light of all those factors, it must be held that the reduction in the value of the disputed bonds did not constitute, in relation to the aim pursued, a disproportionate and intolerable interference impairing the very substance of the right guaranteed. Given the nature of the property title in question, the scale of the Greek public debt crisis, the endorsement by the Greek State and the majority of holders of Greek bonds of a bond exchange incorporating devaluation, and the magnitude of the losses sustained, that interference is not an intolerable impairment of the applicants' right to property.

115 That conclusion is not called into question by the various arguments put forward by the applicants. Thus, the finding that the mandatory exchange and the devaluation of the disputed bonds are measures deriving from decisions of the Greek State as a public authority is not sufficient to establish a breach of the right to property as provided for in Article 17(1) of the Charter. The fact that bonds are generally considered to be safe, particularly under the Regulation on solvency (see paragraph 88 above), does not affect the assessment that the purchase of State bonds is, by definition, a transaction entailing a certain financial risk (see paragraph 108 above). Similarly, the financial losses claimed by the applicants, even if proven, are not sufficient to establish a breach of Article 17(1) of the Charter, since the bonds have a residual value and, without CACs and the restructuring of the Greek public debt achieved as a result of them, the likelihood of the Hellenic Republic's going bankrupt would have increased significantly, leading not only to the collapse of the Greek economy and a risk for the euro area, but also an even greater reduction in the value of the disputed bonds held by the applicants. Finally, in so far as the applicants claim that the ECtHR's judgment of 21 July 2016, *Mamatas and Others v. Greece* (CE:ECHR:2016:0721JUD 006306614), is not relevant because it is concerned only with expropriation from Greek private creditors, not foreign private creditors who are not established in Greece, it should be noted that the applicants do not put forward any convincing arguments to show that the ECtHR would have taken a different view if it had had to rule expressly on the situation of such foreign creditors, who, moreover, were bound by the same contractual terms under the Greek law of obligations as Greek creditors.

116 Accordingly, limiting the value of the disputed bonds of the applicants is not a disproportionate measure in relation to the aim of protecting the Hellenic Republic's economy and the euro area against the risk of that Member State's bankruptcy and the collapse of the economy. The applicants are therefore wrong to claim that the measures at issue infringe Article 17(1) of the Charter. Furthermore, in the absence of a breach of that provision, the ECB cannot be criticised for having failed to draw attention to such a breach in the contested opinion.

Infringement of Article 63 TFEU

117 The applicants submit that the ECB should have pointed out in the contested opinion that the implementation of Law No 4050/2012 entailed an infringement of Article 63 TFEU. According to the applicants, Law No 4050/2012 led to a restriction on the movement of capital because that concept should be interpreted as encompassing the legal deprivation of creditors' rights where such deprivation is not based on a valid review clause. The outflow of capital from the repayment of matured bonds and from interest is restricted by the fact that dissenting creditors receive, instead of the full amount of capital invested, only proportions of that amount in the form of new bonds or notes that will not mature until between 2022 and 2042. The applicants assert that that restriction cannot be justified on the grounds of public policy set out in Article 65(1)(b) TFEU since creditors who did not consent to the reduction in the face value of Greek bonds did not pose, by reason of their claims, a threat to the existence of the Greek State.

118 The ECB contends that it cannot be held liable for an infringement of Article 63 TFEU and disputes the very existence of an infringement of that provision in the present case.

119 Article 63(1) TFEU prohibits all restrictions on the movement of capital between Member States and between Member States and third countries. Those restrictions include measures imposed by a Member State which are liable to deter, limit or prevent investors of other Member States from investing in that Member State or, conversely, to deter, limit or prevent investors of that Member State from investing in other Member States (see, to that effect, judgments of 26 September 2000, *Commission* v *Belgium*, C-478/98, EU:C:2000:497, paragraph 18; of 23 October 2007, *Commission* v *Germany*, C-112/05, EU:C:2007:623, paragraph 19; and of 26 May 2016, *NN (L) International*, C-48/15, EU:C:2016:356, paragraph 44).

120 The free movement of capital enshrined in Article 63(1) TFEU is one of the fundamental freedoms of the EU (see, to that effect, judgments of 1 July 2010, *Dijkman and Dijkman-Lavaleije*, C-233/09, EU:C:2010:397, paragraphs 40 and 41, and of 6 March 2018, *SEGRO and Horváth*, C-52/16 and C-113/16, EU:C:2018:157, paragraph 66) which must be respected by the Member States and the EU institutions alike (see, to that effect, judgments of 29 February 1984, *Rewe-Zentrale*, 37/83, EU:C:1984:89, paragraph 18; of 2 March 2010, *Arcelor* v *Parliament and Council*, T-16/04, EU:T:2010:54, paragraph 177; and of 12 December 2012, *Evropaïki Dynamiki* v *EFSA*, T-457/07, not published, EU:T:2012:671, paragraph 36) and, therefore, by the ECB too.

121 Irrespective of whether the implementation of Law No 4050/2012 led to a restriction on the movement of capital within the meaning of Article 63(1) TFEU, such a restriction, if it had been established, would be justified by overriding reasons in the public interest.

122 The Court has held that the free movement of capital may be limited by national legislation provided that such legislation is justified, on the basis of objective considerations independent of the origin of the capital concerned, by overriding reasons in the public interest and observes the principle of proportionality, a condition which requires the legislation to be appropriate for ensuring the attainment of the objective legitimately pursued and not to go beyond what is necessary in order for it to be attained (see judgment of 6 March 2018, *SEGRO and Horváth*, C-52/16 and C-113/16, EU:C:2018:157, paragraph 76 and the case-law cited).

123 In the present case, the measures at issue were justified by overriding reasons in the public interest. As stated in paragraph 111 above, the circumstances that led to Law No 4050/2012 were genuinely exceptional since, without restructuring, at least a selective default in the short term by the Hellenic Republic was a credible prospect. Moreover, as explained in paragraphs 105 and 106 above, the measures at issue were intended to ensure the stability of the banking system of the euro area as a whole. That objective is an overriding reason in the public interest.

124 Furthermore, the applicants have not shown that those measures were disproportionate. They served to restore the stability of the banking system of the euro area as a whole and it has not been demonstrated that they went beyond what was necessary for that purpose. In particular, the involvement of private creditors in the exchange of Greek bonds on a voluntary basis only, as the applicants advocated, would not have ensured the success of that exchange. Without the assurance that private creditors would be treated equally, very few of those creditors would have accepted the exchange in view of the moral hazard it entailed, namely that they would bear the consequences of risks taken by creditors who were not participating in the exchange of Greek bonds. The success of the bond exchange was a precondition for the restructuring of the Greek public debt, which, in turn, was necessary to stabilise the banking system of the euro area.

125 Accordingly, the applicants are wrong to take issue with the ECB for failing to draw attention in the contested opinion to an infringement of the free movement of capital within the meaning of Article 63 TFEU.

Infringement of Article 124 TFEU

– Preliminary observations

126 The applicants argue that the Hellenic Republic infringed Article 124 TFEU by imposing on dissenting creditors a mandatory exchange of their existing Greek bonds for new bonds.

127 The ECB disputes the claim that either it or the Hellenic Republic infringed Article 124 TFEU. Moreover, the ECB contends that its rights of the defence were infringed as regards paragraphs 55 and 56 of Annex A.8 mentioned by the applicants, since those paragraphs do not appear in the application.

– *The ECB's rights of the defence*

128 In the application, the applicants stated that the Commission had confirmed that an infringement of Article 124 TFEU was made out in cases of expropriation. To support that assertion, the applicants referred to paragraphs 55 and 56 of the Commission's observations of 19 August 2013 submitted to the Court in Cases C-226/13, C-245/13 and C-247/13 attached as Annex A.8. Paragraphs 55 and 56 of those observations were not, however, reproduced in Annex A.8, because pages 13 to 15 of the observations were missing. The ECB deduces from this that it was unable to exercise its rights of the defence in respect of those paragraphs.

129 It follows from the principle of unfettered adduction of evidence that a party before the Court is, in principle, entitled to rely on as evidence documents adduced in other legal proceedings. The proper administration of justice precludes the production of such documents before the Court only where that party has had unlawful access to them or where they are confidential (see, to that effect, judgment of 4 July 2017, *European Dynamics Luxembourg and Others* v *European Union Agency for Railways*, T-392/15, EU:T:2017:462, paragraph 55).

130 It must also be observed that the applicants produced the pages missing from Annex A.8 in the reply (see Annex C.5), so that the ECB was able to state its views on those paragraphs in the rejoinder and at the hearing. Furthermore, the argument put forward by the applicants is based not only on Annex A.8, but on Annex A.9 too. Paragraphs 48 and 49 of that annex, which contain the Commission's observations of 21 February 2014 submitted to the Court in Case C-578/13, are identical to paragraphs 55 and 56 of the Commission's observations of 19 August 2013 reproduced in Annex C.5.

131 In the light of those considerations, the ECB is wrong to claim that its rights of the defence were infringed and that the applicants' assertion based on paragraphs 55 and 56 of Annex A.8 should be rejected.

– *Article 124 TFEU*

132 Article 124 TFEU prohibits any measure, not based on prudential considerations, establishing privileged access by Union institutions, bodies, offices or agencies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States to financial institutions.

133 The applicants submit that, under that provision and Council Regulation (EC) No 3604/93 of 13 December 1993 specifying definitions for the application of the prohibition of privileged access referred to in Article [124 TFEU] (OJ 1993 L 332, p. 4), Member States may not provide to the public sector, by means of measures of a public authority, privileged access to credit institutions. According to the applicants, the creditors who did not consent to the restructuring of the Greek public debt included credit institutions which were 'financial institutions' within the meaning of Article 4(1) of Regulation No 3604/93, read in conjunction with the first indent of Article 1 of First Council Directive 77/780/EEC of 12 December 1977 on the coordination of the laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (OJ 1977 L 322, p. 30). The applicants state that the mandatory exchange of Greek bonds established by Law No 4050/2012 required those financial institutions to deposit the new State bonds on terms that were clearly not market compliant. That exchange therefore infringed Article 124 TFEU. In support of that argument, the applicants contend that when the mandatory exchange of Greek bonds took place in

March 2012, the face value of the 'new' bonds accounted for only 46.5% of the face value of the 'old' bonds exchanged and that, from an economic perspective, the value of those 'new' bonds accounted for only 21.5% of the value of the 'old' bonds (see judgment of the Symvoulio tis Epikrateias (Council of State) of 22 March 2014).

134 Accordingly, the applicants essentially complain that the ECB committed a sufficiently serious breach by failing to draw attention to the fact that draft Law No 4050/2012 gave rise to an infringement of Article 124 TFEU.

135 However, first, Law No 4050/2012 does not grant privileged access to financial institutions contrary to Article 124 TFEU.

136 Article 124 TFEU prohibits any measure, not based on prudential considerations, granting Member States, among others, privileged access to financial institutions so as to encourage the former to follow a sound budgetary policy, not allowing monetary financing of public deficits or privileged access by public authorities to the financial markets to lead to excessively high levels of debt or excessive Member State deficits (see, to that effect, first recital of Regulation No 3604/93 and judgment of 1 October 2015, *Bara and Others*, C-201/14, EU:C:2015:638, paragraph 22 and the case-law cited).

137 The aim of Law No 4050/2012 was not to increase the level of debt of the Hellenic Republic, but rather to reduce it, due to its excessively high nature, by devaluing the bonds held by the applicants.

138 Moreover, the adoption of Law No 4050/2012 is justified by prudential considerations as referred to in Article 124 TFEU. These are defined by Article 2 of Regulation No 3604/93 as considerations which underlie national laws, regulations or administrative actions based on, or consistent with, EU law and designed to promote the soundness of financial institutions so as to strengthen the stability of the financial system as a whole and the protection of the customers of those institutions. Draft Law No 4050/2012 contributed to preserving both Greek public finances and the stability of the financial system in the euro area (see paragraphs 105 and 106 above).

139 Secondly, Article 124 TFEU is not designed to protect the applicants and does not confer rights on them.

140 As explained in paragraph 77 above, a rule of law which does not confer rights on the person invoking it cannot form the basis of a claim for damages. Accordingly, a rule which does not protect the person against the unlawfulness invoked by him, but protects another person, cannot be accepted. A rule of law is intended to confer rights on individuals where it creates an advantage which could be defined as a vested right, is designed for the protection of the interests of individuals or entails the grant of rights to individuals, the content of those rights being sufficiently identifiable (see judgment of 19 October 2005, *Cofradía de pescadores 'San Pedro de Bermeo' and Others* v *Council*, T-415/03, EU:T:2005:365, paragraph 86 and the case-law cited). Here, the rule laid down in Article 124 TFEU is designed to protect the institutions of the European Union and of the Member States against the budgetary risks of privileged access to financial institutions. The prohibition set out in Article 124 TFEU is therefore intended to protect not individuals and undertakings such as the applicants in the instant case, but the European Union in itself, including Member States, against conduct liable to undermine the economic and financial stability of the Union as a whole.

141 Consequently, Article 124 TFEU cannot be considered to be a provision conferring rights on the applicants, with the result that they cannot rely on it in support of their claim for damages.

142 For all of those reasons, the applicants are wrong to invoke the existence of unlawfulness rendering the ECB liable towards them based on the ECB's failure to draw attention to a breach of Article 124 TFEU in this case.

143 Given the cumulative nature of the conditions for establishing the non-contractual liability of the ECB, the action must be dismissed in its entirety where one of those conditions is not satisfied (see, to that effect, judgment of 24 January 2017, *Nausicaa Anadyomène and Banque d'escompte* v *ECB*, T-749/15, not published, EU:T:2017:21, paragraph 68 and the case-law cited).

144 In this instance, in the light of all the foregoing considerations, it must be concluded that none of the arguments put forward by the applicants demonstrates that the ECB committed a sufficiently serious breach of rules of law conferring rights on individuals. Accordingly, the applicants' claims for compensation must be rejected for that reason alone, without there being any need to examine actual damage and the existence of a causal link between the alleged conduct of the ECB and the damage claimed.

Costs

145 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the applicants have been unsuccessful, they must be ordered to pay the costs, in accordance with the form of order sought by the ECB.

On those grounds

THE GENERAL COURT (Third Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Mr Frank Steinhoff, Mr Ewald Filbry, Vereinigte Raiffeisenbanken Gräfenberg-Forchheim-Eschenau-Heroldsberg eG, Mr Werner Bäcker and EMB Consulting SE to pay the costs.**

Frimodt Nielsen Kreuschitz Półtorak

Delivered in open court in Luxembourg on 23 May 2019.

[Signatures]