Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

16 December 2020*

Table of contents

Legal context . . . 12
Protocol No 14 . . . 12
The ESM Treaty . . . 12
The resolution of the European Council of 13 December 1997 . . . 14
Decision 2013/236 . . . 14
The Euro Group statement of 25 March 2013 . . . 14
Cypriot law . . . 15
Background to the dispute . . . 16
Procedure before the General Court and the judgments under appeal . . . 18
Procedure and forms of order sought before the Court of Justice . . . 19
Cases C-597/18 P and C-598/18 P . . . 19
Cases C-603/18 P and C-604/18 P . . . 19
The request seeking the reopening of the oral part of the procedure . . . 20
The Council's appeals in Cases C-597/18 P and C-598/18 P . . . 21
Arguments of the parties . . . 21
Findings of the Court . . . 23
The Council's cross-appeals in Cases C-603/18 P and C-604/18 P . . . 26
Arguments of the parties . . . 26

* Language of the case: English.

Findings of the Court 27

The appellants' appeals in Cases C-603/18 P and C-604/18 P 29

First ground of appeal 29

Arguments of the parties 29

Findings of the Court 29

Second, third and fourth grounds of appeal 29

Arguments of the parties 29

Findings of the Court 30

Fifth ground of appeal 31

Arguments of the parties 31

Findings of the Court 32

Sixth ground of appeal 33

Arguments of the parties 33

Findings of the Court 34

Seventh ground of appeal 37

Arguments of the parties 37

Findings of the Court 37

Eighth ground of appeal 38

Arguments of the parties 38

Findings of the Court 39

The actions before the General Court 42

Costs 43

(Appeals – Economic and monetary policy – Stability support programme for the Republic of Cyprus – Restructuring of Cypriot debt – Decision of the Governing Council of the European Central Bank (ECB) relating to emergency liquidity assistance following a request from the Central Bank of the Republic of Cyprus – Euro Group statements of 25 March, 12 April, 13 May and 13 September 2013 – Decision 2013/236/EU – Memorandum of understanding on specific economic policy conditionality concluded between the Republic of Cyprus and the European Stability Mechanism (ESM) – Right to property – Principle of the protection of legitimate expectations – Equal treatment – Non-contractual liability of the European Union)

In Joined Cases C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P,

FOUR APPEALS under Article 56 of the Statute of the Court of Justice of the European Union, brought on 21 September 2018 (Cases C-597/18 P and C-598/18 P) and 24 September 2018 (Cases C-603/18 P and C-604/18 P),

Council of the European Union, represented by A. de Gregorio Merino, I. Gurov and E. Chatziioakeimidou, acting as Agents,

appellant (C-597/18 P),

supported by:

Republic of Finland, represented by S. Hartikainen and J. Heliskoski, acting as Agents,

intervener in the appeal (C-597/18 P),

the other parties to the proceedings being:

Dr. K. Chrysostomides & Co. LLC, established in Nicosia (Cyprus),

Agroton plc, established in Nicosia,

Joanna Andreou, residing in Kato Pyrgos (Cyprus),

Kyriaki Andreou, residing in Kato Pyrgos,

Bundeena Holding plc, established in Nicosia,

Henrietta Jindra Burton, residing in London (United Kingdom),

C & O Service & Investment Ltd, established in Nicosia,

C.G. Christofides Industrial Ltd, established in Nicosia,

Phidias Christodoulou, residing in Nicosia,

Georgia Phanou-Christodoulou, residing in Nicosia,

Christakis Christofides, represented by his executor,

Theano Chrysafi, residing in Nicosia,

Andreas Chrysafis, residing in Nicosia,

Dionysios Chrysostomides, residing in Nicosia,

Eleni K. Chrysostomides, residing in Nicosia,

Eleni D. Chrysostomides, residing in Nicosia,

D & C Construction and Development Ltd, established in Nicosia,

Chrystalla Dekatris, residing in Nicosia,

Constantinos Dekatris, residing in Nicosia,

Dr. K. Chrysostomides and Co., established in Nicosia,

Emily Dragoumi, residing in Nicosia,

Parthenopi Dragoumi, residing in Nicosia,

James Droushiotis, residing in Nicosia,

Eastvale Finance Ltd, established in Nicosia,

Nicos Eliades, residing in Nicosia,

Tereza Eliades, residing in Nicosia,

Goodway Alliance Ltd, established in Nicosia,

Christos Hadjimarkos, residing in Johannesburg (South Africa),

Johnson Cyprus Employees Provident Fund, established in Nicosia,

Kalia Georgiou LLC, established in Limassol (Cyprus),

Komposit Ltd, established in Tortola (British Virgin Islands),

Platon M. Kyriakides, residing in Nicosia,

L.kcar Intermetal and Synthetic Ltd, established in Nicosia,

Lois Builders Ltd, established in Nicosia,

Athena Mavronicola-Droushiotis, residing in Nicosia,

Medialgeria Monitoring and Consultancy Ltd, established in Nicosia,

Neita International Inc., established in Mahé (Seychelles),

Sophia Nicolatos, residing in Limassol,

Paris & Barcelona Ltd, established in Tortola,

Louiza Patsiou, residing in Larnaca (Cyprus),

Probus Mare Marine Ltd, established in Nicosia,

Provident Fund of the Employees of Osel Ltd, established in Nicosia,

R.A.M. Oil Cyprus Ltd, established in Nicosia,

Steelway Alliance Ltd, established in Hong Kong (China),

Tameio Pronoias Prosopikou Genikon, established in Nicosia,

The Cyprus Phassouri Estates Ltd, established in Limassol,

The Prnses Ltd, established in Nicosia,

Christos Tsimon, residing in Nicosia,

Nafsika Tsimon, residing in Nicosia,

Unienergy Holdings Ltd, established in Nicosia,

Julia Justine Jane Woods, residing in Paphos (Cyprus),

represented by P. Tridimas, Barrister,

applicants at first instance (C-597/18 P),

European Union, represented by the European Commission,

European Commission, represented by L. Flynn, J.-P. Keppenne and T. Maxian Rusche, acting as Agents,

European Central Bank (ECB), represented initially by M.O. Szablewska and K. Laurinavičius, acting as Agents, and H.-G. Kamann, Rechtsanwalt, and subsequently by K. Laurinavičius, G. Várhelyi and O. Heinz, acting as Agents, and H.-G. Kamann, Rechtsanwalt,

Euro Group, represented by the Council of the European Union,

defendants at first instance (C-597/18 P),

Council of the European Union, represented by A. de Gregorio Merino, I. Gurov and E. Chatziioakeimidou, acting as Agents,

appellant (C-598/18 P),

supported by:

Republic of Finland, represented by S. Hartikainen and J. Heliskoski, acting as Agents,

intervener in the appeal (C-598/18 P),

the other parties to the proceedings being:

Eleni Pavlikka Bourdouvali, residing in Meneou (Cyprus),

Georgios Bourdouvalis, residing in Meneou,

Nikolina Bourdouvali, residing in Meneou,

Coal Energy Trading Ltd, established in Road Town (British Virgin Islands),

Christos Christofi, residing in Larnaca,

Elisavet Christofi, residing in Larnaca,

Athanasia Chrysostomou, residing in Paphos,

Sofoklis Chrysostomou, residing in Paphos,

Clearlining Ltd, established in Road Town,

Alan Dimant, residing in Herzelia (Israel),

Dodoni Ependyseis Chartofylakou Dimosia Etaireia Ltd, established in Nicosia,

Dtek Holdings Ltd, established in Nicosia,

Dtek Trading Ltd, established in Nicosia,

Elma Holdings pcl, established in Nicosia,

Elma Properties & Investments pcl, established in Nicosia,

Agrippinoulla Fragkoudi, residing in Nicosia,

Dimitrios Fragkoudis, residing in Nicosia,

Frontal Investments Ltd, established in Limassol,

Costas Gavrielides, residing in Mammari (Cyprus),

Eleni Harou, residing in Nea Penteli (Greece),

Theodora Hasapopoullou, residing in Nicosia,

Gladys Iasonos, residing in Larnaca,

Georgios Iasonos, residing in Larnaca,

Jupiter Portfolio Investments pcl, established in Nicosia,

George Karkousi, residing in Canterbury (Australia),

Lend & Seaserve Ltd, established in Road Town,

Liberty Life Insurance pcl, established in Nicosia,

Michail P. Michailidis Ltd, established in Nicosia,

Michalakis Michaelides, residing in Nicosia,

Rena Michael Michaelidou, residing in Nicosia,

Akis Micromatis, residing in Nicosia,

Erginos Micromatis, residing in Nicosia,

Harinos Micromatis, residing in Nicosia,

Alvinos Micromatis, residing in Nicosia,

Plotinos Micromatis, residing in Nicosia,

Nertera Investments Ltd, established in Nicosia,

Andros Nicolaides, residing in Nicosia,

Melina Nicolaides, residing in Nicosia,

Ero Nicolaidou, residing in Nicosia,

Aris Panagiotopoulos, residing in Nea Penteli,

Nikolitsa Panagiotopoulou, residing in Nea Penteli,

Lambros Panayiotides, residing in Nicosia,

Ersi Papaefthymiou, residing in Larnaca,

Kostas Papaefthymiou, residing in Larnaca,

Restful Time Co., established in Wilmington (United States),

Alexandros Rodopoulos, residing in Athens (Greece),

Seatec Marine Services Ltd, established in Limassol,

Sofoklis Chrisostomou & Yioí Ltd, established in Paphos,

Marinos C. Soteriou, residing in Nicosia,

Sparotin Ltd, established in Nicosia,

Miranda Tanou, residing in Nicosia,

Myria Tanou, residing in Nicosia,

represented by P. Tridimas, Barrister, and K. Chrysostomides, dikigoros,

applicants at first instance (C-598/18 P),

European Union, represented by the European Commission,

European Commission, represented by L. Flynn, J.-P. Keppenne and T. Maxian Rusche, acting as Agents,

European Central Bank (ECB), represented by M.O. Szablewska and K. Laurinavičius, acting as Agents, and H.-G. Kamann, Rechtsanwalt,

Euro Group, represented by the Council of the European Union,

defendants at first instance (C-598/18 P),

Dr. K. Chrysostomides & Co. LLC, established in Nicosia,

Agroton plc, established in Nicosia,

Joanna Andreou, residing in Kato Pyrgos,

Kyriaki Andreou, residing in Kato Pyrgos,

Henrietta Jindra Burton, residing in London,

C & O Service & Investment Ltd, established in Nicosia,

C.G. Christofides Industrial Ltd, established in Nicosia,

Christakis Christofides, represented by his executor,

Theano Chrysafi, residing in Nicosia,

Andreas Chrysafis, residing in Nicosia,

Dionysios Chrysostomides, residing in Nicosia,

Eleni K. Chrysostomides, residing in Nicosia,

Eleni D. Chrysostomides, residing in Nicosia,

D & C Construction and Development Ltd, established in Nicosia,

Chrystalla Dekatris, residing in Nicosia,

Constantinos Dekatris, residing in Nicosia,

Dr. K. Chrysostomides and Co., established in Nicosia,

Emily Dragoumi, residing in Nicosia,

Parthenopi Dragoumi, residing in Nicosia,

Eastvale Finance Ltd, established in Nicosia,

Nicos Eliades, residing in Nicosia,

Tereza Eliades, residing in Nicosia,

Goodway Alliance Ltd, established in Hong Kong,

Christos Hadjimarkos, residing in Johannesburg,

Johnson Cyprus Employees Provident Fund, established in Nicosia,

L.kcar Intermetal and Synthetic Ltd, established in Nicosia,

Lois Builders Ltd, established in Nicosia,

Medialgeria Monitoring and Consultancy Ltd, established in Nicosia,

Neita International Inc., established in Mahé,

Paris & Barcelona Ltd, established in Tortola,

Provident Fund of the Employees of Osel Ltd, established in Nicosia,

R.A.M. Oil Cyprus Ltd, established in Nicosia,

Steelway Alliance Ltd, established in Hong Kong,

Tameio Pronoias Prosopikou Genikon, established in Nicosia,

The Cyprus Phassouri Estates Ltd, established in Limassol,

Christos Tsimon, residing in Nicosia,

Nafsika Tsimon, residing in Nicosia,

Julia Justine Jane Woods, residing in Paphos,

represented by P. Tridimas, Barrister (C-603/18 P),

and

Eleni Pavlikka Bourdouvali, residing in Meneou,

Georgios Bourdouvalis, residing in Meneou,

Nikolina Bourdouvali, residing in Meneou,

Christos Christofi, residing in Larnaca,

Elisavet Christofi, residing in Larnaca,

Clearlining Ltd, established in Road Town,

Dtek Holding Ltd, established in Nicosia,

Dtek Trading Ltd, established in Nicosia,

Agrippinoulla Fragkoudi, residing in Nicosia,

Dimitrios Fragkoudis, residing in Nicosia,

Frontal Investments Ltd, established in Limassol,

Costas Gavrielides, residing in Mammari,

Eleni Harou, residing in Nea Penteli,

Theodora Hasapopoullou, residing in Nicosia,

Gladys Iasonos, residing in Larnaca,

Georgios Iasonos, residing in Larnaca,

George Karkousi, residing in Canterbury,

Lend & Seaserve Ltd, established in Road Town,

Michail P. Michailidis Ltd, established in Nicosia,

Michalakis Michaelides, residing in Nicosia,

Rena Michael Michaelidou, residing in Nicosia,

Andros Nicolaides, residing in Nicosia,

Melina Nicolaides, residing in Nicosia,

Ero Nicolaidou, residing in Nicosia,

Aris Panagiotopoulos, residing in Nea Penteli,

Nikolitsa Panagiotopoulou, residing in Nea Penteli,

Alexandros Rodopoulos, residing in Athens,

Seatec Marine Services Ltd, established in Limassol,

Marinos C. Soteriou, residing in Nicosia,

represented by P. Tridimas, Barrister, and K. Chrysostomides, dikigoros (C-604/18 P),

appellants,

the other parties to the proceedings being:

European Union, represented by the European Commission,

Council of the European Union, represented by E. Chatziioakeimidou, A. de Gregorio Merino and I. Gurov, acting as Agents,

European Commission, represented by L. Flynn, J.-P. Keppenne and T. Maxian Rusche, acting as Agents,

European Central Bank (ECB), represented by M.O. Szablewska and K. Laurinavičius, acting as Agents, and H.-G. Kamann, Rechtsanwalt,

Euro Group, represented by the Council of the European Union,

defendants at first instance (C-603/18 P and C-604/18 P),

Republic of Finland, represented by S. Hartikainen and J. Heliskoski, acting as Agents,

intervener in the appeal in support of the Council of the European Union (C-603/18 P and C-604/18 P),

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, A. Arabadjiev (Rapporteur), A. Prechal, M. Vilaras, M. Ilešič, L. Bay Larsen and A. Kumin, Presidents of Chambers, E. Juhász, S. Rodin, F. Biltgen, I. Jarukaitis and N. Jääskinen, Judges,

Advocate General: G. Pitruzzella,

Registrar: M. Longar, Administrator,

having regard to the written procedure and further to the hearing on 25 February 2020,

after hearing the Opinion of the Advocate General at the sitting on 28 May 2020,

gives the following

Judgment

1 By its appeals, in Cases C-597/18 P and C-598/18 P, the Council of the European Union asks the Court to set aside the judgments of the General Court of the European Union of 13 July 2018, *K. Chrysostomides & Co. and Others* v *Council and Others* (T-680/13, 'the first judgment under appeal', EU:T:2018:486), and of 13 July 2018, *Bourdouvali and Others* v *Council and Others* (T-786/14, 'the second judgment under appeal', not published, EU:T:2018:487) (together, 'the judgments under appeal'), inasmuch as they dismiss the pleas of inadmissibility raised by it in so far as those pleas relate to the actions of the applicants at first instance in Cases C-597/18 P and C-598/18 P directed against the Euro Group.

2 By their appeals, Dr. K. Chrysostomides & Co. LLC, Agroton plc, Ms Joanna Andreou, Ms Kyriaki Andreou, Ms Henrietta Jindra Burton, C & O Service & Investment Ltd, C.G. Christofides Industrial Ltd, Mr Christakis Christofides, Ms Theano Chrysafi, Mr Andreas Chrysafis, Mr Dionysios Chrysostomides, Ms Eleni K. Chrysostomides, Ms Eleni D. Chrysostomides, D & C Construction and Development Ltd, Ms Chrystalla Dekatris, Mr Constantinos Dekatris, Dr. K. Chrysostomides and Co., Ms Emily Dragoumi, Ms Parthenopi Dragoumi, Eastvale Finance Ltd, Mr Nicos Eliades, Ms Tereza Eliades, Goodway Alliance Ltd, Mr Christos Hadjimarkos, Johnson Cyprus Employees Provident Fund, L.kcar Intermetal and Synthetic Ltd, Lois Builders Ltd, Medialgeria Monitoring and Consultancy Ltd, Neita International Inc., Paris & Barcelona Ltd, Provident Fund of the Employees of Osel Ltd, R.A.M. Oil Cyprus Ltd, Steelway Alliance Ltd, Tameio Pronoias Prosopikou Genikon, The Cyprus Phassouri Estates Ltd, Mr Christos Tsimon, Ms Nafsika Tsimon and Ms Julia Justine Jane Woods, appellants in Case C-603/18 P, and Ms Eleni Pavlikka Bourdouvali, Mr Georgios Bourdouvalis, Ms Nikolina Bourdouvali, Mr Christos Christofi, Ms Elisavet Christofi, Clearlining Ltd, Dtek Holding Ltd, Dtek Trading Ltd, Ms Agrippinoulla Fragkoudi, Mr Dimitrios Fragkoudis, Frontal Investments Ltd, Mr Costas Gavrielides, Ms Eleni Harou, Ms Theodora Hasapopoullou, Ms Gladys Iasonos, Mr Georgios Iasonos, Mr George Karkousi, Lend & Seaserve Ltd, Michail P. Michailidis Ltd, Mr Michalakis Michaelides, Ms Rena Michael Michaelidou, Mr Andros Nicolaides, Ms Melina Nicolaides, Ms Ero Nicolaidou, Mr Aris Panagiotopoulos, Ms Nikolitsa Panagiotopoulou, Mr Alexandros Rodopoulos, Seatec Marine Services Ltd and Mr Marinos C. Soteriou, appellants in Case C-604/18 P (together, 'the appellants'), ask the Court to set aside the first judgment under appeal and the second judgment under appeal respectively.

3 By its cross-appeals in Cases C-603/18 P and C-604/18 P, the Council asks the Court to set aside the parts of the judgments under appeal in which the General Court dismissed its pleas of inadmissibility in so far as those pleas relate to the appellants' actions directed against Article 2(6)(b) of Council Decision 2013/236/EU of 25 April 2013 addressed to Cyprus on specific measures to restore financial stability and sustainable growth (OJ 2013 L 141, p. 32).

Legal context

Protocol No 14

4 Article 1 of the Protocol (No 14) on the Euro Group, which is annexed to the EU Treaty and the FEU Treaty ('Protocol No 14'), is worded as follows:

'The Ministers of the Member States whose currency is the euro shall meet informally. Such meetings shall take place, when necessary, to discuss questions related to the specific responsibilities they share with regard to the single currency. The [European] Commission shall take part in the meetings. The European Central Bank [(ECB)] shall be invited to take part in such meetings, which shall be prepared by the representatives of the Ministers with responsibility for finance of the Member States whose currency is the euro and of the Commission.'

5 Article 2 of Protocol No 14 provides:

'The Ministers of the Member States whose currency is the euro shall elect a president for two and a half years, by a majority of those Member States.'

The ESM Treaty

6 On 2 February 2012, the Treaty establishing the European Stability Mechanism between the Kingdom of Belgium, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Grand Duchy of Luxembourg, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic and the Republic of Finland ('the ESM Treaty') was concluded in Brussels. It entered into force on 27 September 2012.

7 Recital 1 of the ESM Treaty is worded as follows:

'The European Council agreed on 17 December 2010 on the need for euro area Member States to establish a permanent stability mechanism. This European Stability Mechanism ("ESM") will assume the tasks currently fulfilled by the European Financial Stability Facility ("EFSF") and the European Financial Stabilisation Mechanism ("EFSM") in providing, where needed, financial assistance to euro area Member States.'

8 Under Articles 1 and 2 and Article 32(2) of the ESM Treaty, the Contracting Parties, that is to say, the Member States whose currency is the euro ('the MSCE'), establish among themselves an international financial institution, the ESM.

9 As provided in Article 3 of the ESM Treaty:

'The purpose of the ESM shall be to mobilise funding and provide stability support under strict conditionality, appropriate to the financial assistance instrument chosen, to the benefit of ESM Members which are experiencing, or are threatened by, severe financing problems, if indispensable to safeguard the financial stability of the euro area as a whole and of its Member States. For this

purpose, the ESM shall be entitled to raise funds by issuing financial instruments or by entering into financial or other agreements or arrangements with ESM Members, financial institutions or other third parties.'

10 Article 4(1) of the ESM Treaty states:

'The ESM shall have a Board of Governors and a Board of Directors, as well as a Managing Director and other dedicated staff as may be considered necessary.'

11 Article 5(3) of the ESM Treaty provides that 'the Member of the … Commission in charge of economic and monetary affairs and the President of the ECB, as well as the President of the Euro Group (if he or she is not the Chairperson or a Governor) may participate in the meetings of the Board of Governors [of the ESM] as observers'.

12 Article 12 of the ESM Treaty defines the principles governing the provision of stability support and states in paragraph 1 as follows:

'If indispensable to safeguard the financial stability of the euro area as a whole and of its Member States, the ESM may provide stability support to an ESM Member subject to strict conditionality, appropriate to the financial assistance instrument chosen. Such conditionality may range from a macro-economic adjustment programme to continuous respect of pre-established eligibility conditions.'

13 The procedure for granting stability support to an ESM Member is described in Article 13 of the ESM Treaty as follows:

'1. An ESM Member may address a request for stability support to the Chairperson of the Board of Governors. Such a request shall indicate the financial assistance instrument(s) to be considered. …

2. On the basis of the request of the ESM Member and the assessment referred to in paragraph 1, the Board of Governors may decide to grant, in principle, stability support to the ESM Member concerned in the form of a financial assistance facility.

3. If a decision pursuant to paragraph 2 is adopted, the Board of Governors shall entrust the [Commission] – in liaison with the ECB and, wherever possible, together with the [International Monetary Fund (IMF)] – with the task of negotiating, with the ESM Member concerned, a memorandum of understanding (an "MoU") detailing the conditionality attached to the financial assistance facility. The content of the MoU shall reflect the severity of the weaknesses to be addressed and the financial assistance instrument chosen. In parallel, the Managing Director of the ESM shall prepare a proposal for a financial assistance facility agreement, including the financial terms and conditions and the choice of instruments, to be adopted by the Board of Governors.

The MoU shall be fully consistent with the measures of economic policy coordination provided for in the [FEU Treaty], in particular with any act of European Union law, including any opinion, warning, recommendation or decision addressed to the ESM Member concerned.

4. The [Commission] shall sign the MoU on behalf of the ESM, subject to prior compliance with the conditions set out in paragraph 3 and approval by the Board of Governors.

5. The Board of Directors shall approve the financial assistance facility agreement detailing the financial aspects of the stability support to be granted and, where applicable, the disbursement of the first tranche of the assistance.

…

7. The [Commission] – in liaison with the ECB and, wherever possible, together with the IMF – shall be entrusted with monitoring compliance with the conditionality attached to the financial assistance facility.'

The resolution of the European Council of 13 December 1997

14 The resolution of the European Council of 13 December 1997 on economic policy coordination in stage 3 of [economic and monetary union (EMU)] and on Treaty Articles 109 and 109b of the EC Treaty (OJ 1998 C 35, p. 1; 'the resolution of the European Council of 13 December 1997') states, inter alia, in paragraph 6:

'The Ministers of the [MSCE] may meet informally among themselves to discuss issues connected with their shared specific responsibilities for the single currency. The Commission, and the [ECB] when appropriate, will be invited to take part in the meetings.'

Decision 2013/236

15 Article 2(6)(b) of Decision 2013/236 is worded as follows:

'With a view to restoring the soundness of its financial sector, [the Republic of Cyprus] shall continue to thoroughly reform and restructure the banking sector and reinforce viable banks by restoring their capital, addressing their liquidity situation and strengthening their supervision. The programme shall provide for the following measures and outcomes:

…

(b) establishing an independent valuation of the assets of [Trapeza Kyprou Dimosia Etaireia Ltd] and [Cyprus Popular Bank Public Co. Ltd] and quickly integrating the operations of [Cyprus Popular Bank Public Co.] into [Trapeza Kyprou Dimosia Etaireia]. The valuation shall be completed quickly so as to enable the completion of the deposit-equity swap at [Trapeza Kyprou Dimosia Etaireia];

…'

The Euro Group statement of 25 March 2013

16 By a statement of 25 March 2013, the Euro Group indicated that it had reached an agreement with the Cypriot authorities on the key elements of a future macroeconomic adjustment programme that was supported by all the MSCE and by the Commission, the ECB and the IMF ('the Euro Group statement of 25 March 2013').

17 That statement sets out, in particular, the following:

'The Euro Group welcomes the plans for restructuring the financial sector as specified in the annex. These measures will form the basis for restoring the viability of the financial sector. In particular, they safeguard all deposits below EUR 100 000 in accordance with EU principles.

The programme will contain a decisive approach to addressing financial sector imbalances. There will be an appropriate downsizing of the financial sector …

The Euro Group urges the immediate implementation of the agreement between [the Republic of Cyprus] and [the Hellenic Republic] on the Greek branches of the Cypriot banks, which protects the stability of both the Greek and Cypriot banking systems.'

18 The annex to the statement is worded as follows:

'Following the presentation by the [authorities of the Republic of Cyprus] of their policy plans, which were broadly welcomed by the Euro Group, the following was agreed:

1. [Cyprus Popular Bank Public Co.] will be resolved immediately – with full contribution of equity shareholders, bondholders and uninsured depositors – based on a decision by the Central Bank of Cyprus, using the newly adopted Bank Resolution Framework.

2. [Cyprus Popular Bank Public Co.] will be split into a good bank and a bad bank. The bad bank will be run down over time.

3. The good bank will be folded into [Trapeza Kyprou Dimosia Etaireia], using the Bank Resolution Framework, after having heard the Boards of Directors of [Trapeza Kyprou Dimosia Etaireia] and [Cyprus Popular Bank Public Co.]. It will take [EUR 9 billion] of [emergency liquidity assistance] with it. Only uninsured deposits in [Trapeza Kyprou Dimosia Etaireia] will remain frozen until recapitalisation has been effected, and may subsequently be subject to appropriate conditions.

4. The Governing Council of the ECB will provide liquidity to [Trapeza Kyprou Dimosia Etaireia] in line with applicable rules.

5. [Trapeza Kyprou Dimosia Etaireia] will be recapitalised through a deposit/equity conversion of uninsured deposits with full contribution of equity shareholders and bondholders.

6. The conversion will be such that a capital ratio of 9% is secured by the end of the programme.

7. All insured depositors in all banks will be fully protected in accordance with the relevant EU legislation.

8. The programme money (up to [EUR 10 billion]) will not be used to recapitalise [Cyprus Popular Bank Public Co.] and [Trapeza Kyprou Dimosia Etaireia].'

Cypriot law

19 Under Article 3(1) and Article 5(1) of the Peri exiyiansis pistotikon kai allon idrimaton nomos (N. 17(I)/2013) (Law on the resolution of credit and other institutions (Law 17(I)/2013)) of 22 March 2013 (EE, Annex I(I), No 4379, 22.3.2013, p. 117; 'the Law of 22 March 2013'), the Central Bank of Cyprus (CBC) was entrusted, together with the Ministry of Finance (Cyprus), with the resolution of the institutions covered by that law. To that end, Article 12(1) of the Law of 22 March 2013 provides that the CBC may, by decree, restructure the debts and obligations of an institution under resolution, including by means of the reduction, modification, rescheduling or novation of the principal or outstanding amount of any type of claim, existing or future, against that institution, or by means of a conversion of debt instruments or obligations into equity. In addition, Article 12(1) of that law provides that 'insured deposits', within the meaning of the fifth paragraph of Article 2 thereof, are to be excluded from those measures. It is common ground between the parties that the deposits in question are deposits of less than EUR 100 000.

20 Kanonistiki Dioikitiki Praxi 96/2013, peri tis polisis ergasion ton en elladi ergasion tis Trapezas Kyprou Dimosias Etaireias Ltd (Decree 96/2013 on the sale of certain operations of Trapeza Kyprou Dimosia Etaireia Ltd in Greece) of 26 March 2013 (EE, Annex III(I), No 4640, 26.3.2013, p. 745; 'Decree No 96') and Kanonistiki Dioikitiki Praxi 97/2013, peri tis polisis ergasion ton en elladi ergasion tis Cyprus Popular Bank Public Co. Ltd (Decree 97/2013 on the sale of certain operations of Cyprus Popular Bank Public Co. Ltd in Greece) of 26 March 2013 (EE, Annex III(I), No 4640, 26.3.2013, p. 749; 'Decree No 97') provide for the sale of, respectively, the branches of Trapeza Kyprou Dimosia Etaireia ('BoC') and the branches of Cyprus Popular Bank Public Co. ('Laïki') established in Greece ('the Greek branches').

21 Kanonistiki Dioikitiki Praxi 103/2013, peri diasosis me idia mesa tis Trapezas Kyprou Dimosias Etaireias Ltd (Decree 103/2013 on the bailing-in of Trapeza Kyprou Dimosia Etaireia Ltd) of 29 March 2013 (EE, Annex III(I), No 4645, 29.3.2013, p. 769; 'Decree No 103') provides for the recapitalisation of BoC – at the expense, in particular, of its uninsured depositors, its shareholders and its bondholders – in order to enable it to continue to provide banking services. Accordingly, uninsured deposits were converted into BoC shares (37.5% of each uninsured deposit), into securities which were convertible by BoC either into shares or into deposits (22.5% of each uninsured deposit), and into securities which were convertible into deposits by the CBC (40% of each uninsured deposit). Article 6(5) of Decree No 103 states that, if the contributions of uninsured depositors exceed what is necessary in order to restore the equity capital of BoC, the resolution authority will determine the amount corresponding to overcapitalisation and will treat it as if the conversion had never taken place.

22 Following amendments made to Decree No 103, on 30 July 2013, first, 10% of uninsured deposits, which had previously been converted into securities convertible either into shares or into deposits, were converted into shares in BoC. Second, the nominal value of EUR 1 of each ordinary share in BoC was reduced to one cent. Subsequently, 100 ordinary shares with a nominal value of one cent each were merged into one ordinary share with a nominal value of EUR 1. Ordinary shares with a nominal value of one cent that were fewer than 100 in number, and could not therefore be merged to form one new ordinary share with a nominal value of EUR 1, were extinguished.

23 Article 2, in conjunction with Article 5, of Kanonistiki Dioikitiki Praxi 104/2013, peri tis polisis orismenon ergasion tis Cyprus Popular Bank Public Co. Ltd (Decree 104/2013 on the sale of certain operations of Cyprus Popular Bank Public Co. Ltd) of 29 March 2013 (EE, Annex III(I), No 4645, 29.3.2013, p. 781; 'Decree No 104') provides for the transfer, at 6.10 a.m. on 29 March 2013, of certain assets and liabilities from Laïki to BoC, including deposits of less than EUR 100 000. Deposits of more than EUR 100 000 remained with Laïki, pending its liquidation.

24 Following amendments made to Decree No 104 on 30 July 2013, approximately 18% of the new share capital of BoC was granted to Laïki.

Background to the dispute

25 For the purposes of the present proceedings, the background to the dispute, as set out in paragraphs 10 to 28 and 38 to 46 of the judgments under appeal, may be summarised as follows.

26 During the first months of 2012, the Hellenic Republic and its private bondholders carried out an exchange of Greek bonds at a substantial haircut on the nominal value of Greek debt held by private investors (Private Sector Involvement ('the PSI')).

27 As a result of their exposure to bonds which were subject to the PSI, several banks established in Cyprus, including Laïki and BoC, suffered significant losses and encountered under-capitalisation problems. Since Laïki was no longer able to supply sufficient securities to seek funding from the ECB, it requested, and obtained, emergency liquidity assistance (ELA) from the CBC, the total amount of which came to EUR 3.8 billion in May 2012 and nearly EUR 9.6 billion in July 2012.

28 In those circumstances, the Republic of Cyprus judged it necessary to intervene in support of the Cypriot banking sector, in particular by recapitalising Laïki in the amount of EUR 1.8 billion in June 2012. During that month, BoC announced that it also had asked the Cypriot authorities for capital support but had not obtained it.

29 On 25 June 2012, the Republic of Cyprus presented a request to the President of the Euro Group for financial assistance from the ESM or from the European Financial Stability Facility. By a statement of 27 June 2012, the Euro Group indicated that the financial assistance requested would be provided to the Republic of Cyprus by either that facility or the ESM in the context of a macroeconomic adjustment programme to be defined in an MoU which would be negotiated between the Commission together with the ECB and the IMF, on the one hand, and the Cypriot authorities, on the other. On 29 November 2012, representatives of the Commission, the ECB, the IMF and the Republic of Cyprus drew up a draft MoU.

30 In March 2013, the Republic of Cyprus and the other MSCE reached a political agreement on the draft MoU. By a statement of 16 March 2013, the Euro Group welcomed that agreement and referred to certain adjustment measures which the Cypriot authorities undertook to take, including the introduction of a levy on bank deposits, restructuring and recapitalisation of banks, and the bail-in of the holders of low-ranking bonds.

31 On 18 March 2013, the Republic of Cyprus declared a bank holiday on 19 and 20 March 2013, which was then extended until 28 March 2013, in order to avoid a run on the banks.

32 On 19 March 2013, the Cypriot Parliament rejected the Cypriot Government's bill relating to the introduction of a levy on all bank deposits in the Republic of Cyprus. The Cypriot Government then prepared a new bill providing solely for the restructuring of BoC and Laïki.

33 On 21 March 2013, the ECB issued a press release ('the ECB press release of 21 March 2013') stating as follows:

'The Governing Council of the [ECB] decided to maintain the current level of [ELA] until … 25 March 2013.

Thereafter [ELA] could only be considered if an [EU or IMF] programme is in place that would ensure the solvency of the concerned banks.'

34 The Cypriot Parliament adopted the Law of 22 March 2013.

35 By a statement of 25 March 2013, the Euro Group indicated that it had reached an agreement with the Cypriot authorities on the key elements of a future macroeconomic adjustment programme that was supported by all the MSCE and by the Commission, the ECB and the IMF.

36 Decrees No 96 and No 97 were adopted on 26 March 2013, and Decrees No 103 and No 104 were adopted on 29 March 2013.

37 At its meeting of 24 April 2013, the Board of Governors of the ESM:

– confirmed, first, that the Commission and the ECB had been entrusted with carrying out the assessments referred to in Article 13(1) of the ESM Treaty and, second, that the Commission had been entrusted, in liaison with the ECB and the IMF, with the negotiation with the Republic of Cyprus of the MoU referred to in Article 13(3) thereof;

– decided to grant stability support to the Republic of Cyprus in the form of a financial assistance facility ('FAF'), in accordance with the proposal of the ESM's Managing Director;

– approved a new draft MoU negotiated by the Commission, in liaison with the ECB and the IMF, and the Republic of Cyprus; and

– mandated the Commission to sign the MoU on behalf of the ESM.

38 On 25 April 2013, the Council, acting under Article 136(1) TFEU, adopted Decision 2013/236 which provides for a series of 'measures and outcomes' with a view to correcting the budget deficit of the Republic of Cyprus and to restoring the soundness of its financial system.

39 The new MoU was signed on 26 April 2013 by the Minister for Finance of the Republic of Cyprus, the Governor of the CBC and the Vice-President of the Commission on behalf of the ESM ('the MoU of 26 April 2013'), and was approved by the Cypriot Parliament on 30 April 2013.

40 On 8 May 2013, the ESM, the Republic of Cyprus and the CBC concluded the agreement relating to the FAF. On the same day, the ESM's Board of Directors approved that agreement and also a proposal relating to the arrangements for payment to the Republic of Cyprus of a first tranche of assistance amounting to EUR 3 billion.

41 By a statement of 13 May 2013, the Euro Group welcomed the decision of the Board of Governors of the ESM to approve that first tranche of assistance and confirmed that the Republic of Cyprus had implemented the measures agreed in the MoU of 26 April 2013.

42 By a statement of 13 September 2013, the Euro Group welcomed, first, the conclusion of the first review mission of the Commission, the ECB and the IMF and, second, the fact that BoC had been taken out of resolution on 30 July 2013. Moreover, the Euro Group expressed its support for the payment to the Republic of Cyprus of a second tranche of assistance, amounting to EUR 1.5 billion. That payment was made on 27 September 2013.

Procedure before the General Court and the judgments under appeal

43 By applications lodged at the Registry of the General Court on 20 December 2013 in Case T-680/13 and 1 December 2014 in Case T-786/14, the applicants at first instance in Cases C-597/18 P and C-598/18 P brought actions asking the General Court to order the Council, the Commission, the ECB and the Euro Group ('the defendants') to pay them the sums shown in the schedules annexed to their applications plus interest accruing from 16 March 2013 until the judgments of the General Court, or, in the alternative, to find that the European Union and/or the defendants had incurred non-contractual liability and to determine the procedure to be followed in order to establish the recoverable loss which they had actually suffered.

44 By separate documents, lodged at the Registry of the General Court in Case T-680/13 on 14 July, 16 July and 18 August 2014 respectively, the Council, the ECB and the Commission raised pleas of inadmissibility under Article 114 of the Rules of Procedure of the General Court.

45 By separate documents, lodged at the Registry of the General Court in Case T-786/14 on 17 April, 29 April and 8 May 2015 respectively, the Commission, the Council and the ECB raised pleas of inadmissibility under Article 114 of the Rules of Procedure of the General Court.

46 By the judgments under appeal, the General Court dismissed the actions of the applicants at first instance in Cases C-597/18 P and C-598/18 P and ordered them to bear, in addition to their own costs, those incurred by the Council, the Commission and the ECB.

Procedure and forms of order sought before the Court of Justice

47 By decision of the President of the Court of Justice of 11 January 2019, Cases C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P were joined for the purposes of the oral part of the procedure and the judgment.

48 By decision of the President of the Court of 21 February 2019, the Republic of Finland was granted leave to intervene in support of the forms of order sought by the Council in Cases C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P.

Cases C-597/18 P and C-598/18 P

49 The Council claims that the Court should:

– set aside the parts of the judgments under appeal in which the General Court dismisses its pleas of inadmissibility in so far as those pleas relate to the actions of the applicants at first instance in Cases C-597/18 P and C-598/18 P directed against the Euro Group; and

– order those applicants to pay the costs of the appeals.

50 The applicants at first instance in Cases C-597/18 P and C-598/18 P contend that the Court should:

– dismiss the appeals; and

– order the Council to pay the costs.

51 The Commission contends that the Court should:

– uphold the appeals; and

– order the applicants at first instance in Cases C-597/18 P and C-598/18 P to pay the costs of the appeals and of the proceedings before the General Court.

Cases C-603/18 P and C-604/18 P

52 The appellants claim that the Court should:

– set aside the judgments under appeal;

– grant the orders sought by them in the proceedings before the General Court;

– dismiss the cross-appeals brought by the Council;

– order the defendants to pay the costs of the appeals and of the proceedings before the General Court; and

– order the Council to pay the costs of the cross-appeals.

53 The Council and the ECB contend that the Court should:

– dismiss the appellants' appeals; and

– order the appellants to pay the costs.

54 By its cross-appeals, the Council contends that the Court should:

– set aside the parts of the judgments under appeal in which the General Court dismisses its pleas of inadmissibility in so far as those pleas relate to the appellants' actions directed against Article 2(6)(b) of Decision 2013/236;

– declare the actions brought by the appellants against the Council inadmissible; and

– order the appellants to pay the costs.

55 The Commission contends that the Court should:

– dismiss the appellants' appeals;

– uphold the cross-appeals brought by the Council; and

– order the appellants to pay the costs of the appeals and of the proceedings before the General Court.

The request seeking the reopening of the oral part of the procedure

56 After the Advocate General delivered his Opinion, the appellants, by document received at the Court Registry of the Court of Justice on 16 June 2020, requested the reopening of the oral part of the procedure pursuant to Article 83 of the Rules of Procedure of the Court of Justice.

57 In support of their request, the appellants submit, first, that the Opinion delivered by the Advocate General breaches the principle of equality of arms in that it examines only the arguments put forward by the parties in the appeals brought by the Council in Cases C-597/18 P and C-598/18 P and not those set out by the appellants in support of their appeals in Cases C-603/18 P and C-604/18 P. Second, the Advocate General's Opinion is said to be based on a misunderstanding of the arguments put forward by the appellants in support of their appeals in Cases C-603/18 P and C-604/18 P, since they have never contended that recognition of the Euro Group as an institution whose acts or conduct may form the subject matter of an action to establish non-contractual liability of the European Union under the second paragraph of Article 340 TFEU is a necessary condition for the success of their claims seeking compensation for the harm suffered by them. According to the appellants, it follows, third and last, that the Advocate General's Opinion cannot be regarded as relevant for the purpose of resolution of the present proceedings.

58 It should be recalled that, pursuant to the second paragraph of Article 252 TFEU, it is the duty of the Advocate General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require the Advocate General's involvement. The Court is not bound either by the

Advocate General's Opinion or by the reasoning on which it is based (judgment of 25 July 2018, *Société des produits Nestlé and Others* v *Mondelez UK Holdings & Services*, C-84/17 P, C-85/17 P and C-95/17 P, EU:C:2018:596, paragraph 31).

59 Furthermore, the Statute of the Court of Justice of the European Union and the Rules of Procedure of the Court of Justice make no provision for interested parties to submit observations in response to the Advocate General's Opinion (judgment of 21 December 2016, *Commission* v *Aer Lingus and Ryanair Designated Activity*, C-164/15 P and C-165/15 P, EU:C:2016:990, paragraph 31 and the case-law cited).

60 Consequently, the fact that a party disagrees with the Opinion of the Advocate General, irrespective of the questions that he examines in his Opinion, cannot in itself constitute grounds justifying the reopening of the oral part of the procedure (judgment of 28 February 2018, *mobile.de* v *EUIPO*, C-418/16 P, EU:C:2018:128, paragraph 30).

61 That said, the Court may at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure under Article 83 of its Rules of Procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated between the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union.

62 That is not the position here. First, the grounds of appeal and arguments put forward by the appellants in support of their appeals in Cases C-603/18 P and C-604/18 P were debated in the written and oral parts of the procedure. Second, at the request of the Court, which considered that the appeals brought by the Council in Cases C-597/18 P and C-598/18 P raised a new point of law, as referred to in the fifth paragraph of Article 20 of the Statute of the Court of Justice of the European Union, the Advocate General focused his Opinion on assessment of the arguments put forward by the parties in the context of those appeals, a fact which is without prejudice to the assessment by the Court of the arguments that the appellants were able to set out, during the written and oral parts of the procedure, in the context of their own appeals in Cases C-603/18 P and C-604/18 P, and which, contrary to what the appellants submit, means that the Advocate General did not misunderstand those arguments because he failed to examine them in his Opinion. Thus, the Court considers, after hearing the Advocate General, that it is sufficiently informed by the various arguments which have been duly debated before it.

63 In the light of the foregoing considerations, there is no need to order that the oral part of the procedure be reopened.

The Council's appeals in Cases C-597/18 P and C-598/18 P

Arguments of the parties

64 In support of its appeals, the Council puts forward a single ground, alleging that the General Court misinterpreted the case-law relating to the conditions governing the admissibility of actions to establish non-contractual liability of the European Union.

65 By this ground of appeal, the Council contends, in essence, that, contrary to what the General Court held in paragraph 113 of the first judgment under appeal and paragraph 109 of the second judgment under appeal, the Euro Group cannot be regarded as an 'institution' within the meaning of the second paragraph of Article 340 TFEU.

66 In that regard, the Council submits, first, that the General Court qualified the conclusion reached by the Court of Justice in paragraph 61 of its judgment of 20 September 2016, *Mallis and Others* v *Commission and ECB* (C-105/15 P to C-109/15 P, EU:C:2016:702), that the Euro Group cannot be equated with a configuration of the Council or be classified as a 'body, office or agency of the European Union' within the meaning of Article 263 TFEU.

67 Second, the Council, citing the judgment of 10 April 2002, *Lamberts* v *Ombudsman* (T-209/00, EU:T:2002:94, paragraph 49), states that, whilst the term 'institution' within the meaning of the second paragraph of Article 340 TFEU encompasses not only the institutions explicitly mentioned in Article 13 TEU but also all EU bodies which fulfil two criteria, namely, first, that they have been established by the Treaties and, second, that they are intended to contribute to achievement of the European Union's objectives, the Euro Group does not, however, fulfil the first of those criteria.

68 In that regard, first of all it criticises the General Court for having affirmed, in paragraph 113 of the first judgment under appeal and paragraph 109 of the second judgment under appeal, that the Euro Group is a 'body of the Union formally established by the Treaties', when it is an informal gathering of ministers of the MSCE the only function of which is to discuss questions related to the specific responsibilities that the ministers share with regard to the single currency. Next, Article 137 TFEU and Protocol No 14 did not set up the Euro Group, but merely recognised it. Finally, the Council notes that the General Court did not identify any competence conferred on the Euro Group by the Treaties or state that it possesses a distinct legal personality.

69 As regards the second criterion, the Council acknowledges that the meetings of the Euro Group do contribute to the achievement of the European Union's objectives, but points out that Article 119(2) TFEU and Article 3 TEU make no mention of the Euro Group as a body.

70 Third, the Council does not accept the concern expressed by the General Court, in paragraph 114 of the first judgment under appeal and paragraph 110 of the second judgment under appeal, that failure to accept that actions may be brought against the Euro Group to establish non-contractual liability of the European Union creates a loophole with regard to effective judicial protection, the principle of which is laid down in the second subparagraph of Article 19(1) TEU.

71 In that regard, the Council states, in the first place, citing the 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 55), that the Commission may be held accountable in respect of the legality of the acts of the ESM. In the second place, the Council observes that, as the General Court acknowledged in paragraph 238 of the first judgment under appeal and paragraph 237 of the second judgment under appeal, the admissibility of an action to establish non-contractual liability of the European Union may, in some cases, be subject to the prior exhaustion of national remedies that are available for obtaining annulment of a decision of a national authority, provided that those remedies under domestic law effectively ensure protection for the individuals concerned in that they are capable of resulting in compensation for the damage alleged. The Council submits, in the third place, that the Court may, in accordance with Article 7 of Regulation (EU) No 472/2013 of the European Parliament and of the Council of 21 May 2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability (OJ 2013 L 140, p. 1), review acts of the Council which precede and prefigure the content of the ESM conditionality. Finally, in the fourth place, the Council refers to point 66 of the Opinion of Advocate General Wathelet in Joined Cases *Mallis and Others* v *Commission and ECB* (C-105/15 P to C-109/15 P, EU:C:2016:294), from which it is apparent that the lack of a direct remedy against the Euro Group would be at odds with the principle of effective judicial protection only if the Euro Group had in the Treaties been given the power to adopt acts producing binding legal effects with respect to third parties. However, it was not given that power, the Euro Group being, according to the Council, a forum for discussion, not a decision-making body.

72 At the hearing before the Court, the Council added that the principle of effective judicial protection does not constitute a criterion for establishing jurisdiction of the EU judicature beyond the terms of the Treaties.

73 The Commission submits that Articles 263 and 340 TFEU have the same scope *ratione personae*. It states that the General Court did not cite any judgment establishing that an entity whose acts cannot be the subject of an action for annulment may, on the other hand, have its acts or conduct challenged in an action to establish non-contractual liability of the European Union.

74 The applicants at first instance in Cases C-597/18 P and C-598/18 P contest the merits of the single ground of appeal put forward by the Council. They submit, first, that the Court's statement in paragraph 61 of the judgment of 20 September 2016, *Mallis and Others* v *Commission and ECB* (C-105/15 P to C-109/15 P, EU:C:2016:702), that the Euro Group cannot be classified as a 'body, office or agency of the European Union' within the meaning of Article 263 TFEU, is not relevant as that judgment related to the admissibility of an action for annulment against the Euro Group, which is a remedy separate from that of an action, provided for in the second paragraph of Article 340 TFEU, to establish non-contractual liability of the European Union.

75 Second, the applicants at first instance in Cases C-597/18 P and C-598/18 P contest the argument that the Euro Group was not established by the Treaties although its existence was formalised by the Treaty of Lisbon which attached Protocol No 14 to the FEU Treaty.

76 Third, the Euro Group is not merely an informal discussion forum but has responsibilities that fall within the scope of EU economic and budgetary policy-making.

77 Fourth and last, the applicants at first instance in Cases C-597/18 P and C-598/18 P contend that the inability to render the European Union liable for acts of the Euro Group would amount to infringement of the fundamental right to effective judicial protection, as enshrined in Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

Findings of the Court

78 The second paragraph of Article 340 TFEU provides that, in the case of non-contractual liability, the European Union is, in accordance with the general principles common to the laws of the Member States, to make good any damage caused by its institutions or by its servants in the performance of their duties.

79 The European Union may incur non-contractual liability under that provision only if a number of conditions are fulfilled, namely the unlawfulness of the conduct alleged against the EU institution, the fact of damage and the existence of a causal link between the conduct of the institution and the damage complained of (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 64 and the case-law cited).

80 The term 'institution' within the meaning of that provision encompasses not only the EU institutions listed in Article 13(1) TEU but also all the EU bodies, offices and agencies that have been established by or under the Treaties and are intended to contribute to the achievement of the European Union's objectives (see, to that effect, judgment of 2 December 1992, *SGEEM and Etroy* v *EIB*, C-370/89, EU:C:1992:482, paragraphs 13 to 16).

81 In the present instance, the General Court recalled that case-law in paragraphs 82, 106 and 112 of the first judgment under appeal and paragraphs 78, 102 and 108 of the second judgment under appeal. Applying that case-law, it held, in paragraph 113 of the first judgment under appeal and paragraph 109 of the second judgment under appeal, that the Euro Group is an EU body established

by the Treaties and intended to contribute to achieving the objectives of the European Union. It drew that conclusion following an analysis, set out in those same paragraphs of the judgments under appeal, relating to the terms of Article 137 TFEU and of Protocol No 14, according to which, first, they make provision, inter alia, for the existence, the composition, the procedural rules and the functions of the Euro Group and, second, that entity meets to discuss questions concerning, under Article 119(2) TFEU, the activities of the European Union for the purposes of the objectives set out in Article 3 TEU, which include the establishment of an economic and monetary union whose currency is the euro.

82 In the single ground put forward in support of its appeals, the Council does not contest the criteria set out by the case-law, cited in paragraph 80 of the present judgment, for assessing whether an action to establish non-contractual liability of the European Union is admissible.

83 The Council submits, however, that the General Court erred in law in holding, in paragraph 113 of the first judgment under appeal and paragraph 109 of the second judgment under appeal, that the Euro Group satisfied the first of those criteria, to the effect that the defendant entity must be an EU entity established by the Treaties, even though Article 137 TFEU and Protocol No 14 recognise only the right of the MSCE to meet informally and do not confer any competence on the Euro Group.

84 In that regard, it should be noted, first, that the Euro Group was formally established by the resolution of the European Council of 13 December 1997 pursuant to which 'the Ministers of the [MSCE] may meet informally among themselves to discuss issues connected with their shared specific responsibilities for the single currency' and 'the Commission, and the [ECB] when appropriate, will be invited to take part in the meetings'. As the Advocate General has also pointed out inter alia in points 64, 65, 92, 96, 101, 103 and 106 of his Opinion, the Euro Group was created as an intergovernmental body – outside the institutional framework of the European Union – intended to enable the ministers of the MSCE to exchange and coordinate their views on issues relating to their common responsibilities concerning the single currency. It thus provides a bridge between the national level and the EU level for the purpose of coordinating the economic policies of the MSCE.

85 It is true that, as the General Court correctly found in paragraph 113 of the first judgment under appeal and paragraph 109 of the second judgment under appeal, Article 137 TFEU and Protocol No 14 make provision, inter alia, for the existence, the composition, the procedural rules and the functions of the Euro Group.

86 However, contrary to the submissions of the applicants at first instance in Cases C-597/18 P and C-598/18 P, it cannot be inferred from that finding that the Euro Group is an EU entity established by the Treaties, for the purposes of the case-law cited in paragraph 80 of the present judgment.

87 Article 137 TFEU and Protocol No 14 admittedly formalised the existence of the Euro Group and the participation of the Commission and the ECB at its meetings. However, they did not alter its intergovernmental nature in the slightest. It should, in particular, be made clear that, as the Court has already held, the Euro Group cannot be equated with a configuration of the Council (judgment of 20 September 2016, *Mallis and Others* v *Commission and ECB*, C-105/15 P to C-109/15 P, EU:C:2016:702, paragraph 61).

88 Second, as both the resolution of the European Council of 13 December 1997 and Article 1 of Protocol No 14 expressly state, and as the Court held in paragraph 61 of the judgment of 20 September 2016, *Mallis and Others* v *Commission and ECB* (C-105/15 P to C-109/15 P, EU:C:2016:702), the Euro Group is characterised by its informality, which, as the Advocate General has stated in points 64 and 86 of his Opinion, can be explained by the purpose pursued by its creation of endowing

economic and monetary union with an instrument of intergovernmental coordination but without affecting the role of the Council – which is the fulcrum of the European Union's decision-making process in economic matters – or the independence of the ECB.

89 Third, the Euro Group does not have any competence of its own in the EU legal order, as Article 1 of Protocol No 14 merely states that its meetings are to take place, when necessary, to discuss questions related to the specific responsibilities that the ministers of the MSCE share with regard to the single currency – responsibilities which they owe solely on account of their competence at national level.

90 It follows from the foregoing that the General Court was wrong in holding, in paragraph 113 of the first judgment under appeal and paragraph 109 of the second judgment under appeal, that the Euro Group was an EU body established by the Treaties and that an action to establish non-contractual liability of the European Union could accordingly be brought against it by the applicants at first instance in Cases C-597/18 P and C-598/18 P, on the basis of the second paragraph of Article 340 TFEU.

91 This conclusion is not called into question by the argument of those applicants – founded on the reasoning of the General Court set out in paragraph 114 of the first judgment under appeal and paragraph 110 of the second judgment under appeal – regarding infringement of Article 47 of the Charter.

92 The General Court held in those paragraphs of the judgments under appeal that the inability to bring, on the basis of the second paragraph of Article 340 TFEU, an action against the Euro Group to establish non-contractual liability of the European Union would clash with the principle of the Union's being based on the rule of law, in the light of the requirements related to observing the principle of effective judicial protection.

93 However, it must be pointed out that, given what has been stated in paragraph 89 of the present judgment and the fact that the Euro Group does not have the power to punish a failure to comply with the political agreements concluded within it, those agreements are given concrete expression and are implemented by means, in particular, of acts and action of the EU institutions. Individuals may thus bring before the EU judicature an action to establish non-contractual liability of the European Union against the Council, the Commission and the ECB in respect of the acts or conduct that those EU institutions adopt following such political agreements, as is shown here by the actions brought at first instance by the applicants at first instance in Cases C-597/18 P and C-598/18 P.

94 Thus, in the judgments under appeal, the General Court held that the actions to establish non-contractual liability of the European Union were admissible in so far as they were directed against the Council in respect of the specific measures which were adopted under the three-year macroeconomic adjustment programme implemented by the Republic of Cyprus and are expressly specified in Article 2(4) to (15) of Decision 2013/236.

95 Likewise, in those judgments the General Court held that the actions of the applicants at first instance in Cases C-597/18 P and C-598/18 P were admissible in so far as they were directed against the Commission and the ECB on account of their alleged unlawful conduct at the time of the negotiation and signing of the MoU of 26 April 2013, which gives concrete expression to that macroeconomic adjustment programme.

96 In that regard, as is apparent from Article 17(1) TEU, the Commission 'shall promote the general interest of the Union' and 'shall oversee the application of Union law' (judgments of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraph 163, and 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 57). It therefore retains, in the context of its participation in the activities of the Euro Group, its role of guardian of the

Treaties. It follows that any failure on its part to check that the political agreements concluded within the Euro Group are in conformity with EU law is liable to result in non-contractual liability of the European Union being invoked under the second paragraph of Article 340 TFEU.

97 It is apparent from all the foregoing that the General Court committed an error of law in the interpretation and application of the second paragraph of Article 340 TFEU by holding, in paragraphs 113 and 114 of the first judgment under appeal and paragraphs 109 and 110 of the second judgment under appeal, that, if the principle of the Union's being based on the rule of law was not to be infringed, the Euro Group had to be regarded as an EU body established by the Treaties whose acts or conduct could form the subject matter of an action before the EU judicature to establish non-contractual liability of the European Union.

98 Therefore, the Council's appeals must be upheld and the judgments under appeal must be set aside inasmuch as they dismiss the pleas of inadmissibility raised by it in so far as those pleas relate to the actions of the applicants at first instance in Cases C-597/18 P and C-598/18 P directed against the Euro Group.

The Council's cross-appeals in Cases C-603/18 P and C-604/18 P

Arguments of the parties

99 In support of its cross-appeals, the Council, endorsed by the Commission, puts forward a single ground of appeal, to the effect that the General
Court was wrong in holding, in paragraphs 181 and 191 of the first judgment under appeal and paragraphs 180 and 190 of the second judgment under appeal, first, that the Council, by means of Article 2(6)(b) of Decision 2013/236, required the Cypriot authorities to maintain or continue to implement the measure consisting in the conversion of uninsured deposits in BoC into shares and, second, that those authorities had no margin of discretion to revoke that conversion. In the Council's submission, such an interpretation runs counter to the case-law relating to the admissibility of actions to establish non-contractual liability of the European Union that put in issue an act or conduct by which a national authority implements EU legislation, case-law which requires that two conditions both be met.

100 As regards the first condition, namely that the adoption of the measure at issue must be required by an EU act binding a Member State in legal terms, the Council submits, first of all, that the adoption of that measure predates Decision 2013/236.

101 Next, the Council contends that the appellants would have suffered the same damage in the absence of Decision 2013/236 and that the requirement to maintain or continue to implement the measure is attributable only to the Cypriot authorities. The obligation to carry out an independent valuation of the assets of Laïki and BoC, laid down in Article 2(6)(b) of Decision 2013/236, presupposes but does not impose conversion of the uninsured deposits in BoC into shares.

102 Finally, the Council states that Decision 2013/236 reflects a common practice that had developed since the beginning of the euro area crisis, under which conditionality attached to financial assistance granted to an MSCE is coupled with Council decisions based on Article 136 TFEU, thereby ensuring consistency between the intergovernmental and EU spheres of action.

103 As to the second condition, namely that the national authorities must not have any margin of discretion for implementing EU legislation, the Council contends that, in any event, this condition was not met here. The Council criticises the General Court for having found, in paragraphs 186 to 188 of the first judgment under appeal and paragraphs 185 to 187 of the second judgment under

appeal, that the Cypriot authorities had no margin of discretion to revoke the conversion of the uninsured deposits in BoC into shares on the ground that Decision 2013/236 was mandatory for the Republic of Cyprus and had legally binding effects. The General Court's reasoning thereby renders the second condition superfluous having regard to the first condition as set out in paragraph 100 of the present judgment and contains a contradiction since, in paragraph 178 of the first judgment under appeal and paragraph 177 of the second judgment under appeal, the General Court found that Decision 2013/236, on the other hand, left the Cypriot authorities a margin of discretion for the purpose of defining the specific rules required by Article 2(6)(b) thereof for the integration of Laïki into BoC.

104 The Council further submits that the margin of discretion of the Cypriot authorities for converting the uninsured deposits in BoC into shares is confirmed by the fact that Article 2(6)(b) of Decision 2013/236 is drafted in general terms and contains no specific rule as to that conversion.

105 The appellants contend that the Council's cross-appeals are inadmissible in that they are designed, in truth, to obtain a fresh assessment of the facts and, in any event, are unfounded. In particular, Article 2(6)(b) of Decision 2013/236 prohibits the Cypriot authorities from revoking the conversion of the uninsured deposits in BoC into shares as they would thereby infringe the precise obligation imposed by that provision to complete the conversion and fail to have regard to the binding character of Decision 2013/236.

Findings of the Court

106 According to settled case-law, Article 268 TFEU in conjunction with the second paragraph of Article 340 TFEU gives jurisdiction to the EU judicature only to award compensation for damage caused by the EU institutions or by their servants in the performance of their duties or, in other words, for damage capable of giving rise to non-contractual liability on the part of the European Union. Damage caused by national authorities, on the other hand, can give rise to liability only on the part of those national authorities and the national courts retain sole jurisdiction to order compensation for such damage (judgment of 7 July 1987, *L'Étoile commerciale and CNTA* v *Commission*, 89/86 and 91/86, EU:C:1987:337, paragraph 17 and the case-law cited).

107 It follows that, in order to determine whether the EU judicature has jurisdiction, it must be established whether the unlawful conduct alleged in support of the claim for compensation is truly the responsibility of an EU institution and cannot be regarded as attributable to a national authority.

108 It was in the light of those principles, which are correctly noted in paragraphs 83 and 84 of the first judgment under appeal and paragraphs 79 and 80 of the second judgment under appeal, that the General Court examined, inter alia, whether the Council had, by means of Article 2(6)(b) of Decision 2013/236, required the Cypriot authorities to maintain or continue to implement the measures for integrating Laïki and converting the uninsured deposits in BoC into shares and, as the case may be, whether the Republic of Cyprus enjoyed, under that provision, a margin of discretion in that regard.

109 It should be recalled at the outset that Article 2(6)(b) of Decision 2013/236 states that the macroeconomic adjustment programme for the Republic of Cyprus is to provide for 'establishing an independent valuation of the assets of [BoC] and [Laïki] and quickly integrating the operations of [Laïki] into [BoC]. The valuation shall be completed quickly so as to enable the completion of the deposit-equity swap at [BoC]'.

110 In its examination of Article 2(6)(b) of Decision 2013/236, the General Court, first, stated, in paragraph 180 of the first judgment under appeal and paragraph 179 of the second judgment under appeal, that that provision 'requires an independent valuation of the assets of the banks [concerned] to be completed in a deadline to enable the completion of that conversion' of deposits in BoC into

shares and that 'it follows …, implicitly but necessarily, [from that provision] that … the Cypriot authorities [could not] revoke [that] conversion'. It concluded therefrom, in paragraph 181 of the first judgment under appeal and paragraph 180 of the second judgment under appeal, that the Council, 'by means of Article 2(6)(b) of Decision 2013/236, required the Republic of Cyprus to maintain or continue to implement … the conversion of uninsured deposits in BoC into shares'.

111 The General Court cannot be held to have committed any error of assessment in the passages of the judgments under appeal reproduced in the preceding paragraph. In the first place, it is clear from the very wording of Article 2(6)(b) of Decision 2013/236 that the valuation of BoC's assets and the conversion of the uninsured deposits in BoC into shares are technically linked operations in the sense that the valuation, intended to determine the average price of a share that the depositors would receive in exchange for their deposits, was required solely in order that the conversion should then take place.

112 In the second place, contrary to the Council's contentions, it does not matter that Decision 2013/236 postdates the adoption of the measure consisting in the conversion of the uninsured deposits in BoC into shares since, as the General Court correctly stated, in paragraphs 157, 159 and 160 of the first judgment under appeal and paragraphs 156, 158 and 159 of the second judgment under appeal, whilst the Council cannot be considered to have required the adoption of that measure, it was nevertheless necessary to determine whether, by adopting Decision 2013/236, it had obliged the Republic of Cyprus to maintain or continue to implement that measure, which was the case, as the General Court concluded in paragraph 181 of the first judgment under appeal and paragraph 180 of the second judgment under appeal.

113 Therefore, the Council's line of argument seeking to contest the General Court's assessment in paragraphs 180 and 181 of the first judgment under appeal and paragraphs 179 and 180 of the second judgment under appeal cannot succeed.

114 Second, the General Court verified, in paragraphs 183 to 190 of the first judgment under appeal and paragraphs 182 to 189 of the second judgment under appeal, whether the Republic of Cyprus had a margin of discretion to escape the requirement to maintain or continue to implement the conversion of the uninsured deposits in BoC into shares. The General Court explained first of all, in paragraphs 186 and 187 of the first judgment under appeal and paragraphs 185 and 186 of the second judgment under appeal, that Decision 2013/236 was mandatory for the Republic of Cyprus in its entirety, including Article 2(6)(b) thereof, as its provisions are entirely worded in mandatory terms. Next, in paragraph 188 of the first judgment under appeal and paragraph 187 of the second judgment under appeal, it stated that that decision was intended to produce legally binding effects. Finally, in paragraphs 189 and 190 of the first judgment under appeal and paragraphs 188 and 189 of the second judgment under appeal, the General Court observed that the Council had stated, in response to measures of organisation of procedure, that Decision 2013/236 reflected a common practice that had developed since the beginning of the euro area crisis, under which conditionality attached to financial assistance granted to an MSCE is coupled with Council decisions based on Article 136 TFEU, thereby ensuring consistency between the intergovernmental and EU spheres of action. It concluded therefrom, in paragraph 191 of the first judgment under appeal and paragraph 190 of the second judgment under appeal, that the Republic of Cyprus had no margin of discretion to revoke the conversion of the uninsured deposits in BoC into shares.

115 As the Council correctly submits, that reasoning is vitiated by an error of law.

116 As Article 2(6)(b) of Decision 2013/236 merely requires, in general terms, that the Cypriot authorities maintain or continue to implement the conversion, without defining in any way the specific rules for that operation, the General Court was wrong in concluding, in paragraphs 183 to 191 of the first judgment under appeal and paragraphs 182 to 190 of the second judgment under appeal, that the

Cypriot authorities had no margin of discretion for the purpose of laying down such rules, in particular for the purpose of determining the number and value of the shares to be allocated to BoC's depositors in exchange for their uninsured deposits with that bank.

117 It follows that the grounds set out in those paragraphs of the judgments under appeal are vitiated by a manifest error of assessment such as to result in the judgments under appeal being set aside inasmuch as they dismiss the pleas of inadmissibility raised by the Council in relation to Article 2(6)(b) of Decision 2013/236.

118 In the light of all the foregoing considerations, the cross-appeals must be upheld.

The appellants' appeals in Cases C-603/18 P and C-604/18 P

119 The appellants raise eight grounds of appeal.

First ground of appeal

Arguments of the parties

120 In the first ground of appeal, the appellants complain, in essence, of a series of alleged errors or distortions of the clear sense of the evidence on the part of the General Court in paragraphs 115 to 118, 127 and 132 of the first judgment under appeal and paragraphs 111 to 114, 123 and 128 of the second judgment under appeal, in holding, first, that the Euro Group statement of 25 March 2013 did not require the Republic of Cyprus to adopt the decrees mentioned in paragraphs 20 to 24 of the present judgment and, second, that the agreement between the representatives of the MSCE according to which the FAF would be granted to the Republic of Cyprus only if it adopted the measures provided for by those decrees ('the agreement on conditionality') was concluded by the finance ministers of the MSCE as members of the ESM Board of Governors, and not as members of the Euro Group.

121 The Council and the Commission submit that this ground of appeal is inadmissible and, in any event, unfounded.

Findings of the Court

122 This first ground of appeal, like the findings of the General Court which are criticised by it, is founded on the premiss, set out in paragraph 113 of the first judgment under appeal and paragraph 109 of the second judgment under appeal, that the Euro Group is an EU body established by the Treaties, whose acts and conduct are capable of giving rise to non-contractual liability of the European Union under the second paragraph of Article 340 TFEU. However, as is clear from the examination of the Council's appeals in Cases C-597/18 P and C-598/18 P, that premiss is vitiated by an error of law. Therefore, the first ground of appeal cannot succeed in any event.

Second, third and fourth grounds of appeal

Arguments of the parties

123 By their second, third and fourth grounds of appeal, which it is appropriate to examine together, the appellants complain, in essence, that the General Court committed errors of law or assessment and distortions so far as concerns the ECB press release of 21 March 2013, the negotiation and conclusion of the MoU of 26 April 2013, the 'Commission's findings that the measures adopted by the Cypriot

authorities complied with conditionality', the approval, by the Commission and the ECB, of the payment of various tranches of the FAF to the Republic of Cyprus, the Euro Group statements of 12 April, 13 May and 13 September 2013, and Decision 2013/236.

124 In particular, they dispute that the General Court could, after analysing that evidence, have come to the conclusion that the defendants did not require the Cypriot authorities to adopt the measures provided for by the decrees mentioned in paragraphs 20 to 24 of the present judgment even though, inter alia, the various acts and actions of the defendants are a 'continuum' in which each of them is a necessary condition for the maintenance or continued implementation, by the Republic of Cyprus, of those measures and constitutes concerted action by the defendants.

125 The appellants further submit that, by virtue of Article 14.4 of the Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank, annexed to the EU Treaty and the FEU Treaty ('the ECB Statute'), the power of the ECB to stop the supply of ELA means that its grant does not lie within the exclusive powers of a national central bank, and therefore, by the ECB press release of 21 March 2013, that institution required the Cypriot authorities to adopt the measures referred to in the preceding paragraph.

126 The defendants contest the appellants' arguments.

Findings of the Court

127 It follows from Article 256 TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and Article 168(1)(d) and Article 169 of the Rules of Procedure of the Court of Justice that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal. According to the Court's settled case-law, that requirement is not satisfied by an appeal which, without even including an argument specifically identifying the error of law allegedly vitiating the judgment under appeal, merely reproduces the pleas in law and arguments previously submitted to the General Court. Such an appeal amounts in reality to no more than a request for re-examination of the application submitted to the General Court, which the Court of Justice does not have jurisdiction to undertake (see, inter alia, judgment of 4 July 2000, *Bergaderm and Goupil* v *Commission*, C-352/98 P, EU:C:2000:361, paragraph 35, and order of 27 May 2020, *Paix et justice pour les juifs séfarades en Israël* v *Commission and Council of Europe*, C-798/19 P, not published, EU:C:2020:389, paragraphs 10 and 11 and the case-law cited).

128 Furthermore, it is settled case-law that the Court of Justice has no jurisdiction to establish the facts or, save in exceptional cases, to examine the evidence which the General Court accepted in support of those facts (see, to that effect, judgments of 8 May 2003, *T. Port* v *Commission*, C-122/01 P, EU:C:2003:259, paragraph 27, and of 25 October 2007, *Komninou and Others* v *Commission*, C-167/06 P, not published, EU:C:2007:633, paragraph 40). The appraisal of the evidence put before the General Court does not constitute, save where the clear sense of the evidence has been distorted, a point of law which is subject as such to review by the Court of Justice (see, inter alia, judgment of 28 May 1998, *New Holland Ford* v *Commission*, C-8/95 P, EU:C:1998:257, paragraph 26).

129 In the present instance, first, in so far as the arguments set out by the appellants in their second, third and fourth grounds of appeal relate to the Euro Group statements of 12 April, 13 May and 13 September 2013, they must be rejected as ineffective for the reasons stated in paragraph 122 of the present judgment.

130 Second, it must be stated that, under the guise of a line of argument alleging distortion of the facts and of the clear sense of the evidence by the General Court, the second, third and fourth grounds of appeal consist, essentially, in a repetition of the line of argument put forward by the appellants before the

General Court that the defendants' acts and conduct are a 'continuum', and thus seek a fresh assessment of that line of argument by the Court of Justice, which it does not have jurisdiction to undertake.

131 Third, in so far as the appellants' arguments relate to the negotiation and conclusion of the MoU of 26 April 2013 by the Commission, the 'Commission's findings that the measures adopted by the Cypriot authorities complied with conditionality' and the approval, by the Commission and the ECB, of the payment of various tranches of the FAF to the Republic of Cyprus, it should be noted that, as the General Court correctly held in paragraphs 167 to 169 of the first judgment under appeal and paragraphs 166 to 168 of the second judgment under appeal, the duties conferred on the Commission and the ECB in the context of the ESM Treaty do not entail any power to make decisions of their own, meaning that the activities pursued by those two institutions under the ESM Treaty commit the ESM alone (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 53 and the case-law cited).

132 It follows that the General Court did not err in law in holding that the acts referred to in the preceding paragraph of the present judgment were attributable not to the Commission and the ECB, but to the ESM, without prejudice, as is clear from paragraphs 201 to 204 of the first judgment under appeal and paragraphs 200 to 203 of the second judgment under appeal, to the question whether the Commission and the ECB adopted – in the context of the process for negotiation and conclusion of the MoU of 26 April 2013 or in the context of monitoring implementation of the measures adopted by the Cypriot authorities – unlawful conduct, in connection to the verification of compliance with EU law, that was capable of giving rise to non-contractual liability of the European Union.

133 Fourth, as regards the reliance placed on Article 14.4 of the ECB Statute for the purpose of showing that, in the context of the grant of ELA, the ECB required the Cypriot authorities to adopt the measures referred to in paragraph 124 of the present judgment, it must be stated that that argument merely repeats a line of argument set out before the General Court, which the latter rejected after examining it in detail in paragraphs 134 to 155 of the first judgment under appeal and paragraphs 130 to 151 of the second judgment under appeal. In accordance with the case-law recalled in paragraph 127 of the present judgment, that argument must therefore be rejected as inadmissible.

134 So far as concerns, fifth, Decision 2013/236 and, in particular, the integration of Laïki into BoC referred to in Article 2(6)(b) of that decision, the General Court did not err in holding, in paragraph 178 of the first judgment under appeal and paragraph 177 of the second judgment under appeal, that that provision did not lay down specific rules for the implementation of that measure, with the result that the Cypriot authorities enjoyed, at least, a wide margin of discretion for the purposes of defining those rules.

135 In the light of the foregoing, the second, third and fourth grounds of appeal must be dismissed.

Fifth ground of appeal

Arguments of the parties

136 By their fifth ground of appeal, the appellants plead that the General Court erred in law in holding, in paragraph 218 of the first judgment under appeal and paragraph 217 of the second judgment under appeal, that their actions were inadmissible in so far as they related to the bail-in of Laïki on the ground that they merely pleaded, in that regard, that the shares in that bank had, as a result of the measures adopted by the Cypriot authorities, been 'extinguished' without financial compensation or

that their economic value had been 'completely extinguished', without identifying any link between the unlawfulness said to vitiate Decision 2013/236 and the harm alleged or specifying how the Council was involved in the occurrence of that harm.

137 First of all, according to the appellants it is clear from the annex to the Euro Group statement of 25 March 2013 and recital 5 of Decision 2013/236 that the shareholders of Laïki were required to bear the burden of financing the rescue of that financial institution, a burden which is equivalent to a bail-in.

138 The appellants contend, next, that the General Court's reasoning thereby contained in paragraph 218 of the first judgment under appeal and paragraph 217 of the second judgment under appeal is at odds with the fact that, in paragraph 506 of the first judgment under appeal and paragraph 505 of the second judgment under appeal, the General Court itself referred to the 'bail-in of the banks concerned'.

139 The Commission contests the appellants' arguments.

Findings of the Court

140 First of all, the argument put forward by the appellants in respect of the content of the annex to the Euro Group statement of 25 March 2013 must be rejected as ineffective for the reasons stated in paragraph 122 of the present judgment.

141 As regards, next, recital 5 of Decision 2013/236, it must be stated that the appellants, who do not plead any distortion concerning that recital, seek in reality a fresh assessment thereof, which, as is clear from the case-law cited in paragraphs 127 and 128 of the present judgment, the Court does not have jurisdiction to undertake.

142 Finally, as to the alleged contradiction in the grounds of the judgments under appeal that is pleaded by the appellants, it should be recalled that the question whether the grounds of a judgment of the General Court are contradictory is a question of law which is amenable, as such, to judicial review on appeal (judgment of 16 July 2009, *Der Grüne Punkt – Duales System Deutschland* v *Commission*, C-385/07 P, EU:C:2009:456, paragraph 71 and the case-law cited).

143 However, in the present instance, there is no contradiction between paragraph 218 and paragraph 506 of the first judgment under appeal or between paragraph 217 and paragraph 505 of the second judgment under appeal that can result in those judgments being set aside.

144 On the one hand, it is apparent from paragraph 218 of the first judgment under appeal and paragraph 217 of the second judgment under appeal that the General Court found that the decrees mentioned in paragraphs 20 to 24 of the present judgment did not provide that Laïki shares would be subject to a bail-in. The appellants do not dispute that those decrees provide solely for the sale of the branches of Laïki established in Greece, the transfer of certain assets and liabilities from Laïki to BoC and the grant of 18% of the new share capital of BoC to Laïki, and, accordingly, do not provide for any bail-in so far as concerns Laïki's shareholders. On the other hand, paragraph 506 of the first judgment under appeal and paragraph 505 of the second judgment under appeal state that, according to an IMF report of May 2013, the need to distinguish between solvent and insolvent banks was one of the reasons why bail-in of Laïki and BoC was preferred to an exceptional levy on the insured and uninsured deposits in all Cypriot banks. That general statement does not therefore relate specifically to the aforesaid decrees as explicitly analysed by the General Court in paragraph 218 of the first judgment under appeal and paragraph 217 of the second judgment under appeal, and the General Court's reasoning cannot therefore be found to be vitiated by any contradiction.

145 In any event, the appellants' line of argument is not capable of affecting the General Court's finding, in paragraph 218 of the first judgment under appeal and paragraph 217 of the second judgment under appeal, that the actions at first instance failed to specify how the Council was said, through the adoption of Decision 2013/236, to be involved in the occurrence of the harm suffered by Laïki's shareholders.

146 Consequently, the fifth ground of appeal must be dismissed.

Sixth ground of appeal

Arguments of the parties

147 By their sixth ground of appeal, which is in three parts, the appellants plead, in essence, that the General Court erred in law in rejecting the existence of an infringement of their right to property attributable to the acts and conduct of the EU institutions.

148 In the first part of this ground of appeal, concerning the takeover by BoC of the insured deposits of Laïki and the retention of uninsured deposits with Laïki, the conversion of 37.5% of the uninsured deposits in BoC into shares and the temporary freezing of another part of those uninsured deposits, the appellants observe, first of all, that, 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), the Court was concerned only with paragraphs 1.23 to 1.27 of the MoU of 26 April 2013.

149 Next, the appellants contest the General Court's finding, in paragraph 285 of the first judgment under appeal and paragraph 284 of the second judgment under appeal, that the restrictions on the right to property were laid down in law although, first, at the time when the measures at issue were adopted, the European Union lacked authority to impose any bail-in or the resolution of the banks concerned. Second, the Law of 22 March 2013 was adopted only under extreme pressure applied by the defendants on the Cypriot authorities, as is shown by its contents dictated by the Commission and the date of its adoption, namely the day after the ECB decided to stop the supply of ELA. The test of quality of law under Article 52(1) of the Charter is accordingly not met. Third, contrary to what the General Court held in paragraph 276 of the first judgment under appeal and paragraph 275 of the second judgment under appeal, the Law of 22 March 2013 does not provide for real guarantees in favour of the creditors and shareholders of the banks concerned or observe the right to effective judicial protection. Fourth, the General Court erred in law and distorted the clear sense of the evidence in holding, in paragraph 282 of the first judgment under appeal and paragraph 281 of the second judgment under appeal that the establishment of a prior consultation procedure would not have been possible because of the urgency of the situation.

150 Finally, the appellants submit that the measures at issue infringed the principle of proportionality as other, less onerous, measures could have been adopted. In that regard, they state, first, that the fact that the levy on bank deposits was rejected by the Cypriot Parliament did not justify the imposition of a more restrictive measure. Second, the case of the Republic of Cyprus is perfectly comparable to that of the other MSCE which sought financial assistance. Third, the appellants note that the Court stated in its judgment of 16 June 2015, *Gauweiler and Others* (C-62/14, EU:C:2015:400), that the ECB has a large array of options at its disposal to calm the financial markets, secure the stability of the euro and promote financial stability. Fourth, the absence of progressivity in the haircut of deposits above EUR 100 000 is incompatible with the principle of proportionality.

151 By the second part of the sixth ground of appeal, concerning the reduction of the nominal value of ordinary shares in BoC from EUR 1 to one cent and the sale of the Greek branches, the appellants refer to their arguments set out in the first part of this ground of appeal. In addition, they submit that the sale of the Greek branches did not take place in an open, transparent and non-discriminatory procedure.

152 The appellants plead in support of the third part of this ground of appeal that the General Court erred in law by finding that the conduct of the ECB with regard to ELA was not a manifest infringement of Article 14.4 of the ECB Statute, the principle of sound administration and the obligations of fairness and consistency. First, contrary to what the General Court held in paragraph 377 of the first judgment under appeal and paragraph 376 of the second judgment under appeal, the ECB required the adoption of the measures referred to in paragraph 124 of the present judgment, as is clear from the arguments set out in the second ground of appeal. Second, the conduct of the ECB is vitiated by illegality since, on account of its broad discretion in deciding whether a bank is solvent and thus granting it ELA, it acts in a decision-making process contrary to Article 52(1) of the Charter. Third, the General Court wrongly concluded, in paragraph 400 of the first judgment under appeal and paragraph 399 of the second judgment under appeal, that the ECB press release of 21 March 2013 satisfied the requirement to state reasons in that it permitted the reasons for the decision of the ECB's Governing Council of the same day to be ascertained.

153 The defendants contest the appellants' arguments.

Findings of the Court

154 First of all, it should be pointed out, as the General Court did in paragraph 254 of the first judgment under appeal and paragraph 253 of the second judgment under appeal, that the right to property enshrined in Article 17 of the Charter is not an absolute right (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).

155 In accordance with Article 52(1) of the Charter, any limitation on the exercise of the rights and freedoms recognised by it must, however, be provided for by law and respect their essence and, in observance of the principle of proportionality, limitations may be made to those rights and freedoms only if they are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others (judgment of 31 January 2019, *Islamic Republic of Iran Shipping Lines and Others* v *Council*, C-225/17 P, EU:C:2019:82, paragraph 101).

156 So far as concerns the first part of the sixth ground of appeal, it should be stated at the outset that the General Court did not err in taking the view, in paragraph 261 of the first judgment under appeal and paragraph 260 of the second judgment under appeal, that the assessment carried out by the Court of Justice, in paragraphs 73 and 74 of the 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), in respect of the first series of measures, which are referred to in paragraphs 1.23 to 1.27 of the MoU of 26 April 2013, was relevant in this instance.

157 In any event, as regards, in the first place, the complaint alleging that the restrictions on the right to property were not laid down in law and, in particular, the appellants' argument that, at the time when the measures referred to in paragraph 124 of the present judgment were adopted, the European Union could not require any bail-in or the resolution of the banks concerned, it must be found, first, that, as the General Court correctly observed in paragraph 284 of the first judgment under appeal and paragraph 283 of the second judgment under appeal, the absence, at the material time, of EU harmonisation measures in relation to bail-ins of banks does not mean that Member States were precluded from adopting bail-in measures, but their adoption cannot give rise to non-contractual

liability of the European Union. Second, regarding the bank resolution regime, since the General Court did not rule on whether that regime had a legal basis in EU law at the material time, the appellants' argument in that regard must be rejected as ineffective.

158 Furthermore, in so far as the appellants submit that the defendants applied extreme pressure on the Cypriot authorities in order that they adopt the Law of 22 March 2013, that the test of quality of law under Article 52(1) of the Charter is not met and that the Law of 22 March 2013 provided neither any guarantee in favour of the creditors and shareholders of the banks concerned nor effective judicial protection, it must be held that, by those arguments, the appellants are in reality asking the Court to conduct a fresh assessment of the facts and evidence adduced before the General Court, without demonstrating that, in the assessment which it carried out in paragraphs 274 to 281 of the first judgment under appeal and paragraphs 273 to 280 of the second judgment under appeal, it distorted those facts and the clear sense of that evidence. As is apparent from the case-law cited in paragraphs 127 and 128 of the present judgment, such arguments are inadmissible on appeal.

159 As to the appellants' argument that, contrary to what the General Court held in paragraph 282 of the first judgment under appeal and paragraph 281 of the second judgment under appeal, the establishment of a procedure providing for prior consultation of the depositors and shareholders of the banks concerned would have been possible, it must be stated that the General Court correctly based its reasoning, in those paragraphs of the judgments under appeal, on the judgment of the European Court of Human Rights of 21 July 2016, *Mamatas and Others v. Greece* (CE:ECHR:2016:0721JUD006306614), from which it is clear that the requirement that any restriction on the right to property must be provided for by law cannot be interpreted as meaning that the persons concerned should have been consulted before the adoption of that law, in particular where such prior consultation would inevitably have delayed the application of the measures designed to prevent the collapse of the banks concerned.

160 In the second place, as regards the complaint alleging infringement of the principle of proportionality, it should be recalled that this principle requires that the means employed by a provision of EU law be appropriate for attaining the legitimate objectives pursued by the legislation at issue and do not go beyond what is necessary to achieve them (judgment of 31 January 2019, *Islamic Republic of Iran Shipping Lines and Others* v *Council*, C-225/17 P, EU:C:2019:82, paragraph 102 and the case-law cited).

161 In the present instance, the General Court, first of all, took into consideration, in paragraph 255 of the first judgment under appeal and paragraph 254 of the second judgment under appeal, the objective of public interest pursued by the acts and conduct of the defendants consisting in ensuring the stability of the Cypriot financial system and of the euro area as a whole.

162 Next, it examined, in paragraphs 302 to 313 of the first judgment under appeal and paragraphs 301 to 312 of the second judgment under appeal, the appellants' arguments contesting the contention that less restrictive measures to achieve the objective thus pursued did not exist. In that regard, the General Court took into account the Cypriot Parliament's rejection on 19 March 2013 of the introduction of a levy on all bank deposits, the disadvantages or unavailability of alternatives referred to in paragraph 11 of the IMF report of May 2013, the considerable losses that would have resulted, for both taxpayers and depositors, from the Republic of Cyprus leaving the euro area, and the shortcomings of a progressive haircut system, as suggested by the appellants, which would have taken account of the size of the deposits with the banks concerned.

163 Finally, in paragraphs 311 and 312 of the first judgment under appeal and paragraphs 310 and 311 of the second judgment under appeal, the General Court rejected the comparison between the situation of the Republic of Cyprus and that of other MSCE which received financial assistance on the ground that the financial sector of the Republic of Cyprus was characterised by an excessive size in relation to the size of its economy.

164 It is apparent from the detailed findings of the General Court that it did not make an error of assessment or infringe the principle of proportionality in holding that the alternatives to the recapitalisation of the banks concerned would not have been less restrictive than the measures adopted and that, in the absence of recapitalisation, the banks concerned would have been exposed to the risk of having to cease their activities and have been threatened with a disorderly default liable to be systemic in nature, spreading rapidly to other Member States, or to the entire banking system of the euro area.

165 Therefore, the first part of the sixth ground of appeal must be rejected.

166 As regards the second part of this ground of appeal, first, the appellants simply refer, in a general manner, to their arguments set out in the first part of this ground of appeal. It follows that, for the reasons referred to in paragraphs 156 to 165 of the present judgment, their arguments cannot succeed.

167 Second, as regards the complaint alleging that the sale of the Greek branches was not the subject of an open, transparent and non-discriminatory procedure, the appellants merely refer to the evidence which they adduced before the General Court without indicating which items of evidence had their clear sense distorted. In accordance with the case-law cited in paragraph 128 of the present judgment, such a complaint falls outside the jurisdiction of the Court of Justice in an appeal.

168 It follows that the second part of the sixth ground of appeal cannot succeed.

169 So far as concerns the third part of this ground of appeal, and as regards, in particular, the appellants' arguments intended, first, to dispute the fact that the adoption of the measures referred to in paragraph 124 of the present judgment was not required by either the ECB press release of 21 March 2013 or the decision of the ECB's Governing Council of the same day and, second, to call into question the legality of the ECB's conduct in the context of supplying ELA, it should be observed that the appellants refer to their line of argument set out in the second ground of appeal, which, as noted in paragraph 133 of the present judgment, merely reproduces their arguments put forward before the General Court relating to the ECB's role in that context and was rejected as inadmissible, in accordance with the case-law cited in paragraph 127 hereof.

170 Furthermore, as regards the appellants' line of argument alleging that the ECB press release of 21 March 2013 is vitiated by a failure to state reasons, it is sufficient to note that this line of argument is intended to contest the grounds set out in paragraph 400 of the first judgment under appeal and paragraph 399 of the second judgment under appeal, according to which, 'consequently, in any event, in the circumstances of the present case, the wording of the [ECB] press release of 21 March 2013, however laconic it may be, permitted the applicants to understand, in view in particular of the context, from the applicable legal rules and from the observations of the President of the ECB expressed during the press conference of 4 April 2013, that the insolvency of the banks referred to in the absence of a suitable adjustment programme prevented the current level of ELA from being maintained'. Those grounds are thus included purely for the sake of completeness, set out in the alternative with respect to paragraphs 397 to 399 of the first judgment under appeal and paragraphs 396 to 398 of the second judgment under appeal.

171 In accordance with the Court of Justice's settled case-law, arguments directed against grounds included in a decision of the General Court purely for the sake of completeness cannot lead to the decision being set aside and are therefore ineffective (judgment of 12 February 2015, *Commission* v *IPK International*, C-336/13 P, EU:C:2015:83, paragraph 33 and the case-law cited).

172 Therefore, the third part of the sixth ground of appeal must be rejected and this ground of appeal must be dismissed in its entirety.

Seventh ground of appeal

Arguments of the parties

173 By their seventh ground of appeal, the appellants complain that the General Court erred in law by holding that the defendants' acts and conduct did not infringe the principle of the protection of legitimate expectations.

174 First, they contend that the letter of 11 February 2013 sent by the Head of Governor's Office of the CBC to the executive directors of Laïki and BoC provided clear, precise and unconditional assurances that the rights of depositors would not be restricted, and that those assurances bound the Eurosystem.

175 Second, the Euro Group's commitment of 21 January 2013 to grant the FAF to the Republic of Cyprus on the basis of a political agreement reached in November 2012 promoted an expectation on the part of the depositors of the banks concerned that no bail-in would be required.

176 Third and last, the appellants submit that the grant of financial assistance to other MSCE, namely Ireland, the Hellenic Republic, the Kingdom of Spain and the Portuguese Republic, had not been made subject to the adoption of bail-in measures and plead the fact that the ECB authorised ELA for a considerable period of time. In that regard, they state that the reference by the General Court to the judgment of 19 July 2016, *Kotnik and Others* (C-526/14, EU:C:2016:570), is not relevant as that judgment concerned the conduct of the Commission under the State aid provisions of the FEU Treaty, which provide a well-established legal framework and grant clear competence to the Commission.

177 The defendants contest all those arguments.

Findings of the Court

178 In accordance with the Court's settled case-law, the right to rely on the principle of the protection of legitimate expectations extends to any person whom an institution of the European Union has caused, by giving him or her precise assurances, to entertain justified expectations. By contrast, a person may not plead breach of that principle unless he or she has been given those assurances (see, to that effect, judgments of 13 September 2017, *Pappalardo and Others* v *Commission*, C-350/16 P, EU:C:2017:672, paragraph 39, and of 31 January 2019, *Islamic Republic of Iran Shipping Lines and Others* v *Council*, C-225/17 P, EU:C:2019:82, paragraph 57).

179 In the present instance, as regards, first, the complaints alleging that the General Court wrongly held that no legitimate expectation could be derived either from the letter of 11 February 2013 sent by the Head of Governor's Office of the CBC to the executive directors of the banks concerned or from the Euro Group's commitment of 21 January 2013 to grant the FAF to the Republic of Cyprus, it must be stated that, by those complaints, the appellants merely reproduce arguments already put forward before the General Court and essentially ask the Court of Justice to rule afresh on certain evidence, without pleading that there was any distortion of the clear sense of that evidence by the General Court. Therefore, those complaints must be rejected as inadmissible, pursuant to the case-law cited in paragraphs 127 and 128 of the present judgment.

180 Second, the appellants cannot criticise the General Court for having relied, in paragraph 432 of the first judgment under appeal and paragraph 431 of the second judgment under appeal, on the judgment of 19 July 2016, *Kotnik and Others* (C-526/14, EU:C:2016:570), in order to hold that the mere fact that, during the early phases of the international financial crisis, the grant of financial assistance was not subject to the adoption of measures comparable to those referred to in paragraph 124 of the present judgment cannot, in itself, be regarded as a precise, unconditional and

consistent assurance capable of engendering a legitimate expectation on the part of the shareholders, bondholders and depositors of the banks concerned that that would also be the case in the context of the grant of financial assistance to the Republic of Cyprus.

181 Whilst it is true that the case which gave rise to that judgment differs factually from the present cases, the fact remains that the finding made by the Court in paragraph 65 of that judgment, that the circumstance that the subordinated creditors of the banks concerned – that is to say, the creditors who are paid after bondholders but before shareholders in the event of the insolvency or winding up of the issuing entity – had not been called upon to contribute to the rescue of credit institutions in the first phases of the international financial crisis was not capable of engendering a legitimate expectation on the part of the shareholders and the subordinated creditors that they would not be subject to burden-sharing measures in the future, remains valid and applicable, by analogy, to the present instances. That finding must be read in the light of paragraph 66 of that judgment, in which the Court pointed out that, while the principle of the protection of legitimate expectations is one of the fundamental principles of the European Union, economic operators are not, however, justified in having a legitimate expectation that an existing situation which is capable of being altered by the EU institutions in the exercise of their discretion will be maintained, particularly in a field subject to constant adjustment to reflect changes in the economic situation.

182 Thus, the fact that, as the appellants plead, the case which gave rise to the judgment of 19 July 2016, *Kotnik and Others* (C-526/14, EU:C:2016:570), concerned the conduct of the Commission alone in the area of State aid granted to the banking sector clearly has no effect on the relevance of the Court's reasoning for the purposes of the present cases, in particular as they too fall within the context of the financial crisis and they concern economic and monetary policy, which requires constant adjustment to reflect changes in the economic situation.

183 Consequently, the seventh ground of appeal must be dismissed in its entirety.

Eighth ground of appeal

Arguments of the parties

184 By their eighth ground of appeal, the appellants submit that the General Court erred in law by finding that the principle of equal treatment had not been infringed on account of the defendants' acts and conduct.

185 In the first place, they contend that shareholders and uninsured depositors of Laïki and BoC were discriminated against vis-à-vis the creditor of Laïki whose claims arise from ELA, that is to say, the CBC. In particular, the debt arising from ELA is the result of the defendants' unlawful conduct, as the ECB authorised the generous grant of ELA for a number of years and required its repayment at short notice on the basis of its unlawful decision of 21 March 2013. Furthermore, the appellants criticise the General Court for having based its reasoning, in paragraph 449 of the first judgment under appeal and paragraph 448 of the second judgment under appeal, on the judgments of 7 October 2015, *Accorinti and Others* v *ECB* (T-79/13, EU:T:2015:756, paragraph 92), and of 24 January 2017, *Nausicaa Anadyomène and Banque d'escompte* v *ECB* (T-749/15, not published, EU:T:2017:21, paragraphs 108 and 109), although they related to the purchase of government securities and not to bank deposits.

186 In the second place, the appellants suffered indirect discrimination on grounds of nationality vis-à-vis depositors with the Greek branches. In particular, first, that discrimination is contrary to freedom of establishment. Second, a vague risk that a haircut in the deposits held in the Greek branches might

have triggered a deposit flight in Greece cannot justify discriminatory treatment. Third, the support given by the Euro Group to the PSI despite the risk of contagion to Laïki and BoC shows that the appellants are discriminated against vis-à-vis depositors and shareholders of Greek banks.

187 The appellants argue, in the third place, that they are discriminated against vis-à-vis depositors whose deposits did not exceed EUR 100 000. First of all, they contend that, according to the European Court of Human Rights, it is not just to use the threshold of EUR 100 000 as a differentiating factor in relation to imposing a haircut on the value of bonds (judgment of the ECtHR of 21 July 2016, *Mamatas and Others v. Greece*, CE:ECHR:2016:0721JUD006306614, paragraph 137), and the same applies to deposits. Next, the distinction drawn by Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (OJ 1994 L 135, p. 5) between deposits below EUR 100 000 and those above that amount is irrelevant since the possibility of pursuing claims for repayment arising from deposits above EUR 100 000 was denied to the appellants. Finally, the defendants failed to comply with that directive in that the conditionality measures that the Euro Group decided on at its meeting of 16 March 2013 provided that deposits up to EUR 100,000 would incur a loss of 6.75%.

188 In the fourth place, the appellants plead that they were discriminated against vis-à-vis the depositors and shareholders of banks of the other MSCE which benefited from financial assistance. They state inter alia that the amount of that assistance was, on each occasion, greater than that of the FAF granted to the Republic of Cyprus and it was granted under less onerous terms.

189 Finally, in the fifth place, the General Court wrongly held that the appellants were in a different situation from that of the members of the Cypriot cooperative banking sector as Laïki and BoC were insolvent, when, first, that insolvency was precipitated by the conduct of the defendants. Second, inasmuch as their insolvency was not determined by an administrative or judicial authority, the vague concept of 'insolvency' cannot serve as an objective justification for the difference in treatment that the appellants suffered. Furthermore, the General Court was not justified in relying on the IMF report of May 2013 as it postdates the adoption of the measures referred to in paragraph 124 of the present judgment.

190 The defendants contest those various arguments.

Findings of the Court

191 The general principle of equal treatment, as a general principle of EU law, requires comparable situations not to be treated differently and different situations not to be treated in the same way, unless such treatment is objectively justified (judgment of 6 June 2019, *P. M. and Others*, C-264/18, EU:C:2019:472, paragraph 28 and the case-law cited).

192 A breach of the principle of equal treatment as a result of different treatment is based on the premiss that the situations concerned are comparable, having regard to all the elements which characterise them (see, inter alia, judgment of 16 December 2008, *Arcelor Atlantique et Lorraine and Others*, C-127/07, EU:C:2008:728, paragraph 25).

193 As regards, in the first place, the complaint alleging discrimination between, on the one hand, the appellants and, on the other, the creditor of Laïki whose claims arise from ELA, that is to say, the CBC, the General Court pointed out, in paragraph 448 of the first judgment under appeal and paragraph 447 of the second judgment under appeal, that, as the appellants had themselves acknowledged, the provision of ELA falls within the competence of the national central banks, which meant that, in this instance, only the CBC could grant ELA to Laïki and, therefore, had a claim against the latter.

194 In paragraph 449 of the first judgment under appeal and paragraph 448 of the second judgment under appeal, the General Court explained that, unlike the uninsured depositors in the banks concerned and the shareholders of BoC, who act solely in their private interests, a Eurosystem central bank is guided in its decision-making exclusively by public interest objectives, as was clear from the judgments of 7 October 2015, *Accorinti and Others* v *ECB* (T-79/13, EU:T:2015:756, paragraph 92), and of 24 January 2017, *Nausicaa Anadyomène and Banque d'escompte* v *ECB* (T-749/15, not published, EU:T:2017:21, paragraphs 108 and 109).

195 After establishing, in paragraph 450 of the first judgment under appeal and paragraph 449 of the second judgment under appeal, that the CBC acquired the claim arising from ELA in order to contribute to the general interest objective consisting in ensuring the stability of the Cypriot financial system and of the euro area as a whole, the General Court concluded, in paragraph 452 of the first judgment under appeal and paragraph 451 of the second judgment under appeal, that the uninsured depositors of the banks concerned and the shareholders of BoC, on the one hand, and the CBC, on the other, were not in a comparable situation, and the principle of equal treatment had not therefore been infringed.

196 Those findings are not vitiated by any error of law, having regard to the case-law set out in paragraphs 191 and 192 of the present judgment.

197 Nor can the General Court be criticised for having based its reasoning on the judgments cited in paragraph 194 of the present judgment on the ground that they related to the purchase of Greek State bonds and not to bank deposits. As the ECB has correctly observed, irrespective of the nature of the measures at issue for restructuring public debt at issue, a central bank of the European System of Central Banks (ESCB) which pursues a public interest objective is in a different situation from that of both private investors holding claims against the State and bank depositors such as the appellants.

198 In the second place, so far as concerns the complaint alleging discrimination between the appellants, on the one hand, and depositors with the Greek branches, on the other, the appellants submit that such discrimination is contrary to freedom of establishment. In that regard, it need only be stated that they raise this complaint for the first time before the Court of Justice, with the result that it must be rejected as inadmissible (see, to that effect, judgments of 13 December 2017, *Telefónica* v *Commission*, C-487/16 P, not published, EU:C:2017:961, paragraph 84, and of 26 September 2018, *Philips and Philips France* v *Commission*, C-98/17 P, not published, EU:C:2018:774, paragraph 42).

199 As to the remainder, the appellants' arguments concern, without any distortion being pleaded, the findings of fact and the assessment of the evidence – set out by the General Court in paragraphs 467, 476 and 477 of the first judgment under appeal and paragraphs 466, 475 and 476 of the second judgment under appeal – relating to a risk, to which a haircut of the deposits in the Greek branches would have given rise, of deposit flight in Greece, justifying the alleged discrimination, and to the factual context in which the Euro Group had encouraged the PSI. Therefore, for the reasons stated in paragraphs 127 and 128 of the present judgment, those arguments must be rejected as inadmissible.

200 As regards, in the third place, the complaint alleging discrimination between the appellants, on the one hand, and depositors in the banks concerned whose deposits did not exceed EUR 100 000, on the other, it must be stated, first, that the conclusion of the European Court of Human Rights in its judgment of 21 July 2016, *Mamatas and Others v. Greece* (CE:ECHR:2016:0721JUD006306614, paragraph 137), that it would not be just to use the threshold of EUR 100 000 as a differentiating factor so far as concerns the imposition of a haircut on the value of bonds was drawn with regard to the particular status of bondholder held by the natural or legal persons at issue and not that of bank depositor, which is covered by Directive 94/19.

201 In that last connection, and so far as concerns, second, the arguments set out by the appellants in order to contest the relevance of that directive in the context of the present cases, it must be held that those arguments do not meet the requirements, noted in paragraph 127 of the present judgment, under which the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal must be indicated precisely, and they must therefore be rejected as inadmissible.

202 As regards, in the fourth place, the complaint alleging discrimination between, on the one hand, the appellants and, on the other, the depositors and shareholders of banks of the MSCE other than the Republic of Cyprus which benefited from financial assistance before that latter Member State, the General Court observed, in paragraph 490 of the first judgment under appeal and paragraph 489 of the second judgment under appeal, that the measures to which the grant of financial assistance by the ESM may be subject in order to resolve the financial difficulties encountered by a Member State facing the need to recapitalise its banking system are likely to vary significantly from case to case depending on a range of circumstances other than the size of the assistance in relation to the size of that State's economy. The General Court stated, in those paragraphs of the judgments under appeal, that those factors may include, in particular, the economic situation of the recipient State, the prospects of the banks concerned becoming economically viable again, the reasons which led to the difficulties encountered by them, including, where appropriate, the excessive size of the banking sector of the recipient State in relation to its national economy, the development of the international economic environment or an increased likelihood of future ESM interventions (or interventions of other international organisations, bodies and institutions of the European Union or States) in support of other States in difficulty which can require a preventive limitation of amounts dedicated to each intervention.

203 The appellants' arguments are not capable of demonstrating that this appraisal by the General Court is misconceived. First, the fact, highlighted by the appellants, that 'the economic function of a deposit [or of a share] in one [euro area] State is comparable to that in any other' does not mean in the slightest that the depositors and shareholders of the Republic of Cyprus are in a situation comparable to that of the depositors and shareholders of the other MSCE which benefited from financial assistance provided by the ESM before the Republic of Cyprus, as the factors to be taken into consideration for the purposes of the comparative analysis are related to the Member States themselves.

204 Second, it is immaterial that, as the appellants maintain, they 'could in no way be held responsible for whatever reasons might have led [the Republic of] Cyprus to be in need of financial assistance'. Not only does this fact not affect the reasoning set out by the General Court when it appraised whether there was any discrimination between the appellants, on the one hand, and the depositors and shareholders of banks of the MSCE other than the Republic of Cyprus which had previously benefited from financial assistance provided by the ESM, on the other, but, above all, it does not prevent the content of the measures to which that assistance may be subject from being dictated by considerations relating exclusively to the financial difficulties encountered by the MSCE seeking the assistance.

205 Third, the appellants' argument that the Republic of Cyprus received the smallest amount of assistance under the harshest terms merely reproduces an argument already set out before the General Court and must therefore, in the light of the case-law recalled in paragraph 127 of the present judgment, be rejected as inadmissible.

206 Finally, in the fifth place, as regards the complaint alleging discrimination between the appellants, on the one hand, and the members of the Cypriot cooperative banking sector, on the other, it must be stated that the criticisms set out by the appellants relating to alleged insolvency of the banks concerned precipitated by the conduct of the defendants and to the lack of recourse to an administrative or judicial decision for the purpose of determination of that insolvency are too imprecise and not sufficiently substantiated for the Court to be able to exercise its power of review in

respect of the judgments under appeal. Furthermore, those criticisms relate, to a large extent, to assessments of fact. In accordance with the case-law cited in paragraph 128 of the present judgment, such assessments cannot – unless the facts at issue have been distorted, which, however, is not pleaded in this instance – fall within the scope of the review that the Court is called upon to conduct on appeal.

207 Furthermore, as regards the argument to the effect that the General Court could not base its reasoning in paragraph 503 of the first judgment under appeal and paragraph 502 of the second judgment under appeal on the IMF report of May 2013, it must be pointed out, as the Commission has correctly observed, that the General Court referred to that report solely in order to corroborate its conclusion that the central Cypriot body – the Co-operative Central Bank – and the credit institutions of the cooperative banking sector, unlike the banks concerned, were not insolvent. It reached that conclusion, in those paragraphs of the judgments under appeal, by relying upon matters that the appellants do not contest, namely, first, Section 3.1 of the disclosures made by that body in May 2013 under pillar 3 of the 'Basel framework' intended to guarantee minimum capital requirements in order to ensure the financial soundness of banks and, second, the ECB's replies at the hearing before the General Court, with the result that that argument must be rejected as ineffective.

208 It follows that the eighth ground of appeal must be dismissed.

209 As all the grounds of appeal have been rejected, the appellants' appeals must be dismissed in their entirety.

The actions before the General Court

210 In accordance with the second sentence of the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, if the decision of the General Court is set aside the Court of Justice may itself give final judgment in the matter, where the state of the proceedings so permits.

211 That is the case here.

212 First, it is clear from the grounds set out in paragraphs 78 to 97 of the present judgment that the Euro Group is not an EU entity established by the Treaties whose acts or conduct might form the subject matter of an action to establish non-contractual liability of the European Union under the second paragraph of Article 340 TFEU.

213 Therefore, the Council's pleas of inadmissibility must be upheld in so far as they relate to the actions of the applicants at first instance in Cases C-597/18 P and C-598/18 P directed against the Euro Group.

214 Second, it has been found in paragraph 116 of the present judgment that, although Article 2(6)(b) of Decision 2013/236 required the Republic of Cyprus to maintain or continue to implement the conversion of the uninsured deposits in BoC into shares, it did not, however, deprive the Cypriot authorities of a significant margin of discretion for the purpose of defining the specific rules for that conversion. Therefore, the harm allegedly suffered by the appellants on account of the conversion would result, in any event, not from that provision but from the implementing measures adopted by the Republic of Cyprus in order to carry out the conversion.

215 Consequently, the pleas of inadmissibility raised by the Council in relation to Article 2(6)(b) of Decision 2013/236 must be upheld.

216 It follows that the actions of the applicants at first instance in Cases C-597/18 P and C-598/18 P, in so far as they relate to the Euro Group, and those of the appellants directed against Article 2(6)(b) of Decision 2013/236, must be dismissed as inadmissible.

Costs

217 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded or where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to the costs.

218 Under Article 138(1) of the Rules of Procedure, which applies to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

219 In the present instance, as regards the appeals brought in Cases C-597/18 P and C-598/18 P, since the applicants at first instance in those cases have been unsuccessful, they must, in accordance with the forms of order sought by the Council and the Commission, be ordered to bear their own costs and to pay those incurred by the Council and the Commission in the appeal proceedings and the proceedings before the General Court.

220 So far as concerns the appeals brought in Cases C-603/18 P and C-604/18 P, since the Council, the Commission and the ECB have applied for costs and the appellants have been unsuccessful, the latter must be ordered to bear their own costs and to pay those incurred by those institutions in the appeal proceedings and the proceedings before the General Court.

221 In accordance with Article 140(1) of the Rules of Procedure, which applies to appeal proceedings by virtue of Article 184(1) thereof, Member States and institutions which have intervened in the proceedings are to bear their own costs. The Republic of Finland, which has intervened in the present appeals, must therefore bear its own costs relating to the appeal proceedings.

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

1. **Sets aside the judgments of the General Court of the European Union of 13 July 2018, *K. Chrysostomides & Co. and Others* v *Council and Others* (T-680/13, EU:T:2018:486), and of 13 July 2018, *Bourdouvali and Others* v *Council and Others* (T-786/14, not published, EU:T:2018:487), inasmuch as they dismiss the pleas of inadmissibility raised by the Council of the European Union in so far as those pleas relate to the actions, brought in those cases, directed against the Euro Group and Article 2(6)(b) of Council Decision 2013/236/EU of 25 April 2013 addressed to Cyprus on specific measures to restore financial stability and sustainable growth;**

2. **Declares that the actions brought at first instance in Cases T-680/13 and T-786/14 are inadmissible in so far as they are directed against the Euro Group and Article 2(6)(b) of Decision 2013/236;**

3. **Dismisses the main appeals brought in Cases C-603/18 P and C-604/18;**

4. **Orders Dr. K. Chrysostomides & Co. LLC, Agroton plc, Ms Joanna Andreou, Ms Kyriaki Andreou, Bundeena Holding plc, Ms Henrietta Jindra Burton, C & O Service & Investment Ltd, C.G. Christofides Industrial Ltd, Mr Phidias Christodoulou, Ms Georgia Phanou-Christodoulou, Mr Christakis Christofides, Ms Theano Chrysafi, Mr Andreas Chrysafis, Mr Dionysios Chrysostomides, Ms Eleni K. Chrysostomides, Ms Eleni D. Chrysostomides, D & C Construction and Development Ltd, Ms Chrystalla Dekatris, Mr Constantinos Dekatris, Dr. K. Chrysostomides and Co., Ms Emily Dragoumi, Ms Parthenopi Dragoumi, Mr James Droushiotis, Eastvale Finance Ltd, Mr Nicos Eliades, Ms Tereza Eliades, Goodway Alliance Ltd, Mr Christos Hadjimarkos, Johnson Cyprus Employees Provident Fund, Kalia Georgiou LLC, Komposit Ltd, Mr Platon M. Kyriakides, L.kcar Intermetal and Synthetic Ltd, Lois Builders Ltd, Ms Athena Mavronicola-Droushiotis,**

Medialgeria Monitoring and Consultancy Ltd, Neita International Inc., Ms Sophia Nicolatos, Paris & Barcelona Ltd, Ms Louiza Patsiou, Probus Mare Marine Ltd, Provident Fund of the Employees of Osel Ltd, R.A.M. Oil Cyprus Ltd, Steelway Alliance Ltd, Tameio Pronoias Prosopikou Genikon, The Cyprus Phassouri Estates Ltd, The Prnses Ltd, Mr Christos Tsimon, Ms Nafsika Tsimon, Unienergy Holdings Ltd and Ms Julia Justine Jane Woods, and also Ms Eleni Pavlikka Bourdouvali, Mr Georgios Bourdouvalis, Ms Nikolina Bourdouvali, Coal Energy Trading Ltd, Mr Christos Christofi, Ms Elisavet Christofi, Ms Athanasia Chrysostomou, Mr Sofoklis Chrysostomou, Clearlining Ltd, Mr Alan Dimant, Dodoni Ependyseis Chartofylakou Dimosia Etaireia Ltd, Dtek Holding Ltd, Dtek Trading Ltd, Elma Holdings pcl, Elma Properties & Investments pcl, Ms Agrippinoulla Fragkoudi, Mr Dimitrios Fragkoudis, Frontal Investments Ltd, Mr Costas Gavrielides, Ms Eleni Harou, Ms Theodora Hasapopoullou, Ms Gladys Iasonos, Mr Georgios Iasonos, Jupiter Portfolio Investments pcl, Mr George Karkousi, Lend & Seaserve Ltd, Liberty Life Insurance pcl, Michail P. Michailidis Ltd, Mr Michalakis Michaelides, Ms Rena Michael Michaelidou, Mr Akis Micromatis, Mr Erginos Micromatis, Mr Harinos Micromatis, Mr Alvinos Micromatis, Mr Plotinos Micromatis, Nertera Investments Ltd, Mr Andros Nicolaides, Ms Melina Nicolaides, Ms Ero Nicolaidou, Mr Aris Panagiotopoulos, Ms Nikolitsa Panagiotopoulou, Mr Lambros Panayiotides, Ms Ersi Papaefthymiou, Mr Kostas Papaefthymiou, Restful Time Co., Mr Alexandros Rodopoulos, Seatec Marine Services Ltd, Sofoklis Chrisostomou & Yioí Ltd, Mr Marinos C. Soteriou, Sparotin Ltd, Ms Miranda Tanou and Ms Myria Tanou, to bear their own costs and to pay those incurred by the Council of the European Union and the European Commission relating both to the proceedings at first instance and to the proceedings connected with the appeals in Cases C-597/18 P and C-598/18 P;

5. **Orders Dr. K. Chrysostomides & Co. LLC, Agroton plc, Ms Joanna Andreou, Ms Kyriaki Andreou, Ms Henrietta Jindra Burton, C & O Service & Investment Ltd, C.G. Christofides Industrial Ltd, Mr Christakis Christofides, Ms Theano Chrysafi, Mr Andreas Chrysafis, Mr Dionysios Chrysostomides, Ms Eleni K. Chrysostomides, Ms Eleni D. Chrysostomides, D & C Construction and Development Ltd, Ms Chrystalla Dekatris, Mr Constantinos Dekatris, Dr. K. Chrysostomides and Co., Ms Emily Dragoumi, Ms Parthenopi Dragoumi, Eastvale Finance Ltd, Mr Nicos Eliades, Ms Tereza Eliades, Goodway Alliance Ltd, Mr Christos Hadjimarkos, Johnson Cyprus Employees Provident Fund, L.kcar Intermetal and Synthetic Ltd, Lois Builders Ltd, Medialgeria Monitoring and Consultancy Ltd, Neita International Inc., Paris & Barcelona Ltd, Provident Fund of the Employees of Osel Ltd, R.A.M. Oil Cyprus Ltd, Steelway Alliance Ltd, Tameio Pronoias Prosopikou Genikon, The Cyprus Phassouri Estates Ltd, Mr Christos Tsimon, Ms Nafsika Tsimon and Ms Julia Justine Jane Woods, and also Ms Eleni Pavlikka Bourdouvali, Mr Georgios Bourdouvalis, Ms Nikolina Bourdouvali, Mr Christos Christofi, Ms Elisavet Christofi, Clearlining Ltd, Dtek Holding Ltd, Dtek Trading Ltd, Ms Agrippinoulla Fragkoudi, Mr Dimitrios Fragkoudis, Frontal Investments Ltd, Mr Costas Gavrielides, Ms Eleni Harou, Ms Theodora Hasapopoullou, Ms Gladys Iasonos, Mr Georgios Iasonos, Mr George Karkousi, Lend & Seaserve Ltd, Michail P. Michailidis Ltd, Mr Michalakis Michaelides, Ms Rena Michael Michaelidou, Mr Andros Nicolaides, Ms Melina Nicolaides, Ms Ero Nicolaidou, Mr Aris Panagiotopoulos, Ms Nikolitsa Panagiotopoulou, Mr Alexandros Rodopoulos, Seatec Marine Services Ltd and Mr Marinos C. Soteriou, to bear their own costs and to pay those incurred by the Council of the European Union, the European Commission and the European Central Bank (ECB) relating both to the proceedings at first instance and to the proceedings connected with the appeals in Cases C-603/18 P and C-604/18 P;**

6. **Orders the Republic of Finland to bear its own costs incurred in the context of the present appeals.**

Lenaerts Silva de Lapuerta Arabadjiev

Prechal	Vilaras	Ilešič
Bay Larsen	Kumin	Juhász
Rodin	Biltgen	Jarukaitis
Jääskinen		

Delivered in open court in Luxembourg on 16 December 2020.

A. Calot Escobar	K. Lenaerts
Registrar	President