

**Action brought on 3 March 2021 — Malacalza Investimenti and Malacalza v ECB****(Case T-134/21)**

(2021/C 163/53)

*Language of the case: Italian***Parties**

*Applicants:* Malacalza Investimenti Srl (Genoa, Italy) and Vittorio Malacalza (Genoa) (represented by: L. Boggio, S. Carbone and A. D'Angelo, lawyers)

*Defendant:* European Central Bank

**Form of order sought**

The applicants claim that the Court should:

- order the European Central Bank to pay compensation for damages:
- to Malacalza Investimenti s.r.l., in the amount of EUR 870 525 670, or any other greater or lesser amount which is deemed fair, to be determined, if necessary, *ex aequo et bono*;
- to Mr Vittorio Malacalza, in the amount of EUR 4 546 022, or any other greater or lesser amount which is deemed fair, to be determined, if necessary, *ex aequo et bono*;
- to both applicants in an amount equal to all the costs and fees of the proceedings.

**Pleas in law and main arguments**

The subject matter of this case is an application under Articles 268 and 340 TFEU for compensation for harm suffered by the applicants as a result of various actions of ECB, relating to the exercise of its supervisory functions over Banca Carige S.p.A. (Carige) and consisting both of failures to act when it should have done so and harmful actions.

In support of the action, the applicants rely on the following pleas in law.

1. First plea in law, alleging that the European Central Bank (ECB) participated in creating a picture of the bank's situation and prospects on the basis of which shareholders felt confident to invest significant resources to purchase Carige shares and subscribe to increases in capital and pay for them; it subsequently undermined that confidence by its conduct and contradictory decisions, imposing unjustified, disproportionate and also, in other respects, unlawful measures, which form part of overall unlawful and harmful conduct.

In that regard, the applicants refer, *inter alia* and in particular, to: (i) the confidence in Carige's situation created by the increases in capital of 2014 and 2015; (ii) the subsequent undermining of that confidence as a result of ECB's conduct and measures; (iii) the unlawfulness of those measures and the unlawfulness of the overall conduct of which they are part; (iv) the confidence in Carige's situation created by the increase in capital of 2017; (v) the subsequent undermining of that confidence as a result of ECB's conduct and measures; (vi) the unlawfulness of those measures and the unlawfulness of the overall conduct of which they are part; (vii) the unlawfulness of ECB's measures — causing serious harm consisting in loss of value of the shares held by Carige's shareholders — which would have imposed the divestiture of non-performing loans, in a way and to an extent which are unjustified, disproportionate and contrary to the principle of equal treatment and other principles.

2. Second plea in law, alleging that ECB had unduly influenced and interfered in the Bank's governance processes, promoting an autocratic management by the managing directors, contrary to company law rules and the normal order of a collegiate administrative body, in order to ensure the implementation of improperly imposed measures, and also hindering a response to the management's unlawful and harmful managerial practices, and creating weakness for the Bank.
3. Third plea in law, alleging that the Bank contributed to the creation of the conditions on which it then based its unlawful decision to put the Bank under special administration and, by that conduct and subsequent conduct, also contributed to the unlawful increase in capital with the exclusion of pre-emption rights, approved in 2019, which caused a significant loss in value of the shares of the shareholders.

4. Fourth plea in law, alleging that the reasons for ECB's liability relate to the general clause set out in paragraphs 2 and 3 Article 340 of the Treaty on the Functioning of the European Union (TFEU) and the fact that ECB's conduct and measures conflict, in several aspects, with the duties inherent to its supervisory functions, including in respect of the safeguard of the sound and prudent management of banks, and to the infringement of the principles of protection of property, proportionality, good administration, equality, impartiality and equal treatment, transparency, good faith and protection of legitimate expectations, with particular regard to Articles 17, 20 and 41 of the Charter of Fundamental Rights of the European Union, Article 5(4) of the Treaty on the European Union and Article 16 of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ 2013 L 287, p. 63).
5. Fifth plea in law, based on a complaint, concerning in particular the applicant Vittorio Malacalza, relating to actions and reasons which are specifically inherent to his position as former manager and Vice-President of Carige.

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**Action brought on 11 March 2021 — El Corte Inglés v EUIPO — Rimex Trading (UNK UNIK)**

**(Case T-144/21)**

(2021/C 163/54)

*Language in which the application was lodged: Spanish*

**Parties**

*Applicant:* El Corte Inglés, SA (Madrid, Spain) (represented by: J.L. Rivas Zurdo, lawyer)

*Defendant:* European Union Intellectual Property Office (EUIPO)

*Other party to the proceedings before the Board of Appeal:* Rimex Trading (Sofía, Bulgaria)

**Details of the proceedings before EUIPO**

*Applicant for the trade mark at issue:* Other party to the proceedings before the Board of Appeal

*Trade mark at issue:* Application for the European Union figurative mark UNK UNIK — Application for registration No 17 940 710

*Procedure before EUIPO:* Opposition proceedings

*Contested decision:* Decision of the Fifth Board of Appeal of EUIPO of 10 December 2020 in Case R 2889/2019-5

**Form of order sought**

The applicant claims that the Court should:

- annul the contested decision in so far as in rejecting the opponent's appeal, it confirmed the Opposition Division's decision rejecting Opposition B 3 069 013 and granting EU trade mark No 17 940 710 UNK UNIK (figurative).
- order the party or parties opposing this action to pay the costs.

**Pleas in law**

Infringement of Article 8(1)(b) and 8(2)(c) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

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