



C/2023/959

27.11.2023

**Appeal brought on 11 September 2023 by Vincenzo D'Agostino and Dafin Srl against the order of the General Court (Fourth Chamber) delivered on 25 July 2023 in Case T-424/22, D'Agostino and Dafin v ECB**

**(Case C-566/23 P)**

(C/2023/959)

*Language of the case: Italian*

**Parties**

*Appellants:* Vincenzo D'Agostino, Dafin Srl (represented by: M. De Siena, avvocato)

*Other party to the proceedings:* European Central Bank

**Form of order sought**

The appellants claim that the order of the General Court of 25 July 2023 in Case T-424/22 dismissing the action brought by Mr Vincenzo D'Agostino, in his own name and in his capacity as sole director of Dafin Srl against the European Central Bank should be set aside, and, consequently, that the form of order sought at first instance should be granted, and thus claim the Court of Justice should:

- (I) find and declare that the European Central Bank, represented by President Christine Lagarde, is non-contractually liable:
  - (I.a) for having caused the financial securities owned by Mr Vincenzo D'Agostino, filed under Annex 3 in the application at first instance and denominated as SI FTSE.COPERP, to suffer a loss amounting to the overall value of the capital invested, equal to EUR 450 596,28, as the famous statement made by Ms Christine Lagarde, as President of the ECB, on 12 March 2020 that 'we are not here to close spreads. This is not the function ... of the ECB' caused a significant fall in the value of securities in all markets worldwide, including a fall of 16,92 % at the Borsa di Milano, quantified in a percentage that has never been seen before in the history of that institution and other world stock exchanges; by that sentence, spoken during a press conference to the entire world, she communicated that the ECB would no longer support the value of securities issued by distressed countries and, therefore, communicated a complete shift in the monetary policy adopted by the ECB while headed by the Mario Draghi, whose mandate ended in November 2019;
  - (I.b) for having caused, by that conduct, and as a result of the sharp drop in the Borsa di Milano index referred to above, a decrease in the value of the appellant's assets;
  - (I.c) for having required the appellant, as a result of the substantial and significant reduction in the value of his assets, in order to offset that reduction in his assets, and as guarantor for the company Dafin Srl in respect of the credit line made available to that company by Banca Fideuram SpA, to extinguish the part of that credit line that had been used, by obtaining the necessary funds through selling other securities owned by him in a short time, thus suffering a loss of EUR 2 534 422,16 in 2020 and subsequently of EUR 336 517,30 between January 2021 and 15 April 2021 and, therefore, a total loss of EUR 2 870 939,30;
  - (I.d) for causing material damage in the form of loss of profit in the amount of EUR 1 013 074,00.
  - (I.e) for having consequently caused a total amount of material damage in the amount of EUR 4 334 609,28.

As a consequence:

- (II) order the European Central Bank, represented by the President *pro tempore*, to pay compensation to the appellant, Mr Vincenzo D'Agostino, for the material damage made up of the consequential damage and the loss of earnings, for the non-material damage and for the damage resulting from loss of chance, assessed according to the criteria set out in the relevant sections and paragraphs of the present appeal, by the payment of the following amounts:
  - (II.1) EUR 4 334 609,28 by way of material damage;
  - (II.2) EUR 1 000 000,00 for non-material damage;
  - (II.3) and therefore to the overall payment of the sum of EUR 5 321 535,68

Together with default interest to be calculated from 12 March 2020, the date of the event that gave rise to the damage, to the date on which the compensation is actually paid.

- (III) In the alternative, order payment of amounts of different sizes to be assessed during the proceedings, to the extent that they are upheld by the Court, including by recourse to an expert's report to be obtained by the Court;
- (IV) order payment of the additional sum that the Court shall determine and assess to be equitable compensation for damage in the form of loss of chance.
- (V) in the alternative, refer the case back to the General Court.
- (VI) Order the defendant to pay the costs of the proceedings.

### **Grounds of appeal and main arguments**

In support of their appeal, the appellants allege, in the first place, that the General Court, in infringing the rights of the defence enshrined in Article 6 of the European Convention on Human Rights, denied them the right to reply to the defence lodged by the ECB, a right that the appellants intended to exercise by lodging a sworn technical report aimed at finding whether or not the significant decline in the indexes of the stock exchange and of the Milan stock exchange was due to the effects of the Covid pandemic, as maintained by the ECB, or, as maintained by the appellants, due to the statement made by the President of the ECB.

In the second place, the appellants show that in the appeal they had already provided proof of the existence of the causal link between the statement at issue, the decline in the index of the Milan Stock Exchange and the resulting loss of value of the appellant's securities, emphasising that it was a general belief, from the media coverage of the press conference made by the President of the ECB on 12 March 2020, the comments made in Italian and international newspapers as well as from the statements of the President of the Italian Republic, that the decline in the values of the stock exchanges was caused exclusively by the statement at issue made by the President of the ECB. Moreover, the initiative of the President of the ECB to apologise and amend the statement made denoted her own recognition of having caused extremely harmful consequences on the markets.

In the third place, the appellants dispute the General Court's statements in paragraph 16 to 33 of the order under appeal, according to which there was no non-contractual liability on the part of the ECB inasmuch as, in the case at hand, the ECB had not infringed any rule of law intended to confer rights on individuals. The appellants submit that the provisions relied on by them are institutional rules which define the powers of the various ECB bodies by conferring on them specific powers. They confer rights on individuals, in particular, the right to have the various bodies act in accordance with the institutional powers conferred on them by law, in accordance with the principle of legitimate expectations.

In the fourth place, in the alternative, the appellants submit that, should it be found that the rules infringed by the President of the ECB are not intended to confer rights on individuals, as stated by the General Court, the reasoning of that court cannot be accepted in so far as it is the result of a restrictive interpretation of Article 340 TFEU. That provision, like Article 2043 of the Codice civile (Italian Civil Code), does not in any way draw a distinction that favours rules that are designed to confer rights on individuals over other rules, by triggering a right to compensation on the part of the injured party exclusively where rules belonging to the first category have been infringed. Furthermore, the reasoning is at odds with the principles set out in the judgment of the General Court in Case T 868/16, in which it was held that non-contractual liability of the European Union may be said to exist in the presence of any unlawful conduct causing damage that is capable of establishing such liability.

In the fifth place, the appellant disputes the General Court's statement in paragraph 32 of the order under appeal, according to which the appellants, in arguing that the President of the ECB had abused her powers, failed to provide further details in respect of that argument in the application and had presented it solely as a consequence of the infringement of the provisions referred to in the application, not intended to confer rights on individuals. The appellants claim that abuse of power is 'the use of power in a way that is not consistent with the legal provisions' and arises where an EU institution departs from general principles such as fairness, good faith, or due care; in the appellants' submission, it is clear that, by making the statement complained of, the President of the ECB failed to observe the principle of fairness and of due care.

In the sixth place, the appellants complain that in paragraph 35 of the order, in relation to material damage alleged by them, the General Court makes a different representation of the facts from that referred to in the application, in which Mr Vincenzo D'Agostino showed that, as guarantor of Delfin Srl for the line of credit granted by Banca Fideuram, owing to the reduction in value of his own assets caused by the total loss of the value of the securities of SI FISTE COPERP, because of the collapse of the Milan Stock Exchange following the statement at issue, fearing a reaction from the bank, he had obtained funds to extinguish that line of credit, being forced to sell other securities owned by him at unfavourable prices and thus suffering additional capital loss.