

10. Tenth plea in law, alleging that the Commission committed multiple violations of the rights of defence of the applicant and failed to state reasons in the adoption of the Contested Regulation, given that the definitive disclosure on which it is based did not contain essential facts and considerations for the adoption of the definitive measures. The Commission also changed the period of validity of the measures without stating reasons while it did not allow the applicant to access to the non-confidential file in a timely manner nor did it allow sufficient time for the applicant to submit comments on the definitive disclosure.

Action brought on 24 May 2013 — Ledra Advertising v Commission and ECB

(Case T-289/13)

(2013/C 226/21)

Language of the case: English

Parties

Applicant: Ledra Advertising Ltd (Nicosia, Cyprus) (represented by: C. Paschalides, Solicitor, and A. Paschalides, lawyer)

Defendants: European Central Bank and European Commission

Form of order sought

The applicant claims that the Court should:

- Order compensation in the sum of EUR 958 920,00 on the basis that the conditions required under the Memorandum of Understanding of 26 April 2013 between Cyprus and the Defendants at paragraphs 1.23 to 1.27 were pregnant with requirements in flagrant violation of a superior law for the protection of the individual, namely: article 17 of the Charter of Fundamental Rights of the European Union and article 1 of Protocol 11 of the European Convention of Human Rights;
- Declare the relevant conditions void and order an urgent review of the financial assistance instruments under article 14 to 18 of the Treaty establishing the European Stability Mechanism ('ESM Treaty') pursuant to Article 19 in light of the court's judgment with a view to changes in order to comply with the judgment of the court; and
- To the extent that compensation under the first head of claim does not cater for the fact that the relevant conditions would stand annulled, an order for compensation for breach of article 263 TFEU.

Pleas in law and main arguments

In support of the action, the applicant relies on five pleas in law.

1. First plea in law, alleging that the relevant conditions in the Memorandum of Understanding were pregnant with requirements that were 'in flagrant violation of a superior rule of law for the protection of the individual' (!) because:

— The said rule of law is superior because it is a law contained the Charter and the ECHR;

— By Article 51(1) of the Charter and 6.2 TEU the defendants are obliged to respect and uphold fundamental rights guaranteed by the Charter and the ECHR; and

— Bank deposits are property within the meaning of the said article 17 of the Charter and article 1 of Protocol 11 of the ECHR.

2. Second plea in law, alleging that the violations below taken together were so extensive as to amount to a flagrant violation of a superior law, as follows:

— At the time the applicant was deprived of its bank deposits there were no 'conditions provided for by law' in place in the *acquis* dealing with deprivation of bank deposits contrary to the Charter and Protocol;

— The applicant was deprived of its deposits without 'fair compensation being paid in good time' contrary to article 17 of the Charter and article 1 of the Protocol;

— Deprivation of deposits is *prima facie* unlawful unless 'subject to the principle of proportionality... it is necessary and genuinely meets objectives of general interest recognised by the EU or the need to protect the rights and freedoms of others.' (?);

— The competing public interest in preventing panic and a run on the banking system, short and medium term, was not considered in evaluating the public interest under Article 17 of the Charter and Article 1 of the Protocol;

— The aim was not to damage or penalise Cyprus but to benefit it and the euro area by providing stability support and thereby alleviating not destabilising its financial institutions and economic viability; and

- There was no relationship of proportionality of the interference to a legitimate aim since by Article 3 of the ESM Treaty 2012 the genuine objective was 'to mobilise funding and provide stability support under strict conditionality... to the benefit of ESM Members which are experiencing or are threatened by severe financial problems, if indispensable to safeguard the euro area as a whole and of its member state' without paralysing its economy.
3. Third plea in law, alleging that deprivation of the applicant's deposits was not necessary or proportionate.
 4. Fourth plea in law, alleging that in the result the defendants caused the applicant to be deprived of its bank deposits because, but for the flagrant infringement, the applicant's bank deposits would have been protected by their rights under the Charter and Protocol with the result that the applicant's loss was sufficiently direct and foreseeable.
 5. Fifth plea in law, alleging that if the above submissions are well founded the relevant conditions fall to be declared void notwithstanding the relevant conditions were addressed to Cyprus, since they are of direct and individual concern to the applicant on the grounds that the relevant conditions and the manner of their implementation infringe the Treaty and/or a rule of law relating to its application and/or, to the extent that it is held that depriving the applicant's bank deposit undermined the rule of law contrary to Article 6.1 of the TEU, were a misuse of powers.

⁽¹⁾ See the judgment of 2 December 1971 in Case 5/71 Zuckerfabrik Schoepfenstedt v Council (1971) ECR 975

⁽²⁾ Article 52(1) of the Charter

Action brought on 24 May 2013 — CMBG v Commission and ECB

(Case T-290/13)

(2013/C 226/22)

Language of the case: English

Parties

Applicant: CMBG Ltd (Tortola, British Virgin Islands) (represented by: C. Paschalides, Solicitor, and A. Paschalides, lawyer)

Defendants: European Central Bank and European Commission

Form of order sought

The applicant claims that the Court should:

- Order compensation in the sum of EUR 1 999 121,60 on the basis that the conditions required under the Memorandum of Understanding of 26 April 2013 between Cyprus and the Defendants at paragraphs 1.23 to 1.27 were pregnant with requirements in flagrant violation of a superior law for the protection of the individual, namely: article 17 of the Charter of Fundamental Rights of the European Union and article 1 of Protocol 1 of the European Convention of Human Rights;
- Declare the relevant conditions void and order an urgent review of the financial assistance instruments under article 14 to 18 of the Treaty establishing the European Stability Mechanism ('ESM Treaty') pursuant to Article 19 in light of the court's judgment with a view to changes in order to comply with the judgment of the court; and
- To the extent that compensation under the first head of claim does not cater for the fact that the relevant conditions would stand annulled, an order for compensation for breach of article 263 TFEU.

Pleas in law and main arguments

In support of the action, the applicant relies on five pleas in law.

1. First plea in law, alleging that the relevant conditions in the Memorandum of Understanding were pregnant with requirements that were 'in flagrant violation of a superior rule of law for the protection of the individual' ⁽¹⁾ because:

— The said rule of law is superior because it is a law contained the Charter and the ECHR;

— By Article 51(1) of the Charter and 6.2 TEU the defendants are obliged to respect and uphold fundamental rights guaranteed by the Charter and the ECHR; and

— Bank deposits are property within the meaning of the said article 17 of the Charter and article 1 of Protocol 1 of the ECHR.