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- 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.
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 applicants were deprived of their 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 applicants were deprived of their 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.' <sup>(2)</sup>;
- 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 applicants' deposits was not necessary or proportionate.
4. Fourth plea in law, alleging that in the result the defendants caused the applicants to be deprived of their bank deposits because, but for the flagrant infringement, the applicants' bank deposits would have been protected by their rights under the Charter and Protocol with the result that the applicants' 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 each of the applicants 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 applicants' bank deposit undermined the rule of law contrary to Article 6.1 of the TEU, were a misuse of powers.
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- <sup>(1)</sup> See the judgment of 2 December 1971 in Case 5/71 Zuckerfabrik Schoepfenstedt v Council (1971) ECR 975
- <sup>(2)</sup> Article 52(1) of the Charter
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- Action brought on 27 May 2013 — Fialtor v Commission and ECB**
- (Case T-294/13)**
- (2013/C 226/26)
- Language of the case: English*
- Parties**
- Applicant:* Fialtor Ltd (Belize, Belize) (represented by: C. Paschalides, Solicitor, and A. Paschalides, lawyer)
- Defendant:* European Central Bank, European Commission

### Form of order sought

The applicant claims that the Court should:

- Order compensation in the sum of EUR 278 925,79 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' <sup>(1)</sup> 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.
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 their 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.' <sup>(2)</sup>;
  - 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.

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

<sup>(2)</sup> Article 52(1) of the Charter

**Action brought on 30 May 2013 — Adler Modemärkte v OHIM — Blufin (MARINE BLEU)**

**(Case T-296/13)**

(2013/C 226/27)

*Language in which the application was lodged: German*

**Parties**

*Applicant:* Adler Modemärkte AG (Haibach, Germany) (represented by: J. Plate and R. Kaase, lawyers)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)

*Other party to the proceedings before the Board of Appeal:* Blufin SpA (Carpi, Italy)

**Form of order sought**

The applicant claims that the Court should:

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 April 2013 in Case R 386/2012-2 due to incompatibility with Article 8(1)(b) of Regulation No 40/94 on the Community trade mark;
- Order OHIM to pay the costs including those incurred in the appeal proceedings.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* the applicant

*Community trade mark concerned:* the figurative mark including the word elements 'MARINE BLEU' for goods in Class 25 — Community trade mark application No 6 637 193

*Proprietor of the mark or sign cited in the opposition proceedings:* Blufin SpA

*Mark or sign cited in opposition:* the word mark 'BLUMARINE' for goods in Class 25

*Decision of the Opposition Division:* the opposition was rejected

*Decision of the Board of Appeal:* the appeal was upheld and the application was rejected

*Pleas in law:* Infringement of Article 8(1)(b) of Regulation No 40/94

**Action brought on 28 May 2013 — Nordex Holding/OHIM — Fontana Food (Taverna)**

**(Case T-302/13)**

(2013/C 226/28)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Nordex Holding A/S (Dronninglund, Denmark) (represented by: M. Kleis, lawyer)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)

*Other party to the proceedings before the Board of Appeal:* Fontana Food AB (Tyresö, Sweden)

**Form of order sought**

The applicant claims that the Court should:

- Annul the First Board of Appeal's decision of 21 March 2013 in Case R 2608/2011-1;
- Annul the Cancellation Division's decision of 21 October 2011 No 4891 C, which preceded the adoption of the contested decision;
- Order the Office to pay the costs, including those incurred in the appeal proceedings.

**Pleas in law and main arguments**

*Registered Community trade mark in respect of which a declaration of invalidity has been sought:* The figurative mark containing the word element 'Taverna'— Community trade mark registration No 5 466 909