



Reports of Cases

ORDER OF THE GENERAL COURT (First Chamber)

16 October 2014*

(Actions for annulment — Programme of stability support for Cyprus — Euro Group statement on the restructuring of the banking sector in Cyprus — Mistaken designation of defendant in the application — Inadmissibility)

In Case T-327/13,

Konstantinos Mallis, residing in Larnaka (Cyprus),

Elli Konstantinou Malli, residing in Larnaka,

represented by E. Efstathiou, K. Efstathiou and K. Liasidou, lawyers,

applicants,

v

European Commission, represented by B. Smulders, J.-P. Keppenne and M. Konstantinidis, acting as Agents,

and

European Central Bank (ECB), represented by A. Sáinz de Vicuña Barroso, N. Lenihan and F. Athanasiou, acting as Agents, assisted by W. Bussian, W. Devroe and D. Arts, lawyers,

defendants,

APPLICATION for the annulment of the Euro Group's statement of 25 March 2013 concerning the restructuring of the banking sector in Cyprus,

THE GENERAL COURT (First Chamber),

composed of H. Kanninen (Rapporteur), President, I. Pelikánová and E. Buttigieg, Judges,

Registrar: E. Coulon,

makes the following

* Language of the case: Greek.

Order

Background to the dispute

The ESM Treaty

- 1 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, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, 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 (Belgium). In accordance with Articles 1, 2 and 32(2) of the ESM Treaty, the Contracting Parties, that is to say, the Member States whose currency is the euro, established among themselves an international financial institution, the European Stability Mechanism (ESM), which is a legal person. The ESM Treaty entered into force on 27 September 2012.
- 2 Recital 1 of the preamble to the ESM Treaty reads:

'The European Council agreed on 17 December 2010 on the need for euro area Member States to establish a permanent stability mechanism. [The 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.'
- 3 Article 3 of the ESM Treaty describes the purpose of the ESM as follows:

'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.'
- 4 Article 4 of the ESM Treaty provides as follows:

'1. 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.

...

3. The adoption of a decision by mutual agreement requires the unanimity of the members participating in the vote. Abstentions do not prevent the adoption of a decision by mutual agreement.

4. By way of derogation from paragraph 3, an emergency voting procedure shall be used where the Commission and the [European Central Bank] both conclude that a failure to urgently adopt a decision to grant or implement financial assistance, as defined in Articles 13 to 18, would threaten the economic and financial sustainability of the euro area. ...'

- 5 Article 5(3) of the ESM Treaty provides that '[t]he Member of the European Commission in charge of economic and monetary affairs and the President of the [European Central Bank], 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'.
- 6 Article 6(2) of the ESM Treaty states that '[t]he Member of the European Commission in charge of economic and monetary affairs and the President of the [European Central Bank] may appoint one observer each [to the ESM Board of Directors]'.
- 7 Article 12 of the ESM Treaty defines the principles governing the provision of stability support and states, in paragraph 1 thereof:

'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 macroeconomic adjustment programme to continuous respect of pre-established eligibility conditions.'

- 8 The procedure for granting stability support to an ESM Member is described in Article 13 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. On receipt of such a request, the Chairperson of the Board of Governors shall entrust the European Commission, in liaison with the [European Central Bank], with the following tasks:

- (a) to assess the existence of a risk to the financial stability of the euro area as a whole or of its Member States, unless the [European Central Bank] has already submitted an analysis under Article 18(2);
- (b) to assess whether public debt is sustainable. Wherever appropriate and possible, such an assessment is expected to be conducted together with the [International Monetary Fund];
- (c) to assess the actual or potential financing needs of the ESM Member concerned.

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 European Commission — in liaison with the [European Central Bank] and, wherever possible, together with the [International Monetary Fund] — 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 EU law, including any opinion, warning, recommendation or decision addressed to the ESM Member concerned.

4. The European 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 European Commission — in liaison with the [European Central Bank] and, wherever possible, together with the [International Monetary Fund] — shall be entrusted with monitoring compliance with the conditionality attached to the financial assistance facility.'

The financial difficulties of the Republic of Cyprus and the measures initially adopted

- 9 During the early part of 2012, certain banks established in Cyprus, including Cyprus Popular Bank Public Co. Ltd (Laïki), became insolvent. The Republic of Cyprus considered it necessary for them to be recapitalised and, to that end, applied to the President of the Euro Group for financial assistance from the European Financial Stability Facility (EFSF) or the ESM.
- 10 In a statement dated 27 June 2012, the Euro Group indicated that the financial assistance requested would be provided by either the EFSF or the ESM in the context of a macroeconomic adjustment programme to be defined in a memorandum of understanding to be negotiated between the European Commission together with the European Central Bank (ECB) and the International Monetary Fund (IMF), on the one hand, and the Cypriot authorities, on the other.
- 11 The Republic of Cyprus and the other Member States whose currency is the euro reached a policy agreement on a draft memorandum of understanding in March 2013. In a statement dated 16 March 2013, the Euro Group welcomed that agreement and referred to a number of anticipated adjustment measures, including the creation of a tax on bank deposits. The Euro Group indicated that, against that background, it considered that the grant of financial assistance to safeguard financial stability in the Republic of Cyprus and the euro area was, in principle, warranted and called on the parties concerned to expedite the negotiations that were underway.
- 12 On 18 March 2013, the Republic of Cyprus ordered the banks to close on the business days 19 and 20 March 2013. In a statement made the same day, the President of the Euro Group stated that the tax on bank deposits, together with the financial assistance requested, would be used to restore the viability of the Cypriot banking system and hence safeguard financial stability in Cyprus. Nevertheless, he stated that, in the Euro Group's view, small depositors should be treated differently from large depositors and reaffirmed the importance of fully securing deposits of less than EUR 100 000. Lastly, on behalf of the Euro Group, the President encouraged the Cypriot authorities and the Cypriot Parliament to implement the agreed measures rapidly.
- 13 The Cypriot authorities decided to postpone the bank closure to 28 March 2013, in order to avoid a run on the banks.
- 14 On 19 March 2013, the Cypriot Parliament rejected the draft law presented by the Cypriot Government on the creation of a tax on all bank deposits in Cyprus. The Cypriot Government then drew up a new draft law providing solely for the restructuring of two banks, Trapeza Kyprou Dimosia Etairia Ltd (BoC) and Laïki.
- 15 On 22 March 2013, the Cypriot Parliament adopted the Peri exiýiansis pistotikon kai allon idrimaton nomos (Law on the Resolution of Credit and Other Institutions, 'the Law of 22 March 2013', EE, Annex I(I), No 4379, 22.3.2013, p. 117). Pursuant to Paragraphs 3(1) and 5(1) of that law, the Central Bank of Cyprus (CBC) and the Ministry of Finance were jointly entrusted with the resolution of the institutions referred to in the law. To that end, Paragraph 12(1) of the Law of 22 March 2013

provides, first, that CBC may, by decree, restructure the debts and liabilities of an institution placed into resolution, including by way of the reduction, alteration, rescheduling or novation of nominal capital or of the outstanding amount of any type of claim, actual or future, against the institution, or by means of the conversion of debt instruments or obligations into equity. Secondly, Paragraph 12(1) provides that ‘insured depositors’, within the meaning of the fifth indent of Paragraph 2 of the Law of 22 March 2013, are excluded from such measures. It is common ground that insured deposits are deposits of less than EUR 100 000.

The contested statement

16 In its statement of 25 March 2013 (‘the contested statement’) the Euro Group stated that it had reached an agreement with the Cypriot authorities on the key elements necessary for a future macroeconomic adjustment programme that was supported by all euro area Member States and by the Commission, the ECB and the IMF. Moreover, the Euro Group welcomed the plans for restructuring the financial sector specified in the annex to the statement.

17 The annex to the contested statement is drafted as follows:

‘Following the presentation by the ... authorities [of the Republic of Cyprus] of their policy plans, which were broadly welcomed by the Eurogroup, the following was agreed:

1. Laïki will be resolved immediately — with full contribution of equity shareholders, bond holders and uninsured depositors — based on a decision by [CBC], using the newly adopted Bank Resolution Framework.
2. Laïki 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 [BoC], using the Bank Resolution Framework, after having heard the Board of Directors of BoC and Laïki. It will take 9 bn Euros of [emergency liquidity assistance (ELA)] with it. Only uninsured deposits in BoC 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 the BoC in line with applicable rules.
5. BoC will be recapitalised through a deposit/equity conversion of uninsured deposits with full contribution of equity shareholders and bond holders.
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 10 bn Euros) will not be used to recapitalise Laïki and [BoC].’

Bank restructuring measures adopted by Cyprus

18 On 25 March 2013, the Governor of CBC placed BoC and Laïki into resolution. On 29 March 2013, two decrees were published in that connection on the basis of the Law of 22 March 2013, namely:

- the Peri diasosis me idia mesa tis Trapezas Kyprou Dimosias Etaireias Ltd Diatagma tou 2013, Kanonistiki Dioikitiki Praxi No 103 (Decree of 2013 on the bailing-in of BoC, Regulatory Administrative Act No 103), EE, Annex III(I), No 4645, 29.3.2013, pp. 769 to 780 (‘Decree No 103’);

— the *Peri tis Polisis orisimenon ergasion tis Cyprus Popular Bank Public Co Ltd Diatagma tou 2013, Kanonistiki Dioikitiki Praxi No 104* (Decree of 2013 on the sale of certain operations of Laïki, Regulatory Administrative Act No 104), EE, Annex III(I), No 4645, 29.3.2013, pp. 781 to 788) ('Decree No 104').

- 19 Decree No 103 provided for the recapitalisation of BoC, at the expense, in particular, of its own unsecured depositors, shareholders and bondholders, so that it could continue to operate as a bank. Unsecured deposits were converted, as to 37.5% thereof, into shares in BoC, as to 22.5% thereof, into securities convertible by BoC into either shares or deposits, and, as to 40% thereof, into securities convertible by CBC into deposits. Pursuant to Paragraph 10 thereof, Decree No 103 entered into force on 29 March 2013, at 6:00 a.m.
- 20 In so far as concerns Decree No 104, the combined provisions of Paragraphs 2 and 5 thereof provided for the transfer, at 6:10 a.m. on 29 March 2013, of certain of Laïki's assets and liabilities, including deposits of less than EUR 100 000, to BoC. Deposits of more than EUR 100 000 remained with Laïki, pending its liquidation
- 21 At the time when Decrees Nos 103 and 104 entered into force, the applicants, Mr K. Mallis and Mrs E. Malli, held deposits with Laïki.
- 22 The application of the measures provided for in Decree No 104 resulted in a substantial reduction in the value of those deposits. The applicants state that they have lost everything over and above EUR 100 000 and give a detailed statement of the losses sustained.
- 23 After the adoption of Decrees Nos 103 and 104, the Commission embarked upon new discussions with the Cypriot authorities with a view to finalising the memorandum of understanding.

The grant of financial assistance to the Republic of Cyprus

- 24 At its meeting on 24 April 2013, the Board of Governors of the ESM:
- confirmed, first, that the Commission and the ECB were entrusted with carrying out the assessments referred to in Article 13(1) of the ESM Treaty and, secondly, that the Commission was entrusted, in liaison with the ECB and the IMF, with the negotiation of the memorandum of understanding with the Republic of Cyprus;
 - 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 the draft memorandum of understanding, and
 - requested the Commission to sign the memorandum of understanding on behalf of the ESM.
- 25 The memorandum of understanding was signed on 26 April 2013 by the Minister for Finance of the Republic of Cyprus, the Governor of CBC and O. Rehn, Vice-President of the Commission, on behalf of the Commission.
- 26 On 8 May 2013, the Board of Governors of the ESM approved the FAF agreement together with a proposal for the disbursement of a first tranche of the financial assistance to the Republic of Cyprus. That tranche was divided into two disbursements, the first, of EUR 2 billion, to be made on 13 May 2013 and the second, of EUR 1 billion, to be made on 26 June 2013. A second tranche of financial assistance, amounting to EUR 1.5 billion, was to be disbursed on 27 September 2013.

Procedure and forms of order sought

- 27 In the application lodged at the Registry of the General Court on 4 June 2013, the applicants claim that the General Court should:
- annul the contested statement, ‘which took its final form through [Decree No 104] of the Governor of [CBC] as the representative and/or agent of the European System of Central Banks ... whereby the “sale of certain operations” of [Laiki] was decided and which in essence constitutes a joint decision of not only the [ECB] but also of the ... Commission’;
 - in the alternative, declare that the contested statement in essence constitutes ‘a joint decision of the [ECB] and/or of the ... Commission’ irrespective of the shape or form in which it was dressed;
 - in the further alternative, annul the contested statement, ‘irrespective of the shape or form in which it was dressed’;
 - in the yet further alternative ‘annul the joint decision of the [ECB] and/or the ... Commission ... adopted through Europgroup, irrespective of the shape or form in which it was dressed’;
 - order the ECB and/or the Commission to pay the costs.
- 28 By separate documents lodged at the Court Registry on 1 and 9 October 2013 respectively, the Commission and the ECB raised objections of inadmissibility pursuant to Article 114 of the Rules of Procedure of the General Court. They claim that the Court should:
- dismiss the action as inadmissible;
 - order the applicants to pay the costs.
- 29 The applicants submitted their observations of the objections of inadmissibility raised by the Commission and the ECB on 4 December 2013.

Law

- 30 Pursuant to Article 114(1) of the Rules of Procedure, the Court may, if a party so requests, rule on the question of admissibility without considering the merits of the case. Under Article 114(3), unless the Court decides otherwise, the remainder of the proceedings is to be oral. Under Article 114(4), the Court may either rule on the objection of inadmissibility or reserve its decision for the final judgment.
- 31 In the present case, the Court considers that it has sufficient information from the documents before it and that it is not necessary to open the oral procedure.
- 32 It is appropriate to examine, first of all, the admissibility of the first, third and fourth heads of claim and, subsequently, the admissibility of the second head of claim.

The admissibility of the first, third and fourth heads of claim

- 33 By their first, third and fourth heads of claim, the applicants seek the annulment of the contested statement.
- 34 The Commission and the ECB maintain that that claim is inadmissible and put forward a number of arguments to that effect, which the applicants dispute.

- 35 In this connection, it must be observed, first of all, that, under Article 44(1)(b) of the Rules of Procedure, an application of the kind referred to in Article 21 of the Statute of the Court of Justice of the European Union is to state the designation of the party against whom the application is made.
- 36 The mistaken designation in the application of a defendant other than the body which adopted the contested measure does not render the application inadmissible if the application contains information which makes it possible to identify unambiguously the party against whom it is made, such as the designation of the contested measure and the body responsible for it. In such a case, the defendant must be considered to be the body responsible for the contested measure, even if not referred to in the introduction to the application. However, that situation must be distinguished from the case in which the applicant persists in the designation of the defendant referred to in the introduction to the application, in full awareness of the fact that that defendant is not the author of the contested measure. In the latter case, the Court must treat as defendant the party designated in the application and, where appropriate, draw the necessary consequences of that designation in so far as concerns the admissibility of the action (order of 16 October 2006 in Case T-173/06 *Aisne and Nature v Commission*, not published in the ECR, paragraphs 17 and 18 and the case-law cited; see also, to that effect, Case T-162/89 *Mommer v Parliament* [1990] ECR II-679, paragraphs 19 and 20).
- 37 The contested statement takes the form of a document in which the Euro Group mentions, first, the agreement which it had reached with the Cypriot authorities and, secondly, sets out a number of observations on that agreement. The applicants have not brought their action against the Euro Group, but — and they insist on this point in their observations on the objections of inadmissibility — against the Commission and the ECB. It is therefore necessary for the Court to consider whether, as the applicants maintain, the contested statement may indeed be imputed to the Commission and the ECB, with the result that those bodies must be regarded as its author and, thus, as the parties against which the case was to be brought.
- 38 It is therefore necessary to analyse the characteristics of the Euro Group and its relationship to the Commission and the ECB with regard to the content of the contested statement.
- 39 The Euro Group is referred to in Article 137 TFEU, which provides that arrangements for meetings between ministers of those Member States whose currency is the euro are laid down by the Protocol on the Euro Group.
- 40 The provisions of that protocol are worded as follows:

‘Article 1

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 Commission shall take part in the meetings. The [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.

Article 2

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.’

- 41 First of all, it is clear from the foregoing that the Euro Group is a forum for discussion, at ministerial level, between representatives of the Member States whose currency is the euro, and not a decision-making body. That informal forum, the purpose of which is to facilitate the exchange of views on certain specific questions of common interest to the Member States which participate in it,

has a certain institutional structure, inasmuch as it has a President who is elected for a fixed term. There is, however, no reason to regard that structure as being subsumed within the structure of the Commission or the ECB.

- 42 Secondly, it must be observed that, even though provision is made in Article 1 of the Protocol on the Euro Group for the Commission and the ECB to take part in meetings of the Euro Group, and for the Commission also to assist with the preparation of the meetings, the Euro Group is nevertheless an informal meeting of the ministers of the Member States concerned.
- 43 Thirdly, it is not apparent from the rules which apply to the Euro Group that that latter body has received any delegation of powers from the Commission or the ECB, contrary to what the applicants argue, or that those institutions have any power of review with regard to the Euro Group or can issue recommendations to it or, still less, give it binding instructions.
- 44 Therefore, contrary to the applicants' argument, the Euro Group cannot be regarded as being under the control of the Commission or the ECB, or that it acts as an agent of those institutions.
- 45 In light of the foregoing, it must be held that statements made by the Euro Group, such as the contested statement, cannot be imputed to the Commission or to the ECB. Furthermore, there is nothing in the documents before the Court to suggest that the contested statement should be regarded as a statement that was, in reality, drawn up by the Commission and the ECB.
- 46 Next, it is appropriate to observe that the applicants' arguments could also be construed as implying that the contested statement may, in any event, be attributed to the ESM and that, since that body is allegedly controlled by the Commission and the ECB, the contested statement can ultimately be imputed to those institutions.
- 47 It must be observed in this connection that, as is clear from paragraphs 4, 5, 6 and 8 above, the ESM Treaty entrusts certain tasks to the Commission and the ECB relating to the attainment of the objectives which it defines. Nevertheless, no provision in the ESM Treaty supports the conclusion that the ESM received a delegation of powers from those institutions or that those institutions are entitled to exercise powers of review with regard to the ESM or issue directives to it.
- 48 That finding is confirmed by the case-law of the Court, according to which, first, the duties conferred on the Commission and ECB within the ESM Treaty do not entail any power to make decisions of their own and, secondly, the activities pursued by those two institutions within the ESM Treaty solely commit the ESM (Case C-370/12 *Pringle* [2012] ECR, paragraph 161).
- 49 Consequently, even if the contested statement may be attributed to the EMS, rather than to the Euro Group, that fact would not permit the inference that the Commission or the ECB instigated the adoption of that statement.
- 50 It follows from all the foregoing considerations that the contested statement cannot be imputed to the defendants. In accordance with the case-law referred to in paragraph 36 above, the first, third and fourth heads of claim must therefore be rejected as inadmissible.
- 51 Secondly, it is appropriate to observe, for the sake of completeness, that it is settled case-law that only measures which produce binding legal effects of such a kind as to affect the interests of the applicant by bringing about a distinct change in his legal position are measures which may be the subject of an action for annulment for the purposes of the first paragraph of Article 263 TFEU (Case 60/81 *IBM v Commission* [1981] ECR 2639, paragraph 9, Joined Cases C-68/94 and C-30/95 *France and Others v Commission* [1998] ECR I-1375, paragraph 62, and the order in Case T-130/02 *Kronoply v Commission* [2003] ECR II-4857, paragraph 43).

- 52 In accordance with settled case-law, in order to determine whether an act or decision produces binding legal effects capable of affecting the interests of the applicant by bringing about a distinct change in his legal position, it is necessary to look to its substance (see the order in Case C-50/90 *Sunzest v Commission* [1991] ECR I-2917, paragraph 12, and the order of 14 May 2009 in Case T-22/07 *US Steel Košice v Commission*, not published in the ECR, paragraph 41).
- 53 As regards the substance of the contested statement, it is important to bear in mind that the Euro Group cannot be regarded as a decision-making body. Indeed, the provisions governing its operation do not empower it to adopt legally binding measures. In principle, a statement made by the Euro Group cannot, therefore, be regarded as a measure intended to produce legal effects with respect to third parties (see, to that effect and by analogy, Case C-301/03 *Italy v Commission* [2005] ECR I-10217, paragraph 28, the order of 3 November 2008 in Case T-196/08 *Srinivasan v Ombudsman*, not published in the ECR, paragraphs 11 and 12, and order of 3 December 2008 in Case T-210/07 *RSA Security Ireland v Commission*, not published in the ECR, paragraphs 53 to 55).
- 54 The content of the contested statement, read in that context, demonstrates that the statement is incapable of producing such legal effects.
- 55 Indeed, in the contested statement, the Euro Group:
- stated that it had reached an agreement with the Cypriot authorities on certain elements of a future adjustment programme (first paragraph of the contested statement);
 - welcomed several measures which, according to the Euro Group, had been agreed with the Cypriot authorities (third, fifth and sixth paragraphs of the contested statement);
 - took note of certain commitments made by the Cypriot authorities (ninth and tenth paragraphs of the contested statement);
 - urged the immediate implementation of the agreement between the Hellenic Republic and the Republic of Cyprus (seventh paragraph of the contested decision);
 - requested the Cypriot authorities and the Commission to finalise the memorandum of understanding (eighth paragraph of the contested statement);
 - reconfirmed that, as it had stated on 16 March 2013, the Republic of Cyprus could, in principle, benefit from a FAF, in light of the preceding observations (eleventh paragraph of the contested statement);
 - stated that it expected the ESM Board of Governors to be in a position formally to approve the proposal for a FAF by the third week of April 2013, subject to the completion of ‘national procedures’ (twelfth paragraph of the contested statement);
 - listed the measures which, in its view, had been agreed within the Euro Group following the presentation by the Cypriot authorities of their plans (annex to the contested statement; see paragraph 17 above).
- 56 In the contested statement, the Euro Group thus gave a very general account of certain policy measures which had been agreed with the Republic of Cyprus in order to stabilise the country’s financial situation, announced likely future negotiations and encouraged the pursuit of other negotiations and the adoption of other measures which it regarded as necessary or desirable. However, in the statement, the Euro Group did not express any definitive position on the grant of the FAF to the Republic of Cyprus or on the conditions with which that Member State would have to comply in order to receive the assistance requested.

- 57 It is important to emphasise in this connection, first, that the Euro Group did not state that the financial assistance would be granted to the Republic of Cyprus only if it implemented bank restructuring measures of the kind provided for in Decrees Nos 103 and 104.
- 58 Secondly, whilst, in the third paragraph of the contested statement, the Euro Group welcomed the plans for restructuring the financial sector specified in the annex to the statement, it did not state that those plans were regarded as part of any macroeconomic adjustment programme that the Republic of Cyprus might be required to follow in order to receive financial assistance, as provided for in Article 12(1) of the ESM Treaty.
- 59 Lastly, it follows implicitly but necessarily from the contested statement that, far from claiming any authority to grant or refuse the assistance requested, the Euro Group considered that such a decision fell not within the sphere of its own powers but within the competence of the Board of Governors of the ESM. Indeed, first of all, the Euro Group abstained from any confirmation as to whether the FAF would be granted or not and merely stated that it expected the ESM Board of Governors to be in position formally to approve the grant of assistance. Secondly, the Euro Group indicated, in substance, that any such approval would be subject to ratification by the members of the ESM in accordance with national procedures.
- 60 It follows that the contested statement was of a purely informative nature: the Euro Group was informing the general public of the existence of certain policy agreements and expressing its opinion on the likelihood of the grant of the FAF by the ESM. It was not adopting a measure capable of producing legal effects with respect to third parties in connection with that matter.
- 61 Consequently, whilst it is true that the annex to the contested statement contains statements which could be regarded as categorical, in particular the statement that Laïki was to be resolved immediately, with full contribution of equity shareholders, bond holders and uninsured depositors, and the statement that BoC was to be recapitalised through a deposit/equity conversion of uninsured deposits with full contribution of equity shareholders and bond holders (see paragraph 17 above), those statements cannot be read in isolation. On the contrary, they must be read in their proper context, from which it is clear that the contested statement is purely informative in nature.
- 62 Since the contested statement was not capable of producing legal effects with respect to third parties, the first, third and fourth heads of claim must also be rejected as inadmissible on the grounds set out in paragraphs 51 to 61 above.

The admissibility of the second head of claim

- 63 By their second head of claim, which they put forward in the alternative, the applicants seek from the Court, in substance, a declaratory judgment that the authors of the contested statement are the ECB and the Commission, rather than the Euro Group.
- 64 Suffice it to recall in this connection that the General Court has no jurisdiction, in the context of a review of legality on the basis of Article 263 TFEU, to issue declaratory judgments (see, to that effect, the order in Case C-224/03 *Italy v Commission* [2003] ECR I-14751, paragraphs 20 to 22).
- 65 It must therefore be held that the second head of claim is inadmissible, as the ECB correctly argued.
- 66 It follows from all the foregoing that the application must be dismissed as inadmissible.

Costs

- ⁶⁷ Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the applicants have been unsuccessful, they must be ordered to pay the costs, in accordance with the form of order sought by the Commission and the ECB.

On those grounds,

THE GENERAL COURT (First Chamber)

hereby:

- 1. Dismisses the application as inadmissible;**
- 2. Orders K. Mallis and E. Malli to bear their own costs and to pay the costs of the European Commission and the European Central Bank (ECB).**

Luxembourg, 16 October 2014.

E. Coulon
Registrar

H. Kanninen
President