



## Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

20 September 2016\*

(Appeals — Stability support programme for the Republic of Cyprus — Eurogroup statement concerning, in particular, the restructuring of the banking sector in Cyprus — Actions for annulment)

In Joined Cases C-105/15 P to C-109/15 P,

FIVE APPEALS under Article 56 of the Statute of the Court of Justice of the European, lodged on 27 February 2015,

**Konstantinos Mallis**, residing in Larnaca (Cyprus) (C-105/15 P),

**Elli Konstantinou Malli**, residing in Larnaca (C-105/15 P),

**Tameio Pronoias Prosopikou Trapezis Kyprou**, established in Nicosia (Cyprus) (C-106/15 P),

**Petros Chatzithoma**, residing in Makedonitissa (Cyprus) (C-107/15 P),

**Elenitsa Chatzithoma**, residing in Makedonitissa (C-107/15 P),

**Lella Chatziioannou**, residing in Nicosia (C-108/15 P),

**Marinos Nikolaou**, residing in Strovolos (Cyprus) (C-109/15 P),

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

appellants,

the other parties to the proceedings being:

**European Commission**, represented by J.-P. Keppenne and M. Konstantinidis, acting as Agents, with an address for service in Luxembourg,

**European Central Bank (ECB)**, represented by A. Koutsoukou, O. Heinz and K. Laurinavičius, acting as Agents, and H.-G. Kamann, Rechtsanwalt,

defendants at first instance,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta, T. von Danwitz, J.L. da Cruz Vilaça, A. Arabadjiev (Rapporteur) and D. Šváby, Presidents of Chambers, A. Rosas, E. Juhász, M. Berger, A. Prechal, E. Jarašiūnas, C.G. Fernlund, M. Vilaras and E. Regan, Judges,

\* Language of the case: Greek.

Advocate General: M. Wathelet,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 2 February 2016,

after hearing the Opinion of the Advocate General at the sitting on 21 April 2016,

gives the following

### Judgment

- 1 By their appeals, Konstantinos Mallis and Elli Konstantinou Malli, in Case C-105/15 P, Tameio Pronoias Prosopikou Trapezis Kyprou, in Case C-106/15 P, Petros Chatzithoma and Elenitsa Chatzithoma, in Case C-107/15 P, Lella Chatziioannou, in Case C-108/15 P, and Marinos Nikolaou, in Case C-109/15 P, ask the Court to set aside, respectively, the orders of the General Court of the European Union of 16 October 2014, *Mallis and Malli v Commission and ECB* (T-327/13, EU:T:2014:909), of 16 October 2014, *Tameio Pronoias Prosopikou Trapezis Kyprou v Commission and ECB* (T-328/13, EU:T:2014:906), of 16 October 2014, *Chatzithoma v Commission and ECB* (T-329/13, EU:T:2014:908), of 16 October 2014, *Chatziioannou v Commission and ECB* (T-330/13, EU:T:2014:904), and of 16 October 2014, *Nikolaou v Commission and ECB* (T-331/13, EU:T:2014:905) (collectively, ‘the orders under appeal’), by which the General Court dismissed their actions for annulment of the Eurogroup statement of 25 March 2013 concerning, in particular, the restructuring of the banking sector in Cyprus (‘the statement at issue’).

### Legal context

#### *The ESM Treaty*

- 2 On 2 February 2012, the Treaty establishing the European Stability Mechanism was concluded in Brussels (Belgium) between the Kingdom of Belgium, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Grand Duchy of Luxembourg, 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’). The ESM Treaty entered into force on 27 September 2012.
- 3 Recital 1 of the ESM Treaty is worded as follows:

‘The European Council agreed on 17 December 2010 on the need for euro area Member States to establish a permanent stability mechanism. This European Stability Mechanism (“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.’
- 4 Under 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 has legal personality.

5 Article 3 of the ESM Treaty describes the purpose of the latter 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.’

6 Article 4(1), (3) and (4), first subparagraph, of the ESM Treaty states:

‘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 (ECB)] 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. ...’

7 Article 12 of the ESM Treaty defines the principles governing the provision of stability support and states in paragraph 1:

‘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 macro-economic 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 of 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 ECB, 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 ECB 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 (IMF)];
- (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 ECB and, wherever possible, together with the IMF — 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 ECB and, wherever possible, together with the IMF — shall be entrusted with monitoring compliance with the conditionality attached to the financial assistance facility.’

*The statement at issue*

- 9 By the statement at issue, the Eurogroup indicated that it had reached an agreement with the Cypriot authorities on the key elements of a future macro-economic adjustment programme, which was supported by all the Member States whose currency is the euro, as well as by the Commission, the ECB and the IMF. In addition, the Eurogroup welcomed the plans for the restructuring of the financial sector that were mentioned in the annex to that statement.

*Decrees No 103 and No 104 adopted on the basis of the Law of 22 March 2013*

- 10 Under Articles 3(1) and 5(1) of the Peri exiyiansis pistotikon kai allon idrimaton nomos (Law on the resolution of credit and other institutions) of 22 March 2013 (EE, Annex I(I), No 4379, 22.3.2013; ‘the Law of 22 March 2013’), the Kentriki Trapeza tis Kyprou (Central Bank of Cyprus; ‘the CBC’) was entrusted, together with the Ypourgeio Oikonomikon (Ministry of Finance), with the resolution of the institutions covered by that law. To that end, Article 12(1) of the Law of 22 March 2013 provides that the CBC may, by decree, restructure the debts and obligations of an institution under resolution, including by means of the reduction, modification, rescheduling or novation of the principal or outstanding amount of any type of claim, existing or future, against that institution, or by means of a conversion of debt instruments or obligations into equity. In addition, Article 12(1) provides that ‘insured deposits’, within the meaning of the fifth paragraph of Article 2 of the Law of 22 March 2013, are to be excluded from those measures. It is common ground between the parties that the deposits in question are deposits of up to EUR 100 000.
- 11 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 Trapeza Kyprou Dimosia Etaireia Ltd, Regulatory Administrative Act No 103) (EE, Annex III(I), No 4645, 29.3.2013, p. 769; ‘Decree No 103’) provides for the recapitalisation of Trapeza Kyprou Dimosia Etaireia Ltd (‘Bank of

Cyprus') — at the expense, in particular, of its uninsured depositors, its shareholders and its bondholders — in order to enable it to continue to provide banking services. Accordingly, uninsured deposits were converted into Bank of Cyprus shares (37.5% of each uninsured deposit), into securities which were convertible by Bank of Cyprus either into shares or into deposits (22.5% of each uninsured deposit), and into securities which were convertible into deposits by the CBC (40% of each uninsured deposit). Decree No 103 entered into force at 6.00 a.m. on 29 March 2013, in accordance with Article 10 thereof.

- 12 Article 2, in conjunction with Article 5, of the *Peri tis Polisis Orismenon 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 Cyprus Popular Bank Public Co. Ltd ('Cyprus Popular Bank'), Regulatory Administrative Act No 104) (EE, Annex III(I), No 4645, 29.3.2013, p. 781; 'Decree No 104') provides for the transfer, at 6.10 a.m. on 29 March 2013, of certain assets and liabilities from Cyprus Popular Bank to Bank of Cyprus, including deposits of up to EUR 100 000. Deposits over EUR 100 000 remained with Cyprus Popular Bank, pending its liquidation.

### **Background to the disputes**

- 13 During the first few months of 2012, certain banks established in Cyprus, including Cyprus Popular Bank and Bank of Cyprus, encountered financial difficulties. The Republic of Cyprus thus considered it necessary for them to be recapitalised and submitted a request to the President of the Eurogroup for financial assistance from the EFSF or the ESM.
- 14 By a statement of 27 June 2012, the Eurogroup indicated that the financial assistance requested would be provided by the EFSF or the ESM in the framework of a macro-economic adjustment programme to be set out in the form of a memorandum of understanding which would be negotiated by the Commission, together with the ECB and the IMF, on the one hand, and by the Cypriot authorities, on the other.
- 15 The Republic of Cyprus and the other Member States whose currency is the euro reached a political agreement on a draft memorandum of understanding in March 2013. By a statement of 16 March 2013, the Eurogroup welcomed that agreement and referred to some of the adjustment measures envisaged, including the introduction of a levy on bank deposits. The Eurogroup indicated that, against that background, it considered that — in principle — financial assistance was warranted in order to safeguard financial stability in Cyprus and the euro area, and called upon the relevant parties to accelerate the ongoing negotiations.
- 16 On 18 March 2013, the Republic of Cyprus declared a bank holiday on 19 and 20 March 2013. By a statement made on the same day, the President of the Eurogroup indicated that the levy on bank deposits, together with the financial support requested, would be used to restore the viability of the Cypriot banking system and hence safeguard financial stability in Cyprus. Nevertheless, he pointed out that, in the Eurogroup's view, small depositors should be treated differently from large depositors and reaffirmed the importance of fully guaranteeing deposits of less than EUR 100 000. Lastly, on behalf of the Eurogroup, the President urged the Cypriot authorities and the Cypriot Parliament to implement the agreed measures rapidly.
- 17 The Cypriot authorities decided to extend the bank holiday until 28 March 2013 in order to avoid a run on the banks.
- 18 On 19 March 2013, the Cypriot Parliament rejected the Cypriot Government's bill relating to the introduction of a levy on all bank deposits in Cyprus. The Cypriot Parliament then adopted the Law of 22 March 2013.

- 19 On 25 March 2013, the Eurogroup made the statement at issue. On the same day, the Governor of the CBC put Bank of Cyprus and Cyprus Popular Bank into resolution. On 29 March 2013, Decrees No 103 and No 104 were published for that purpose on the basis of the Law of 22 March 2013. The Commission then embarked upon new discussions with the Cypriot authorities with a view to finalising the memorandum of understanding.
- 20 At its meeting on 24 April 2013, the ESM's Board of Governors:
- confirmed, first, that the Commission and the ECB had been entrusted with carrying out the assessments referred to in Article 13(1) of the ESM Treaty and, secondly, that the Commission had been 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, in accordance with the proposal by the Managing Director of the ESM;
  - approved the draft memorandum of understanding negotiated by the Commission, in liaison with the ECB and the IMF, and by the Republic of Cyprus;
  - mandated the Commission to sign that memorandum on behalf of the ESM.
- 21 The memorandum of understanding was signed on 26 April 2013 by the Minister for Finance of the Republic of Cyprus, by the Governor of the CBC and by O. Rehn, Vice-President of the Commission, on behalf of the ESM.
- 22 On 8 May 2013, the ESM's Board of Directors approved the agreement relating to the financial assistance facility and a proposal concerning the terms of payment of a first tranche of aid to the Republic of Cyprus. That tranche was divided into two disbursements of approximately EUR 2 billion and EUR 1 billion, paid on 13 May 2013 and 26 June 2013 respectively. A second tranche of aid, amounting to roughly EUR 1.5 billion, was disbursed on 27 September 2013.

### **The proceedings before the General Court and the orders under appeal**

- 23 By applications lodged at the Registry of the General Court on 4 June 2013, the applicants brought five actions claiming that the General Court should:
- annul the statement at issue, 'which took its final form through [Decree No 104] of the Governor of the [CBC] as the representative and/or agent of the European System of Central Banks ..., whereby the "sale of certain operations" of Cyprus Popular Bank ... 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 statement at issue constitutes, in essence, '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 statement at issue, '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 the Eurogroup, irrespective of the shape or form in which it was dressed';
  - order the ECB and/or the Commission to pay the costs.

24 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 of 2 May 1991, as last amended on 19 June 2013. They claimed that the General Court should:

- dismiss the actions as inadmissible;
- order the appellants to pay the costs.

25 By the orders under appeal, the General Court dismissed the actions in their entirety as inadmissible.

### **Forms of order sought and procedure before the Court of Justice**

26 The appellants claim that the Court should:

- set aside the orders under appeal;
- set aside the award of costs against them at first instance.

27 The Commission and the ECB contend that the Court should:

- dismiss the appeals;
- order the appellants to pay all the costs.

28 By decision of the President of the Court of 21 August 2015, Cases C-105/15 P to C-109/15 P were joined for the purposes of the oral procedure and judgment.

### **The appeals**

29 In support of their appeals, the appellants put forward three pleas in law, by which they seek to show that the General Court committed errors of law and failed to fulfil its obligation to state reasons in holding that the statement at issue did not display, in their regard, the characteristics of an act whose annulment may be sought on the basis of Article 263 TFEU.

30 The Commission and the ECB contend that the appeals are inadmissible and add that, in any event, the pleas put forward in support of the appeals must be dismissed as unfounded.

#### *Admissibility of the appeals*

31 The Commission and the ECB plead that the appeals are inadmissible on the ground that the appellants confine themselves essentially to reproducing the pleas and arguments which they have already submitted to the General Court and that the appellants contest the factual assessments made by the General Court regarding the various pieces of evidence adduced.

32 In that regard, it must be borne in mind that, under Article 256 TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union, an appeal is limited to points of law and must be based on the grounds of lack of competence of the General Court, of a breach of procedure before it which adversely affects the interests of the appellant, or of infringement of EU law by the General Court (see, inter alia, judgment of 4 September 2014, *Spain v Commission*, C-192/13 P, EU:C:2014:2156, paragraph 42 and the case-law cited).

- 33 Furthermore, it follows from Article 256 TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and also from Articles 168(1)(d) and 169(2) of the Rules of Procedure of the Court of Justice that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal (see, *inter alia*, judgments of 4 July 2000, *Bergaderm and Goupil v Commission*, C-352/98 P, EU:C:2000:361, paragraph 34, and of 4 September 2014, *Spain v Commission*, C-192/13 P, EU:C:2014:2156, paragraph 43).
- 34 In particular, under Article 169(2) of the Rules of Procedure of the Court of Justice, the pleas in law and legal arguments relied on must identify precisely those points in the grounds of the decision of the General Court which are contested.
- 35 Thus, where an appeal merely repeats or reproduces verbatim the pleas in law and arguments submitted to the General Court, including those based on facts expressly rejected by that Court, it fails to satisfy the requirement to state reasons under those provisions. Such an appeal amounts in reality to no more than a request for re-examination of the application submitted to the General Court, a matter which falls outside the jurisdiction of the Court of Justice (see judgment of 4 September 2014, *Spain v Commission*, C-192/13 P, EU:C:2014:2156, paragraph 44 and the case-law cited).
- 36 However, provided that an appellant challenges the interpretation or application of EU law by the General Court, the points of law examined at first instance may be discussed again in the course of an appeal. If an appellant could not thus base his appeal on pleas in law and arguments already relied on before the General Court, an appeal would be deprived of part of its purpose (see judgment of 4 September 2014, *Spain v Commission*, C-192/13 P, EU:C:2014:2156, paragraph 45 and the case-law cited).
- 37 Here, the appellants seek, by their pleas, to demonstrate that the orders under appeal fail to state grounds, or state insufficient grounds, and they cast doubt on the answer which the General Court expressly gave to questions of law, questions which can be the subject matter of review by the Court of Justice on appeal.
- 38 Furthermore, it must be found that, in accordance with Article 169(2) of the Rules of Procedure of the Court of Justice, the points in the grounds of the orders under appeal which are contested and the pleas in law and legal arguments enabling the Court to carry out its review of legality are identified in the appeals.
- 39 It follows that the appeals are admissible.

### *Merits of the appeals*

#### Arguments of the parties

- 40 By their three pleas, which it is appropriate to examine together, the appellants complain that the General Court committed an error of law and failed to fulfil its obligation to state reasons in holding, in paragraph 45 of the orders under appeal, that the statement at issue could not be imputed to the Commission or the ECB. They submit in this regard that the General Court should have acknowledged the decision-making power of the Commission and the ECB in respect of questions related to the ESM and should have inferred from their participation in Eurogroup meetings that that statement must be imputed to them.

- 41 The General Court committed an error of law in classifying the Eurogroup as a mere ‘forum for discussion’ in paragraph 41 of the orders under appeal. It did not respond to the appellants’ argument that, as none of the powers vested in the Commission and the ECB have been conferred upon or delegated to the Eurogroup, it should be inferred that the latter constitutes the channel by which the Commission and the ECB take decisions on specific questions linked to the ESM or to financial stability. The appellants contend that the ECB and the Commission are required to act in compliance with the legal framework defined by the Treaties and the protocols thereto and by secondary legislation. The exercise outside that framework of any competence or any power is similar to an abuse of powers.
- 42 The General Court also failed to respond to the appellants’ argument that the recapitalisation of Bank of Cyprus was merely the consequence of the conditions imposed on the Republic of Cyprus by the Commission and the ECB by means of the Eurogroup statement. The General Court should have been led to conclude, on taking that circumstance into account, that in this instance the harm suffered by the appellants was caused by the acts and decisions of the Commission and the ECB. The appellants further complain that the General Court acknowledged, in paragraph 61 of the orders under appeal, that the statement at issue contains statements which could be regarded as categorical but did not draw the appropriate conclusions from such a finding or examine the argument that, first, when the Governor of the CBC adopted Decrees No 103 and No 104, he applied ‘to the letter’ the decisions taken by the Commission and the ECB by means of the Eurogroup and, secondly, his status as a member of the Board of Governors of the ECB is such as to render his acts and/or omissions imputable to that institution.
- 43 The appellants also complain that the General Court did not classify the statement at issue as a challengeable act in paragraphs 53 and 56 of the orders under appeal and that it failed to respond to their argument that that statement produced effects both on their rights and on their assets.
- 44 The Commission and the ECB dispute the merits of those pleas.

#### Findings of the Court

- 45 First, as regards the argument alleging a failure to state reasons in the orders under appeal, it should be recalled that, according to settled case-law, the duty owed by the General Court under Article 36 and the first paragraph of Article 53 of the Statute of the Court of Justice of the European Union to state reasons does not require the General Court to provide an account that follows exhaustively and one by one all the arguments articulated by the parties to the case. The reasoning may also be implicit, on condition that it enables the persons concerned to understand the grounds of the General Court’s judgment and provides the Court of Justice with sufficient information to exercise its powers of review on appeal (see, *inter alia*, judgment of 8 March 2016, *Greece v Commission*, C-431/14 P, EU:C:2016:145, paragraph 38 and the case-law cited).
- 46 In the present instance, after noting, in paragraph 39 of the orders under appeal, that the Eurogroup is referred to in Article 137 TFEU, which provides that the composition of and arrangements for meetings between ministers of those Member States whose currency is the euro are laid down by Protocol No 14 on the Eurogroup, annexed to the FEU Treaty, the General Court pointed out, in paragraph 40 of the orders, that under Article 1 of that protocol those ministers are to meet informally to discuss questions related to the specific responsibilities they share with regard to the single currency.
- 47 In paragraphs 41 to 45 of the orders under appeal, the General Court, relying in particular on that provision of the protocol, first of all held that the Eurogroup 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. It then observed that, even though provision is made in Article 1 of the

protocol for the Commission and the ECB to take part in meetings of the Eurogroup, the Eurogroup is nevertheless an informal meeting of the ministers of the Member States concerned. Finally, the General Court stated that there was nothing to support a finding that the Eurogroup is under the control of the Commission or the ECB or that it acts as an agent of those institutions. It inferred from these matters that the statement at issue could not be imputed to the Commission or to the ECB.

- 48 In paragraphs 47 to 49 of the orders under appeal, the General Court, in the light of the relevant provisions of the ESM Treaty, also ruled out the possibility that the statement at issue, even if it could be attributed to the ESM rather than to the Eurogroup, could be imputed to the Commission or the ECB by virtue of the control allegedly exerted by them over the ESM. The General Court therefore held that the Commission and the ECB could not be regarded as having instigated the adoption of that statement.
- 49 For the sake of completeness, the General Court held in paragraphs 51 to 62 of the orders under appeal that, as the Eurogroup is not a decision-making body, a statement by it cannot be regarded as a measure intended to produce legal effects with respect to third parties. It added that that assessment is borne out by examination of the content of the statement at issue, an examination which it carried out in detail in paragraphs 54 to 59 of those orders and which led it to find, in paragraph 60, that the statement at issue is of a purely informative nature.
- 50 It must be held that the reasoning of the orders under appeal, recalled in paragraphs 46 to 49 of the present judgment, satisfies the requirements to state reasons referred to in paragraph 45 of the present judgment.
- 51 Secondly, it should be recalled that an action for annulment is available against all measures adopted by the EU institutions, whatever their nature or form, which are intended to have binding legal effects capable of affecting the interests of the applicant by bringing about a distinct change in his legal position (see, *inter alia*, judgments of 11 November 1981, *IBM v Commission*, 60/81, EU:C:1981:264, paragraph 9, and of 9 September 2015, *Lito Maieftiko Gynaikologiko kai Cheirurgiko Kentro v Commission*, C-506/13 P, EU:C:2015:562, paragraph 16).
- 52 In the present instance, so far as concerns the appellants' argument — alleging an error of law by the General Court — that the context provided by the adoption of the statement at issue and by the way in which the Eurogroup operates shows that that statement corresponds to a joint decision of the Commission and the ECB, it should be noted that it is apparent from the Eurogroup statement of 27 June 2012 that the Commission and the ECB were, in accordance with Article 13(3) of the ESM Treaty, entrusted by the Board of Governors with the task of negotiating with the Cypriot authorities a macro-economic adjustment programme to be set out in the form of a memorandum of understanding.
- 53 In addition, it must be pointed out that the role of the Commission and the ECB as defined by Article 1 of Protocol No 14 on the Eurogroup cannot be wider than the role accorded to those institutions by the ESM Treaty. As noted by the General Court in paragraph 48 of the orders under appeal, it is apparent from paragraph 161 of the judgment of 27 November 2012, *Pringle* (C-370/12, EU:C:2012:756), that, whilst the ESM Treaty entrusts to the Commission and the ECB certain tasks relating to the attainment of the objectives of that Treaty, first, the duties conferred on the Commission and ECB within the ESM Treaty do not entail the exercise of any power to make decisions of their own and, secondly, the activities pursued by those two institutions within the ESM Treaty commit the ESM alone.
- 54 In this connection, it should be noted that the tasks allocated to the Commission under the ESM Treaty consist in assessing requests for stability support (Article 13(1)), assessing their urgency (Article 4(4)), negotiating a memorandum of understanding detailing the conditionality attached to

the financial assistance granted (Article 13(3)), monitoring compliance with the conditionality attached to the financial assistance (Article 13(7)), and participating in the meetings of the Board of Governors and the Board of Directors as an observer (Articles 5(3) and 6(2)) (judgment of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraph 156).

- 55 Pursuant to Article 13(4) of the ESM Treaty, the Commission is also entrusted with signing the memorandum of understanding on behalf of the ESM, subject to prior compliance with the conditions set out in Article 13(3) and approval by the ESM's Board of Governors.
- 56 The tasks that have been allocated to the ECB under the ESM Treaty consist in assessing the urgency of requests for stability support (Article 4(4)), participating in the meetings of the Board of Governors and the Board of Directors as an observer (Articles 5(3) and 6(2)) and, in liaison with the Commission, assessing requests for stability support (Article 13(1)), negotiating a memorandum of understanding (Article 13(3)) and monitoring compliance with the conditionality attached to the financial assistance (Article 13(7)) (judgment of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraph 157).
- 57 In the light of those points, the fact that the Commission and the ECB participate in the meetings of the Eurogroup does not alter the nature of the latter's statements and cannot result in the statement at issue being considered to be the expression of a decision-making power of those two EU institutions.
- 58 Nor is there anything in the statement at issue reflecting a decision of the Commission and the ECB to create a legal obligation on the Member State concerned to implement the measures which it contains.
- 59 As the General Court essentially pointed out in paragraph 60 of the orders under appeal, that statement, of a purely informative nature, was intended to inform the general public of the existence of a political agreement between the Eurogroup and the Cypriot authorities reflecting a common intention to pursue the negotiations in accordance with the statement's terms.
- 60 Accordingly, the adoption by the Republic of Cyprus of the Law of 22 March 2013, which created the legal framework necessary for the restructuring of the banks concerned and empowered the CBC to adopt Decrees No 103 and No 104, cannot be regarded as having been imposed by a supposed joint decision of the Commission and the ECB that was given concrete expression in the statement at issue.
- 61 Finally, in so far as, by their actions, the appellants sought the annulment of a Eurogroup statement, it should be noted not only that the term 'informally' is used in the wording of Protocol No 14 on the Eurogroup, annexed to the FEU Treaty, but also that the Eurogroup is not among the different configurations of the Council of the European Union enumerated in Annex I to its Rules of Procedure adopted by Council Decision 2009/937/EU of 1 December 2009 (OJ 2009 L 325, p. 35), the list of which is referred to in Article 16(6) TEU. Accordingly, as the Advocate General has observed in points 55 to 65 of his Opinion, the Eurogroup cannot be equated with a configuration of the Council or be classified as a body, office or agency of the European Union within the meaning of Article 263 TFEU.
- 62 In the light of all the foregoing considerations, the appeals must be dismissed as unfounded.

### **Costs**

- 63 In accordance with Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to the costs.

- <sup>64</sup> Under Article 138(1) of the Rules of Procedure, which is applicable to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.
- <sup>65</sup> Since the Commission and the ECB have applied for costs and the appellants have been unsuccessful, the latter must be ordered to pay the costs relating to the appeals.

On those grounds, the Court (Grand Chamber) hereby:

- 1. Dismisses the appeals in Cases C-105/15 P to C-109/15 P;**
- 2. Orders Konstantinos Mallis, Elli Konstantinou Malli, Tameio Pronoias Prosopikou Trapezis Kyprou, Petros Chatzithoma, Elenitsa Chatzithoma, Lella Chatziioannou and Marinos Nikolaou to pay the costs.**

[Signatures]