Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

7 October 2015 *

(Non-contractual liability — Economic and monetary policy — ECB — National central banks — Restructuring of Greek public debt — Bond buy-back scheme — Bond exchange agreement for the sole benefit of the Eurosystem central banks — Involvement of the private sector — Collective action clauses — Credit enhancement in the form of a purchasing programme designed to support the quality of the bonds as collateral — Private creditors — Sufficiently serious breach of a rule of law conferring rights on individuals — Legitimate expectations — Equal treatment — Liability in respect of a lawful legislative act — Unusual and special damage)

In Case T-79/13,

Alessandro Accorinti, residing in Nichelino (Italy), and the applicants whose names appear in the annex, represented by S. Sutti, R. Spelta and G. Sanna, lawyers,

applicants,

v

European Central Bank (ECB), represented initially by S. Bening and P. Papapaschalis, then by P. Senkovic and M. Papapaschalis, and finally by P. Senkovic, acting as Agents, and by E. Castellani, B. Kaiser and T. Lübbig, lawyers,

defendant,

APPLICATION for compensation for the damage sustained by the applicants following, in particular, the adoption by the ECB of Decision 2012/153/EU of 5 March 2012 on the eligibility of marketable debt instruments issued or fully guaranteed by the Hellenic Republic in the context of the Hellenic Republic's debt exchange offer (OJ 2012 L 77, p. 19), and also of other ECB measures linked with the restructuring of the Greek public debt,

THE GENERAL COURT (Fourth Chamber),

composed of M. Prek, President, I. Labucka and V. Kreuschitz (Rapporteur), Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 25 February 2015,

gives the following

* Language of the case: Italian.

Judgment

Legal context

1 Article 127(1) and (2) TFEU sets out the objectives and basic tasks of the European System of Central Banks (ESCB).

2 Article 2 and Article 3(1) of Protocol No 4 on the Statute of the ESCB and of the ECB (OJ 2010 C 83, p. 230; 'the Statute') define those objectives and those tasks in identical terms.

3 Article 18 of the Statute provides:

'1. In order to achieve the objectives of the ESCB and to carry out its tasks, the ECB and the national central banks may:

— operate in the financial markets by buying and selling outright (spot and forward) or under repurchase agreement and by lending or borrowing claims and marketable instruments, whether in euro or other currencies, as well as precious metals;

— conduct credit operations with credit institutions and other market participants, with lending being based on adequate collateral.

2. The ECB shall establish general principles for open market and credit operations carried out by itself or the national central banks, including for the announcement of conditions under which they stand ready to enter into such transactions.'

4 The European Central Bank (ECB) defined the general principles of open market and credit operations, first of all, in its Guideline ECB/2000/7 of 31 August 2000 on monetary policy instruments and procedures of the Eurosystem (ECB/2000/7) (OJ 2000 L 310, p. 1). That Guideline was subsequently amended on several occasions and, finally, was consolidated and replaced, with effect from 1 January 2012, by Guideline ECB/2011/817/EU of 20 September 2011 on monetary policy instruments and procedures of the Eurosystem (ECB/2011/14) (OJ 2011 L 331, p. 1). Annex I to that Guideline, entitled 'General documentation on Eurosystem monetary policy instruments and procedures' ('the general documentation'), sets out the criteria governing the uniform implementation of monetary policy in the euro area, including the definition of 'eligible assets' (Chapter 6). The ECB set out that definition, ultimately, in Guideline 2011/817, in particular, by fixing, in points 6.3.1 and 6.3.2 of the general documentation, the criteria governing both the minimum signature quality requirement or the credit quality threshold for marketable assets.

Background to the dispute

5 In May 2010, owing to the financial crisis facing the Greek State and the discussions of a plan to restructure the Greek public debt supported by the Member States of the euro area and by the International Monetary Fund (IMF), the normal evaluation by the financial markets of bonds issued by the Greek Government was disrupted, with negative effects on the financial stability of the euro area.

6 In the light of that situation, by Decision 2010/268/EU of May 2010 on temporary measures relating to the eligibility of marketable debt instruments issued or guaranteed by the Greek Government (ECB/2010/3) (OJ 2010 L 117, p. 102), the ECB decided on the temporary suspension of 'the Eurosystem's minimum requirements for credit quality thresholds, as specified in the Eurosystem credit assessment framework rules for marketable assets in Section 6.3.2 of the General

Documentation' (Article 1(1) of that decision). According to Article 2 of that decision, 'the Eurosystem's credit quality threshold shall not apply to marketable debt instruments issued by the Greek Government' and 'such assets shall constitute eligible collateral for the purposes of Eurosystem monetary policy operations, irrespective of their external credit rating'. Article 3 of that decision lays down a similar rule for 'marketable debt instruments issued by entities established in Greece and fully guaranteed by the Greek Government'.

7 In the words of recital 5 of Decision 2010/268, in particular, 'this exceptional measure … will apply temporarily, until the Governing Council considers that the stability of the financial system allows the normal application of the Eurosystem framework for monetary policy operations'.

8 On 14 May 2010, the ECB adopted Decision 2010/281/EU establishing a securities markets programme (ECB 2010/5) (OJ 2010 L 124, p. 8), on the basis of the first indent of Article 127(2) TFEU and, in particular, Article 18(1) of the Statute.

9 Recitals 2 to 5 of Decision 2010/281 are worded, in particular, as follows:

'(2) On 9 May 2010 the Governing Council decided and publicly announced that, in view of the current exceptional circumstances in financial markets, characterised by severe tensions in certain market segments which are hampering the monetary policy transmission mechanism and thereby the effective conduct of monetary policy oriented towards price stability in the medium term, a temporary securities markets programme (hereinafter the "programme") should be initiated. Under the programme, the euro area [national central banks], according to their percentage shares in the key for subscription of the ECB's capital, and the ECB, in direct contact with counterparties, may conduct outright interventions in the euro area public and private debt securities markets.

(3) The programme forms part of the Eurosystem's single monetary policy and will apply temporarily. The programme's objective is to address the malfunctioning of securities markets and restore an appropriate monetary policy transmission mechanism.

…

(5) As part of the Eurosystem's single monetary policy, the outright purchase of eligible marketable debt instruments by Eurosystem central banks under the programme should be implemented in accordance with the terms of this Decision[.]'

10 In the words of Article 1 of Decision 2010/281, under the heading 'Establishment of the security markets programme', in particular, 'Eurosystem central banks may purchase … on the secondary market, eligible marketable debt instruments issued by the central governments or public entities of the Member States whose currency is the euro …'. Article 2 prescribes as eligibility criteria for debt instruments, in particular, that such instruments be 'denominated in euro' and issued by those central governments or public entities.

11 In a press release of the Institute of International Finance (IIF), dated July 1 2011, the global association of financial institutions stated, inter alia:

'The Board of Directors of the Institute of International Finance is committed to working with its membership and other financial sectors, the public sector, and the Greek authorities to deliver substantial cash-flow to [the Hellenic Republic], as well as to lay the basis for a more sustainable debt position.

The private financial community is ready to engage in a voluntary, cooperative, transparent and broad-based effort to support [the Hellenic Republic] given its unique and exceptional circumstances …

The involvement of private investors will complement parallel official financing and liquidity support and will be based on a small number of options …'

12 On 21 July 2011, the Heads of State or Government of the euro area and EU institutions met to consider measures to be taken in order to overcome the difficulties facing the euro area.

13 Their joint statement of 21 July 2011 includes, in particular, the following:

'1. We welcome the measures undertaken by the Greek Government to stabilise public finances and [to] reform the economy as well as the new package of measures including privatisation recently adopted by the Greek Parliament. These are unprecedented, but necessary, efforts to bring the Greek economy back on a sustainable growth path. We are conscious of the efforts that the adjustment measures entail for the Greek citizens, and are convinced that these sacrifices are indispensable for economic recovery and will contribute to the future stability and welfare of the country.

2. We agree to support a new programme for [the Hellenic Republic] and, together with the IMF and the voluntary contribution of the private sector, to fully cover the financing gap. The total official financing will amount to an estimated [EUR] 109 billion … This programme will be designed, notably through lower interest rates and extended maturities, to decisively improve the debt sustainability and refinancing profile of [the Hellenic Republic]. We call on the IMF to continue to contribute to the financing of the new Greek programme. We intend to use the [European Financial Stability Facility] as the financing vehicle for the next disbursement. We will monitor very closely the strict implementation of the programme based on the regular assessment by the Commission in liaison with the ECB and the IMF

…

5. The financial sector has indicated its willingness to support [the Hellenic Republic] on a voluntary basis through a menu of options further strengthening overall sustainability. The net contribution of the private sector is estimated at [EUR] 37 billion … Credit enhancement will be provided to underpin the quality of collateral so as to allow its continued use for access to Eurosystem liquidity operations by Greek banks. We will provide adequate resources to recapitalise Greek banks if needed.'

14 As regards private sector involvement, point 6 of that statement indicates that:

'As far as our general approach to private sector involvement in the euro area is concerned, we would like to make it clear that [the Hellenic Republic] requires an exceptional and unique solution.'

15 At their summit of 26 October 2011, the Heads of State and of Government of the euro area declared, in particular, as follows:

'12. The Private Sector Involvement (PSI) has a vital role in establishing the sustainability of the … debt [of the Hellenic Republic]. Therefore we welcome the current discussion between [the Hellenic Republic] and its private investors to find a solution for deeper PSI. Together with an ambitious reform programme for the Greek economy, the PSI should secure the decline of the Greek debt to GDP ratio with an objective of reaching 120% by 2020. To this end, we invite [the Hellenic Republic], private investors and all parties concerned to develop a voluntary bond exchange with a nominal discount of 50% on notional Greek debt held by private investors. The

euro [area] Member States would contribute to the PSI package up to [EUR] 30 [billion]. On that basis, the official sector stands ready to provide additional programme financing of up to [EUR] 100 [billion] until 2014, including the required recapitalisation of Greek banks. The new programme should be agreed by the end of 2011 and the exchange of bonds should be implemented at the beginning of 2012. We call on the IMF to continue to contribute to the financing of the new Greek programme.

…

14. Credit enhancement will be provided to underpin the quality of collateral so as to allow its continued use for access to Eurosystem liquidity by Greek banks.

15. As far as our general approach to private sector involvement in the euro area is concerned, we reiterate our decision taken on 21 July 2011 that [the Hellenic Republic] requires an exceptional and unique solution.'

16 According to a press release of the Greek Ministry of Finance of 17 November 2011, that ministry had commenced consultations with holders of Greek bonds in preparation for a voluntary exchange of those bonds with a notional 'haircut' of 50% of the nominal value of Greek debt held by private investors, as provided for in paragraph 12 of the statement of 26 October 2011.

17 On 15 February 2012, the ECB and the Eurosystem central banks, for the one part, and the Hellenic Republic, for the other part, entered into an exchange agreement with the aim of exchanging Greek bonds held by the ECB and by the national central banks for new Greek bonds having the same nominal values, interest rates, interest payment and repayment dates as the bonds to be exchanged, but having different serial numbers and dates.

18 On 17 February 2012, at the request of the Greek Ministry of Finance pursuant to Article 127(4) TFEU, read with Article 282(5) TFEU, the ECB delivered a positive opinion on draft Greek legislation concerning the involvement of private creditors in the restructuring of the public debt of the Hellenic Republic, based, in particular, on the application of the Collective Action Clauses ('the CACs').

19 According to the statement of the Eurogroup of 21 February 2012, in particular:

'… The Eurogroup acknowledges the common understanding that has been reached between the Greek authorities and the private sector on the general terms of the [Private Sector Involvement (PSI)] exchange offer, covering all private sector bondholders. This common understanding provides for a nominal haircut amounting to 53.5%. The Eurogroup considers that this agreement constitutes an appropriate basis for launching the invitation for the exchange to holders of Greek Government bonds (PSI). A successful PSI operation is a necessary condition for a successor programme. The Eurogroup looks forward to a high participation of private creditors in the debt exchange, which should deliver a significant positive contribution to [the Hellenic Republic's] debt sustainability.

…

The Eurogroup takes note that the Eurosystem (ECB and [national central banks]) holdings of Greek Government bonds have been held for public policy purposes. The Eurogroup takes note that the income generated by the Eurosystem holdings of Greek Government bonds will contribute to the profit of the ECB and of the [national central banks]. The ECB's profits will be disbursed to the [national central banks], in line with the ECB's statutory profit distribution rules. The [national central banks'] profits will be disbursed to euro area Member States in line with [those banks'] statutory profit distribution rules.'

20 In a press release of 21 February 2012, the Greek Ministry of Finance disclosed the essential characteristics of the proposed voluntary bond exchange operation and announced that a draft Greek bill would be prepared and adopted for that purpose. That transaction was to include a consent solicitation and an invitation to private holders of certain Greek bonds to exchange those bonds for new bonds having a face value equal to 31.5% of the face value of the debt exchanged and for notes of the European Financial Stability Facility (EFSF) maturing within 24 months having a face value equal to 15% of the face value of the debt exchanged, each to be delivered by the Hellenic Republic at settlement. In addition, each participating private holder would also receive detachable GDP-linked securities of the Hellenic Republic with a notional amount equal to the face amount of the new bonds.

21 In a press release of 24 February 2012, the Greek Ministry of Finance specified the conditions governing the voluntary bond exchange transaction involving private investors (Private Sector Involvement) ('the PSI'), referring to Greek Law No 4050, Greek Bondholder Act, which had been adopted by the Greek Parliament on 23 February 2012. That law introduced a procedure under the CACs, under which the proposed amendments would become legally binding on the holders of all bonds governed by Greek law issued before 31 December 2011 identified in the act of the Ministerial Council approving PSI invitations, if at least two thirds by face value amounted to a quorum of those bonds, voting collectively without distinction by series, approved the proposed amendments. The preamble of that law states that '… the [ECB] and the other members of the Eurosystem have concluded special agreements with [the Hellenic Republic] in order to ensure that their task and their institutional role, and the [ECB's] role in drawing up monetary policy, as laid down in the Treaty, are not compromised'.

22 In the words of recital 3 of Decision 2012/433/EU of 18 July 2012 repealing Decision ECB/2012/3 on the eligibility of marketable debt instruments issued or fully guaranteed by the Hellenic Republic in the context of the Hellenic Republic's debt exchange offer (ECB/2012/14) (OJ 2012 L 199, p. 26), at the same time, on 24 February 2012, a collateral enhancement in the form of a buy-back scheme to underpin the quality of marketable debt instruments issued or guaranteed by the Hellenic Republic was provided for the benefit of the national central banks.

23 The applicants, Mr Alessandro Accorinti and the applicants whose names appear in the annex, who are all holders of Greek bonds, were involved in the restructuring of the Greek public debt and made substantial losses on the nominal value of their bonds following the implementation of the Greek bond exchange offer under the PSI and the CAC procedure under which the exchange of securities was binding on all the private investors concerned, on the basis of Greek Law No 4050/2012.

24 On 27 February 2012, the ECB adopted Decision 2012/133/EU repealing Decision ECB/2010/3 on temporary measures relating to the eligibility of marketable debt instruments issued or guaranteed by the Greek Government (ECB/2012/2) (OJ 2012 L 59, p. 36) (see paragraph 6 above), which had the effect of suspending the eligibility of Greek debt instruments as collateral for the purposes of Eurosystem monetary policy operations.

25 In support of that repeal, recitals 4 and 5 of Decision 2012/133 state that 'the Hellenic Republic has decided to launch a debt exchange offer in the context of private sector involvement to holders of marketable debt instruments issued by the Greek Government' and that 'the adequacy as collateral for Eurosystem operations of the marketable debt instruments issued by the Greek Government, or issued by entities established in Greece and fully guaranteed by the Greek Government, has been further negatively affected by such decision of the Hellenic Republic'.

26 According to Article 2 thereof, that decision entered into force on 28 February 2012.

27 In a draft agreement dated 1 March 2012, the European Commission, acting on behalf of the Member States of the euro area, and the Hellenic Republic agreed, inter alia, as follows:

'The Hellenic Republic will launch an exchange offer for outstanding eligible bonds with a view to reduce the nominal value by 53.5%. Bondholders will be offered to exchange existing bonds into new bonds of the Hellenic Republic with a new nominal value of 31.5% of the original nominal value. In addition, 15% of the original nominal value will be provided to bondholders in the form of notes …'

28 As regards the credits to be granted by the FESF, the following, in particular, is stated in that agreement:

'An amount up to EUR 35 [billion] will be used to facilitate the maintenance of eligibility, as collateral for Eurosystem monetary policy operations, of marketable debt instruments issued or guaranteed by the Greek Government. This will be achieved by putting in place a buy-back scheme for as long as a default or selective default rating is assigned to the Hellenic Republic or her bonds as a result of the debt exchange offer …'

29 On 1 March 2012, the EFSF, the Hellenic Republic, the Hellenic Financial Stability Fund, as guarantor, and the Greek Central Bank approved an agreement concerning a financial assistance facility of EUR 35 billion for the purposes of financing the increase of credit in the form of a buy-back scheme and to facilitate the maintenance of the eligibility of Greek bonds as collateral in the context of Eurosystem credit operations.

30 On 5 March 2012, the ECB adopted Decision 2012/153/EU on the eligibility of marketable debt instruments issued or fully guaranteed by the Hellenic Republic in the context of the Hellenic Republic's debt exchange offer (ECB/2012/3) (OJ 2012 L 77, p. 19).

31 In the words of Article 1(1) of Decision 2012/153, 'the use, as collateral for Eurosystem credit operations, of marketable debt instruments issued or fully guaranteed by the Hellenic Republic that do not fulfil the Eurosystem's minimum requirements for credit quality thresholds … while fulfilling the other eligibility requirements specified in [the general documentation], shall be conditional on the provision by the Hellenic Republic to [national central banks], shall be conditional on the provision by the Hellenic Republic to [national central banks] of a collateral enhancement in the form of a buy-back scheme'. Article 1(2) of Decision 2012/153 provides that 'the marketable debt instruments referred to in paragraph 1 shall remain eligible for the duration of the collateral enhancement'. According to Article 2, that decision entered into force on 8 March 2012.

32 Recital 2 of Decision 2012/153 is worded as follows:

'On 21 July 2011, the Heads of State or Government of the euro area and Union institutions announced measures to stabilise Greek public finances, which included their commitment to provide collateral enhancement to underpin the quality of marketable debt instruments issued or guaranteed by the Hellenic Republic. The Governing Council has decided that such collateral enhancement is to be provided by the Hellenic Republic for the benefit of the national central banks …'

33 According to recital 3 of that decision:

'The Governing Council has decided that the Eurosystem's credit quality threshold should be suspended in respect of marketable debt instruments issued or fully guaranteed by the Hellenic Republic that [were] covered by the collateral enhancement.'

34 Pursuant to Article 2 of Decision 2012/153, the latter decision entered into force on 8 March 2012.

35 By Decision 2012/433, the ECB repealed Decision 2012/153 with effect from 25 July 2012 (Articles 1 and 2).

36 Recital 3 of that decision states the following:

'In the context of the debt exchange offer launched by the Hellenic Republic to the holders of marketable debt instruments issued or guaranteed by the Greek Government, on 24 February 2012 a collateral enhancement in the form of a buy-back scheme to underpin the quality of marketable debt instruments issued or guaranteed by the Hellenic Republic was provided for the benefit of the national central banks.'

37 Following a decision of its Governing Council, the ECB published, on 6 September 2012, the following press release, entitled '6 September 2012 — Technical features of Outright Monetary Transactions':

'As announced on 2 August 2012, the Governing Council of the [ECB] has today taken decisions on a number of technical features regarding the Eurosystem's outright transactions in secondary sovereign bond markets that aim at safeguarding an appropriate monetary policy transmission and the singleness of the monetary policy. These will be known as Outright Monetary Transactions (OMTs) and will be conducted within the following framework:

Conditionality A necessary condition for Outright Monetary Transactions is strict and effective conditionality attached to an appropriate European Financial Stability Facility/European Stability Mechanism (EFSF/ESM) programme. Such programmes can take the form of a full EFSF/ESM macroeconomic adjustment programme or a precautionary programme (Enhanced Conditions Credit Line), provided that they include the possibility of EFSF/ESM primary market purchases. The involvement of the IMF shall also be sought for the design of the country-specific conditionality and the monitoring of such a programme. The Governing Council will consider Outright Monetary Transactions to the extent that they are warranted from a monetary policy perspective as long as programme conditionality is fully respected, and terminate them once their objectives are achieved or when there is non-compliance with the macroeconomic adjustment or precautionary programme. Following a thorough assessment, the Governing Council will decide on the start, continuation and suspension of Outright Monetary Transactions in full discretion and acting in accordance with its monetary policy mandate.

Coverage Outright Monetary Transactions will be considered for future cases of EFSF/ESM macroeconomic adjustment programmes or precautionary programmes as specified above. They may also be considered for Member States currently under a macroeconomic adjustment programme when they will be regaining bond market access. Transactions will be focused on the shorter part of the yield curve, and in particular on sovereign bonds with a maturity of between one and three years. No ex ante quantitative limits are set on the size of Outright Monetary Transactions.

Creditor treatment The Eurosystem intends to clarify in the legal act concerning Outright Monetary Transactions that it accepts the same (pari passu) treatment as private or other creditors with respect to bonds issued by euro area countries and purchased by the Eurosystem through Outright Monetary Transactions, in accordance with the terms of such bonds). …'

Procedure and forms of order sought

38 By application lodged at the Court Registry on 11 February 2013, the applicants brought the present action.

39 By a document lodged at the Court Registry on 27 May 2013, Nausicaa Anadyomène SAS, a company established in Paris (France) and having as its object the acquisition, management on its own account and valuation of bonds, sought leave to intervene in the present case in support of the form of order sought by the applicants and requested that all procedural documents relating to the present case be communicated to it, with the exception of documents deemed to be confidential.

40 By a document lodged at the Court Registry on 21 June 2013, the applicants requested the Court to grant Nausicaa Anadyomène leave to intervene in support of the forms of order sought by them and to communicate to that company all the procedural documents relating to the present dispute.

41 By a document lodged at the Court Registry on 21 June 2013, the ECB claimed that Nausicaa Anadyomène's application to intervene should be rejected, on the ground that, in particular, it did not have a direct and current interest in the result of the case, within the meaning of the second paragraph of Article 40 of the Statute of the Court of Justice of the European Union, and that the Court should order that company to bear its own costs and also to pay the costs incurred by the ECB.

42 Following a change in the composition of the Chambers of the Court, the Judge-Rapporteur was assigned to the Eighth Chamber, to which the present case was, consequently, assigned.

43 By order of 13 December 2013, rectified upon application by the ECB by order of 14 February 2014, the President of the Fourth Chamber dismissed Nausicaa Anadyomène's application to intervene and ordered it to bear its own costs and to pay those incurred by the ECB in connection with the application to intervene.

44 By order of 25 June 2014 in *Accorinti and Others* v *ECB* (T-224/12, EU:T:2014:611), the Court dismissed the action for annulment brought by certain of the applicants against Decision 2012/153 as inadmissible.

45 Upon hearing the report of the Judge-Rapporteur, the Court (Fourth Chamber) decided to open the oral procedure.

46 The parties presented oral argument and answered the oral questions put by the Court at the hearing on 25 February 2015.

47 The applicants claim that the Court should:

— declare the action admissible;

— acknowledge the ECB's liability pursuant to Article 340 TFEU;

— order the ECB to make reparation for the damage caused to them, in the amount of at least EUR 12 504 614.98, namely to the extent stated for each of them in paragraphs 68 to 72 of the application, or such other amount as may be deemed just and fair, subject to clarification in the course of the proceedings, including 'statutory and default' interest on those amounts;

— in the alternative, order the ECB to make reparation for the damage caused to them, in the amount of at least EUR 3 668 020.39, namely to the extent stated for each of them in paragraphs 74 and 76 of the application, or such other amount as may be deemed just and fair, subject to clarification in the course of the proceedings, including 'statutory and default' interest on those amounts;

— further in the alternative, order the ECB to make reparation for the damage caused to them in the amount of at least EUR 2 667 651,19 namely to the extent stated for each of them in paragraphs 77 and 78 of the application, or such other amount as may be deemed fair and equitable, subject to clarification in the course of the proceedings, including 'statutory and default' interest on those amounts;

— still further in the alternative, order the ECB to make reparation for the damage caused to them by its lawful or non-negligent conduct, in such amount as may be deemed just and fair;

— order the ECB to pay the costs.

48 The ECB contends that the Court should:

— dismiss the action as inadmissible or unfounded;

— order the applicants to pay the costs.

Law

1. *The ECB's non-contractual liability in respect of an unlawful act*

Admissibility

49 The ECB maintains that the action is inadmissible, since the application does not satisfy the requirements of Article 44(1)(c) of the Rules of Procedure of the General Court of 2 May 1991 and since at the time when the action was brought the proceedings in Case T-224/12, which concerned only some of the applicants party to the present proceedings, were pending before the Court. In addition, the present action for compensation seeks to circumvent the inadmissibility of the applications for annulment having as their object the same unlawful acts and seeking the same financial outcome.

50 As regards the requirements of Article 44(1)(c) of the Rules of Procedure of 2 May 1991, the action is alleged to be inadmissible as regards both the unlawful acts alleged and the damage alleged to have been sustained, including their quantification. The ECB maintains that the application does not specify in sufficient detail the reasons why the PSI, as the outcome of Greek Law No 4050/2012, could render the ECB liable, as it played only an advisory role in that context and cannot have caused — even indirectly — the alleged damage. Nor is the quantification of that damage in the application substantiated by sufficient evidence. The bank statements annexed to the application do not satisfy those requirements, as those annexes contain no express and specific references to the applicants concerned.

51 In the ECB's submission, in the application the alleged unlawful conduct and the causal link between that conduct and the alleged damage are not substantiated by sufficient probative material. In support of what they allege to be the 'reassuring statements' made by representatives of the ECB, the applicants merely made a general reference in the application to various press articles and other documents annexed to the application. The same applies to the alleged breaches of the principles of legal certainty and proportionality, and also to the alleged misuse of powers, including the way in which the purely advisory role played by the ECB may have given rise to such unlawful acts. Nor do the applicants explain in the application the way in which the exchange agreement of 15 February 2012 and other conduct on the part of the ECB may have played a role in causing the alleged damage, which is wholly attributable to the implementation of Greek Law No 4050/2012. In addition, the applicants fail to identify in the application any specific conduct on the part of the ECB that might

have deprived the Members of the Greek Parliament of their political independence and their unfettered power to take decisions. The applicants have also failed to demonstrate the existence of a causal link between Decision 2012/153, which was not adopted until after the Hellenic Republic had decided to have recourse to the PSI, and the damage sustained. Last, the applicants have failed to present, in the application, the essential evidence to justify the quantification of the damage which they claim to have sustained, including the date on which and the price at which they bought the Greek bonds concerned, their initial due date, the specific characteristics of the coupons of those bonds, the rates of the 'haircut' applied individually to reduce the amount of the payment for the new coupons and, last, 'the evaluation attributed by the investor to 15% of the one- and two-year EFSF bonds, and to the GNP-indexed bonds granted in exchange'.

52 The applicants dispute the ECB's arguments and maintain that their action is admissible.

53 As regards the ECB's main argument, it should be borne in mind that under the first paragraph of Article 21 of the Statute of the Court of Justice, read with the first paragraph of Article 53 thereof, and Article 44(1) of the Rules of Procedure of 2 May 1991, an application must set out the subject-matter of the proceedings and a summary of the pleas in law on which it is based. That statement must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the action, if necessary, without any further information. In order to guarantee legal certainty and the sound administration of justice it is necessary, in order for a plea to be admissible, that the essential matters of law and fact relied on are stated, at least in summary form, coherently and intelligibly in the application itself. More specifically, in order to satisfy those requirements, an application for compensation for damage said to have been caused by an EU institution must indicate the evidence from which the conduct which the applicant alleges against the institution can be identified, the reasons why the applicant considers that there is a causal link between the conduct and the damage which it claims to have sustained, and the nature and extent of that damage (see judgment of 2 March 2010 in *Arcelor* v *Parliament and Council*, T-16/04, ECR, EU:T:2010:54, paragraph 132 and the case-law cited).

54 In the present case, the ECB cannot claim that the applicant did not satisfy those formal requirements, as the application sets out to the requisite standards the matters of fact and of law that enable the conduct alleged against it to be identified, the reasons why the applicants consider that there is a causal link between that conduct and the damage which they claim to have sustained and also the nature and extent of that damage. In reality, the ECB's argument amounts to disputing, under the guise of the assessment of the admissibility of the action under Article 44(1)(c) of the Rules of Procedure of 2 May 1991, the merits of the claims for compensation, in particular as regards the existence of a causal link and damage, the various components of which are none the less set out to the requisite standard in the application, under a separate heading, 'Liability of the ECB pursuant to Articles 268 [TFEU] and 340 [TFEU]'.

55 In the first place, the applicants rely on a number of instances of unlawful conduct which they ascribe to the ECB and which are first of all summarised in paragraph 32 of the application and then developed in greater detail, first, in paragraphs 33 to 35 as regards the breach of the protection of legitimate expectations; second, in paragraphs 36 and 37 as regards the breach of the principle of equal treatment of creditors; third, in paragraphs 38 and 39 as regards misuse of powers and the breach of the principles of proportionality, coherence and rationality; and, fourth, in paragraphs 40 and 41 as regards the infringement of Articles 123 TFEU and 127 TFEU and Article 21 of the Statute.

56 In the second place, in paragraph 45 et seq. of the application, the applicants clarify the nature and the scope of the alleged damage, which, in their submission, results from that unlawful conduct, including the existence of a causal link between those factors. Thus, in paragraph 48 of the application, it is stated that the 'damage resulting from the breach [of the principle of] equal treatment … by the ECB … had a disproportionate impact on a limited and clearly defined group of savers/creditors, who held at most 6% of the Greek debt, while the ECB and the [national central banks] held 22%'. In

paragraphs 49 to 52 of the application, the applicants ascribe the loss of 75% of the value of their Greek bonds in the context of the PSI, at least in part, to the ECB's alleged breach, to their detriment, of the principle of equal treatment, in particular by the conclusion of the exchange agreement of 15 February 2012 — which excluded the involvement of the ECB and the national central banks in the restructuring of the Greek public debt — and by the adoption of Decision 2012/153. Furthermore, in paragraph 54 et seq. of the application, the applicants expressly address the question of the causal link between the damage sustained and the ECB's unlawful conduct, by carrying out a counterfactual analysis which takes account of both the hypothetical situation that would have existed had that conduct not occurred and the question whether Greek Law No 4050/2012 might have severed that causal link, which the applicants deny. In that regard, it is made clear, in particular, in paragraph 56 of the application that 'if the ECB and the [national central banks] had not decided unilaterally, in a discriminatory fashion and unlawfully, to place themselves outside the restructuring of the Greek [public] debt, the damage caused to investors' wealth would not have occurred or would in any event have been smaller and less onerous, since the allocation of the losses and the reduction in the value of the Greek bonds would necessarily have been alleviated in proportion to the bonds held in their portfolios by the ECB and the [national central banks], which, however, were [exchanged] beforehand …'.

57 In the third place, in paragraph 68 et seq. of the application, the applicants describe the extent of the damage which they claim to have sustained, and provide actual figures. In that regard, the ECB's argument that a correct quantification of that damage would have required further information cannot undermine that finding, since such a quantification — still less its 'correctness' as a substantive issue — is not among the essential requirements of form or admissibility of an action for damages (see judgment of 16 September 2013 in *ATC and Others* v *Commission*, T-333/10, ECR, EU:T:2013:451, paragraphs 198 to 201 and the case-law cited).

58 It follows that the explanations set out in the application itself are sufficiently clear and precise to enable the ECB to prepare its defence and the Court to rule on the action, which is confirmed by the actual content of the defence, in particular, as regards the lack of merit of the action for damages. It must be concluded that the wording of the application sets out, to a sufficient standard and in a coherent and comprehensible fashion, the essential elements of fact and of law on which the present action is based to satisfy the requirements of Article 44(1)(c) of the Rules of Procedure of 2 May 1991.

59 Nor can the ECB properly claim, in the alternative, that the action is inadmissible on the ground of *lis pendens*, in so far as it is based on the illegality of Decision 2012/153, which has been contested by certain of the applicants in the context of Case T-244/12, or on the ground that they brought the action solely in order to circumvent the conditions of admissibility of the action for annulment.

60 First of all, the case-law relating to challenges to the refusal to grant Community financial assistance (order of 26 October 1995 in *Pevasa and Inpesca* v *Commission*, C-199/94 P and C-200/94 P, ECR, EU:C:1995:360, paragraph 27, and judgment of 7 February 2001 in *Inpesca* v *Commission*, T-186/98, ECR, EU:T:2001:42, paragraphs 76 and 77), on which the ECB relies in support of its argument, is irrelevant. Unlike the situation forming the background to those decisions, in the present case the applicants do not seek, by their action for damages, to obtain a result comparable to that sought by their action for annulment in Case T-244/12. The sole purpose of that action was to obtain the annulment of Decision 2012/153 and the applicants in that case did not pursue a financial objective. Furthermore, as that action for annulment was brought within the period prescribed in the sixth paragraph of Article 263 TFEU, any intention to circumvent that period, within the meaning of that case-law, by bringing an action for damages was precluded at the outset. It is only exceptionally, and in order to ensure that that period is not circumvented, that an action for damages has been declared inadmissible, namely where it has been brought jointly with an action for annulment, on the ground that the action for damages sought, in reality, to have an individual decision addressed to the applicant which had become final withdrawn and that it would, if successful, have had the effect of

eliminating the legal effects of that decision (see, to that effect, judgments of 17 October 2002 in *Astipesca* v *Commission*, T-180/00, ECR, EU:T:2002:249, paragraph 139, and of 3 April 2003 in *Vieira and Others* v *Commission*, T-44/01, T-119/01 and T-126/01, ECR, EU:T:2003:98, point 213).

61 Next, it should be emphasised that an action for damages is an autonomous form of action, with a particular purpose to fulfil within the system of legal remedies and subject to conditions of use dictated by its specific purpose. Whereas actions for annulment and for failure to act seek a declaration that a legally binding measure is unlawful or that such a measure has not been taken, an action for damages seeks compensation for damage resulting from a measure or from unlawful conduct, attributable to an EU institution or body (see judgment of 23 March 2004 in *Ombudsman* v *Lamberts*, C-234/02 P, ECR, EU:C:2004:174, paragraph 59 and the case-law cited; judgments of 27 November 2007 in *Pitsiorlas* v *Council and ECB*, T-3/00 and T-337/04, ECR, EU:T:2007:357, paragraph 283, and of 3 March 2010 in *Artegodan* v *Commission*, T-429/05, ECR, EU:T:2010:60, paragraph 50). That autonomy of action cannot be called into question by the mere fact that an applicant decides to bring actions for annulment and for damages successively; and the fact that an action for annulment is declared inadmissible does not mean that an action for damages brought subsequently is inadmissible on the sole ground that those actions are based on similar, or even identical, pleas of illegality. Such an interpretation would run counter to the very principle of the autonomy of remedies and would therefore deprive Article 268 TFEU, read with the third paragraph of Article 340 TFEU, of its practical effect.

62 Last, in so far as the ECB none the less means to rely on a risk of circumvention of procedure or misuse of a remedy, it is sufficient to point to the exceptional nature of the case-law cited in paragraph 60 above, which is therefore to be applied strictly (see, to that effect, judgment of 23 November 2004 in *Cantina sociale di Dolianova and Others* v *Commission*, T-166/98, ECR, EU:T:2004:337, paragraph 122 and the case-law cited, not set aside on that point in the judgment of 17 July 2008 in *Commission* v *Cantina sociale di Dolianova and Others*, C-51/05 P, ECR, EU:C:2008:409, paragraph 63; see also, to that effect, judgment of 19 April 2007 in *Holcim (Deutschland)* v *Commission*, C-282/05 P, ECR, EU:C:2007:226, paragraph 32) and to state that in the present case, by their action for compensation, the applicants do not seek to have the acts at issue annulled, but to obtain compensation for the damage which they allege to have resulted from the adoption and implementation of those acts.

63 In the light of all of the foregoing considerations, the plea of inadmissibility raised by the ECB must be rejected.

Substance

The conditions on which the ECB may render the European Union liable pursuant to Articles 268 TFEU and Article 340 TFEU

64 It should be borne in mind that, pursuant to the third paragraph of Article 340 TFEU, the ECB is, in accordance with the general principles common to the laws of the Member States, to make good any damage caused by it or its servants in the performance of their duties.

65 According to settled case-law, applicable *mutatis mutandis* to the non-contractual liability of the ECB provided for in the third paragraph of Article 340 TFEU, the European Union's non-contractual liability under the second paragraph of Article 340 TFEU for the unlawful conduct of its institutions or bodies is subject to the satisfaction of a set of conditions of a cumulative nature, namely the unlawfulness of the conduct alleged against the EU institution or body, the fact of damage and the existence of a causal link between the alleged conduct and the damage complained of (see judgments

of 9 November 2006 in *Agraz and Others* v *Commission*, C-243/05 P, ECR, EU:C:2006:708, paragraph 26 and the case-law cited, and in *Arcelor* v *Parliament and Council*, cited in paragraph 53 above, EU:T:2010:54, paragraph 139 and the case-law cited).

66 Given the cumulative nature of those conditions, the action must be dismissed in its entirety where one of those conditions is not satisfied (see judgment in *Arcelor* v *Parliament and Council*, cited in paragraph 53 above, EU:T:2010:54, paragraph 140 and the case-law cited).

67 As regards the first condition, relating to the unlawfulness of the alleged conduct of the institution or body concerned, the case-law requires that there must be established a sufficiently serious breach of a rule of law intended to confer rights on individuals (judgment of 4 July 2000 in *Bergaderm and Goupil* v *Commission*, C-352/98 P, ECR, EU:C:2000:361, paragraph 42). The decisive test for finding that a breach is sufficiently serious is whether the EU institution or body concerned manifestly and seriously disregarded the limits on its discretion. It is solely where that institution or body has only considerably reduced, or even no, discretion, that the mere infringement of EU law may suffice to establish the existence of a sufficiently serious breach (judgment of 10 December 2002 in *Commission* v *Camar and Tico*, C-312/00 P, ECR, EU:C:2002:736, paragraph 54; in *Arcelor* v *Parliament and Council*, paragraph 53 above, EU:T:2010:54, point 141, and in *ATC and Others* v *Commission*, paragraph 57 above, EU:T:2013:451, paragraph 62).

68 In that regard, it should be made clear that the disputed conduct of the ECB took place in the context of the tasks conferred on it for the purposes of defining and implementing the EU monetary policy, under Articles 127 TFEU and 282 TFEU and Article 18 of its Statute, in particular by intervening on the capital markets and managing credit operations. Those provisions confer a broad discretion on the ECB, the exercise of which entails complex evaluations of an economic and social nature and of rapidly-changing situations, which must be carried out in the context of the Eurosystem, or even of the European Union as a whole. Thus, any sufficiently serious breach of the legal rules at issue must be based on a manifest and serious failure to have regard for the limits of the broad discretion enjoyed by the ECB when exercising its powers in monetary policy matters. That is even more true because the exercise of that discretion implies the need for the ECB to foresee and evaluate complex and uncertain economic developments, such as the development of capital markets, the monetary mass and the rate of inflation, which affect the proper functioning of the Eurosystem and payment and credit systems, and also to make political, economic and social choices in which it is required to weigh up and decide between the different objectives referred to in Article 127(1) TFEU, the main objective of which is the maintenance of price stability (see, to that effect, Opinion of Advocate General Cruz Villalón in *Gauweiler and Others*, C-62/14, ECR, EU:C:2015:7, point 111 and the case-law cited; see also, to that effect and by analogy, judgments in *Arcelor* v *Parliament and Council*, cited in paragraph 53 above, EU:T:2010:54, paragraph 143 and the case-law cited, and of 16 December 2011 in *Enviro Tech Europe and Enviro Tech International* v *Commission*, T-291/04, ECR, EU:T:2011:760, paragraph 125 and the case-law cited).

69 Last, as regards the legislative activity of the institutions, including the adoption by the ECB of measures of general application, such as Decision 2012/153, it has been held that the strict approach taken towards the liability of the European Union in the exercise of those legislative activities is attributable to two considerations. First, even where the legality of the measures is subject to judicial review, exercise of the legislative function must not be hindered by the prospect of actions for damages whenever the general interest of the European Union requires the adoption of legislative measures that may adversely affect individual interests. Second, in a legislative context characterised by the exercise of a wide discretion, which is essential for implementing an EU policy, the European Union cannot incur liability unless the institution concerned has manifestly and gravely disregarded the limits on the exercise of its powers (see, to that effect, judgment of 9 September 2008 in *FIAMM and Others* v *Council and Commission*, C-120/06 P and C-121/06 P, ECR, EU:C:2008:476, paragraph 174).

70 The merits of the pleas of illegality raised by the applicants must be assessed in the light of those criteria.

The allegedly unlawful conduct of the ECB

– Preliminary observations

71 In the applicants' submission, the ECB acted unlawfully, causing the European Union to incur liability, on a number of occasions, namely (i) by concluding the exchange agreement of 15 February 2012 with the Hellenic Republic, which the applicants ask the Court to order the ECB to disclose; (ii) by refusing to participate in the restructuring of the Greek public debt, as a result of which the Hellenic Republic was forced to obtain new financial aid; and (iii) by adopting Decision 2012/153, which made the eligibility of the Greek bonds as collateral subject to a buy-back scheme made available only to the national central banks, although those bonds did not satisfy the credit quality conditions.

72 The ECB denies having breached a rule of law intended to confer rights on individuals. The rules alleged to have been breached related to the debtor position of the Hellenic Republic, while the ECB merely expressed its view on whether or not the PSI was appropriate and played only an advisory role within the 'troika'. The ECB states that it has no legal or financial relationship with the applicants. It is neither a debtor nor the issuer of the bonds held by the applicants, but is itself a creditor of the Hellenic Republic. Furthermore, it did not act 'directly against the applicants', but assumed the responsibilities conferred on it by the FEU Treaty, and in particular Article 127 TFEU, in managing the Greek public debt crisis. Accordingly, the rules on which the applicants rely do not apply to the role which the ECB played in the context of the PSI and do not confer on them any rights that would protect them.

– The plea alleging breach of the principle of protection of legitimate expectations

73 In the context of the first plea, the applicants maintain that the conduct referred to in paragraph 71 above constitutes a breach of the principle of the legitimate expectation of the holders of Greek bonds, because it is contrary to the assurances given by the successive presidents of the ECB, Mr Trichet and Mr Draghi, and also by Members of its Executive Board. According to those statements, first, the Greek bonds held by the ECB would not be the subject of a 'voluntary' exchange; second, there was no risk of payment default on the part of the Hellenic Republic; third, a forced restructuring of the Greek public debt was not possible; fourth, the involvement of private creditors in such a restructuring could be envisaged only on a voluntary basis; fifth, a reduction of the nominal value of those bonds was impossible; and, sixth, if such a situation should none the less arise, the Greek bonds would never be accepted as collateral. In the applicants' submission, those precise, unconditional and consistent assurances from authorised and reliable sources were such as to give rise to legitimate expectations on the part of individuals, which were frustrated by the subsequent unlawful conduct of the ECB, including the exchange agreement of 15 February 2012. In the reply, the applicants maintain that the ECB's entering into a secret and discriminatory exchange agreement, in a situation in which there was a conflict of interests owing to its own status as a creditor of the Hellenic Republic, in order to avoid the restructuring of the Greek public debt and to assume the rank of a preferential creditor is contrary to Article 5 TEU and to the principle of legal certainty. In the context of that restructuring, the ECB's role was not limited to a purely advisory activity, since it participated as a member of and key player in the 'troika' with its own power to take decisions and power of signature.

74 The ECB contends, essentially, that, on the contrary, its press releases and the public statements of its agents clearly showed and warned that the PSI was not within the powers of the ECB and that the related decisions were taken by the sovereign governments and also that the sovereign debt crisis in European presented significant potential risks linked with investments in Greek bonds. An ECB

publication of 6 June 2011 expressly addressed the question of the consequences of a PSI and issued a warning against the disadvantages that could result from an 'imprudent and automatic' implementation of that instrument. The relevant documents therefore show that the ECB did not play a determinative or decision-making role in the context of the adoption of the PSI and that none of the points of view which it expressed within the limits of its terms of reference could be understood by the applicants as a guarantee that such a PSI would not be adopted. Any prudent and circumspect reader of those documents ought to have known that a PSI was one of the possible options and that its adoption fell exclusively within the legal and political responsibility of the Hellenic Republic. In the absence of statements unambiguously precluding the possibility of a PSI, no precise, unconditional and consistent assurance to that effect was given by the ECB.

75 The Court has repeatedly held that the right to rely on the principle of the protection of legitimate expectation extends to any person in a situation where an EU authority has caused him or her to have justified expectations. Nevertheless, the right to rely on that principle requires that three conditions be satisfied cumulatively. First, precise, unconditional and consistent assurances originating from authorised and reliable sources must have been given to the person concerned by the EU authorities. Second, those assurances must be such as to give rise to a legitimate expectation on the part of the person to whom they are addressed. Third, the assurances given must be consistent with the applicable rules (see, to that effect, judgments of 17 March 2011 in *AJD Tuna*, C-221/09, ECR, EU:C:2011:153, paragraphs 71 and 72; of 14 March 2013 in *Agrargenossenschaft Neuzelle*, C-545/11, ECR, EU:C:2013:169, paragraphs 23 to 25 and the case-law cited; of 18 June 2010 in *Luxembourg* v *Commission*, T-549/08, ECR, EU:T:2010:244, paragraph 71; and of 27 September 2012 in *Applied Microengineering* v *Commission*, T-387/09, ECR, EU:T:2012:501, paragraphs 57 and 58 and the case-law cited).

76 Furthermore, it should be borne in mind that while the possibility of relying on the protection of legitimate expectations, as a fundamental principle of EU law, is available to any economic operator whom an institution has caused to have justified expectations, the fact remains that, where a prudent and circumspect economic operator is able to foresee the adoption of an EU measure likely to affect his interests, he cannot rely on that principle if the measure is adopted. Nor can economic operators have a legitimate expectation that an existing situation which is capable of being altered by the EU institutions in the exercise of their discretion will be maintained, especially in an area such as monetary policy, the subject-matter of which is constantly being adjusted according to variations in the economic situation (see, to that effect and by analogy, judgments of 10 September 2009 in *Plantanol*, C-201/08, ECR, EU:C:2009:539, paragraph 53 and the case-law cited; in *AJD Tuna*, cited in paragraph 75 above, EU:C:2011:153, paragraph 73; in *Agrargenossenschaft Neuzelle*, cited in paragraph 75 above, EU:C:2013:169, paragraph 26; and of 19 October 2005 in *Cofradía de pescadores 'San Pedro de Bermeo' and Others* v *Council*, T-415/03, ECR, EU:T:2005:365, paragraph 78).

77 It therefore falls to be determined whether the press releases and public statements of certain members of the ECB constituted precise, unconditional and consistent assurances originating from authorised and reliable sources that could have given rise to legitimate expectations on the part of the applicants that the value of their Greek bonds would not have been subject to a compulsory 'haircut'.

78 In that regard, it should be pointed out that the press releases and public statements produced by the applicants differ in their subject-matter and their content. They consist, on the one hand, of statements made between April and June 2011 by the then President of the ECB Mr Trichet, and by Mr Draghi, his designated successor, expressing, in particular, the ECB's declared and reiterated opposition to a restructuring of the Greek public debt and to selective default by the Hellenic Republic. On the other hand, the applicants rely on a public statement by Mr Bini Smaghi, a member of the Executive Board of the ECB, on 16 June 2011, and a speech by him on 15 September 2010 on 'improving the economic governance and stability framework in the EU, in particular in the euro area.

79 As regards the statements made by Mr Draghi and Mr Trichet, it must be observed that, in the light of, first, their general nature; second, the fact that — as correctly emphasised in those statements — the ECB did not have the power to decide on any restructuring of the public debt of a Member State affected by a selective payment default; and, third, the prevailing uncertainty in the financial markets at the time concerning, especially, future developments in the financial situation of the Hellenic Republic, those statements could not be described as precise and unconditional assurances originating from authorised and reliable sources, still less as assurances that that Member State would not adopt a decision on such restructuring. Although the ECB was involved in monitoring developments in the financial situation of the Hellenic Republic within the framework of the 'troika' formed by it, the IMF and the Commission, it was not competent to decide on such a measure, which fell mainly if not exclusively within the sovereign power and budgetary authority of the Member States, in particular its legislature, and, to a certain extent, the coordination of economic policy by the Member States pursuant to Article 120 TFEU et seq. In such circumstances, opposition to such a restructuring, such as repeatedly expressed in public by Mr Trichet and Mr Draghi in a climate of increasing uncertainty on the part of the financial market players, was to be interpreted as having a purely politico-economic scope. In particular, by adopting that approach their authors sought to warn those players against further deterioration in the economic situation at the time, and even the possible insolvency of the Hellenic Republic, whose potentially defaulting bonds would no longer be acceptable to the ECB and the national central banks as collateral in Eurosystem credit operations (see Decision 2012/133, adopted subsequently) and, moreover, against the risks that such a development could entail for the stability of the financial system and the functioning of the Eurosystem as a whole. It should be added that that opposition on the part of the successive Presidents of the ECB was accompanied by the information that, in the event that such a default should none the less occur and the Member States concerned should decide on a restructuring of the public debt, the ECB would require that that restructuring was supported by sufficient guarantees in order to protect its integrity and to maintain the stability and the confidence of the financial markets. It follows that, in that respect also, the ECB did not encourage legitimate expectations that its opposition would be maintained if the Member States concerned decided to carry out such a restructuring, or that it had legal capacity — which it did not — to preclude such an approach.

80 As regards the statements made by Mr Bini Smaghi, it should be made clear that he merely indicated in public that the ECB would be unable to participate in an 'extension of Greek debt maturities', because to do so would violate its rules, and that any restructuring of the public debt of a Member State, should it become necessary, would be possible only on the basis of an agreement between creditors and debtors. In that context, he expressly mentioned the possibility that the euro area Member States would adopt CACs, which would make it easier for creditors and debtors to agree on a fair sharing of the burden. Contrary to the applicants' assertion, those statements do not preclude the possibility that a restructuring of the Greek public debt or a default on the part of the Hellenic Republic might occur or be decided upon, but describe only the ECB's limited room for manoeuvre in such a context and the circumstances in which such a restructuring could or should be implemented. Nor can it be inferred that any precise and unconditional assurance was given that the ECB would ultimately oppose such a restructuring if it should be decided upon by the Member States or by the competent bodies or that, if appropriate, it would not be involved in any form whatsoever in such a measure.

81 Consequently, in the present case, the public statements of the members of the ECB on which the applicants rely do not constitute precise, unconditional and consistent tending to preclude any restructuring of the Greek public debt, nor do they originate from authorised and reliable sources within the meaning of the case-law, and the plea alleging breach of the principle of protection of legitimate expectations must therefore be rejected.

82 For the same of completeness, it should none the less be pointed out that, as the ECB claims, the purchase by an investor of State bonds is by definition a transaction entailing a certain financial risk, because it is subject to the hazards of movements in the capital markets, and that some of the

applicants even acquired Greek bonds during the period when the financial crisis of the Hellenic Republic was at its peak. In the light of the economic situation of the Hellenic Republic and the uncertainties concerning it at the time, the investors concerned cannot claim to have acted as prudent and circumspect economic operators, within the meaning of the case-law referred to in paragraph 76 above, able to rely on the existence of legitimate expectations. On the contrary, in the light of the public statements which the applicants invoke in support of their complaints (see paragraph 78 above), those investors were supposed to be aware of the highly unstable economic situation that determined the fluctuation of the value of the Greek bonds which they had acquired and also the appreciable risk of at least a selective default by the Hellenic Republic. Furthermore, as the ECB correctly submits, a prudent and circumspect economic operator apprised of those public statements could not have ruled out the risk of a restructuring of the Greek public debt, given the differing views prevailing in that regard within the euro area Member States and the other bodies involved, such as the Commission, the IMF and the ECB.

83 Last, in so far as the applicants also rely, in that context, on a breach of the principle of legal certainty, it is sufficient to observe that they have not put forward any additional specific argument to the effect that the ECB's actions in the context of the antecedents to the restructuring of the Greek public debt contributed to the enactment of rules the effects of which were not sufficiently clear, precise and predictable (see, to that effect, judgment of 7 June 2005 in *VEMW and Others*, C-17/03, ECR, EU:C:2005:362, paragraph 80 and the case-law cited) or did not enable those concerned to know to the requisite standard the extent of the obligations which those rules imposed on them (see, to that effect and by analogy, judgment of 29 April 2004 in *Sudholz*, C-17/01, ECR, EU:C:2004:242, paragraph 34 and the case-law cited). Accordingly, this complaint alleging breach of the principle of legal certainty cannot be upheld either.

84 The applicants have therefore failed to show the existence of a breach by the ECB of the principle of protection of legitimate expectations or even, in that context, of the principle of legal certainty, that could cause the ECB to incur non-contractual liability.

– The plea alleging breach of the principle of equal treatment of 'private creditors' and of the pari passu clause

85 In the context of the second plea, the applicants rely on a breach of the principle of equal treatment of private creditors within the meaning of, in particular, Articles 20 and 21 of the Charter of Fundamental Rights of the European Union, as the ECB and the national central banks ensured, by implementing the exchange agreement of 15 February 2012, that the Greek bonds held in their respective folios would avoid the restructuring of Greek public debt in application of the CACs and would be immune to a reduction of their value. In taking the course of action described in paragraph 71 above, without taking the financial situation of private investors and savers, including the applicants, into account, the ECB breached that principle. The principle of equal treatment for all creditors or savers is also established at international level as a customary principle and should therefore be classified as a general principle of EU law or as a direct and special manifestation of the general principle of non-discrimination under Article 10 TFEU and Articles 20 and 21 of the Charter of Fundamental Rights. The clause known as 'par condicio creditorum' or 'pari passu', which assumes that creditors are treated equally in the payout, irrespective of their rank, therefore also applies to the ECB. Thus, in its press release of 6 September 2012 on the launch of outright monetary transactions ('OMTs'), the ECB accepted 'the same (pari passu) treatment as private or other creditors with respect to bonds issued by euro area countries and purchased by the Eurosystem through [OMTs], in accordance with the terms of such bonds'. Accordingly, the ECB's acquisition of the Greek bonds in the context of the buy-back scheme established by Decision 2010/281 did not confer any special treatment on it and it was required to assume a credit risk equal to that borne by any other private or institutional investor. The applicants, in their capacity as holders of Greek bonds, were, like the ECB and the national central banks, private-law creditors of the Hellenic Republic and the damage which they sustained was likely to

give rise to the same systemic effects on the European economy. Owing to the previous exchange of bonds in the ECB's and the national central banks' portfolios for new bonds, those banks were able to avoid the Greek State's 'targeted and concealed [payment] default', with the effect that the other bonds which were not able to benefit from such an exchange were downgraded and had to face the Greek State's 'residual ability to pay'. The ECB and the national central banks thus reserved a status of 'preferential creditor' to themselves, to the detriment of the private sector, on the pretext of their monetary policy task. Furthermore, by Decision 2012/153, the ECB unlawfully made the eligibility of the Greek bonds subject to the grant to the national central banks of a buy-back scheme for low-rated bonds in Eurosystem credit transactions. The applicants deny that that unequal treatment is objectively justified by public interests or by the provisions of the Treaties, as Article 127(1) TFEU, Article 3(3) and (4) TEU and Article 13 TEU make no provision for a derogation of that type. In any event, the ECB did not explain how the exchange agreement of 15 February 2012 and the buy-back scheme reserved to the national central banks come within its discretion in monetary policy matters, contributed to price stability in the euro area and were proportionate and necessary.

86 The ECB denies that the principle of equal treatment of creditors applies in the context of private law contractual clauses, as the bond issuer has the power, but is under no obligation, to incorporate that principle in the documentation accompanying the bonds. It is not a universal rule, of public international law or of constitutional law common at Member State level, still less a general principle of EU law, as its application depends on the choice of the bond issuer. Even on the assumption that the alleged obligation to comply with that principle were a superior rule of EU law, it would create legal obligations only for the issuer of the debt, namely, in this instance, the Greek State, and not for its creditors. The ECB also denies being a creditor of the Hellenic Republic comparable with the applicants, who are investors seeking high returns and made investments in an exclusively private capacity. Conversely, the ECB bought Greek bonds on the secondary bond market solely in the exercise of the public mandate conferred on it by Article 127(1) TFEU, read with Article 3(3) and (4) TEU and Article 13(1) TEU, which was reaffirmed in the Eurogroup's declaration of 21 February 2012 and in the statement of the grounds of Greek Law No 4050/2012. Thus, by Decision 2010/281, with the principal objective of maintaining price stability pursuant to Article 127(1) TFEU, the ECB decided to launch a temporary programme for bond markets, in the context of which the ECB and the national central banks bought, inter alia, bonds issued by the Hellenic Republic. Those purchases were intended to maintain 'the proper functioning of the monetary policy transmission mechanism, which is essential in order to ensure price stability, and to facilitate the "effective conduct of monetary policy oriented towards price stability in the medium term", by ensuring … the liquidity of the private and public bond markets in the euro area …', that is to say, for very different reasons from those that informed the investment decisions of other private investors. Furthermore, if the Greek bonds held by the Eurosystem central banks, including the Greek Central Bank, had not been excluded from the PSI, the Eurosystem's financial and functional independence within the meaning of Article 130 TFEU would have been affected and its capacity to refinance credit institutions and to operate in the financial markets within the meaning of Article 18(1) of its Statute would have been undermined. Therefore, as the situations at issue were not comparable, the applicants cannot claim that there was unequal treatment.

87 In the first place, the Court considers it appropriate to examine whether the ECB's conduct complained of constitutes a breach of the principle of equal treatment, as enshrined in Articles 20 and 21 of the Charter of Fundamental Rights (judgment of 18 July 2013 in *Sky Italia*, C-234/12, ECR, EU:C:2013:496, paragraph 15), which the ECB, as an EU institution, is required to observe as a superior rule of EU law protecting individuals. The general principle of equal treatment requires that comparable situations are not treated differently and that different situations are not treated in the same way unless such treatment is objectively justified. The comparability of different situations must be assessed with regard to all the elements which characterise them. Those elements must in particular be determined and assessed in the light of the subject-matter and purpose of the European Union act which makes the distinction in question. The principles and objectives of the field to which the act relates must also be taken into account (see judgments of 16 December 2008 in *Arcelor*

Atlantique and Lorraine and Others, C-127/07, ECR, EU:C:2008:728, paragraphs 23, 25 and 26 and the case-law cited, and of 12 May 2011 in *Luxembourg* v *Parliament and Council*, C-176/09, ECR, EU:C:2011:290, paragraphs 31 and 32 and the case-law cited).

88 In the present case, the applicants proceed from an incorrect premiss by claiming that all individuals who acquired Greek bonds, as 'private' savers or creditors of the Hellenic Republic, on the one hand, and the ECB and Eurosystem national central banks, on the other hand, were, in the light of the principles and the objectives of the relevant rules on which the actions complained of were based, in a comparable, or indeed identical, situation, for the purposes of the application of the general principle of equal treatment. That argument fails, in particular, to have regard to the fact that, by purchasing Greek bonds, notably on the basis of Decision 2010/281, the ECB and those national central banks acted in the exercise of their basic tasks, pursuant to Article 127(1) and (2) TFEU and, in particular, the first indent of Article 18(1) of the Statute, with the aim of maintaining price stability and the sound administration of monetary policy, and also within the limits defined by the provisions of that decision (see recital 5 of that decision).

89 Thus, first, the scheme for the purchase of State bonds, including Greek bonds, established by Decision 2010/281, was expressly based on the first indent of Article 127(2) TFEU and, in particular, on Article 18(1) of the Statute and formed part, in the face of the financial crisis to which the Greek State was exposed, of the context of 'the current exceptional circumstances in financial markets, characterised by severe tensions in certain market segments which [were] hampering the monetary policy transmission mechanism and thereby the effective conduct of monetary policy oriented towards price stability in the medium term'. According to that decision, that programme was therefore intended to 'form part of the Eurosystem's single monetary policy' to 'address the malfunctioning of securities markets and restore an appropriate monetary policy transmission mechanism' (recitals 2 to 4 of that decision). Those reasons are not disputed as such by the applicants, who merely base the comparability of the situations at issue on the sole fact that both the private investors and the Eurosystem central banks which acquired Greek bonds are creditors of the Greek state enjoying equal rights.

90 In that regard, it should be borne in mind that, under the first indent of Article 18(1) of the Statute, 'in order to achieve the objectives of the ESCB and to carry out its tasks, the ECB and the national central banks may', in particular, 'operate in the financial markets by buying and selling outright (spot and forward) … claims and marketable instruments, whether in euro or other currencies …'. It follows that the State bond buy-back scheme and, accordingly, the purchase of such bonds by the Eurosystem central banks form part of the basic tasks of the ESCB within the meaning of Article 127(1) and (2) TFEU, read with Article 282(1) TFEU, and that, more specifically, those measures are based on the authority provided for in the first indent of Article 18(1) of the Statute. It follows from the latter provision, moreover, that the sole purpose of the purchase by those central banks of State bonds on the secondary market is to achieve the objectives of the ESCB and to carry out its tasks, which precludes any reason not covered by that purpose, in particular the intention to obtain higher yields by investments, or even by speculative operations.

91 Consequently, it must be held that the applicants, as investors or savers who acted on their own behalf and in their exclusively private interest to obtain the maximum return on their investments, were in a different situation from that of the Eurosystem central banks. Although, under the applicable private law, when purchasing State bonds those central banks, like the private investors, acquired the status of creditors of the issuing and debtor State, that single point in common cannot justify their being regarded as being in a comparable, or indeed identical, situation to that of those investors. In fact, such an approach, taken solely from the viewpoint of private law, does not take account of either the legal framework of the operation involving the purchase of those bonds by the central banks or the public-interest objectives which those banks were called upon to pursue in that context under the

applicable rules of primary law, the principles and objectives of which must be taken into consideration when assessing the comparability of the situations in question in the light of the general principle of equal treatment (see the case-law cited in paragraph point 87 above).

92 It must therefore be concluded that the applicants, as private investors who purchased Greek bonds solely in their private pecuniary interest, whatever the precise reason for their investment decisions may have been, were in a different situation from that of the Eurosystem central banks whose investment decision was exclusively guided by objectives in the public interest, as referred to in Article 127(1) and (2) TFEU, read with Article 282(1) TFEU and also the first indent of Article 18(1) TFEU and Article 18(1) of the Statute. Thus, as the situations at issue were not comparable, the conclusion and implementation of the exchange agreement of 15 February 2012 cannot constitute a breach of the principle of equal treatment.

93 Nor, second, can the applicants validly claim, in essence, that the private investors and the Eurosystem central banks are in comparable situations in the light of the impact on the European economy of the effects of the reduction of the value of their bonds. In the applicants' submission, the burdens imposed solely on private investors in the context of the restructuring to the Greek public debt are 'likely to have the same systemic effects on the European economy' as the involvement on an equal footing of the Eurosystem central banks in that restructuring, which those banks avoided by concluding and implementing the exchange agreement of 15 February 2012. Even on the assumption that, by that argument, the applicants seek to assert that the PSI and the procedure under the CACs were of such a kind as to seriously affect the confidence of private and institutional investors in the intrinsic value of the Greek bonds and, accordingly, in the reliability of the Greek State as a debtor — a fear which was at the origin of the ECB's initial opposition to selective default by the Hellenic Republic and the partial restructuring of its public debt (see paragraphs 78 to 80 above) –, they have failed to make clear and to prove that those consequences would be comparable to those that the Eurosystem central banks would have to bear and that they would be likely to disrupt the functioning of that system in the same way. On the contrary, having regard to the total value of the Greek bonds and acquired and held by those central banks, as emphasised by the applicants themselves, any involvement by those banks in the restructuring of the public debt of a Member State of the euro area, irrespective of whether it was lawful or not in the light of Article 123 TFEU (see paragraph 114 above), would have been likely to affect the financial integrity of the Eurosystem as a whole and, in particular, its capacity to operate in the financial markets and to refinance the credit institutions pursuant to the first and second indents of Article 18(1) of the Statute. In that regard, it should be pointed out that State bonds are at the same time collateral which those central banks are normally supposed to accept for the purposes of credit operations within the Eurosystem and to maintain access to liquid assets by the national credit institutions (see paragraph 6 of the general document referred to in paragraph 4 above). It follows that the complaint that the ECB and the Eurosystem national central banks reserved to themselves the status of 'preferential' creditor to the detriment of the private sector, 'on the pretext of their monetary policy task', must also be rejected.

94 Third, in that context, the applicants' argument that, by decision 2012/153, the ECB unlawfully made the eligibility of the Greek bonds subject to the grant to the national central banks of a buy-back scheme for low-rated bonds in Eurosystem credit operations cannot succeed. In so far as that argument seeks to rely on unequal treatment imputable to the ECB to the detriment of private investors, and in particular of the applicants, the latter have also failed to make clear and to substantiate that they were in a comparable situation to that of the national central banks. As this Court has already held, in essence, in its order in *Accorinti and Others* v *ECB*, cited in paragraph 44 above (EU:T:2014:611, paragraphs 76 to 78), even if the obligation placed on the Hellenic Republic to supply enhanced credit to the advantage of the national central banks in the form of a purchase scheme had its legal basis in Decision 2012/153, that obligation sought only to ensure that those central banks would still be able to accept Greek bonds as appropriate collateral for the purposes of Eurosystem credit operations within the meaning of the second indent of Article 18(1) of the Statute, since, in the absence of such credit enhancement, those bonds would no longer have satisfied the

minimum requirements of the Eurosystem in relation to credit quality thresholds under the relevant criteria of the general documentation. That obligation therefore ensured that the Eurosystem central banks' scope for manoeuvre under the provisions of Articles 127(1) and (2) TFEU, read with Article 282(1) TFEU and the first and second indents of Article 18(1) of the Statute was maintained and, accordingly, referred to a situation which was not comparable with the situation of private investors. Since the private investors had purchased and held Greek bonds for exclusively private purposes, they were in a different situation from the Eurosystem central banks on which powers were conferred and duties imposed by the abovementioned provisions. It follows that the applicants could not claim, in reliance on the principle of equal treatment, the analogous benefit of a scheme involving the buy-back of their bonds by the Greek State.

95 In any event, as this Court has already held in its order in *Accorinti and Others* v *ECB*, cited in paragraph 44 above (EU:T:2014:611, paragraph 85), the credit enhancement ordered by Article 1(1) of Decision 2012/153 ensured that all Greek bonds covered by that enhancement, including those converted under the CACs, would continue to be eligible. Thus, that decision protected those bonds, including those held and exchanged by the applicants, against an additional loss that might have resulted from the reduction of their rating, or indeed from the insolvency of the Hellenic Republic. It follows that, from that aspect too, the applicants cannot claim to have suffered unequal treatment.

96 It follows that, as regards the aspects and conduct put forward, including the exchange agreement of 15 February 2012 and Decision 2012/153, the applicants were not in comparable, indeed in identical, situations to those of the Eurosystem central banks, that might have justified the finding that there was a breach of the principle of equal treatment.

97 Consequently, the applicants have not shown that there was a breach by the ECB of the principle of equal treatment as a result of which it would have incurred non-contractual liability.

98 In the second place, as regards the complaints based on the pari passu clause, it should first be observed that it has not been demonstrated that such a rule exists in the EU legal order.

99 In that regard, it must be stated that the applicants' assertion that the Principles Consultative Group (PCG) proposed, in its 2010 report 'Principles for Stable Capital Flows and Fair Debt Restructuring in Emerging Markets', as regards the 'emerging markets', that the application of the pari passu clause should be recognised internationally has no relevance to the existence of such a rule in the legal order of the European Union. Nor does it avail the applicants to refer to Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L 160, p. 1). On the contrary, that regulation noted the existence of widely differing arrangements in that respect in the national legal orders, including the preferential treatment of creditors (recital 11 of that regulation) and merely established uniform rules on conflict of laws for the purpose, in particular, of coordinating the distribution of the proceeds of the realisation of assets in order to preserve as much as possible the equal treatment of creditors (recitals 21 and 23 of that regulation).

100 Incidentally, in so far as a rule which imposed the pari passu principle would entail equal treatment for creditors without taking into account the distinct situations of, in particular, private investors, on the one hand, and the Eurosystem central banks, acting in the exercise of their tasks pursuant to Article 127 TFEU and Article 18 of the Statute, on the other hand, the recognition of such a rule in the EU legal order might well be incompatible with the principle of equal treatment, as referred to in paragraph 87 above.

101 Second, and consequently, it is only where that rule is incorporated in contractual clauses, including those covering the issue and sale of State bonds, governing the relationship between issuer/debtor and holder/creditor of a security, that a pari passu clause can, where appropriate, be legally binding. The binding nature of such a clause would therefore depend on an autonomous decision by the issuer of the securities in question, in particular in the context of the general conditions applicable to the issue

of the securities, to be bound by that clause by undertaking to treat its creditors in the same way. As the ECB correctly maintains, it follows, moreover, that in the present case the issuer of the Greek bonds who might, if appropriate, be bound by the pari passu clause is the Greek State itself and not the Eurosystem central banks, in their capacity as creditors and holders of such bonds.

102 Last, the applicants cannot rely on the ECB's decision on the OMTs, which post-dated the relevant facts of the present case, and which, in the light of its specific conditions and scope, namely the existence of a full macroeconomic adjustment programme or an EFSF/ESM precautionary programme, refers to situations which are not comparable to those of the unforeseen public debt crisis confronting the Hellenic Republic at the beginning of 2012 and in the context of which the application of the pari passu clause depends specifically on the conditions of issue granted by the debtor-issuer of the bonds concerned (see paragraph 37 above).

103 Consequently, the present plea must be rejected in its entirety.

– The plea alleging misuse of powers and breach of the principles of proportionality, 'coherence and … rationality'

104 In the context of the third plea, the applicants take issue with the ECB, first, for having misused its powers, as it does not have the discretionary power — or at least misused the power — to protect its financial budget against losses that private creditors must bear and, second, for having breached the principle of proportionality, 'coherence and … rationality' resulting from the 'combined provisions of Article 5(4) TFEU and Article 296 TFEU'. By affording itself, in its own interest and that of the national central banks, favourable treatment to the detriment of private creditors, using powers which the applicants do not have, the ECB misused its power. Such a measure does not form part of a monetary policy designed to ensure price stability. In addition, by the exchange agreement of 15 February 2012, the ECB protected its financial resources by ensuring that it did not incur the losses that only private creditors and savers had to bear, although it had no discretionary power to do so or, at least, misused that power, 'in particular by defining the credit enhancement decided upon by the Heads of State and of Government of the euro area on 21 July 2011'. In the applicants' submission, that misuse of powers is the consequence of the failure to state reasons as regards the actual objective pursued by the ECB by means of the measures adopted, which are therefore, from that aspect, arbitrary. The ECB's conduct was in fact based on the decisive, or indeed exclusive, objective of creating a status of preferential creditor with the ability, unlike private creditors, to avoid the restructuring of the Greek public debt. In any event, the ECB's conduct and its decisions do not comply with the principles of proportionality, coherence and rationality. Last, by failing, when negotiating the exchange agreement with the Hellenic Republic, to take the particular situation of private investors into account, the ECB failed to have regard to the superior rules of EU law and seriously and manifestly exceeded the limits of the exercise of its powers. Thus, the private creditors were the only ones who were required, in an unjustified and 'punitive' manner, to bear the harmful consequences of the enforced restructuring of the Greek public debt, whereas the ECB, the largest creditor, escaped those consequences. However, the reduction of the nominal value of the Greek bonds subject to the PSI would certainly have been less if the ECB had been duly involved in that restructuring on the same basis as the private creditors.

105 The ECB contends that the present plea should be rejected. It played only an advisory role in the complex negotiating process at political and macroeconomic level aimed at ensuring the support of numerous creditors and other financial institutions with the aim of preventing payment default by the Hellenic Republic and eventually leading to the PSI. Nor is the ECB required to justify, by reference to the principle of proportionality, the legislation adopted by the Hellenic Republic. As regards the consistency with EU law of the Hellenic Republic's decision to exclude the ECB's involvement in the PSI, the ECB's advisory activity cannot be considered to stem from an inappropriate use of its powers. The negotiation of the exchange agreement 15 February 2012 was necessary in technical terms in order

to ensure the implementation of the decision taken by the Greek legislature. There was no conflict of interests on the part of the ECB, whose activity was consistent with its duty to protect its financial independence in order to continue to discharge the tasks provided for in the FEU Treaty.

106 As a preliminary point, it should be noted that a measure is vitiated by misuse of powers only if it appears on the basis of objective, relevant and consistent evidence to have been taken with the exclusive or main purpose of achieving an end other than that stated or of evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case (see judgment of 23 October 2008 in *People's Mojahedin Organization of Iran* v *Council*, T-256/07, ECR, EU:T:2008:461, paragraph 151 and the case-law cited).

107 It must be observed that, by the present plea, the applicants call into question the lawfulness of the ECB's conduct on essentially the same grounds as those put forward in support of the first and second pleas. Having regard to the considerations set out in paragraphs 87 to 96 above, the applicants have not succeeded in putting forward objective, relevant and consistent indicia of such a kind as to show that, by the conduct complained of, the ECB misused its powers, misused its wide discretion under Article 127(1) and (2) TFEU read with Article 282(1) TFEU and the first and second indents of Article 18(1) of the Statute or manifestly and seriously exceeded the limits of that discretion or its powers in monetary policy matters within the meaning of the principles referred to in paragraphs 67 to 69 above.

108 Thus, the creation, through the conclusion and implementation of the exchange agreement of 15 February 2012, of the alleged 'preferential creditor status' of the Eurosystem central banks in order to escape the restructuring of the Greek public debt through the PSI and in application of the CACs cannot be regarded as abusive or as exceeding the limits of the ECB's powers. On the contrary, those measures form part of the exercise of the ECB's powers and basic tasks in that they are specifically intended to preserve the central banks' scope for manoeuvre and to ensure the continuity of the smooth functioning of the Eurosystem (see paragraph 93 above). The same applies to Decision 2012/153 in that it requires the Hellenic Republic to provide the national central banks with enhanced credit so that they may continue to accept Greek bonds as appropriate collateral for the purposes of Eurosystem credit operations within the meaning of the second indent of Article 18(1) of the Statute (see paragraph 94 above).

109 Accordingly, the complaints alleging misuse or abuse of powers must be rejected.

110 Last, the grounds put forward in support of the complaints alleging breach of the principle of proportionality, 'of coherence and of rationality', and also a breach resulting from 'the combined provisions of Article 5(4) TEU and Article 296 TFEU' are so succinct, vague and imprecise that it is impossible to understand the extent to which those complaints differ from those already assessed and rejected. Those complaints must therefore also be rejected.

111 Consequently, the complaints put forward in the context of the third plea cannot be upheld and are not such as to engage the non-contractual liability of the ECB.

– The plea alleging infringement of Articles 123 TFEU and Article 127 TFEU and also of Article 21 of the Statute

112 In the context of the fourth plea, the applicants maintain that the ECB infringed Articles 123 TFEU and 127 TFEU and also Article 21 of the Statute. They maintain that it manifestly and seriously exceeded its wide discretion under those rules by negotiating the exchange agreement of 15 February 2012 and thereby securing a status of preferential creditor not provided for in the provisions in force. That applies *a fortiori* because the ECB was in a situation in which there was a conflict of interests, owing to its position within the Eurogroup 'troika', its position as creditor of the Hellenic Republic

and its position as guardian of the monetary policy within the meaning of Article 127 TFEU. Those measures cannot be justified by the independence or autonomy of the ECB, as recognised by the Treaties, as the operations and the monetary policy decisions for which the ECB is competent are intended to pursue the general objectives of the European Union and must comply with EU law, including the principle of equal treatment. The applicants further maintain that 'either the ECB, by exceeding or misusing its powers, failed to comply with the competences conferred on it by Article 127 TFEU, or [it] infringed Article 123 TFEU'. In the applicants' submission, if price stability is the objective of the monetary policy, the financial stability obtained by aid granted through the acquisition of State bonds of a euro area country in difficulties is not among the tasks of the Eurosystem.

113 The ECB contends that the present plea should be rejected.

114 It is sufficient to state that the argument put forward in support of this plea is particularly vague and succinct and largely overlaps with the argument put forward in support of the second and third pleas, with the consequence that the considerations set out in paragraphs 87 to 96 and 107 to 110 above apply, *mutatis mutandis*. In addition, that argument is intrinsically contradictory, in that it is intended to substantiate an infringement of Article 123 TFEU, read with Article 21 of the Statute. As the applicants themselves claim, the ECB's conduct to which they take exception, in particular the conclusion of the exchange agreement of 15 February 2012, was intended to avoid the involvement of the Eurosystem central banks in the restructuring of the Greek public debt that would mean sacrificing a part of the value of the Greek bonds held in their respective portfolios. However, it should be observed that such unconditional involvement would have been specifically in danger of being classified as intervention having an effect equivalent to that of the direct purchase of State bonds by those central banks, which is prohibited by Article 123 TFEU.

115 Consequently, the complaints put forward in the context of the fourth plea cannot be upheld and are not capable of engaging the non-contractual liability of the ECB.

116 Having regard to all of the foregoing considerations, it must be concluded that none of the pleas of illegality put forward by the applicants is capable of satisfying the first condition of the engagement of the non-contractual liability of the ECB, within the meaning of the third paragraph of Article 340 TFEU. Accordingly, the claims for compensation, in that they are based on the non-contractual liability of the ECB in respect of an unlawful act, must be rejected for that reason alone, without there being any need to examine the conditions relating to actual damage and the existence of a causal link between the alleged conduct and the damage claimed.

2. *The non-contractual liability of the ECB in respect of a lawful legislative measure*

117 In the alternative, the applicants claim that they sustained unusual and special damage within the meaning of the case-law, which means that they are entitled to compensation even in the absence of an unlawful act on the part of the ECB. In the present case, they suffered a 'disproportionate and intolerable interference with the very essence' of their right to property as holders of Greek bonds, in that the nominal value of those bonds was reduced in a disproportionate manner.

118 The ECB denies both the existence in EU law of a regime of liability in respect of a lawful act and the existence of unusual and special damage in this case.

119 As regards the non-contractual liability of the European Union in respect of a lawful act coming within its legislative sphere, it follows from the consistent case-law of the Court of Justice, applicable *mutatis mutandis* to the non-contractual liability of the ECB under the third paragraph of Article 340 TFEU, that, as EU law currently stands, a comparative examination of the Member States' legal orders does not permit the affirmation of a regime providing for non-contractual liability of the European Union

for the lawful pursuit of its activities falling within the legislative sphere (see judgment of 14 October 2014 in *Buono and Others* v *Commission*, C-12/13 P and C-13/13 P, ECR, EU:C:2014:2284, paragraph 43 and the case-law cited). In the present case, some of the acts to which the applicants refer, including Decision 2012/153, fall within the ECB's pursuit of its legislative decision-making powers. Accordingly, and for that reason alone, the claim for compensation must be rejected so far as the acts of general application adopted by the ECB, or the latter's refusal to adopt such an act, as referred to in paragraph 71 above, are concerned.

120 In addition, it should be made clear that, in the present case, the applicants cannot claim to have sustained unusual and special damage capable of substantiating such liability if the principle of such damage should none the less be recognised. It follows from settled case-law that damage is 'unusual' if it exceeds the limits of the economic risks inherent in activities in the economic sector in question (see judgment of 7 November 2012 in *Syndicat des thoniers méditerranéens and Others* v *Commission*, T-574/08, EU:T:2012:583, paragraph 78 and the case-law cited); and, moreover, the damage must be classified as 'special' if the act concerned affects a particular circle of economic operators in a disproportionate manner by comparison with others (judgments of 28 April 1998 in *Dorsch Consult* v *Council and Commission*, T-184/95, ECR, EU:T:1998:74, paragraph 80, and of 10 February 2004 in *Afrikanische Frucht-Compagnie and Internationale Fruchtimport Gesellschaft Weichert* v *Council and Commission*, T-64/01 and T-65/01, ECR, EU:T:2004:37, paragraph 151).

121 In the present case, the damage alleged by the applicants does not exceed the limits of the economic risks inherent in commercial activities in the financial sector, in particular in operations involving negotiable bonds issued by a State, especially when that State, like the Hellenic Republic as from the end of 2009, has a low rating. On the contrary, independently of the general principle that every creditor must bear the risk of his debtor's insolvency, including a State debtor, such operations are carried out on particularly volatile markets, often subject to hazards and uncontrollable risks as regards the increase or decrease in the value of such bonds, which may invite speculation in order to obtain high returns in the very short term. Therefore, even on the assumption that all the applicants were not involved in speculative operations, they had to be aware of those hazards and risks of a considerable loss in the value of the bonds which they purchased. That applies *a fortiori* because, even before the beginning of its financial crisis in 2009, the issuing Greek State was already faced with high indebtedness and a high deficit. Accordingly, the damage sustained on account of the PSI cannot be classified as 'unusual' within the meaning of the case-law cited above.

122 Nor can that damage be classified as 'special, since the applicants, like all other private investors, admittedly with the exception of the Eurosystem central banks, were subject to the PSI and to the 'haircut' mechanism based on Greek Law No 4050/2012. In those circumstances, and given the large number of investors concerned, identified by that law in a general and objective manner by reference, in particular, to the serial numbers of the bonds in question, the applicants cannot be considered to belong to a particular category of economic operators who were affected in a disproportionate manner by comparison with others.

123 In the light of all of the foregoing considerations, the action must be dismissed in its entirety, without there being any need to examine the admissibility of the evidence adduced for the first time in the reply, to order the ECB to produce the exchange agreement of 15 February 2012 or to request an expert report for the purposes of determining the quantum of the damage sustained.

Costs

124 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleading. As the applicants have been unsuccessful, they must be ordered to pay the costs, in accordance with the form of order sought by the ECB.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Mr Alessandro Accorinti and the other applicants whose names appear in the annex to pay the costs.**

Prek Labucka Kreuschitz

Delivered in open court in Luxembourg on 7 October 2015.

[Signatures]

Annex

Michael Acherer, residing in Bressanone (Italy),

Giuliano Agostinetti, residing in Mestre (Italy),

Marco Alagna, residing in Milan (Italy),

Riccardo Alagna, residing in Milan,

Agostino Amalfitano, residing in Forio (Italy),

Emanuela Amsler, residing in Turin (Italy),

Francine Amsler, residing in Turin,

Alessandro Anelli, residing in Bellinzago Novarese (Italy),

Angelo Giovanni Angione, residing in Potenza (Italy),

Giancarlo Antonelli, residing in Verona (Italy),

Giuseppe Aronica, residing in Licata (Italy),

Elisa Arsenio, residing in Sesto San Giovanni (Italy),

Pasquale Arsenio, residing in Sesto San Giovanni,

Luigi Azzano, residing in Concordia Sagittaria (Italy),

Giovanni Baglivo, residing in Lecce (Italy),

Mario Bajeli, residing in Bergamo (Italy),

Mario Stefano Baldoni, residing in Matera (Italy),

Giulio Ballini, residing in Lonato (Italy),

Antonino Barbara, residing in Naples (Italy),

Armida Baron, residing in Cassola (Italy),

Paolo Baroni, residing in Rome (Italy),

Lucia Benassi, residing in Scandiano (Italy),

Michele Benelli, residing in Madignano (Italy),

Erich Bernard, residing in Lana (Italy),

Flaminia Berni, residing in Rome,

Luca Bertazzini, residing in Monza (Italy),

Adriano Bianchi, residing in Casale Corte Cerro (Italy),

Massimiliano Bigi, residing in Montecchio Emilia (Italy),

Daniele Fabrizio Bignami, residing in Milan,

Sergio Borghesi, residing in Coredo (Italy),

Borghesi Srl, established in Cles (Italy),

Sergio Bovini, demeurant Cogoleto (Italie),

Savino Brizzi, residing in Turin,

Annunziata Brum, residing in Badiola (Italy),

Christina Brunner, residing in Laives (Italy),

Giovanni Busso, residing in Caselette (Italy),

Fabio Edoardo Cacciuttolo, residing in Milan,

Vincenzo Calabrò, residing in Rome,

Carlo Cameranesi, residing in Ancona (Italy),

Giuseppe Campisciano, residing in Besana in Brianza (Italy),

Allegra Canepa, residing in Pisa (Italy),

Luca Canonaco, residing in Como (Italy),

Piero Cantù, residing in Vimercate (Italy),

Fabio Capelli, residing in Tortona (Italy),

Gianluca Capello, residing in San Remo (Italy),

Sergio Capello, residing in San Remo,

Filippo Caracciolo Di Melito, residing in Lucca (Italy),

Mario Carchini, residing in Carrara (Italy),

Elena Carra, residing in Rome,

Claudio Carrara, residing in Nembro (Italy),

Filippo Carosi, residing in Rome,

Ivan Michele Casarotto, residing in Verona,

Anna Maria Cavagnetto, residing in Turin,

Gabriele Lucio Cazzulani, residing in Segrate (Italy),

Davide Celli, residing in Rimini (Italy),

Antonio Cerigato, residing in Ferrara (Italy),

Paolo Enrico Chirichilli, residing in Rome,

Celestino Ciocca, residing in Rome,

Mariagiuseppa Civale, residing in Milan,

Benito Colangelo, residing in Bollate (Italy),

Roberto Colicchio, residing in Milan,

Edoardo Colli, residing in Trieste (Italy),

Nello Paolo Colombo, residing in Casatenovo (Italy)

Mario Concini, residing in Tuenno (Italy),

Marika Congestrì, residing in Sant'Onofrio (Italy),

Luigi Corsini, residing in Pistoia (Italy),

Maria Chiara Corsini, residing in Genoa (Italy),

Aniello Cucurullo, residing in Civitavecchia (Italy),

Roberto Cugola, residing in Melara (Italy),

Roberto Cupioli, residing in Rimini,

Giuseppe D'Acunto, residing in Lucca,

Nazzareno D'Amici, residing in Rome,

Stefano D'Andrea, residing in Ancona,

Rosa D'Antonio, residing in Ercolano (Italy),

Michele Danelon, residing in Gruaro (Italy),

Piermaria Carlo Davoli, residing in Milan,

Iole De Angelis, residing in Rome,

Roberto De Pieri, residing in Treviso (Italy),

Stefano De Pieri, residing in Martellago (Italy),

Ario Deasti, residing in San Remo,

Stefano Marco Debernardi, residing in Aosta (Italy),

Gianfranco Del Mondo, residing in Casoria (Italy),

Salvatore Del Mondo, residing in Gaeta (Italy),

Gianmaria Dellea, residing in Castelveccana (Italy),

Rocco Delsante, residing in Langhirano (Italy),

Gianmarco Di Luigi, residing in Sant'Antimo (Italy),

Alessandro Di Tomizio, residing in Reggello (Italy),

Donata Dibenedetto, residing in Altamura (Italy),

Angela Dolcini, residing in Pavia (Italy),

Denis Dotti, residing in Milan,

Raffaele Duino, residing in San Martino Buon Albergo (Italy),

Simona Elefanti, residing in Montecchio Emilia,

Maurizio Elia, residing in Rome,

Claudio Falzoni, residing in Besnate (Italy),

Enrico Maria Ferrari, residing in Rome,

Giuseppe Ferraro, residing in Pago Vallo Lauro (Italy),

Fiduciaria Cavour Srl, established in Rome,

Giorgio Filippello, residing in Caccamo (Italy),

Giovanni Filippello, residing in Caccamo,

Dario Fiorin, residing in Venice (Italy),

Guido Fortunati, residing in Verona,

Achille Furioso, residing in Agrigento (Italy),

Monica Furlanis, residing in Concordia Sagittaria,

Vitaliano Gaglianese, residing in San Giuliano Terme (Italy),

Antonio Galbo, residing in Palermo (Italy),

Gianluca Gallino, residing in Milan,

Giandomenico Gambacorta, residing in Rome,

Federico Gatti, residing in Besana in Brianza,

Raffaella Maria Fatima Gerardi, residing in Lavello (Italy),

Mauro Gini, residing in Bressanone

Barbara Giudiceandrea, residing in Rome,

Riccardo Grillini, residing in Lugo (Italy),

Luciano Iaccarino, residing in Verona,

Vittorio Iannetti, residing in Carrara,

Franz Anton Inderst, residing in Marlengo (Italy),

Alessandro Lepore, residing in Giovinazzo (Italy),

Hermann Kofler, residing in Merano (Italy),

Fabio Lo Presti, residing in Ponte San Pietro (Italy),

Silvia Locatelli, residing in Brembate (Italy),

Nicola Lozito, residing in Grumo Appula (Italy),

Rocco Lozito, residing in Grumo Appula,

Fabio Maffoni, residing in Soncino (Italy),

Silvano Maffoni, residing in Orzinuovi (Italy),

Bruno Maironi Da Ponte, residing in Bergamo (Italy),

Franco Maironi Da Ponte, residing in Bergamo,

Michele Maironi Da Ponte, residing in Bergamo,

Francesco Makovec, residing in Lesmo (Italy),

Concetta Mansi, residing in Matera,

Angela Marano, residing in Melito di Napoli (Italy),

Bruno Marchetto, residing in Milan,

Fabio Marchetto, residing in Milan,

Sergio Mariani, residing in Milan,

Lucia Martini, residing in Scandicci (Italy),

Alessandro Mattei, residing in Treviso,

Giorgio Matterazzo, residing in Seregno (Italy),

Mauro Mazzone, residing in Verona,

Ugo Mereghetti, residing in Brescia (Italy),

Ugo Mereghetti, for and on behalf of Fulvia Mereghetti, residing in Casamassima (Italy),

Vitale Micheletti, residing in Brescia,

Giuseppe Mignano, residing in Genoa,

Fabio Mingo, residing in Ladispoli (Italy),

Giovanni Minorenti, residing in Guidonia Montecelio (Italy),

Filippo Miuccio, residing in Rome,

Fiduciaria Cavour Srl, established in Rome,

Fulvio Moneta Caglio de Suvich, residing in Milan,

Giancarlo Monti, residing in Milano,

Angelo Giuseppe Morellini, residing in Besana in Brianza,

Barbara Mozzambani, residing in San Martino Buon Albergo,

Mario Nardelli, residing in Gubbio (Italy),

Eugenio Novajra, residing in Udine (Italy),

Giorgio Omizzolo, residing in Baone (Italy),

Patrizia Paesani, residing in Rome,

Daniela Paietta, residing in Arona (Italy),

Luigi Paparo, residing in Volla (Italy),

Davide Pascale, residing in Milan,

Salvatore Pasciuto, residing in Gaeta,

Sergio Pederzani, residing in Ossuccio (Italy),

Aldo Perna, residing in Naples,

Marco Piccinini, residing in San Mauro Torinese (Italy),

Nicola Piccioni, residing in Soncino,

Stefano Piedimonte, residing in Naples,

Mauro Piliego, residing in Bolzano (Italy),

Vincenzo Pipolo, residing in Rome,

Johann Poder, residing in Silandro (Italy),

Giovanni Polazzi, residing in Milan,

Santo Pullarà, residing in Rimini,

Patrizio Ragusa, residing in Rome,

Rosangela Raimondi, residing in Arluno (Italy),

Massimo Ratti, residing in Milan,

Gianni Resta, residing in Imola (Italy),

Giuseppe Ricciarelli, residing in San Giustino (Italy),

Enrica Rivi, residing in Scandiano,

Maria Rizescu, residing in Pesaro (Italy),

Alessandro Roca, residing in Turin,

Mario Romani, residing in Milan,

Claudio Romano, residing in Naples,

Gianfranco Romano, residing in Pisticci (Italy),

Ivo Rossi, residing in Nettuno (Italy),

Alfonso Russo, residing in Scandiano,

Iginio Russolo, residing in San Quirino (Italy),

Francesco Sabato, residing in Barcelona (Spain),

Giuseppe Salvatore, residing in Silvi (Italy),

Luca Eudilio Sarzi Amadè, residing in Milano,

Tiziano Scagliola, residing in Terlizzi (Italy),

Antonio Scalzullo, residing in Avellino (Italy),

Liviano Semeraro, residing in Gavirate (Italy),

Laura Liliana Serpente, residing in Ancona (Italy),

Maria Grazia Serpente, residing in Ancona,

Luciana Serra, residing in Milan,

Giuseppe Silecchia, residing in Altamura,

Paolo Sillani, residing in Bergamo,

Vincenzo Solombrino, residing in Naples,

Patrizia Spiezia, residing in Casoria,

Alberto Tarantini, residing in Rome,

Halyna Terentyeva, residing in Concordia Sagittaria,

Vincenzo Tescione, residing in Caserta (Italy),

Riccardo Testa, residing in Cecina (Italy),

Salvatore Testa, residing in Pontinia (Italy),

Nadia Toneatti, residing in Trieste,

Giuseppe Ucci, residing in Como,

Giovanni Urbanelli, residing in Pescara,

Giuseppina Urciuoli, residing in Avellino,

Amelia Vaccaro, residing in Chiavari (Italy),

Maria Grazia Valentini, residing in Tuenno,

Nicola Varacalli, residing in Occhieppo Superiore (Italy),

Giancarlo Vargiu, residing in Bologna (Italy),

Salvatore Veltri Barraco Alestra, residing in Marchala (Italy),

Roberto Vernero, residing in Milan,

Vincenza Vigilia, residing in Castello d'Agogna (Italy),

Celso Giuliano Vigna, residing in Castel San Pietro Terme (Italy),

Roberto Vignoli, residing in Santa Marinella (Italy),

Georg Weger, residing in Merano,

Albino Zanichelli, residing in Busana (Italy),

Maurizio Zorzi, residing in Ora (Italy),

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