Reports of Cases

JUDGMENT OF THE GENERAL COURT (Third Chamber)

9 February 2022*

(Non-contractual liability – Economic and monetary policy – Restructuring of Greek public debt – Bond exchange agreement for the sole benefit of the Eurosystem central banks – Private sector involvement – Collective action clauses – Private creditors – Official sector creditors – Attributability – Sufficiently serious infringement of a rule of law conferring rights on individuals – Article 63(1) TFEU – Articles 120 to 127 and Article 352(1) TFEU – Right to property – Equal treatment)

In Case T-868/16,

QI and the other applicants whose names are set out in the annex,[1] represented by S. Pappas, lawyer,

applicants,

v

European Commission, represented by J.-P. Keppenne, L. Flynn and T. Maxian Rusche, acting as Agents,

and

European Central Bank (ECB), represented by K. Laurinavičius and M. Szablewska, acting as Agents, and by H.-G. Kamann, lawyer,

defendants,

supported by

European Council,

and

Council of the European Union,

represented by K. Michoel, E. Chatziioakeimidou and J. Bauerschmidt, acting as Agents,

interveners,

* Language of the case: English.

[1] The list of the other applicants is annexed only to the version notified to the parties.

APPLICATION based on Article 268 TFEU seeking compensation for the damage allegedly suffered by the applicants following the implementation of a mandatory exchange of State bonds in the context of the restructuring of Greek public debt in 2012 through the involvement of private investors by means of the application of collective action clauses, due to the conduct and actions of, in particular, the European Council, the Council, the Commission and the ECB,

THE GENERAL COURT (Third Chamber),

composed of S. Frimodt Nielsen, President, V. Kreuschitz (Rapporteur) and N. Półtorak, Judges,

Registrar: F. Oller, Administrator,

having regard to the written part of the procedure and further to the hearing on 12 September 2018,

gives the following

Judgment [2]

Background to the dispute

1 On 21 October 2009, the Hellenic Republic notified the Statistical Office of the European Union (Eurostat) that its revised public deficit was 12.5% of gross domestic product (GDP), as compared with 3.7% of GDP as notified in spring 2009. That revision of the Hellenic Republic's economic data raised doubts as to its solvency and, consequently, caused an increase in the rates of interest on Greek bonds during the first months of 2010.

2 Having regard to the fact that the Greek public debt crisis threatened to affect other Member States in the euro area and endangered the stability of that area as a whole, the Heads of State or Government of the euro area agreed at the European Council summit of 25 March 2010 to put into place, with the assistance of the International Monetary Fund (IMF), an intergovernmental mechanism to aid the Hellenic Republic, consisting of the granting of bilateral loans coordinated with non-concessionary interest rates.

3 At the end of April 2010, a credit rating agency downgraded the rating of Greek bonds from BBB- to BB+, a rating regarded as indicating a high-risk debt. Accordingly, on 27 April 2010, the credit rating agency Standard & Poor's (S&P) warned the holders of Greek bonds that they had on average only a 30 to 50% chance of recovering their money in the event of a restructuring of Greek public debt or of a payment default on the part of the Greek State.

4 On 23 April 2010, the Hellenic Republic requested the activation of the intergovernmental aid mechanism referred to in paragraph 2 above. On 2 May 2010, under that aid mechanism, the euro area Member States agreed to supply the Hellenic Republic with EUR 80 billion as part of a financial package of EUR 110 billion allocated jointly with the IMF.

[2] Only the paragraphs of the present judgment which the Court considers it appropriate to publish are reproduced here.

5 On 9 May 2010, in the context of the Ecofin Council, a decision was taken to adopt a package of measures, including the adoption of Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism (OJ 2010 L 118, p. 1), on the basis of Article 122(2) TFEU, and the creation of the European Financial Stability Facility (EFSF). On 7 June 2010, the EFSF was created and the euro area Member States and the EFSF signed a framework agreement laying down the conditions under which the EFSF would provide stability support.

6 By a press release of 10 May 2010, the European Central Bank (ECB) announced the establishment of a programme for purchasing State bonds on the secondary bond market ('the programme for purchasing bonds').

7 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 Article 18(1) of Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank (OJ 2010 C 83, p. 230; 'the ESCB Statute'). Under Article 1 of the ESCB Statute, the ECB and the national central banks are to constitute the European System of Central Banks (ESCB). The ECB and the national central banks of those Member States whose currency is the euro are to constitute the Eurosystem.

8 Recitals 2, 3 and 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.'

9 According to Article 1 of Decision 2010/281, '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 are to be 'denominated in euro' and issued by such central governments or public entities.

10 Within the framework of the programme for purchasing bonds instituted by Decision 2010/281, the ECB and the national central banks of the euro area acquired State bonds, including bonds from the Hellenic Republic, between May 2010 and March 2011 and between August 2011 and February 2012. It is apparent from Decisions No 2/13203/0023A of 15 February 2012 (FEK B' 574), No 2/14328/0023A of 20 February 2012 (FEK B' 705) and No 2/14949/0023A of 21 February 2012 (FEK B' 413) of the Greek Ministry of Finance, that, at that stage, the ECB, the national central banks of the euro area and the European Investment Bank (EIB) held Greek bonds with a total face amount of EUR 42 732 860 000, EUR 13 519 799 177.59 and EUR 315 350 000 respectively. The European Union, represented by the European Commission, also held Greek bonds with a total face amount of EUR 106 700 000, a portion of which – namely bonds with a face amount of EUR 55 700 000 – were managed by the EIB on behalf of and in the name of the European Union. Thus, those institutional creditors held Greek bonds with a total face amount of EUR 56 674 709 177.59.

11 In May 2011, the Hellenic Republic, the euro area Member States and a number of the creditors of the Greek State started discussions with a view to introducing a new financial aid programme, the overarching objective of which was to enable the Hellenic Republic to regain financial viability. One of the measures planned in those discussions was to restructure Greek public debt, under which the Hellenic Republic's private creditors would contribute to reducing the burden of that debt, thereby avoiding a payment default. However, initially, those discussions related to, inter alia, a potential voluntary roll-over of maturities of Greek bonds held by private creditors.

12 On 6 June 2011, the German Finance Minister sent a letter to the ECB, the IMF and the other Finance Ministers of the euro area Member States, in which he recommended an exchange of bonds which would extend by seven years the maturities of the Greek bonds held by private creditors.

13 On 20 June 2011, following a meeting on the financial situation of the Hellenic Republic, the Eurogroup adopted a statement, according to which, in particular:

'Given the difficult financing circumstances, [the Hellenic Republic] is unlikely to regain private market access by early 2012. Ministers agreed that the required additional funding will be financed through both official and private sources and welcome the pursuit of voluntary private sector involvement in the form of informal and voluntary roll-overs of existing [debt of the Hellenic Republic] at maturity for a substantial reduction of the required year-by-year funding within the programme, while avoiding a selective default for [the Hellenic Republic].'

14 At its meeting of 23 and 24 June 2011, the European Council considered the financial situation of the Hellenic Republic and in that regard concluded, in particular, that:

'14. The European Council calls on the national authorities to continue implementing with resolve the necessary adjustment efforts to put the country on a sustainable path. A comprehensive reform package agreed upon with the Commission, in liaison with the ECB and the IMF, and adoption by the Greek Parliament of the key laws on the fiscal strategy and privatisation must be finalised as a matter of urgency in the coming days. Following the request by the Greek Government announced by the Greek Prime Minister, this will provide the basis for setting up the main parameters of a new programme jointly supported by its euro area partners and the IMF, in line with current practices, and at the same time for allowing disbursement in time to meet [the Hellenic Republic's] financing needs in July [2011].

15. The euro area Heads of State or Government agree that required additional funding will be financed through both official and private sources. They endorse the approach decided by the Eurogroup on 20 June [2011] as regards the pursuit of voluntary private sector involvement in the form of informal and voluntary roll-overs of existing Greek [public] debt at maturity for a substantial reduction of the required year-by-year funding within the programme while avoiding a selective default.'

15 On 24 June 2011, the Fédération bancaire française (French Banking Federation), an association representing banks engaged in commercial activities in France, wrote to the French Minister for the Economy, Finance and Industry to propose, in particular, that the maturities of outstanding Greek bonds held by private creditors be extended to 30 years, provided, inter alia, that the ECB was willing not to sell its Greek bonds during that period.

16 In a press release of 1 July 2011, the Institute of International Finance (IIF) stated, inter alia:

'The Board of Directors of the [IIF] 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 …'

17 On 21 July 2011, the IIF submitted a proposal for a bond exchange and maturity extension programme. The programme was aimed at exchanging existing Greek bonds for four different instruments, together with a Greek public debt buy-back facility to be established by the official sector, that is, first, an exchange of bonds at par for a 30-year instrument; second, an offer of bonds at par involving the rolling-over of bonds at maturity into 30-year instruments; third, an exchange of bonds at a discount for a 30-year instrument; and, fourth, an exchange of bonds at a discount for a 15-year instrument.

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

19 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 EFSF 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 [European] 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.'

20 As regards private sector involvement, point 6 of the joint statement of 21 July 2011 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.'

21 On 21 October 2011, the IMF published a Greek public debt sustainability analysis, which stated, in particular, as follows:

'Deeper PSI [private sector involvement], which is now being contemplated, also has a vital role in establishing the sustainability of [the Hellenic Republic's] debt … To assess the potential magnitude of improvements in the debt trajectory, and potential implications for official financing, illustrative scenarios can be considered using discount bonds with an assumed yield of 6[%] percent and no collateral. The results show that debt can be brought to just above 120[%] of GDP by end-2020 if 50[%] discounts are applied. Given still-delayed market access, large scale additional official financing requirements would remain, estimated at some [EUR] 114 billion (under the market access assumptions used). To get the debt down further would require a larger private sector contribution (for instance, to reduce debt below 110[%] of GDP by 2020 would require a face value reduction of at least 60[%] and/or more concessional official sector financing terms). Additional official financing requirements could be reduced to an estimated [EUR] 109 billion in this instance …'

22 At their summit of 26 October 2011, the Heads of State or 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.'

23 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 face amount of Greek debt held by private investors, as provided for in paragraph 12 of the statement of the Heads of State or Government of the euro area of 26 October 2011.

24 On 2 February 2012, the Hellenic Republic submitted to the ECB, pursuant to Article 127(4) TFEU, read in conjunction with Article 282(5) TFEU, a request for an opinion on draft Greek Law No 4050/2012 introducing rules amending the terms applicable to marketable securities issued or guaranteed by the Greek State under agreements with their holders for the purpose of restructuring Greek public debt, based, in particular, on the application of collective action clauses ('CACs').

25 On 15 February 2012, the ECB and the national central banks of the euro area, of the one part, and the Hellenic Republic, of 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 face amounts, interest rates, interest payment and repayment dates as the bonds to be exchanged, but having different serial numbers (ISIN codes) and dates ('the exchange agreement of 15 February 2012').

26 On 17 February 2012, the ECB issued Opinion CON/2012/12 on the terms of securities issued or guaranteed by the Greek State. It is apparent from that opinion, inter alia, that, first, 'it is important that the Member States preserve their ability to honour at all times their commitments, also with a view to ensuring financial stability'; second, 'the case of the Hellenic Republic is exceptional and unique' (paragraph 2.1); third, the aim of the draft law is to promote private sector involvement and in particular to introduce a procedure to facilitate, in accordance with CACs, negotiation with holders of Greek bonds and the securing of their agreement to an exchange offer by the Hellenic Republic for its bonds and, therefore, a possible restructuring of Greek public debt (paragraph 2.2); fourth, 'the ECB welcomes that the terms of such exchange [are] the result of negotiations held between the Hellenic Republic and the institutions representing its bondholders' (paragraph 2.3); fifth, 'the use of CACs as a procedure to achieve an exchange of bonds is broadly aligned with general practice' (paragraph 2.4); and sixth, 'it remains the sole responsibility of the Government of the Hellenic Republic to take the necessary action that will ultimately ensure its debt sustainability' (paragraph 2.6).

27 In a press release of 21 February 2012, following the conclusion of those negotiations, the Greek Ministry of Finance, first, disclosed the essential characteristics of the proposed Greek bond exchange transaction, called Private Sector Involvement (PSI), and, second, announced that a new law 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 amount equal to 31.5% of the face amount of the debt exchanged and for notes of the EFSF maturing within 24 months having a face amount equal to 15% of the face amount of the debt exchanged, each to be delivered by the Hellenic Republic at

settlement. In addition, each participating private investor would also receive detachable GDP-linked securities of the Hellenic Republic with a notional amount equal to the face amount of the new bonds.

28 The Eurogroup statement of the same day states, inter alia, as follows:

'The Eurogroup acknowledges the common understanding that has been reached between the Greek authorities and the private sector on the general terms of the 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 … holdings of Greek … bonds have been held for public policy purposes. The Eurogroup takes note that the income generated by the Eurosystem holdings of Greek … 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.

…

The respective contributions from the private and the official sector should ensure that [the Hellenic Republic's] public debt ratio is brought on a downward path reaching 120.5% of GDP by 2020. On this basis, and provided policy conditionality under the programme is met on an ongoing basis, the Eurogroup confirms that euro area Member States stand ready to provide, through the EFSF and with the expectation that the IMF will make a significant contribution, additional official programme of up to [EUR] 130 [billion] until 2014.

It is understood that the disbursements for the PSI operation and the final decision to approve the guarantees for the [new] programme are subject to a successful PSI operation and confirmation, by the Eurogroup on the basis of an assessment by the Troika, of the legal implementation by [the Hellenic Republic] of the agreed prior actions. The official sector will decide on the precise amount of financial assistance to be provided in the context of the [new] Greek programme in early March, once the results of PSI are known and the prior actions have been implemented.

We reiterate our commitment to provide adequate support to [the Hellenic Republic] during the life of the programme and beyond until it has regained market access, provided that [the Hellenic Republic] fully complies with the requirements and objectives of the adjustment programme.'

29 On 23 February 2012, the Greek Parliament adopted nomos 4050/2012, Kanones tropopoiiseos titlon, ekdoseos i engyiseos tou Ellinikou Dimosiou me symfonia ton Omologiouchon (Law No 4050/2012 on the amendment of bonds issued or guaranteed by the Greek State with the consent of their holders and introducing the CACs mechanism) (FEK A' 36). Under the CACs mechanism, the proposed amendments would become legally binding on any holders of bonds governed by Greek law issued before 31 December 2011, as identified in the act of the Greek

Ministerial Council approving PSI invitations, if the proposed amendments were, collectively and without distinction by series, approved by a quorum of bondholders representing at least two thirds by face value of the bonds participating in the CACs mechanism. In addition, the preamble to that law states, inter alia, 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'.

30 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 with a face amount of approximately EUR 206 billion, making a reference to Law No 4050/2012.

31 The voluntary bond exchange transaction offer was closed on 8 March 2012.

32 In a press release dated 9 March 2012, the Greek Ministry of Finance stated that, in principle, the conditions laid down by Law No 4050/2012 had been fulfilled, and announced the proportions in which private creditors had accepted the exchange offer.

33 In that regard, the press release stated, inter alia, as follows:

'Holders of approximately [EUR] 172 billion principal amount of bonds issued or guaranteed by the [Hellenic] Republic have tendered their bonds for exchange or consented to proposed amendments in response to the invitations and consent solicitations announced by the [Hellenic] Republic on 24 February 2012.

Of the approximately [EUR] 177 billion of bonds issued by the [Hellenic] Republic and governed by Greek law and subject to the invitations, the [Hellenic] Republic has received tenders for exchange and consents from holders of approximately [EUR] 152 billion face amount of bonds, representing 85.8% of the outstanding face amount of these bonds. Holders of 5.3% of the outstanding face amount of these bonds participated in the consent solicitation and opposed the proposed amendments. The [Hellenic] Republic has advised its official sector creditors that, upon confirmation and certification by the [Central] Bank of Greece as process manager under … Law [No] 4050/2012 …, it intends to accept the consents received and amend the terms of all of its Greek law governed bonds, including those not tendered for exchange pursuant to the invitations, in accordance with the terms of [Law No 4050/2012]. Accordingly, the [Hellenic] Republic will not extend the invitation period for its bonds governed by Greek law.

… If the consents to the proposed amendments to the [Hellenic] Republic's Greek law bonds are accepted, the sum of the face amount of those bonds that will be exchanged and of the other bonds [governed by law other than Greek law] subject to the invitations for which the [Hellenic] Republic has received tenders for exchange and consents to the proposed amendments will total approximately [EUR] 197 billion, or 95.7% of the total face amount of the bonds subject to the invitations.'

34 The applicants, QI and the other natural persons whose names are set out in the annex, as holders of Greek bonds, were involved in the restructuring of Greek public debt, under the PSI and the CACs implemented pursuant to Law No 4050/2012, after having, they claim, rejected the offer to exchange their bonds.

...

Law

Whether the contested conduct is attributable to the European Union and the ECB and whether they incur non-contractual liability on that basis

The conditions to be satisfied in order for the European Union and the ECB to incur non-contractual liability

45 The second paragraph of Article 340 TFEU provides that, in the case of non-contractual liability, the European Union is, in accordance with the general principles common to the laws of the Member States, required to make good any damage caused by its institutions or by its servants in the performance of their duties. Furthermore, 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, required to make good any damage caused by it or its servants in the performance of their duties.

46 The European Union or the ECB may incur non-contractual liability under those provisions only if a number of conditions are fulfilled, namely the unlawfulness of the conduct alleged against the EU institution or the ECB, the fact of damage and the existence of a causal link between the conduct of the institution or the ECB and the damage complained of (see judgment of 20 September 2016, *Ledra Advertising and Others* v *Commission and ECB*, C-8/15 P to C-10/15 P, EU:C:2016:701, paragraph 64 and the case-law cited; judgments of 16 December 2020, *Council and Others* v *K. Chrysostomides & Co. and Others*, C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P, EU:C:2020:1028, paragraph 79, and of 24 January 2017, *Nausicaa Anadyomène and Banque d'escompte* v *ECB*, T-749/15, not published, EU:T:2017:21, paragraph 68).

47 Furthermore, the non-contractual liability of the European Union or the ECB cannot be regarded as having been incurred without satisfaction of all the conditions to which the duty to make good any damage, as defined in the second and third paragraphs of Article 340 TFEU, is thus subject (see, to that effect, judgment of 9 September 2008, *FIAMM and Others* v *Council and Commission*, C-120/06 P and C-121/06 P, EU:C:2008:476, paragraphs 165 and 166; order of 12 March 2020, *EMB Consulting and Others* v *ECB*, C-571/19 P, not published, EU:C:2020:208, paragraph 29 and the case-law cited; and judgment of 24 January 2017, *Nausicaa Anadyomène and Banque d'escompte* v *ECB*, T-749/15, not published, EU:T:2017:21, paragraph 68 and the case-law cited).

48 Damage caused by national authorities, on the other hand, can give rise to liability only on the part of those national authorities and the national courts retain sole jurisdiction to order compensation for such damage. It follows that, in order to determine whether the EU Courts have jurisdiction, it must be established whether the unlawful conduct alleged in support of the claim for compensation is truly the responsibility of an EU institution and cannot be regarded as attributable to a national authority (see judgment of 16 December 2020, *Council and Others* v *K. Chrysostomides & Co. and Others*, C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P, EU:C:2020:1028, paragraphs 106 and 107 and the case-law cited).

49 In order to be attributable to the European Union, the conduct in question must be the conduct of an 'institution', within the meaning of the second paragraph of Article 340 TFEU, which encompasses not only the EU institutions listed in Article 13(1) TEU but also all the EU bodies,

offices and agencies that have been established by or under the Treaties and are intended to contribute to the achievement of the European Union's objectives (see judgment of 16 December 2020, *Council and Others* v *K. Chrysostomides & Co. and Others*, C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P, EU:C:2020:1028, paragraph 80 and the case-law cited).

50 In the present case, the applicants allege that the conduct of a number of EU institutions, bodies, offices and agencies, including the Commission, the ECB, the European Council, the Council, the Eurogroup, the Eurosystem and the EIB, relating to the PSI and the activation of the CACs was unlawful ('the contested measures'), and also take issue with the fact that the official sector creditors were excluded from involvement in the restructuring of Greek public debt, which they consider to be attributable either to the European Union or to the ECB.

...

Findings of the Court

71 As a preliminary point, it should be noted that the mere fact that, inter alia, the statements of the Eurogroup or of the European Council or an opinion of the ECB is not legally binding is not sufficient to cause the European Union or the ECB automatically to avoid non-contractual liability for the conduct of the EU institutions or the ECB, within the meaning of the case-law recalled in paragraph 46 above, since, according to settled case-law, all conduct causing damage is capable of establishing such liability. Indeed, if an EU Court were unable to assess the lawfulness of the conduct of an EU institution or body, the procedure provided for in Article 268 TFEU and in the second and third paragraphs of Article 340 TFEU would be rendered ineffective (see, to that effect, judgments of 23 March 2004, *Ombudsman* v *Lamberts*, C-234/02 P, EU:C:2004:174, paragraphs 50 to 52, 60 and 61, and of 23 May 2019, *Steinhoff and Others* v *ECB*, T-107/17, EU:T:2019:353, paragraph 55 and the case-law cited). It follows that the Commission and the ECB cannot rely on the case-law prior to the judgment of 23 March 2004, *Ombudsman* v *Lamberts* (C-234/02 P, EU:C:2004:174), which had dismissed actions for damages as inadmissible on the sole ground that the unlawfulness pleaded was based on a measure with no legal effects (see judgment of 23 May 2019, *Steinhoff and Others* v *ECB*, T-107/17, EU:T:2019:353, paragraph 56 and the case-law cited).

72 Furthermore, in the first place, as regards the nature and effects of the statements of the Eurogroup of 20 June 2011 and 21 February 2012, it should be noted that the Eurogroup was formally established by resolution of the European Council of 13 December 1997 on economic policy coordination in stage 3 of EMU and on Treaty Articles 109 and 109b of the EC Treaty (OJ 1998 C 35, p. 1), pursuant to which 'the Ministers of the States participating in the euro-area may meet informally among themselves to discuss issues connected with their shared specific responsibilities for the single currency' and 'the Commission, and the [ECB] when appropriate, will be invited to take part in the meetings' (paragraph 6). The Eurogroup was created as an intergovernmental body – outside the institutional framework of the European Union – intended to enable the ministers of the Member States whose currency is the euro ('the MSCE') to exchange and coordinate their views on issues relating to their common responsibilities concerning the single currency. It thus provides a bridge between the national level and the EU level for the purpose of coordinating the economic policies of the MSCE (see, to that effect, judgment of 16 December 2020, *Council and Others* v *K. Chrysostomides & Co. and Others*, C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P, EU:C:2020:1028, paragraph 84).

73 The Eurogroup is not among the various configurations of the Council, listed in Annex I to its Rules of Procedure, adopted by Council Decision 2009/937/EU of 1 December 2009 (OJ 2009 L 325, p. 35), the list of which is referred to in Article 16(6) TEU. Consequently, the Eurogroup cannot be treated as a configuration of the Council or be classified as a body, office or agency of the European Union. On the contrary, the Eurogroup is characterised by its informality, which can be explained by the purpose pursued by its creation of endowing economic and monetary union with an instrument of intergovernmental coordination but without affecting the role of the Council – which is the fulcrum of the European Union's decision-making process in economic matters – or the independence of the ECB. Similarly, the fact that, in particular, under Article 137 TFEU and Protocol (No 14) on the Eurogroup, the Commission and the ECB participate in the meetings of the Eurogroup does not alter either its intergovernmental nature or that of its statements, which cannot be treated as an expression of a decision-making power of those two EU institutions. The Eurogroup does not have any competence of its own in the EU legal order, as Article 1 of Protocol (No 14) merely states that its meetings are to take place, when necessary, to discuss questions related to the specific responsibilities that the ministers of the MSCE share with regard to the single currency – responsibilities which they owe solely on account of their competence at national level (see, to that effect, judgments of 20 September 2016, *Mallis and Others* v *Commission and ECB*, C-105/15 P to C-109/15 P, EU:C:2016:702, paragraphs 57 and 61, and of 16 December 2020, *Council and Others* v *K. Chrysostomides & Co. and Others*, C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P, EU:C:2020:1028, paragraphs 87 to 89).

74 It follows that, irrespective of the content and possible effects of the Eurogroup statements of 20 June 2011 and 21 February 2012, those statements cannot be attributed either to the European Union or to the ECB, which means that the Court has no jurisdiction to rule on their lawfulness, including in the context of an action for damages, for the purposes of assessing whether non-contractual liability has been incurred.

75 In the second place, because of its intergovernmental nature, the findings above relating to the Eurogroup's statements must apply *mutatis mutandis* and a fortiori to the joint statement by the Heads of State or Government of the euro area at their summit of 26 October 2011 (see, to that effect, Opinion of Advocate General Pitruzzella in Joined Cases *Council and Others* v *K. Chrysostomides & Co. and Others*, C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P, EU:C:2020:390, point 81). Accordingly, that statement cannot be treated as an EU measure or as a measure attributable to it, with the result that the Court also does not have jurisdiction to rule on its lawfulness for the purposes of assessing whether or not non-contractual liability has been incurred.

76 In the third place, it is admittedly true that the joint statement by the Heads of State or Government of the euro area and the EU institutions of 21 July 2011 goes beyond the purely intergovernmental framework of the statements referred to in paragraphs 72 to 75 above, in that it involves the participation of those institutions. It cannot therefore be ruled out that that statement may be attributable, at least in part, to the European Union. However, the content of that statement merely confirms the intention of the parties at that summit to 'support' the new financial assistance programme for the Hellenic Republic 'and, together with the IMF and the voluntary contribution of the private sector, to fully cover [its] financing gap' (paragraph 2). In addition, paragraph 5 notes, inter alia, the intention of the 'financial sector' to 'support' the Hellenic Republic 'on a voluntary basis', estimating the 'net contribution of the private sector … at [EUR] 37 billion'. As regards the involvement of the private sector, paragraph 6 of that statement states that the Hellenic Republic 'requires an exceptional and unique solution'. Hence, that

statement contains no indication as to the possible 'forced' involvement of private holders of Greek bonds in the restructuring of Greek public debt which would make it possible to establish a causal link between its content and the damage allegedly suffered by the applicants. A fortiori, it cannot be given binding force in the sense that it imposed a legally binding obligation on, or went so far as to order, the Hellenic Republic to implement the contested measures. In any event, the absence of such an order does not preclude the existence of political, or even legal obligations, within the meaning of public international law, on the Hellenic Republic in respect of some of its creditors, in particular the euro area Member States and the IMF, arising from bilateral or multilateral agreements concluded at intergovernmental level (see, inter alia, the agreements referred to in paragraphs 7, 10 and 11 of the judgment of 3 May 2017, *Sotiropoulou and Others* v *Council*, T-531/14, not published, EU:T:2017:297), the review of which falls outside the jurisdiction of the Court and the lawfulness of which the applicants do not dispute in the present case, but which could, indeed, have a significant impact on the exercise by the Greek legislature of its discretion when it enacted, in particular, Law No 4050/2012.

77 Therefore, irrespective of whether it can be attributed to the European Union, the joint statement of the Heads of State or Government of the euro area and the EU institutions of 21 July 2011 was not capable of causing the European Union to incur non-contractual liability.

78 In the fourth place, as regards the conclusions of the European Council of 23 and 24 June 2011, it follows from the status of that institution for the purpose of the second indent of the second subparagraph of Article 13(1) TEU, read in conjunction with Article 15 TEU, that its measures and actions are, in principle, attributable to the European Union and are therefore capable of causing it to incur non-contractual liability. That assessment does not, however, prejudge the legal nature of the measures adopted by the European Council, inter alia, under Article 15(4) TEU, which the applicants consider to be 'decisions'. In that regard, the Commission, the ECB, the European Council and the Council correctly observe that the content of those conclusions does not indicate that they are in the nature of decisions, or that they are legally binding in the sense that they created an obligation incumbent on the Hellenic Republic to implement the contested measures. First, in paragraph 14, the European Council merely calls on 'the national authorities to continue implementing with resolve the necessary adjustment efforts to put the [Greek State] on a sustainable path' and, inter alia, on the Greek Parliament to adopt 'key laws on the fiscal strategy and privatisation' – and, therefore, not those relating to the PSI which were the subject of Law No 4050/2012 – as basic elements for the implementation of the new financial assistance programme for the Hellenic Republic. Second, in paragraph 15, the European Council merely endorses the position of the Eurogroup in its statement of 20 June 2011, in particular as regards a form of voluntary PSI which is different again from that of the contested PSI. However, the fact remains that, in the light of what is stated in paragraph 71 above, those considerations alone do not make it possible automatically to exclude the conclusions of the European Council of 23 and 24 June 2011 from review by the Court under Article 268 TFEU, read in conjunction with the second paragraph of Article 340 TFEU.

79 In the fifth place, as regards the potential liability of the European Union for breach of the Commission's duty to oversee under Article 17(1) TEU, it must be recalled that individuals may bring before the EU Courts an action to establish non-contractual liability of the European Union against the Council, the Commission and the ECB in respect of the acts or conduct that those EU institutions adopt following such political agreements concluded within the Eurogroup (judgment of 16 December 2020, *Council and Others* v *K. Chrysostomides & Co. and Others*, C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P, EU:C:2020:1028, paragraphs 93). In that regard, as is apparent from Article 17(1) TEU, the Commission 'shall promote the general

interest of the Union' and 'shall oversee the application of EU law' (judgments of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraph 163, and of 20 September 2016, *Ledra Advertising and Others* v *Commission and ECB*, C-8/15 P to C-10/15 P, EU:C:2016:701, paragraph 57). The Commission therefore retains, in the context of its participation in the activities of the Eurogroup, its role as guardian of the Treaties. It follows that any failure on its part to check that the political agreements concluded within the Eurogroup are in conformity with EU law is liable to result in non-contractual liability of the European Union being invoked under the second paragraph of Article 340 TFEU (judgment of 16 December 2020, *Council and Others* v *K. Chrysostomides & Co. and Others*, C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P, EU:C:2020:1028, paragraph 96).

80 By virtue of its duty to oversee the application of EU law under Article 17(1) TEU, as recognised in paragraphs 57 and 59 of the judgment of 20 September 2016, *Ledra Advertising and Others* v *Commission and ECB* (C-8/15 P to C-10/15 P, EU:C:2016:701), and confirmed in paragraph 96 of the judgment of 16 December 2020, *Council and Others* v *K. Chrysostomides & Co. and Others* (C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P, EU:C:2020:1028), the Commission is not under a general obligation – that is to say, an obligation as to the result – to prevent infringements of EU law by other EU institutions, bodies, offices and agencies (see, to that effect, Opinion of Advocate General Wahl in Joined Cases *Ledra Advertising and Others* v *Commission and ECB*, C-8/15 P to C-10/15 P, EU:C:2016:290, points 69 and 71). Thus, in paragraph 59 of the judgment of 20 September 2016, *Ledra Advertising and Others* v *Commission and ECB* (C-8/15 P to C-10/15 P, EU:C:2016:701), the Court of Justice merely held that, by virtue of its role as guardian of the Treaties as resulting from Article 17(1) TEU, the Commission should refrain from signing a memorandum of understanding whose consistency with EU law it doubts. In the light of that consideration, it noted, in paragraph 67 of that judgment, that the Commission was bound, under that provision, which confers upon it the general task of overseeing the application of EU law, to ensure that such a memorandum is consistent with the fundamental rights of the Charter, which can therefore refer only to its own conduct and not to that of other institutions or other bodies of the European Union, let alone to that of an intergovernmental entity such as the Eurogroup. That is how, in paragraph 68 of that judgment, the Court of Justice initiated its examination of the question whether the Commission had itself contributed to a sufficiently serious breach of the applicants' right to property in those other cases. To the same effect, in paragraphs 95 and 96 of the judgment of 16 December 2020, *Council and Others* v *K. Chrysostomides & Co. and Others* (C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P, EU:C:2020:1028), the Court of Justice inferred from that case-law that it was the possible 'failure' on the part of the Commission to check that certain political agreements concluded within the Eurogroup were in conformity with EU law which is liable to result in the non-contractual liability of the European Union being invoked under the second paragraph of Article 340 TFEU.

81 That absence of any obligation as to the result is confirmed by the fact that it is impossible for the Commission, by virtue of its duty to oversee under Article 17(1) TEU, actively to prevent the adoption of a measure of an entity that does not come within the institutional framework of the European Union, such as the Eurogroup, let alone a measure the materiality of which has not been demonstrated, such as the alleged decision of or order from the Eurogroup (see paragraph 76 above).

82 In the sixth place, those findings apply *mutatis mutandis* to the ECB in so far as it was involved in the discussions relating to the new financial assistance programme for the Hellenic Republic. It must be stated that, in that intergovernmental framework, the ECB's role was merely advisory, under the EFSF framework agreement and the fourth sentence of Article 1 of Protocol (No 14),

according to which 'the [ECB] shall be invited to take part in [informal meetings of the Ministers of the MSCE]', concerning, in particular, the analysis of the sustainability of Greek public debt. On the other hand, as was held in the judgment of 23 May 2019, *Steinhoff and Others* v *ECB* (T-107/17, EU:T:2019:353, paragraphs 68 to 72), even though the opinion of the ECB of 17 February 2012, adopted pursuant to Article 127(4) and Article 282(5) TFEU, read in conjunction with Council Decision 98/415/EC of 29 June 1998 on the consultation of the ECB by national authorities regarding draft legislative provisions (OJ 1998 L 189, p. 42), could not legally bind the Greek authorities, that opinion was, in principle, capable of causing the ECB to incur non-contractual liability, without prejudice to its broad discretion under Articles 127 and 282 TFEU and Article 18 of the ESCB Statute (see, to that effect, judgment of 24 January 2017, *Nausicaa Anadyomène and Banque d'escompte* v *ECB*, T-749/15, not published, EU:T:2017:21, paragraph 70 and the case-law cited; see also, to that effect and by analogy, judgment of 11 December 2018, *Weiss and Others*, C-493/17, EU:C:2018:1000, paragraphs 73, 91 and 93).

83 Lastly, it is apparent from the case-law referred to in paragraph 71 above that measures, conduct or a failure to act of the institutions, bodies, offices or agencies of the European Union, as alleged by the applicants, namely, inter alia, those of the Eurosystem, the ECB, the EIB, the Commission, the Council and the European Council, are, in principle, capable of causing the European Union or the ECB to incur non-contractual liability, irrespective of whether or not they are legally binding.

84 Those measures, that conduct or that failure to act concern, first, the alleged creation of an obligation to 'consult' the official sector creditors of the Hellenic Republic in the broad sense, to the extent that they include institutions, bodies, offices or agencies of the European Union, second, the ECB's opinion of 17 February 2012, third, the absence of involvement of the Eurosystem, including that of the ECB, and other institutional creditors in the restructuring of Greek public debt, in particular the implementation of the exchange agreement of 15 February 2012, which has previously formed the subject of the judgments of 7 October 2015, *Accorinti and Others* v *ECB* (T-79/13, EU:T:2015:756), and of 24 January 2017, *Nausicaa Anadyomène and Banque d'escompte* v *ECB* (T-749/15, not published, EU:T:2017:21), and, fourth, the fact that the EU institutions did not adopt measures to prevent an infringement of primary EU law within the meaning of the judgments of 20 September 2016, *Ledra Advertising and Others* v *Commission and ECB* (C-8/15 P to C-10/15 P, EU:C:2016:701, paragraphs 56 to 58 and 68), and of 16 December 2020, *Council and Others* v *K. Chrysostomides & Co. and Others* (C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P, EU:C:2020:1028, paragraph 96).

85 Consequently, it is necessary to examine whether those various measures, that conduct or that failure to act involve sufficiently serious infringements of rules of EU law conferring rights on individuals.

86 By contrast, in so far as the action concerns, in that context, measures, conduct or a failure to act on the part of the Eurogroup and the Heads of State or Government of the euro area, the Court has no jurisdiction to rule on their lawfulness.

The first plea of illegality, alleging that the contested measures are ultra vires and that there was a sufficiently serious infringement of Articles 120 to 127 and Article 352(1) TFEU

...

89 The present plea is based on, inter alia, the premiss that the provisions allegedly infringed constitute rules of EU law conferring rights on individuals.

90 In that regard, first, it should be noted that, in order to ensure the effectiveness of the condition relating to the breach of a rule of law conferring rights on individuals, the protection offered by the rule invoked must be effective vis-à-vis the person who invokes it and that person must therefore be among those on whom the rule in question confers rights. A rule which does not protect the individual against the unlawfulness invoked by him or her, but protects another individual, cannot be accepted as a source of compensation. Second, a rule of law is intended to confer rights on individuals where it creates an advantage which could be defined as a vested right, is designed for the protection of the interests of individuals or entails the grant of rights to individuals, the content of those rights being sufficiently identifiable (see, to that effect, judgment of 23 May 2019, *Steinhoff and Others* v *ECB*, T-107/17, EU:T:2019:353, paragraphs 77 and 140 and the case-law cited).

91 It must be stated that none of the provisions relied on under Articles 120 to 127, Article 282(2) and Article 352(1) TFEU constitutes a rule of EU law conferring rights on the applicants on which they may validly rely in support of the present plea of illegality.

92 First, Articles 120 and 121 TFEU merely recognise the Member States' primary competence in the area of economic policy while laying down procedures designed to coordinate their economic policies, but do not contain any rule that is sufficiently clear, precise and unconditional to confer individual rights on the applicants which may be relied on before the EU Courts or before a national court (see, to that effect and by analogy, judgment of 20 March 2018, *Garlsson Real Estate and Others*, C-537/16, EU:C:2018:193, paragraphs 65 and 66, and order of 22 March 2010, *SPM* v *Council and Commission*, C-39/09 P, not published, EU:C:2010:157, paragraph 79 and the case-law cited). The same is true of the provisions of Article 122 TFEU which empower the Council, on the one hand, to adopt measures appropriate to the economic situation, in particular if serious difficulties arise in the supply of certain products, notably in the energy sector (paragraph 1), and, on the other hand, to grant, under certain conditions, EU assistance to a Member State experiencing difficulties or a serious threat of severe difficulties as a result of natural disasters or exceptional occurrences beyond its control (paragraph 2).

93 Second, Article 123(1) TFEU does indeed lay down a clear, precise and unconditional prohibition on direct financial assistance of any kind (overdraft facilities or any other type of credit facility) provided by the ESCB to State bodies as well as on direct acquisitions, by the ESCB, of 'debt instruments' from Member States, without, however, generally excluding the possibility of the Eurosystem purchasing, from the creditors of such a State, bonds previously issued by that State and traded on the secondary market (see, to that effect, judgments of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraph 132; of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 95; and of 11 December 2018, *Weiss and Others*, C-493/17, EU:C:2018:1000, paragraphs 103 and 106). The same is true of Article 125(1) TFEU, under which, inter alia, the European Union is not to be liable for or assume the commitments of State bodies.

94 However, having regard solely to the public-interest objective pursued by both Article 123(1) TFEU and Article 125(1) TFEU, in the same way as Article 124 TFEU (see paragraphs 98 and 99 below), those rules are not intended to confer rights on individuals within the meaning of the case-law referred to in paragraph 90 above.

95 The origin of the prohibition set out in Article 123(1) TFEU is to be found in Article 104 of the EC Treaty (now Article 101 EC), which was inserted into the EC Treaty by the Treaty of Maastricht. It is apparent from the preparatory work relating to the Treaty of Maastricht that the aim of

Article 123 TFEU is to encourage the Member States to follow a sound budgetary policy, not allowing monetary financing of public deficits or privileged access by public authorities to the financial markets to lead to excessively high levels of debt or excessive Member State deficits (see the Draft Treaty amending the Treaty establishing the European Economic Community with a view to achieving economic and monetary union, *Bulletin of the European Communities*, Supplement 2/91, pp. 22 and 52). Thus, as is stated in the seventh recital of Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles [123 TFEU] and [125(1) TFEU] (OJ 1993 L 332, p. 1), purchases made on the secondary market may not be used to circumvent the objective of Article 123 TFEU (see, to that effect, judgments of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraphs 99 to 101, and of 11 December 2018, *Weiss and Others*, C-493/17, EU:C:2018:1000, paragraph 107).

96 It follows that the objective pursued by both Article 123 TFEU and Article 125 TFEU is consistent with that pursued by Article 126 TFEU, which requires Member States to avoid excessive public deficits. That objective is intended to protect not individuals, but the European Union as such, including its Member States, against conduct contrary to the requirement of sound budgetary discipline which could give rise to excessive indebtedness or excessive deficits of certain Member States and thereby jeopardise the economic and financial stability of the European Union as a whole, and the efficient functioning of the single currency (see, to that effect, Opinion of Advocate General Cruz Villalón in *Gauweiler and Others*, C-62/14, EU:C:2015:7, points 217 to 219). That assessment applies *mutatis mutandis* to the prohibition laid down in Article 125 TFEU, which ensures that the Member States remain subject to the logic of the market when they enter into debt, since that ought to prompt them to maintain budgetary discipline, compliance with which contributes at EU level to the attainment of a higher objective, namely maintaining the financial stability of the monetary union (see, to that effect, judgment of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraphs 135 and 136).

97 Thus, Article 123(1) TFEU and Article 125(1) TFEU constitute rules of law adopted with the exclusive aim of serving the public interest and, in particular, the interest of the European Union as a whole, which means that only the European Union and its Member States, as representatives of the European Union interest, are protected by those rules.

98 Third, Article 124 TFEU prohibits any measure, not based on prudential considerations, granting Member States, among others, privileged access to financial institutions so as to encourage the former to follow a sound budgetary policy by not allowing monetary financing of public deficits or privileged access by public authorities to the financial markets to lead to excessively high levels of debt or excessive Member State deficits. That prohibition originally appeared in Article 104a of the EC Treaty (which became Article 102 EC), which was inserted in the EC Treaty by the Treaty of Maastricht, and, therefore, as is the case with Articles 123 and 125 TFEU (see paragraph 95 above), is one of the provisions of the FEU Treaty relating to the economic policy that intended to encourage the Member States to follow a sound budgetary policy, not allowing monetary financing of public deficits or privileged access by public authorities to the financial markets to lead to excessively high levels of debt or excessive Member State deficits (see judgment of 1 October 2015, *Bara and Others*, C-201/14, EU:C:2015:638, paragraph 22 and the case-law cited; order of 12 March 2020, *EMB Consulting and Others* v *ECB*, C-571/19 P, not published, EU:C:2020:208, paragraph 54; see also, to that effect, judgment of 23 May 2019, *Steinhoff and Others* v *ECB*, T-107/17, EU:T:2019:353, paragraph 136).

99 It follows that the prohibition laid down in Article 124 TFEU does not confer rights on individuals and undertakings, but is designed to protect the institutions of the European Union and the Member States against the budgetary risks of privileged access to financial institutions and, therefore, against conduct liable to jeopardise the economic and financial stability of the European Union as a whole (see, to that effect, order of 12 March 2020, *EMB Consulting and Others* v *ECB*, C-571/19 P, not published, EU:C:2020:208, paragraph 55, and judgment of 23 May 2019, *Steinhoff and Others* v *ECB*, T-107/17, EU:T:2019:353, paragraphs 139 to 141).

100 Fourth, Article 127(1) TFEU, read in conjunction with Article 282(2) TFEU, under which the primary objective of the European Union's monetary policy is to maintain price stability (judgment of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 43), is likewise not intended to confer rights on individuals.

101 In that regard, the Court of Justice has stated that the objective of safeguarding an appropriate transmission of monetary policy was likely both to preserve the singleness of monetary policy and to contribute to its primary objective, which was to maintain price stability. The ability of the ESCB to influence price developments by means of its monetary policy decisions in fact depends, to a great extent, on the transmission of the impulses which the ESCB sends out across the money market to the various sectors of the economy. Consequently, if the monetary policy transmission mechanism is disrupted, that is likely to render the ESCB's decisions ineffective in a part of the euro area and, accordingly, to undermine the singleness of monetary policy. Moreover, since disruption of the transmission mechanism undermines the effectiveness of the measures adopted by the ESCB, that necessarily affects the ESCB's ability to guarantee price stability. Accordingly, measures that are intended to preserve that transmission mechanism may be regarded as pertaining to the primary objective laid down in Article 127(1) TFEU (see, to that effect, judgment of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraphs 49 and 50).

102 Irrespective of the foregoing, the ECB's conduct to which the applicants take exception, in particular the conclusion and implementation of the exchange agreement of 15 February 2012 with the aim of avoiding the application of the CACs to Greek bonds held by the Eurosystem central banks, formed part of the exercise of the powers and basic tasks conferred on it for the purposes of defining and implementing the EU monetary policy, under Articles 127 and 282 TFEU and Article 18 of the ESCB Statute, and was intended to preserve those central banks' scope for manoeuvre and, inter alia, their capacity to operate in the financial markets and to refinance the credit institutions, including Greek banks, pursuant to the first and second indents of Article 18(1) of the ESCB Statute and, consequently, to ensure the continuity of the smooth functioning of the Eurosystem as a whole (see, to that effect, judgments of 7 October 2015, *Accorinti and Others* v *ECB*, T-79/13, EU:T:2015:756, paragraphs 93, 108 and 114, and of 24 January 2017, *Nausicaa Anadyomène and Banque d'escompte* v *ECB*, T-749/15, not published, EU:T:2017:21, paragraph 98; see also paragraphs 174 to 178 below).

103 Having regard to the broad discretion conferred on the ECB in monetary policy matters, the exercise of which entails complex evaluations, in particular of an economic and social nature, in the context of the Eurosystem, or even of the European Union as a whole, any finding of a sufficiently serious infringement of Articles 120 to 127 TFEU by the ECB would therefore require the establishment of a manifest and serious disregard for the limits of that broad discretion (see, to that effect, judgment of 7 October 2015, *Accorinti and Others* v *ECB*, T-79/13, EU:T:2015:756, paragraphs 67 and 68; see also, to that effect and by analogy, judgments of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraphs 68 and 75, and of 11 December 2018, *Weiss and Others*, C-493/17, EU:C:2018:1000, paragraphs 73 and 91). In the light of what is set out

in paragraph 102 above, the applicants are not justified in claiming that, in the present case, the ECB manifestly and seriously disregarded the limits of its broad discretion and its powers under, inter alia, Article 127(1) TFEU, read in conjunction with Article 282(2) thereof, which require political, economic and social choices to be made, or indeed compromises between the various objectives referred to therein, the primary objective of which is to maintain price stability.

104 It follows from all the findings above that the rules of law relied on by the applicants in support of the complaint alleging that the institutions acted ultra vires do not confer on them specific rights the infringement of which is such as to give rise to non-contractual liability on the part of either the European Union or the ECB.

105 That conclusion is all the more compelling as regards the additional competency rule laid down in Article 352(1) TFEU, a possible infringement of which cannot be relied on by an individual in support of a claim for damages.

106 Therefore, the present plea must be rejected in its entirety.

The second plea of illegality, alleging a sufficiently serious infringement of Article 123 TFEU

...

109 Aside from the fact that Article 123(1) TFEU does not confer rights on individuals (see paragraphs 93 to 97 above), it is sufficient to note that the present plea is inherently contradictory in that it runs counter to settled case-law which has acknowledged that, on the contrary, unconditional involvement by the Eurosystem central banks in the restructuring of Greek public debt through the PSI and the CACs would have been capable of being classified as intervention having an effect equivalent to that of direct acquisition by those central banks of State bonds, which is prohibited by Article 123 TFEU (see, to that effect, judgment of 7 October 2015, *Accorinti and Others* v *ECB*, T-79/13, EU:T:2015:756, paragraph 114; see also, to that effect and by analogy, judgments of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraphs 97 and 104, and of 11 December 2018, *Weiss and Others*, C-493/17, EU:C:2018:1000, paragraphs 106 and 110). 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 specifically intended to avoid the involvement of the Eurosystem central banks in the restructuring of Greek public debt that would mean sacrificing a part of the value of the Greek bonds held in their respective portfolios.

110 In that regard, the applicants claim that the Court of Justice accepts, under certain conditions, that the ECB, when purchasing State bonds under a buy-back programme, such as the Outright Monetary Transactions programme, is inevitably exposed to the risk of incurring losses, in particular in the event of a haircut by the other creditors of the Member State concerned. The Court of Justice describes that risk as inherent in the purchase of such bonds on the secondary markets and states that that transaction has been authorised by the authors of the Treaties, without being conditional on the ECB having preferential creditor status (judgment of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraphs 125 and 126). However, acceptance of such a risk in the context of a specific programme for the buy-back of bonds does not mean that there is *a contrario* an absolute obligation for the ECB to accept, in every case, *pari passu* treatment with other creditors (see, to that effect, judgment of 7 October 2015, *Accorinti and Others* v *ECB*, T-79/13, EU:T:2015:756, paragraph 102), particularly where such an approach is likely to create an effect equivalent to that of the direct

purchase by the ECB of State bonds from an issuing Member State and, in particular, when it creates for all investors the certainty that their government bonds will be purchased in the future on secondary markets by the Eurosystem (see, to that effect and by analogy, judgment of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 113).

111 Therefore, the present plea in law must be rejected as unfounded.

The third plea of illegality, alleging a sufficiently serious breach of the right to property guaranteed by Article 17(1) of the Charter

...

115 The right to property guaranteed by Article 17(1) of the Charter, which sets out the right of every person to own his or her lawfully acquired possessions, constitutes a rule of law intended to confer rights on individuals, respect for which is a condition in order for an EU act to be lawful (see, to that effect, judgments of 20 September 2016, *Ledra Advertising and Others* v *Commission and ECB*, C-8/15 P to C-10/15 P, EU:C:2016:701, paragraph 66, and of 23 May 2019, *Steinhoff and Others* v *ECB*, T-107/17, EU:T:2019:353, paragraph 96 and the case-law cited).

116 In addition, under Article 51 of the Charter, its provisions are addressed to, inter alia, the institutions of the European Union within the meaning of Article 13(1) TEU – including the ECB – which are required to respect its rights, observe the principles and promote the application of the Charter (see, to that effect, judgment of 23 May 2019, *Steinhoff and Others* v *ECB*, T-107/17, EU:T:2019:353, paragraphs 95 and 98).

117 It follows that, in principle, a sufficiently serious breach of Article 17(1) of the Charter by an institution, body, office or agency of the European Union, including by the ECB, is capable of giving rise to its non-contractual liability or to that of the European Union under the second and third paragraphs of Article 340 TFEU (see, to that effect, judgment of 23 May 2019, *Steinhoff and Others* v *ECB*, T-107/17, EU:T:2019:353, paragraph 97).

118 In addition, the fundamental nature of that rule of law protecting individuals and the corresponding obligation for the Commission and the ECB to promote compliance with it means that those individuals are entitled to expect those institutions to draw attention to a breach of such a rule when exercising their powers or to abstain from contributing to it (see, to that effect, judgments of 20 September 2016, *Ledra Advertising and Others* v *Commission and ECB*, C-8/15 P to C-10/15 P, EU:C:2016:701, paragraphs 57, 59 and 66 to 75; of 16 December 2020, *Council and Others* v *K. Chrysostomides & Co. and Others*, C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P, EU:C:2020:1028, paragraph 96; and of 23 May 2019, *Steinhoff and Others* v *ECB*, T-107/17, EU:T:2019:353, paragraph 98).

119 However, the right to property guaranteed by Article 17(1) of the Charter is not absolute. Its exercise may be subject to restrictions, provided that the restrictions genuinely meet objectives of general interest pursued by the European Union and do not constitute, in relation to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of the right guaranteed (see, to that effect, judgment of 20 September 2016, *Ledra Advertising and Others* v *Commission and ECB*, C-8/15 P to C-10/15 P, EU:C:2016:701, paragraphs 69 and 70 and the case-law cited; order of 12 March 2020, *EMB Consulting and Others* v *ECB*, C-571/19 P, not published, EU:C:2020:208, paragraph 42, and judgment of 23 May 2019, *Steinhoff and Others* v *ECB*, T-107/17, EU:T:2019:353, paragraph 99).

120 In accordance with Article 52(1) of the Charter, any limitation on the exercise of the rights and freedoms recognised by the Charter must, however, be provided for by law and respect the essence of those rights and freedoms and, in observance of the principle of proportionality, limitations may be made to those rights and freedoms only if they are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others (see, to that effect, judgments of 20 September 2016, *Ledra Advertising and Others* v *Commission and ECB*, C-8/15 P to C-10/15 P, EU:C:2016:701, paragraph 70 and the case-law cited; of 16 December 2020, *Council and Others* v *K. Chrysostomides & Co. and Others*, C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P, EU:C:2020:1028, paragraph 155 and the case-law cited; and of 23 May 2019, *Steinhoff and Others* v *ECB*, T-107/17, EU:T:2019:353, paragraph 100).

121 In the present case, in the first place, it is common ground that Law No 4050/2012, forming the subject matter of, inter alia, the opinion of the ECB of 17 February 2012, made it possible to reduce the face amount of the bonds held by the applicants and, therefore, diminished their right to repayment of that value upon the maturity of the bonds (see, to that effect, judgment of 23 May 2019, *Steinhoff and Others* v *ECB*, T-107/17, EU:T:2019:353, paragraph 101).

122 Bonds that have reached maturity must, in principle, be repaid at their face amount. In principle, therefore, the applicants held, upon the maturity of their bonds, a pecuniary claim against the Greek State in an amount equivalent to the bonds' face amount. The adoption of Law No 4050/2012 amended those terms by introducing CACs. As stated in paragraph 33 above, CACs were applicable to certain Greek bonds and specifically provided for the possibility of amending the terms governing them by means of an agreement between the Greek State and a majority of bondholders representing at least two thirds of the face amount of the bonds concerned. Under the relevant provisions of that law, an amendment made in pursuance of such an agreement becomes legally binding on all holders of Greek bonds, including those who have not consented to the proposed amendment (see, to that effect, judgment of 23 May 2019, *Steinhoff and Others* v *ECB*, T-107/17, EU:T:2019:353, paragraph 102).

123 Law No 4050/2012 thus made it possible to force the holders of Greek bonds to be involved in the reduction of Greek public debt by devaluing the value of the bonds as soon as that reduction had been approved by the quorum of their holders. That law thus varied the rights of the holders of Greek bonds even though the terms governing their issuance did not contain review clauses (judgment of 23 May 2019, *Steinhoff and Others* v *ECB*, T-107/17, EU:T:2019:353, paragraph 103).

124 Following the adoption of Law No 4050/2012, the Greek authorities published the characteristics of a PSI in the reduction of Greek public debt and invited the holders of the bonds concerned to be involved in a bond exchange. Since the quorum and the majority required for the planned bond exchange to go ahead were reached, all holders of Greek bonds, including those who opposed the exchange, had their bonds exchanged pursuant to Law No 4050/2012, with the result that the value of those bonds fell (judgment of 23 May 2019, *Steinhoff and Others* v *ECB*, T-107/17, EU:T:2019:353, paragraph 104).

125 It follows that the contested measures resulted in interference with the right to property of the applicants, who encountered a substantial reduction in the face amount of the Greek bonds which they held, which was imposed upon them against their will (see, to that effect, ECtHR, 21 July 2016, *Mamatas and Others v. Greece*, CE:ECHR:2016:0721JUD006306614, §§ 90 to 93).

126 Further interference with the applicants' right to property, albeit of a lesser scope, results from the absence of the involvement of the Eurosystem and the other institutional creditors, such as the EIB and the European Union, in the restructuring of Greek public debt. As the applicants claim, such involvement, representing a total face amount of EUR 56 674 709 177.59 (see paragraph 10 above), would necessarily have resulted in a smaller reduction in the face amount of each of the Greek bonds concerned in order to achieve the same reduction of Greek public debt to EUR 107 billion.

127 In the second place, although the adoption and implementation of Law No 4050/2012 thus gave rise to an interference with the applicants' right to property, that law met general interest objectives, including that of ensuring the stability of the banking system of the euro area as a whole (see, to that effect and by analogy, judgment of 20 September 2016, *Ledra Advertising and Others* v *Commission and ECB*, C-8/15 P to C-10/15 P, EU:C:2016:701, paragraphs 71 and 74). Similarly, the ECtHR held, in its judgment of 21 July 2016, *Mamatas and Others v. Greece* (CE:ECHR:2016:0721JUD006306614, § 103), that the Hellenic Republic could legitimately take measures to attain the objectives of maintaining economic stability and the restructuring of debt, in the general interest of the community. At that moment, without a restructuring of Greek public debt via the contested measures, there was an appreciable risk of a further deterioration in the economic situation and the viability of the public finances of the Greek State, and even of its possible insolvency – its defaulting bonds would no longer have been acceptable to the ECB and the national central banks as collateral in Eurosystem credit operations – and, accordingly, of affecting the stability of the financial system and the functioning of the Eurosystem as a whole (see, to that effect, judgment of 23 May 2019, *Steinhoff and Others* v *ECB*, T-107/17, EU:T:2019:353, paragraphs 105 and 106). Thus, the contested measures contributed to preserving both Greek public finances and the stability of the financial system in the euro area, thereby promoting the solidity of financial institutions (see, to that effect, order of 12 March 2020, *EMB Consulting and Others* v *ECB*, C-571/19 P, not published, EU:C:2020:208, paragraph 51, and judgment of 23 May 2019, *Steinhoff and Others* v *ECB*, T-107/17, EU:T:2019:353, paragraph 138).

128 In the third place, as regards the question whether the reduction in the value of the Greek bonds held by the applicants and the exclusion, in particular, of Eurosystem involvement in the restructuring of Greek public debt did not constitute, in the light of the aim pursued, a disproportionate and intolerable interference which would undermine the very substance of the right thus guaranteed, it is important to recall the following considerations, confirmed by the case-law.

129 First, every creditor must bear the risk of the debtor's insolvency, including that of a State. 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 financial markets. That risk is all the greater where the State issuing the bonds faces a highly unstable economic situation which determines the fluctuation in the value of those bonds, or even an appreciable risk of at least a selective default. Consequently, even before the beginning of the financial crisis in 2009, as the issuing Greek State was already faced with high indebtedness and a high deficit, the applicants must have been aware that the purchase of Greek bonds entailed a high risk of loss (see, to that effect, judgments of 7 October 2015, *Accorinti and Others* v *ECB*, T-79/13, EU:T:2015:756, paragraphs 82 and 121; of 24 January 2017, *Nausicaa Anadyomène and Banque d'escompte* v *ECB*, T-749/15, not published, EU:T:2017:21, paragraph 97; and of 23 May 2019, *Steinhoff and Others* v *ECB*, T-107/17, EU:T:2019:353, paragraphs 108 and 109).

130 In the present case, that assessment is confirmed in the light of the dates on which the Greek bonds at issue were issued and purchased, which, according to what the applicants themselves have stated, were, for most of those bonds, between January 2009 and March 2010. Most of those purchases thus occurred during a period in which the Hellenic Republic was already in a situation of extreme deficit (ECtHR, 21 July 2016, *Mamatas and Others v. Greece*, CE:ECHR:2016:0721JUD006306614, § 101) which preceded the triggering of its financial crisis in October 2009, that is to say, during a period in which its financial situation was exposed to serious disruption in the financial market, which was accentuated when their bonds suffered a significant downgrade (judgment of 24 January 2017, *Nausicaa Anadyomène and Banque d'escompte* v *ECB*, T-749/15, not published, EU:T:2017:21, paragraph 97). It must therefore be held that, at least so far as concerns purchases of bonds issued from 2010 onwards, the applicants made high-risk investments, which they may well have done for speculative instead of savings purposes, in the hope of obtaining a high return. Moreover, the differences of opinion within the euro area Member States and the other bodies involved, such as the Commission, the IMF and the ECB, concerning a restructuring of Greek public debt, could not have been overlooked by private creditors such as the applicants. In such exceptional circumstances, a prudent and circumspect economic operator could not have ruled out the risk of a restructuring of Greek public debt in order to avoid the risk of at least a selective default by the Hellenic Republic (see, to that effect, judgments of 7 October 2015, *Accorinti and Others* v *ECB*, T-79/13, EU:T:2015:756, paragraphs 82 and 121; of 24 January 2017, *Nausicaa Anadyomène and Banque d'escompte* v *ECB*, T-749/15, not published, EU:T:2017:21, paragraphs 97 and 115; and of 23 May 2019, *Steinhoff and Others* v *ECB*, T-107/17, EU:T:2019:353, paragraphs 109 to 111).

131 Second, it is common ground that, in view of the scale of the financial crisis to which the Greek State had been exposed since 2010, a new programme of financial assistance for it, which had been drawn up and had to be implemented at multilateral and intergovernmental levels, with the involvement of the euro area Member States, assisted, first, by the EFSF and, subsequently, by the European Stability Mechanism ('the ESM') established under the Treaty between the Kingdom of Belgium, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Grand Duchy of Luxembourg, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic and the Republic of Finland, concluded in Brussels on 2 February 2012 and which entered into force on 27 September 2012, as well as that of the IMF, had become indispensable. As the applicants themselves point out, the restructuring of Greek public debt envisaged by the contested measures, and the exclusion of the Eurosystem's involvement in that restructuring constituted, under the bilateral and multilateral agreements concluded, preconditions for the implementation of that financial assistance (see, to that effect, ECtHR, 21 July 2016, *Mamatas and Others v. Greece*, CE:ECHR:2016:0721JUD006306614, § 116). Thus, it is apparent from the Eurogroup statement of 21 February 2012 that the restructuring of Greek public debt under Law No 4050/2012 was a prerequisite for the grant of additional financial assistance from State and institutional creditors. In the light of the circumstances prevailing at that stage, a wholly voluntary PSI, without CACs, would certainly not have guaranteed the participation of a sufficient percentage of private holders of Greek bonds in order to achieve the rate of deleveraging required and ultimately obtained by reducing Greek public debt by approximately EUR 107 billion (ECtHR, 21 July 2016, *Mamatas and Others v. Greece*, CE:ECHR:2016:0721JUD006306614, § 104). Furthermore, in view of the risk of moral hazard correctly raised by the Commission, the ECB, the European Council and the Council, it was also not guaranteed that a PSI without CACs would have resulted in a sufficiently high participation rate to allow the release of loans from euro area Member States of up to EUR 130 billion until 2014 (see the Eurogroup statement of

21 February 2012). The issue of moral hazard could create a significant additional incentive for any investor or holder of Greek bonds wishing to preserve his or her assets to refuse an offer to exchange bonds voluntarily, or even to purchase more bonds in the event of a fall in their market value, in the hope that other creditors or the community in the broad sense would assume the negative consequences of his or her high-risk investment. Accordingly, the absence of CACs would not only have led to the application of a higher percentage reduction to the Greek bonds held by those who would have been willing to accept a haircut, but would also have helped to deter a large number of holders of such bonds from being involved in the deleveraging process, or even encouraged them to frustrate the implementation of its objective. The contested measures were therefore indispensable both in order to guarantee the success of the proposed restructuring of Greek public debt and to enable additional financial assistance to be granted in order to prevent, in the short term, a payment default by the Greek State and to help it, in the medium term, to control its financial crisis and to restore an economic balance. It follows that the applicants have failed to demonstrate that Law No 4050/2012 was manifestly inappropriate or disproportionate for that purpose or that an exclusively voluntary PSI, without CACs, or a lower percentage haircut would have constituted equally effective but less onerous measures of achieving the public-interest objectives pursued (see, to that effect, judgment of 23 May 2019, *Steinhoff and Others* v *ECB*, T-107/17, EU:T:2019:353, paragraph 112).

132 In the light of the findings above, it is necessary to reject the applicants' argument that the private holders of Greek bonds had only a negligible share of Greek public debt worth EUR 2.262 billion, which represented only approximately 1.09% of the EUR 206 billion covered by the bond exchange offer, with the result that their inclusion was manifestly disproportionate for the purposes of attaining the public-interest objective pursued. In any event, even if, in that regard, the applicants use a limited concept of 'private holders' by restricting it to natural persons or savers, as compared with institutional or professional holders or legal persons (see the fifth plea of illegality), it need only be stated that that distinction is irrelevant (see paragraphs 156 to 166 below).

133 Third, it is, indeed, true that the mandatory exchange of Greek bonds as a result of Law No 4050/2012 and the approval by a majority of the holders of such bonds caused the face amount of those bonds to fall very significantly. New terms set out in that law and, in particular, a reduction of the face amount of those bonds were imposed on the applicants, who did not consent to the proposed amendment of the terms governing their bonds. However, the Greek legislature could legitimately introduce a haircut rate applicable horizontally on the basis of the face amount of the eligible Greek bonds, since another calculation on the basis of the market value of each of the bonds at a certain date or at their respective maturity dates would have been impracticable. The reference point for assessing the degree of the loss suffered by the applicants cannot be the amount which they hoped to receive at the time when their Greek bonds matured. Although the face amount of a bond gives an indication of the quantification of the bondholder's claim on the maturity date, it did not represent the true market value of the Greek bonds on the date on which the Greek State adopted Law No 4050/2012, namely on 23 February 2012, when that value had already been affected by the declining solvency of the Greek State during 2010 and 2011, which made it possible to foresee that, on the maturity date, the Greek State would have been unable to honour its obligations under the contractual clauses included in those bonds (see, to that effect, judgment of 23 May 2019, *Steinhoff and Others* v *ECB*, T-107/17, EU:T:2019:353, paragraph 113, and ECtHR, 21 July 2016, *Mamatas and Others v. Greece*, CE:ECHR:2016:0721JUD006306614, § 112).

134 Fourth, the applicants cannot claim that the exclusion of Eurosystem involvement in the restructuring of Greek public debt was an unnecessary or manifestly disproportionate restriction. In the first place, as is apparent from, inter alia, the Eurogroup statement of 21 February 2012, the State and institutional creditors of the Greek State had also made the additional financial assistance conditional on that exclusion. In the second place, both the conclusion and the implementation of the exchange agreement of 15 February 2012, which were intended to enable the Eurosystem central banks to escape the PSI and the application of the CACs, formed part of the exercise of the Eurosystem's powers and basic tasks in that they were intended to preserve the central banks' scope for manoeuvre and to ensure the continuity of the smooth functioning of the Eurosystem. The latter required, inter alia, that those central banks should be able to 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 ESCB Statute (see, to that effect, judgment of 7 October 2015, *Accorinti and Others* v *ECB*, T-79/13, EU:T:2015:756, paragraphs 93, 94 and 108; see also paragraph 102 above), which would no longer have been possible in the event of a haircut and, therefore, in the event of selective default by the Greek State. Moreover, as stated in paragraph 109 above, unconditional involvement of the Eurosystem central banks in the restructuring of Greek public debt could have been classified as intervention having an effect equivalent to that of the direct purchase by those central banks of State bonds, which is prohibited by Article 123 TFEU (see, to that effect, judgments of 7 October 2015, *Accorinti and Others* v *ECB*, T-79/13, EU:T:2015:756, paragraph 114, and of 24 January 2017, *Nausicaa Anadyomène and Banque d'escompte* v *ECB*, T-749/15, not published, EU:T:2017:21, paragraph 98; see also, to that effect, judgments of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraphs 97 and 104, and of 11 December 2018, *Weiss and Others*, C-493/17, EU:C:2018:1000, paragraphs 106 and 110).

135 In the light of all the findings above, the applicants are not justified in claiming, first, that the Greek bonds held by the private creditors constituted a negligible part of Greek public debt and, second, that, if the Eurosystem had been involved in the restructuring of Greek public debt, the haircut implemented would have been significantly lower and that the Eurosystem had less onerous means of preventing the adverse effects of *pari passu* treatment.

136 Given the nature of the property title in question, the scale and severe and virulent nature of the Greek public debt crisis, the endorsement by the Greek State and by the majority of holders of Greek bonds of an exchange incorporating devaluation of those bonds, and the magnitude of the losses sustained, neither the reduction in the value of the Greek bonds at issue implemented by the contested measures, nor the exclusion of Eurosystem involvement in the restructuring of Greek public debt constituted, in the light of the aim pursued, a disproportionate and intolerable interference which would undermine the very substance of the right to property guaranteed by Article 17(1) of the Charter. Lastly, in the absence of a breach of that provision, neither the Commission nor the ECB can be criticised for having failed to draw attention to such a breach, inter alia, in the ECB's opinion of 17 February 2012 (see, to that effect, judgment of 23 May 2019, *Steinhoff and Others* v *ECB*, T-107/17, EU:T:2019:353, paragraphs 114 to 116).

137 Consequently, the third plea of illegality must be rejected as unfounded.

The fourth plea of illegality, alleging a sufficiently serious breach of the applicants' rights under Article 63(1) TFEU

...

142 Article 63(1) TFEU prohibits all restrictions on the movement of capital between Member States and between Member States and third countries. Those restrictions include measures imposed by a Member State which are liable to deter, limit or prevent investors of other Member States from investing in that Member State or, conversely, to deter, limit or prevent investors of that Member State from investing in other Member States (see judgment of 23 May 2019, *Steinhoff and Others* v *ECB*, T-107/17, EU:T:2019:353, paragraph 119 and the case-law cited).

143 The free movement of capital enshrined in Article 63(1) TFEU is one of the fundamental freedoms of the European Union which must be respected by the Member States and the EU institutions alike and, therefore, by the ECB too (see judgment of 23 May 2019, *Steinhoff and Others* v *ECB*, T-107/17, EU:T:2019:353, paragraph 120 and the case-law cited).

144 It must be noted that, irrespective of whether the implementation of Law No 4050/2012 could have led to a restriction on the movement of capital within the meaning of Article 63(1) TFEU, such a restriction, if it had been established, would be justified by overriding reasons in the public interest. The free movement of capital may be limited by national legislation provided that such legislation is justified, on the basis of objective considerations independent of the origin of the capital concerned, by overriding reasons in the public interest and observes the principle of proportionality, a condition which requires the legislation to be appropriate for ensuring the attainment of the objective legitimately pursued and not to go beyond what is necessary in order for it to be attained (see judgment of 23 May 2019, *Steinhoff and Others* v *ECB*, T-107/17, EU:T:2019:353, paragraphs 121 and 122 and the case-law cited).

145 In the present instance, that is the case for the contested measures and the exclusion of Eurosystem involvement in the restructuring of Greek public debt. As stated in paragraph 131 above, the circumstances that led to the enactment of Law No 4050/2012 were genuinely exceptional since, without restructuring, at least a selective default in the short term by the Greek State was a credible prospect. Moreover, as explained in paragraphs 102 and 134 above, the contested measures and that exclusion were intended to ensure the stability of the banking system of the euro area as a whole, which is an overriding reason in the public interest (see, to that effect, judgment of 23 May 2019, *Steinhoff and Others* v *ECB*, T-107/17, EU:T:2019:353, paragraph 123).

146 Furthermore, the applicants have not established that the contested measures and that exclusion were disproportionate. Those measures served to restore the stability of the banking system of the euro area as a whole and it has not been demonstrated that they went beyond what was necessary to restore that stability. In particular, the involvement of private creditors in the exchange of Greek bonds on a voluntary basis only, as the applicants advocated, would not have ensured the success of that bond exchange, but would, on the contrary, have created a counter-productive incentive not to be involved. In such a situation, it would not have been guaranteed that a sufficient number of those creditors would have accepted such a voluntary exchange, given the moral hazard which it entailed (see paragraph 131 above). The success of the bond exchange was a precondition for the restructuring of Greek public debt, which, in turn, was necessary to stabilise the banking system of the euro area (see, to that effect, judgment of 23 May 2019, *Steinhoff and Others* v *ECB*, T-107/17, EU:T:2019:353, paragraph 124).

147 Accordingly, the applicants are incorrect in claiming that the EU institutions or the ECB infringed the free movement of capital within the meaning of Article 63 TFEU.

148 Accordingly, the fourth plea of illegality must be rejected as unfounded.

The fifth plea of illegality, alleging a sufficiently serious breach of the right to equal treatment laid down in Article 20 of the Charter

...

Findings of the Court

– *Summary of the case-law*

154 The principle of equal treatment, as a general principle of EU law, requires comparable situations not to be treated differently and different situations not to be treated in the same way, unless such treatment is objectively justified. In addition, a breach of the principle of equal treatment as a result of different treatment is based on the premiss that the situations concerned are comparable, having regard to all the elements which characterise them (see judgment of 16 December 2020, *Council and Others* v *K. Chrysostomides & Co. and Others*, C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P, EU:C:2020:1028, paragraphs 191 and 192 and the case-law cited).

155 It is in the light of those case-law principles that the first and second parts of the present plea must be examined.

– *The first part, alleging equal treatment despite the lack of comparability between private investors and institutional or professional investors*

156 As regards the first part, the applicants are incorrect in claiming that private investors, in particular savers who invested in Greek bonds were not, for the purposes of the PSI, in a situation comparable to that of institutional or professional investors or holders which do not, according to the terms chosen by the applicants, come within the category of official sector creditors.

157 First, the applicants do not dispute that, like certain institutional or professional investors, natural or legal persons with significant financial capacity, such as, in the present case, the company QJ, which held Greek bonds with a total face amount of EUR 22 650 000, are capable of acquiring substantial quantities of State bonds (see, to that effect, ECtHR, 21 July 2016, *Mamatas and Others v. Greece*, CE:ECHR:2016:0721JUD006306614, §§ 137 and 138). This shows in itself that the financial capacity or the volume of bonds purchased are not, in all cases, relevant criteria for differentiating between private investors and institutional or professional investors. The same is true of the criterion relating to expertise and financial knowledge, which may vary in each of the two groups of investor envisaged by the applicants, as all of those groups are likely to have recourse to advice from experts in the field. Moreover, the assertion that the investment decisions of the majority of private investors in State bonds are, unlike those of institutional or professional investors, primarily guided by the desire to invest in savings, given that, like the applicants, a large number of individuals were prompted, during the Greek financial crisis, to invest significant sums in Greek bonds despite the high risk associated with that investment, has not been established (see, in particular, the facts giving rise to the judgments of 7 October 2015, *Accorinti and Others* v *ECB*, T-79/13, EU:T:2015:756, and of 23 May 2019, *Steinhoff and Others* v *ECB*, T-107/17, EU:T:2019:353, confirmed by order of 12 March 2020, *EMB Consulting and Others* v *ECB*, C-571/19 P, not published, EU:C:2020:208).

158 Second, as has already been stated in paragraph 130 above, that assessment is confirmed, in the present case, in the light of the dates of issue and purchase of most of the Greek bonds at issue, which, according to the applicants' own statements, were between January 2009 and March 2010, that is to say, during periods in which the Greek State was already in an situation of extreme deficit or was exposed to serious disruption in the financial market, which was accentuated when their bonds suffered a significant downgrade. It must therefore be held that, at least so far as concerns purchases of bonds issued from 2010 onwards, the applicants made high-risk investments, which may well have been guided by speculative instead of savings purposes, in the hope of obtaining a high return. To that extent, the applicants' decisions to invest in the Greek bonds were comparable to those of other institutional or professional investors pursuing the same objectives (see, to that effect, judgment of 24 January 2017, *Nausicaa Anadyomène and Banque d'escompte* v *ECB*, T-749/15, not published, EU:T:2017:21, paragraphs 97 and 115).

159 Third, the primary motivation, referred to above, underlying the investment decisions at issue constituted a differentiation or comparison criterion that was both relevant and sufficient for the purposes of applying the principle of equal treatment to the private creditors subject to the PSI, including the applicants, and more specifically for the purposes of comparing the respective situations of those investors, in addition to the fact that they all held Greek bonds. However, that is not the case for any reasons ancillary or additional to that primary motivation, which may also have influenced the decision of those investors to purchase Greek bonds. Both in theory and in practice, it is impossible to distinguish clearly between investors who acted purely privately, as savers, and those who acted in the context of an institutional or professional activity, even speculatively, or to distinguish sufficiently between natural or legal persons who may have belonged to one of those two groups of investors. Such a distinction would not only be artificial, but would also require a detailed check of the genuine reasons, which would necessarily be subjective, that guided the investment decisions at issue, which would risk making the inclusion of an investor in one or other category highly uncertain (see, to that effect, ECtHR, 21 July 2016, *Mamatas and Others v. Greece*, CE:ECHR:2016:0721JUD006306614, § 137).

160 It would have been very difficult and time-consuming to draw, for the purposes of the PSI, a clear distinction between private investors, who might be natural or legal persons, on the one hand, and institutional or professional investors, on the other, or even to identify solely the 'savers' among the first category of investors. In addition, in order to determine the precise distribution of Greek public debt among those investors, it would have been necessary to prohibit or 'freeze' the bond exchange from a given moment before the adoption of Law No 4050/2012 in order to establish the basis for a non-discriminatory waiver of the PSI of certain investors meeting certain objective criteria, but which would nevertheless have been difficult to establish. However, the mere announcement of such an approach before that date could have given rise to a massive transfer of bonds to the categories of exempted bondholders, which would have jeopardised the very success of the planned restructuring of Greek public debt through PSI (see, to that effect, ECtHR, 21 July 2016, *Mamatas and Others v. Greece*, CE:ECHR:2016:0721JUD006306614, §§ 137 and 138).

161 That assessment is not contradicted by the information note of the GLK of 24 February 2012, which had identified Greek bonds acquired by natural persons on the primary and secondary markets of bonds with a respective total value of EUR 1.3 billion and EUR 962 million, without explaining the relevant legal and factual criteria on which those findings were based. Nor is it called into question by the applicants' vague and ambiguous argument – which is most likely based on a finding of the ECtHR which was merely intended to summarise the applicants'

arguments in that other case (ECtHR, 21 July 2016, *Mamatas and Others v. Greece*, CE:ECHR:2016:0721JUD006306614, § 76) – according to which natural persons held only 1.09% of Greek public debt.

162 Fourth, even on the assumption that, owing to the significance of their position as creditors and their greater financial capacity, certain institutional or professional investors – who are usually legal persons – are generally more suited than private investors or savers to negotiating with a State bond issuer and to influencing its decisions on the management of its public debt, it is impossible to establish a clear and practical demarcation line between those institutional or professional investors, on the one hand, and those whose size and economic capacity are clearly lower or the natural persons undertaking a business or professional activity, on the other. In addition, without prejudice to their status as a legal or natural person, it has not been established that 'small' private investors or savers were unable to organise themselves and influence the decision-making process that led to the adoption of Law No 4050/2012 or, at the very least, the outcome of the bond exchange offer procedure by attempting to achieve a blocking minority in order to prevent the activation of the CACs, for example, by making use of consumer protection, small investor or saver associations.

163 Therefore, the differentiating factors put forward by the applicants to show that private investors and institutional and professional investors were not, as holders of Greek bonds, in comparable situations are neither substantiated nor relevant in the light of the objective of the contested measures, namely that of ensuring the restructuring of Greek public debt in order to make it viable. In that context, any savings-related purpose or other secondary economic reason which led a private creditor subject to the PSI to invest in Greek bonds does not constitute a relevant distinguishing factor in the light of that objective (see, to that effect, judgment of 16 December 2020, *Council and Others* v *K. Chrysostomides & Co. and Others*, C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P, EU:C:2020:1028, paragraph 200, and ECtHR, 21 July 2016, *Mamatas and Others v. Greece*, CE:ECHR:2016:0721JUD006306614, §§ 134 and 137). On the contrary, for the purposes of that objective, those persons were, a priori, in identical or comparable situations, given that they had acquired Greek bonds solely in their private pecuniary interest, or even for profit or speculative purposes, and given that they had accepted the associated risk of loss while being aware of the financial crisis that the Hellenic Republic was facing at that time.

164 Furthermore, even if the differentiation alleged by the applicants were regarded as being relevant in the light of the principle of equal treatment, it would not have been possible to draw a distinction between the alleged 'small savers' and 'big investors' by setting, inter alia, an investment threshold of EUR 100 000, below which the bonds could have been exempted from the PSI. As stated in paragraph 160 above and as the ECtHR held (ECtHR, 21 July 2016, *Mamatas and Others v. Greece*, CE:ECHR:2016:0721JUD006306614, §§ 137 and 138), a mere announcement explaining that such an exemption was to be introduced would have resulted in a huge transfer of such bonds to categories of exempted bondholders, which could have jeopardised the success of the PSI as a whole. In addition, the applicants have failed to demonstrate that, following the adoption of Law No 4050/2012, it would have been possible to introduce such a differentiation lawfully, since that law had already established clearly the criteria governing the PSI and the activation of the CACs for all eligible Greek bonds, without, however, providing for possible exemptions.

165 Nor is the distinction made by the applicants between private investors and institutional or professional investors substantiated by the provisions of Directive 2004/39. Even though the aim of that directive was to protect 'retail clients' as well as investors in 'securities' such as marketable debt instruments and bonds, that protection was only preventive and related only to how 'investment firms', including commercial banks, offered, sold and managed those securities (see, in particular, recital 44 and Article 19 concerning transparency requirements for transactions and the conduct of business rules for the provision of investment services to clients). Similarly, in so far as that directive laid down specific obligations for investment firms to provide information to their clients concerning, in particular, the quality of the services provided and the proposed financial instruments, including appropriate information on 'the risks associated with investments in those instruments or in respect of particular investment strategies' (second indent of Article 19(3)), those obligations did not relate to the consequences of the materialisation of such risks or, a fortiori, to the question of whether 'retail clients' had or had not to be treated in the same way as 'professional clients', which included credit institutions, in the context of the restructuring of sovereign debt.

166 Thus, since the applicants have failed to establish to the requisite legal standard that they were in a situation different from that of other private holders of Greek bonds, including institutional or professional investors, the first part alleging a sufficiently serious breach of the principle of equal treatment must be rejected, without it being necessary to rule on whether there is any objective justification for the equal treatment at issue.

– *The second part, alleging different treatment on account of the exclusion of official sector creditor involvement, in particular that of the Eurosystem, in the restructuring of Greek public debt*

167 As regards the second part, alleging, in particular, different treatment of the situation of private investors, including the applicants, on the one hand, and that of the official sector creditors, in particular the Eurosystem central banks, on the other, it is necessary to recall the established case-law of the Court rejecting similar complaints (judgments of 7 October 2015, *Accorinti and Others* v *ECB*, T-79/13, EU:T:2015:756, paragraphs 88 to 92, and of 24 January 2017, *Nausicaa Anadyomène and Banque d'escompte* v *ECB*, T-749/15, not published, EU:T:2017:21, paragraphs 108 and 117), which the applicants attempt, in vain, to call into question.

168 In the first place, 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 ESCB 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) (see, to that effect, judgments of 7 October 2015, *Accorinti and Others* v *ECB*, T-79/13, EU:T:2015:756, paragraph 88, and of 24 January 2017, *Nausicaa Anadyomène and Banque d'escompte* v *ECB*, T-749/15, not published, EU:T:2017:21, paragraph 111).

169 Thus, the programme 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 ESCB Statute and formed, in the face of the financial crisis to which the Greek State was exposed, part 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 (see, to that effect, judgments of 7 October 2015, *Accorinti and Others* v *ECB*, T-79/13, EU:T:2015:756, paragraphs 89, and of 24 January 2017, *Nausicaa Anadyomène and Banque d'escompte* v *ECB*, T-749/15, not published, EU:T:2017:21, paragraph 112).

170 The bond purchase programme and, therefore, the purchase by the Eurosystem central banks of State bonds, including Greek State bonds, formed part of the basic tasks of the ESCB within the meaning of Article 127(1) and (2) TFEU, read in conjunction with Article 282(1) TFEU. Specifically, those measures were based on the power provided for in the first indent of Article 18(1) of the ESCB Statute, under which, '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 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 (judgment of 24 January 2017, *Nausicaa Anadyomène and Banque d'escompte* v *ECB*, T-749/15, not published, EU:T:2017:21, paragraph 113; see also, to that effect, judgment of 7 October 2015, *Accorinti and Others* v *ECB*, T-79/13, EU:T:2015:756, paragraph 90).

171 Consequently, it must be held that the applicants, as private 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. Even though, 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 principle of equal treatment (see, to that effect, judgments of 7 October 2015, *Accorinti and Others* v *ECB*, T-79/13, EU:T:2015:756, paragraph 91, and of 24 January 2017, *Nausicaa Anadyomène and Banque d'escompte* v *ECB*, T-749/15, not published, EU:T:2017:21, paragraph 114).

172 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 in conjunction with Article 282(1) TFEU and also the first indent of Article 18(1) of the ESCB 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 (see, to that effect, judgment of 7 October 2015, *Accorinti and Others* v *ECB*, T-79/13, EU:T:2015:756, paragraph 92).

173 In the second place, in the present case, the applicants do not put forward any additional or new argument that might lead the Court to alter that case-law. In particular, contrary to what they claim, it is clear from the findings above that the implementation of both the bond purchase programme and the exchange agreement of 15 February 2012 constituted monetary policy measures within the meaning of Article 127(1) and (2) TFEU, Article 282(1) TFEU and the first and second indents of Article 18(1) of the ESCB Statute.

174 That assessment is borne out by the case-law of the Court of Justice, according to which, in order to determine whether a measure comes within the area of monetary policy, it is necessary to refer principally to the objectives of that measure and to the instruments which the measure employs in order to attain those objectives. When a specific bond purchase programme is intended, first, to achieve the objective of safeguarding the singleness of monetary policy, it contributes to the achievement of the objectives of that policy, in so far as it must, in accordance with Article 119(2) TFEU, be 'single'. Furthermore, in so far as such a programme aims, second, to safeguard an appropriate transmission of monetary policy, that objective is both such as to preserve the singleness of monetary policy and to contribute to its primary objective, which is to maintain price stability. The ability of the Eurosystem to influence price developments by means of its monetary policy decisions in fact depends, to a great extent, on the transmission of the impulses which the Eurosystem sends out across the money market to the various sectors of the economy, which means that, if the monetary policy transmission mechanism is disrupted, that is likely to render the Eurosystem's decisions ineffective in a part of the euro area and, accordingly, to undermine the singleness of monetary policy. Moreover, since disruption of the transmission mechanism undermines the effectiveness of the measures adopted by the Eurosystem, that necessarily affects the Eurosystem's ability to guarantee price stability. It follows that measures that are intended to preserve that transmission mechanism may be regarded as pertaining to the primary objective laid down in Article 127(1) TFEU. The fact that such a bond purchase programme might also be capable of contributing to the stability of the euro area, which is a matter of economic policy, does not call that assessment into question, since a monetary policy measure cannot be treated as equivalent to an economic policy measure merely because it may have indirect effects on the stability of the euro area (see, to that effect, judgments of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraphs 46 to 52 and the case-law cited, and of 11 December 2018, *Weiss and Others*, C-493/17, EU:C:2018:1000, paragraphs 61 and 63).

175 As regards the means to be used for achieving the objectives of the Eurosystem and for performing its tasks as well as for achieving the objectives of such a purchase programme, the Court of Justice has held, in essence, that the implementation sought by that programme would entail outright monetary transactions on secondary sovereign debt markets, within the meaning of Article 18(1) of the ESCB Statute (see, to that effect, judgments of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraphs 53 and 54, and of 11 December 2018, *Weiss and Others*, C-493/17, EU:C:2018:1000, paragraph 69). It concluded, inter alia, that, in the light of the

objectives of such a bond purchase programme and the means provided for achieving them, that programme fell within the field of monetary policy, and rejected the argument that the implementation of such a bond purchase programme is made conditional upon full compliance with EFSF or ESM macroeconomic adjustment programmes and that it could, where appropriate, indirectly increase the impetus to comply with those programmes, the implementation of which pursues economic-policy objectives. According to the Court of Justice, such indirect effects do not mean that such a programme must be treated as equivalent to an economic policy measure, since it is apparent from Article 119(2) TFEU, Article 127(1) TFEU and Article 282(2) TFEU that, without prejudice to the objective of price stability, the Eurosystem is to support the general economic policies in the European Union (see, to that effect, judgment of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraphs 55 to 59).

176 The Court of Justice concluded that the fact that the purchase of government bonds on the secondary market subject to a condition of compliance with a macroeconomic adjustment programme could be regarded as falling within economic policy when the purchase was undertaken by the ESM did not mean that this should equally be the case when that instrument was used by the Eurosystem in the framework of a bond purchase programme. In that regard, the difference between the objectives of the ESM and those of the Eurosystem is decisive. Whilst such a programme may be implemented only in so far as is necessary for the maintenance of price stability, the ESM's intervention, for its part, is intended to safeguard the stability of the euro area, that objective not falling within monetary policy (see, to that effect, judgment of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraphs 63 and 64 and the case-law cited).

177 It follows from the findings above that, even if the restructuring of Greek public debt falls primarily within the scope of economic policy and, therefore, within the competence of the Member States – which is consonant with the Greek legislature's adoption of Law No 4050/2012 in the present case – the fact remains that all the accompanying measures adopted by the Eurosystem under Article 127(1) and (2) TFEU, Article 282(1) TFEU and the first and second indents of Article 18(1) of the ESCB Statute form part of monetary policy. That is all the more true given that such restructuring is likely to have significant repercussions on the pursuit of the primary objective of monetary policy, namely maintaining price stability, and on the smooth operation of payment systems. However, the mere fact that those accompanying measures were supposed to support economic policy measures in the strict sense, that is to say, the recovery of the financial situation of the Hellenic Republic, does not mean that they may be treated on an equal footing. That concerns not only the purchase by the Eurosystem central banks on the secondary bond market of Greek bonds under a bond purchase programme for the purposes of the first indent of Article 18(1) of the ESCB Statute (see Decision 2010/281 referred to in paragraph 7 above), but also any other measure linked to the management of such bonds, including sale or swapping as *actus contrarius*, in particular in the context of the exchange agreement of 15 February 2012.

178 The conclusion and implementation of that exchange agreement, which were intended to enable the Eurosystem central banks to escape the PSI and the application of the CACs, formed part of the exercise of the Eurosystem's competences and basic tasks in that they sought to preserve the central banks' scope for manoeuvre and to ensure the continuity of the smooth functioning of the Eurosystem. The latter objective was based on the premiss, in particular, that those central banks could 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 ESCB Statute (see, to that effect, judgment of 7 October 2015, *Accorinti and Others* v *ECB*, T-79/13,

EU:T:2015:756, paragraph 108), which would not have been possible if those bonds had a low rating, let alone if they were subject to a haircut, that is to say, a selective default (see Guideline 2011/817/EU of the ECB of 20 September 2011 on monetary policy instruments and procedures of the Eurosystem (ECB/2011/14) (OJ 2011 L 331, p. 1) and Annex I thereto, headed 'General documentation on Eurosystem monetary policy instruments and procedures', Sections 6.3.1 and 6.3.2 of which set out the criteria governing both the minimum requirement for high credit standards, or the credit quality threshold, and the high credit standards for marketable assets). In that regard, it should be recalled that, by Decision 2010/268/EU of 6 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), in response to the Greek financial crisis, the ECB had even been led temporarily to suspend, on an exceptional basis, '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) in order to allow the Eurosystem to continue to accept Greek bonds as 'eligible collateral for the purposes of Eurosystem monetary policy operations, irrespective of their external credit rating' (Article 2 of that decision) (see, to that effect, judgment of 7 October 2015, *Accorinti and Others* v *ECB*, T-79/13, EU:T:2015:756, paragraphs 6 and 7).

179 Consequently, the applicants' arguments concerning the classification of the exclusion of the Eurosystem from the restructuring of Greek public debt as an economic policy measure must be rejected as unfounded. The same applies to the arguments based on the observations made by the ECB before the Bundesverfassungsgericht (Federal Constitutional Court) and on the infringement of Article 123(1) TFEU, which have already been rejected in the context of the examination of the second plea of illegality (see paragraphs 109 and 110 above).

180 In the third place, in so far as the applicants claim that the EIB and the Commission, or even the European Union, were treated differently, it is true that the Greek bonds held by those institutional creditors were also excluded from the PSI and from the application of the CACs (see paragraph 29 above), although they were not subject to the exchange agreement of 15 February 2015.

181 However, as regards the EIB's status as a holder of State bonds, it is apparent from the public-interest mission entrusted to that body, under Article 309 TFEU, read in conjunction with Article 18(1), Article 21(1) to (3) and Article 26(2) of Protocol (No 5) on the Statute of the EIB, that it was also in a situation distinct from that of the private holders of Greek bonds.

182 Article 309 TFEU provides that 'the task of the [EIB] shall be to contribute, by having recourse to the capital market and utilising its own resources, to the balanced and steady development of the internal market in the interest of the Union' and that 'for this purpose the [EIB] shall, operating on a non-profit-making basis, grant loans and give guarantees which facilitate the financing of the following projects in all sectors of the economy'. Similarly, Article 21(1) to (3) of Protocol (No 5) empowers the EIB, inter alia, to invest on the money markets, to buy or sell securities and to carry out any other financial operation linked with its objectives (paragraph 1) while requiring it to act 'in agreement with the competent authorities or with the national central bank of the Member State concerned'. Finally, Article 26(2) of that protocol provides that 'the property of the [EIB] shall be exempt from all forms of requisition or expropriation'. Thus, mandatory involvement of the EIB in the restructuring of Greek public debt, which amounted to interference with the right

to property (see paragraphs 121 to 126 above) and, therefore, to a form of 'expropriation', would have been such as to infringe the prohibition laid down in Article 26(2) of Protocol (No 5), the purpose of which is to preserve the EIB's public-interest tasks under Article 309 TFEU.

183 Therefore, in view of the fact that the EIB was in a factual and legal situation different from that of the private investors, its exclusion from the restructuring of Greek public debt cannot give rise to a sufficiently serious breach of the applicants' right to equal treatment.

184 As regards the European Union's situation as creditor, it should be noted that the European Union is, inter alia, represented by the Commission, in its capacity as budgetary authority within the meaning of Article 317 TFEU, and, more specifically, in carrying out 'financial operations' within the meaning of the second paragraph of Article 321 TFEU, and in implementing the financial rules within the meaning of Article 322(1)(a) TFEU, read in conjunction with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1), as repealed by Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union (OJ 2012 L 298, p. 1), which made provision for, inter alia, the recording, in the budget of the Communities or the European Union, of the guarantees for borrowing-and-lending operations entered into by the Communities or the European Union (Article 4(3) of Financial Regulation No 1605/2002; Article 7(2) of Financial Regulation No 966/2012). In addition, as the Commission submitted at the hearing, under the third sentence of Article 1 of Protocol (No 7) on the privileges and immunities of the European Union, 'the property and assets of the Union shall not be the subject of any administrative or legal measure of constraint without the authorisation of the Court of Justice'.

185 It must therefore be held that the Greek bonds held by the European Union were not only part of its budget and were managed, in part, by the Commission, as budgetary authority, and, in part, by the EIB, in the public interest of the European Union, but also benefited from special protection against acts of expropriation on the part of the Member States. It was in that interest that, first, the Commission held a first portfolio of bonds with a face amount of EUR 46 million on behalf of the European Coal and Steel Community (ECSC) in liquidation, and a second portfolio of bonds with a face amount of EUR 5 million held by the Joint Sickness Insurance Scheme of the institutions of the European Communities (JSIS). Second, the EIB managed three portfolios of Greek bonds with a face amount of EUR 55.7 million, of which EUR 40.7 million were held by the Guarantee Fund for external actions established by Council Regulation (EC, Euratom) No 480/2009 of 25 May 2009 (OJ 2009 L 145, p. 10), EUR 10 million were held by the Risk Sharing Finance Facility, and EUR 5 million were held by the Loan Guarantee Instrument for Trans-European Transport Network Projects.

186 It follows that the applicants are not justified in claiming that the private holders who invested in Greek bonds solely in their private pecuniary interests were in a situation comparable to that of the European Union, as holder of Greek bonds for the sole purpose of managing and preserving its budget and implementing its policies and tasks in the public interest.

187 Accordingly, the complaint that private investors were treated differently as compared with the European Union must also be rejected.

188 In the fourth place, as regards the allegedly discriminatory nature of the haircut and the uniform or equal criteria governing new bonds offered by the Greek State, which failed to take into account the different characteristics of the bonds exchanged under the PSI, in particular as concerns the

remaining terms, coupons and current market value, suffice it to note that, in its judgment of 21 July 2016, *Mamatas and Others v. Greece* (CE:ECHR:2016:0721JUD006306614, §§ 133, 135 and 138), the ECtHR rejected a similar complaint and upheld the legality of the judgment of the Symvoulio tis Epikrateias (Council of State, Greece) No 1116/2014, of 21 March 2014 in that regard. As stated in paragraph 133 above, calculating the haircut on the basis of the market value of each of the bonds at a certain date, that value having already been severely affected by the reduction in the solvency of the Greek State, and their respective maturities would have been impracticable. Moreover, in the context of restructuring public debt under a CACs mechanism, it does not appear illogical to harmonise the conditions of issue, including the coupons and maturities, of new bonds, the financing of which must be guaranteed with the support of a third-party intergovernmental organisation, namely, in this case, the EFSF and the ESM. Accordingly, the applicants have not established that a 'bond-by-bond' restructuring would have been technically feasible and sufficient to achieve the public-interest objectives pursued. On the contrary, given that those objectives could be achieved effectively only on the basis of the face amount of the eligible Greek bonds, that criterion was both relevant and appropriate for comparing the situations at issue in the light of the objectives pursued, for the purposes of applying the principle of equal treatment.

189 In those circumstances, that complaint must be rejected, without there being any need to examine the applicants' argument that a 'bond-by-bond' comparison would have given them an advantage or would have justified distinguishing them from other private bondholders, having regard to the quality of the Greek bonds which they held.

190 It follows from the foregoing that the plea of illegality alleging a sufficiently serious breach of the principle of equal treatment must be rejected in its entirety.

191 Consequently, in the light of all the findings above, in the absence of a sufficiently serious breach of a rule of law protecting the applicants capable of causing the European Union or the ECB to incur non-contractual liability, the action must be dismissed, without it being necessary to rule on the causal link or the alleged damage.

...

On those grounds,

THE GENERAL COURT (Third Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders QI and the other applicants whose names appear in the annex to pay, in addition to their own costs, those incurred by the European Commission and by the European Central Bank (ECB);**

3. **Orders the European Council and the Council of the European Union to bear their own costs.**

Frimodt Nielsen | Kreuschitz | Półtorak

Delivered in open court in Luxembourg on 9 February 2022.

[Signatures]