Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

20 September 2016*

[Text rectified by order of 20 December 2017]

(Appeals — Stability support programme for the Republic of Cyprus — Memorandum of Understanding of 26 April 2013 on Specific Economic Policy Conditionality concluded between the Republic of Cyprus and the European Stability Mechanism (ESM) — Duties of the European Commission and the European Central Bank — Non-contractual liability of the European Union — Second paragraph of Article 340 TFEU — Conditions — Obligation to ensure that the Memorandum of Understanding is consistent with EU law)

In Joined Cases C-8/15 P to C-10/15 P,

THREE APPEALS under Article 56 of the Statute of the Court of Justice of the European, lodged on 9 January 2015,

**Ledra Advertising Ltd**, established in Nicosia (Cyprus) (C-8/15 P),

**Andreas Eleftheriou**, residing in Limassol (Cyprus) (C-9/15 P),

**Eleni Eleftheriou**, residing in Limassol (C-9/15 P),

**Lilia Papachristofi**, residing in Limassol (C-9/15 P),

**Christos Theophilou**, residing in Nicosia (C-10/15 P),

**Eleni Theophilou**, residing in Nicosia (C-10/15 P),

represented by A. Paschalides, dikigoros, A. Paschalidou, Barrister, and A. Riza QC, instructed by C. Paschalides, Solicitor,

appellants,

the other parties to the proceedings being:

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

and

* Language of the case: English.

[As rectified by order of 20 December 2017] **European Central Bank (ECB)**, represented by G. Várhelyi, K. Laurinavičius and O. Heinz, acting as Agents, and H.-G. Kamann, Rechtsanwalt,

defendants at first instance,

THE COURT (Grand Chamber),

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

Advocate General: N. Wahl,

Registrar: I. Illéssy, Administrator,

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

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

gives the following

## Judgment

1 By their appeals, Ledra Advertising Ltd, in Case C-8/15 P, Andreas Eleftheriou, Eleni Eleftheriou and Lilia Papachristofi, in Case C-9/15 P, and Christos Theophilou and Eleni Theophilou, in Case C-10/15 P, ask the Court to set aside, respectively, the orders of the General Court of the European Union of 10 November 2014, *Ledra Advertising* v *Commission and ECB* (T-289/13, EU:T:2014:981), of 10 November 2014, *Eleftheriou and Papachristofi* v *Commission and ECB* (T-291/13, not published, EU:T:2014:978), and of 10 November 2014, *Theophilou* v *Commission and ECB* (T-293/13, not published, EU:T:2014:979) (collectively, 'the orders under appeal'), by which the General Court declared in part inadmissible and in part unfounded their actions seeking, first, annulment of paragraphs 1.23 to 1.27 of the Memorandum of Understanding on Specific Economic Policy Conditionality concluded between the Republic of Cyprus and the European Stability Mechanism (ESM) on 26 April 2013 ('the Memorandum of Understanding of 26 April 2013') and, secondly, compensation for the damage pleaded by the appellants resulting from the inclusion of those paragraphs in the Memorandum of Understanding and an infringement of the European Commission's supervisory obligation.

## Legal context

### *ESM Treaty*

2 On 2 February 2012, the Treaty establishing the European Stability Mechanism was concluded in Brussels (Belgium) between the Kingdom of Belgium, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Grand Duchy of Luxembourg, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic and the Republic of Finland ('the ESM Treaty'). The ESM Treaty entered into force on 27 September 2012.

3 Recital 1 of the ESM Treaty is worded as follows:

'The European Council agreed on 17 December 2010 on the need for euro area Member States to establish a permanent stability mechanism. This European Stability Mechanism ("ESM") will assume the tasks currently fulfilled by the European Financial Stability Facility ("EFSF") and the European Financial Stabilisation Mechanism ("EFSM") in providing, where needed, financial assistance to euro area Member States.'

4 Under Articles 1, 2 and 32(2) of the ESM Treaty, the Contracting Parties, that is to say, the Member States whose currency is the euro, established among themselves an international financial institution, the European Stability Mechanism (ESM), which has legal personality.

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

'1. The ESM shall have a Board of Governors and a Board of Directors, as well as a Managing Director and other dedicated staff as may be considered necessary.

…

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

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

6 Article 5(3) of the ESM Treaty provides that 'the Member of the European Commission in charge of economic and monetary affairs and the President of the [European Central Bank], as well as the President of the Eurogroup (if he or she is not the Chairperson or a Governor) may participate in the meetings of the Board of Governors [of the ESM] as observers'.

7 Article 6(2) of the ESM Treaty states that 'the Member of the European Commission in charge of economic and monetary affairs and the President of the ECB may appoint one observer each [to the ESM's Board of Directors]'.

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

'If indispensable to safeguard the financial stability of the euro area as a whole and of its Member States, the ESM may provide stability support to an ESM Member subject to strict conditionality, appropriate to the financial assistance instrument chosen. Such conditionality may range from a macro-economic adjustment programme to continuous respect of pre-established eligibility conditions.'

9 The procedure for granting stability support to an ESM Member is described in Article 13 of the ESM Treaty as follows:

'1. An ESM Member may address a request for stability support to the Chairperson of the Board of Governors. Such a request shall indicate the financial assistance instrument(s) to be considered. On receipt of such a request, the Chairperson of the Board of Governors shall entrust the European Commission, in liaison with the ECB, with the following tasks:

(a) to assess the existence of a risk to the financial stability of the euro area as a whole or of its Member States, unless the ECB has already submitted an analysis under Article 18(2);

(b) to assess whether public debt is sustainable. Wherever appropriate and possible, such an assessment is expected to be conducted together with the [International Monetary Fund (IMF)];

(c) to assess the actual or potential financing needs of the ESM Member concerned.

2. On the basis of the request of the ESM Member and the assessment referred to in paragraph 1, the Board of Governors may decide to grant, in principle, stability support to the ESM Member concerned in the form of a financial assistance facility.

3. If a decision pursuant to paragraph 2 is adopted, the Board of Governors shall entrust the European Commission — in liaison with the ECB and, wherever possible, together with the IMF — with the task of negotiating, with the ESM Member concerned, a memorandum of understanding (an "MoU") detailing the conditionality attached to the financial assistance facility. The content of the MoU shall reflect the severity of the weaknesses to be addressed and the financial assistance instrument chosen. In parallel, the Managing Director of the ESM shall prepare a proposal for a financial assistance facility agreement, including the financial terms and conditions and the choice of instruments, to be adopted by the Board of Governors.

The MoU shall be fully consistent with the measures of economic policy coordination provided for in the [FEU Treaty], in particular with any act of [EU] law, including any opinion, warning, recommendation or decision addressed to the ESM Member concerned.

4. The European Commission shall sign the MoU on behalf of the ESM, subject to prior compliance with the conditions set out in paragraph 3 and approval by the Board of Governors.

5. The Board of Directors shall approve the financial assistance facility agreement detailing the financial aspects of the stability support to be granted and, where applicable, the disbursement of the first tranche of the assistance.

…

7. The European Commission — in liaison with the ECB and, wherever possible, together with the IMF — shall be entrusted with monitoring compliance with the conditionality attached to the financial assistance facility.'

### *The Memorandum of Understanding of 26 April 2013*

10 Under the heading 'Restructuring and resolution of Cyprus Popular Bank and Bank of Cyprus', paragraphs 1.23 to 1.27 of the Memorandum of Understanding of 26 April 2013 ('the disputed paragraphs') are worded as follows:

'1.23. The accounting and economic value assessment mentioned has revealed that the two largest banks of Cyprus were insolvent. To address this situation the government has implemented a far reaching resolution and restructuring plan. In order to prevent the build-up of future imbalances and to restore the viability of the sector, while preserving competition, a fourfold strategy has been adopted which does not involve taxpayers' money.

1.24. First, all Greek-related assets (including shipping loans) and liabilities were carved-out, estimated in the adverse scenario respectively at EUR 16.4 and 15.0 billion. The Greek assets and liabilities were acquired by Piraeus Bank, the restructuring of which will be dealt with by the Greek authorities. The carve-out was based on an agreement signed on 26 March 2013. With the book value of the assets at EUR 19.2 billion, the carve-out has substantially reduced the cross exposures between Greece and Cyprus.

1.25. With respect to the [United Kingdom] branch of [Cyprus Popular Bank Public Co. Ltd; "Cyprus Popular Bank"], all the deposits were transferred to the [United Kingdom] subsidiary of [Trapeza Kyprou Dimosia Etaireia Ltd; "Bank of Cyprus"]. The associated assets were folded into … Bank of Cyprus.

1.26. Second, Bank of Cyprus is taking over via a purchase and assumption procedure the Cypriot assets of Cyprus Popular Bank at fair value, as well as the insured deposits and Emergency Liquidity Assistance exposure at nominal value. The uninsured deposits of Cyprus Popular Bank will remain in the legacy entity. The value of the transferred assets will be higher than the transferred liabilities with the difference corresponding to the recapitalisation of Bank of Cyprus by Cyprus Popular Bank amounting to 9% of the risk weighted assets transferred. Bank of Cyprus is recapitalised to reach a core tier one ratio of 9% under the adverse scenario of the stress test by the end of the programme which should help restoring confidence and normalising funding conditions. The conversion of 37.5% of the uninsured deposits in Bank of Cyprus into class A shares with full voting and dividend rights provides the largest part of the capital needs with additional equity contributions from the legacy entity of Cyprus Popular Bank. Part of the remaining uninsured deposits of Bank of Cyprus will be temporarily frozen.

1.27. Third, to ensure that the capitalisation targets are met, a more detailed and updated independent valuation of the assets of Bank of Cyprus and Cyprus Popular Bank will be completed, as required by the bank resolution framework, by end June 2013. To this end, no later than mid-April 2013, the terms of reference of the independent valuation exercise will be agreed in consultation with the [European Commission], ECB, and IMF. Following that valuation, and if required, an additional conversion of uninsured deposits into class A shares will be undertaken to ensure that the core tier one target of 9% under stress by end-programme can be met. Should the bank be found to be overcapitalised relative to the target, a share-reversal process will be undertaken to refund depositors by the amount of over-capitalisation.'

### *National law*

11 Under Articles 3(1) and 5(1) of the Peri exiyiansis pistotikon kai allon idrimaton nomos (Law on the resolution of credit and other institutions) of 22 March 2013 (EE, Annex I(I), No 4379, 22.3.2013; 'the Law of 22 March 2013'), the Kentriki Trapeza tis Kyprou (Central Bank of Cyprus; 'the CBC') was entrusted, together with the Ypourgeio Oikonomikon (Ministry of Finance), with the resolution of the

institutions covered by that law. To that end, Article 12(1) of the Law of 22 March 2013 provides that the CBC may, by decree, restructure the debts and obligations of an institution under resolution, including by means of the reduction, modification, rescheduling or novation of the principal or outstanding amount of any type of claim, existing or future, against that institution, or by means of a conversion of debt instruments or obligations into equity. In addition, Article 12(1) provides that 'insured deposits', within the meaning of the fifth paragraph of Article 2 of the Law of 22 March 2013, are to be excluded from those measures. It is common ground between the parties that the deposits in question are deposits of up to EUR 100 000.

12 The Peri diasosis me idia mesa tis Trapezas Kyprou Dimosias Etaireias Ltd Diatagma tou 2013, Kanonistiki Dioikitiki Praxi No. 103 (Decree of 2013 on the bailing-in of Trapeza Kyprou Dimosia Etaireia Ltd, Regulatory Administrative Act No 103) (EE, Annex III(I), No 4645, 29.3.2013, p. 769; 'Decree No 103') provides for the recapitalisation of Bank of Cyprus — at the expense, in particular, of its uninsured depositors, its shareholders and its bondholders — in order to enable it to continue to provide banking services. Accordingly, uninsured deposits were converted into Bank of Cyprus shares (37.5% of each uninsured deposit), into securities which were convertible by Bank of Cyprus either into shares or into deposits (22.5% of each uninsured deposit), and into securities which were convertible into deposits by the CBC (40% of each uninsured deposit). Decree No 103 entered into force at 6.00 a.m. on 29 March 2013, in accordance with Article 10 thereof.

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

## Background to the disputes

14 During the first few months of 2012, certain banks established in Cyprus, including Cyprus Popular Bank and Bank of Cyprus, encountered financial difficulties. The Republic of Cyprus thus considered it necessary for them to be recapitalised and submitted a request to the President of the Eurogroup for financial assistance from the EFSF or the ESM.

15 By a statement of 27 June 2012, the Eurogroup indicated that the financial assistance requested would be provided by the EFSF or the ESM in the framework of a macro-economic adjustment programme to be set out in the form of a memorandum of understanding which would be negotiated by the Commission, together with the ECB and the IMF, on the one hand, and by the Cypriot authorities, on the other.

16 The Republic of Cyprus and the other Member States whose currency is the euro reached a political agreement on a draft memorandum of understanding in March 2013. By a statement of 16 March 2013, the Eurogroup welcomed that agreement and referred to some of the adjustment measures envisaged, including the introduction of a levy on bank deposits. The Eurogroup indicated that, against that background, it considered that — in principle — financial assistance was warranted in order to safeguard financial stability in Cyprus and the euro area, and called upon the relevant parties to accelerate the ongoing negotiations.

17 On 18 March 2013, the Republic of Cyprus declared a bank holiday on 19 and 20 March 2013. The Cypriot authorities decided to extend the bank holiday until 28 March 2013 in order to avoid a run on the banks.

18 On 19 March 2013, the Cypriot Parliament rejected the Cypriot Government's bill relating to the introduction of a levy on all bank deposits in Cyprus. The Cypriot Parliament then adopted the Law of 22 March 2013.

19 By a statement of 25 March 2013, the Eurogroup indicated that it had reached an agreement with the Cypriot authorities on the key elements of a future macro-economic adjustment programme, which was supported by all the Member States whose currency is the euro, as well as by the Commission, the ECB and the IMF. In addition, the Eurogroup welcomed the plans for the restructuring of the financial sector that were mentioned in the annex to that statement.

20 On 25 March 2013, the Governor of the CBC put Bank of Cyprus and Cyprus Popular Bank into resolution. On 29 March 2013, Decrees No 103 and No 104 were published for that purpose on the basis of the Law of 22 March 2013.

21 When Decrees No 103 and No 104 entered into force, the appellants had funds on deposit at Bank of Cyprus or Cyprus Popular Bank. The application of the measures laid down by those decrees resulted in a substantial reduction in the value of those deposits, the precise figures for which were supplied by the appellants.

22 At its meeting on 24 April 2013, the ESM's Board of Governors:

– decided to grant stability support to the Republic of Cyprus in the form of a financial assistance facility, in accordance with the proposal by the Managing Director of the ESM;

– approved the draft memorandum of understanding negotiated by the Commission, in liaison with the ECB and the IMF, and by the Republic of Cyprus;

– mandated the Commission to sign that memorandum on behalf of the ESM.

23 The Memorandum of Understanding of 26 April 2013 was signed by the Minister for Finance of the Republic of Cyprus, by the Governor of the CBC and by O. Rehn, Vice-President of the Commission, on behalf of the ESM.

24 On 8 May 2013, the ESM's Board of Directors approved the agreement relating to the financial assistance facility and a proposal concerning the terms of payment of a first tranche of aid to the Republic of Cyprus. That tranche was divided into two disbursements, paid on 13 May 2013 (EUR 2 billion) and 26 June 2013 (EUR 1 billion), respectively. A second tranche of aid, amounting to roughly EUR 1.5 billion, was disbursed on 27 September 2013.

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

25 By applications lodged at the Registry of the General Court on 24 May 2013, the applicants brought three actions claiming that the General Court should:

– order the Commission and the ECB to pay them compensation equivalent to the diminution in value of their respective deposits;

– 'further and/or alternatively' annul the disputed paragraphs;

– consider the actions as a matter of urgency and, pending such consideration, adopt the 'interim measures … necessary under Article [279 TFEU] to preserve [their] position without in any way affecting the stabilisation assistance provided to [the Republic of Cyprus]'.

26 By separate documents, lodged at the Court Registry on 24 September and 1 October 2013 respectively, the Commission and the ECB raised objections of inadmissibility under Article 114 of the Rules of Procedure of the General Court.

27 By the orders under appeal, the General Court dismissed the actions in their entirety as in part inadmissible and in part manifestly lacking any foundation in law.

## Forms of order sought

28 The appellants claim that the Court should:

– set aside the orders under appeal in respect of the first two heads of claim at first instance, namely the claim for payment of compensation and/or the claim seeking annulment of the disputed paragraphs;

– refer the cases back to the General Court.

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

– dismiss the appeals;

– order the appellants to pay the costs.

30 By decision of the President of the Court of 21 August 2015, Cases C-8/15 P to C-10/15 P were joined for the purposes of the oral procedure and judgment.

## The appeals

31 The appellants put forward in support of their appeals a plea alleging errors committed by the General Court when assessing the conditions under which the European Union may incur non-contractual liability.

32 The Commission and the ECB contend that the appeals are inadmissible and that, in any event, the plea relied upon in support of the appeals must be dismissed as unfounded.

### *Admissibility*

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

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

35 Furthermore, it follows from Article 256 TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice and also from Articles 168(1)(d) and 169(2) of the Rules of Procedure of the Court of Justice that an appeal must indicate precisely the contested elements of the judgment which

the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal (see, inter alia, judgments of 4 July 2000, *Bergaderm and Goupil* v *Commission*, C-352/98 P, EU:C:2000:361, paragraph 34, and of 4 September 2014, *Spain* v *Commission*, C-192/13 P, EU:C:2014:2156, paragraph 43).

36 In particular, under Article 169(2) of the Rules of Procedure of the Court of Justice, the pleas in law and legal arguments relied on must identify precisely those points in the grounds of the decision of the General Court which are contested.

37 Thus, where an appeal merely repeats or reproduces verbatim the pleas in law and arguments submitted to the General Court, including those based on facts expressly rejected by that Court, it fails to satisfy the requirement to state reasons under those provisions. Such an appeal amounts in reality to no more than a request for re-examination of the application submitted to the General Court, a matter which falls outside the jurisdiction of the Court of Justice (see judgment of 4 September 2014, *Spain* v *Commission*, C-192/13 P, EU:C:2014:2156, paragraph 44 and the case-law cited).

38 However, provided that an appellant challenges the interpretation or application of EU law by the General Court, the points of law examined at first instance may be discussed again in the course of an appeal. If an appellant could not thus base his appeal on pleas in law and arguments already relied on before the General Court, an appeal would be deprived of part of its purpose (see judgment of 4 September 2014, *Spain* v *Commission*, C-192/13 P, EU:C:2014:2156, paragraph 45 and the case-law cited).

39 Here, the appellants seek, by their plea, to demonstrate that the orders under appeal fail to state grounds, or state insufficient grounds, and to put in issue the answer which the General Court expressly gave to questions of law, questions which can be the subject matter of review by the Court of Justice on appeal.

40 Furthermore, whilst it is true that the structure of the arguments set out by the appellants in their appeals lacks rigour, it must, however, be found that, in accordance with Article 169(2) of the Rules of Procedure of the Court of Justice, the points in the grounds of the orders under appeal which are contested and the legal arguments enabling the Court to carry out its review of legality are identified there.

41 It follows that the appeals are admissible.

***Substance***

*Arguments of the appellants*

42 The appellants complain that the General Court erred in law in simply holding, in paragraph 45 of the orders under appeal, that the duties conferred on the Commission and the ECB do not entail the exercise of any power to make decisions of their own. In so doing, the General Court failed to apply Article 13(4) of the ESM Treaty by disregarding the fact that the Commission signed the Memorandum of Understanding of 26 April 2013 although it contains an unlawful condition. Thus, it is the Commission and the ECB that are truly responsible for the bail-in of the Cypriot banks concerned.

43 In this connection, the appellants state that they had contended before the General Court that the effective cause of the diminution in value of their deposits was the conditions attached to the financial assistance facility provided to the Republic of Cyprus and the process by which those conditions were

required by the Commission and the ECB. The Republic of Cyprus was compelled by the Commission and the ECB to adopt Decrees No 103 and No 104, under the aegis of officials from those institutions who intervened as a matter of urgency for that purpose. The appellants explain in this regard that the Republic of Cyprus had submitted a request for a financial assistance facility in order to recapitalise Cyprus Popular Bank and Bank of Cyprus and not to put them into resolution by means of the premature use of a bail-in tool. According to the appellants, the primary position of the Commission and the ECB was, by contrast, that recourse should be had to that tool.

44 The appellants complain that the General Court did not reply to their arguments seeking to demonstrate the decisive role played by those institutions in the context of the adoption of the Memorandum of Understanding of 26 April 2013 and, therefore, in the bringing about of the financial loss linked to the recapitalisation of Bank of Cyprus and the resolution of Cyprus Popular Bank.

45 The appellants also submit that the General Court erred in law when examining their argument that the Commission failed to ensure that the Memorandum of Understanding of 26 April 2013 was in conformity with EU law.

46 The appellants thus complain that the General Court did not take appropriate account of the Commission's alleged inaction when, according to paragraph 164 of the judgment of 27 November 2012, *Pringle* (C-370/12, EU:C:2012:756), the tasks allocated to the Commission by the ESM Treaty enable it, as provided in Article 13(3) and (4) thereof, to ensure that the memoranda of understanding concluded by the ESM are consistent with EU law and, according to paragraph 174 of that judgment, under Article 13(3) of the ESM Treaty the memorandum of understanding which is to be negotiated with the Member State requesting stability support must be fully consistent with EU law. Thus, the Court of Justice stated that the conditionality attached to the financial assistance facility must be consistent with EU law.

47 Application of a bail-in such as that set out in the disputed paragraphs constitutes a flagrant breach of the right to property, contrary to Article 17(1) of the Charter of Fundamental Rights of the European Union ('the Charter') and Article 1 of Protocol No 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.

48 The Commission and the ECB dispute the merits of the appellants' arguments.

*Findings of the Court*

49 By their plea, the appellants call into question the General Court's assessment concerning the role of the Commission and the ECB in the adoption of the Memorandum of Understanding of 26 April 2013. They submit in particular that those institutions are the true authors of the bail-in implemented in Cyprus and that the General Court erred in law when examining their argument that the Commission failed to ensure that the Memorandum of Understanding of 26 April 2013 was in conformity with EU law.

50 This plea relates, first, to paragraphs 44 to 47 of the orders under appeal, in which the General Court stated that the adoption of the Memorandum of Understanding of 26 April 2013 did not originate with the Commission and the ECB, and therefore declared that it did not have jurisdiction to rule on the actions for compensation in so far as they were based on the illegality of the disputed paragraphs. The plea relates, secondly, to paragraphs 48 to 54 of the orders under appeal, in which the General Court held, in essence, that the appellants had not established that the damage they claim to have suffered was caused by the infringement by the Commission of an alleged obligation to ensure that the Memorandum of Understanding of 26 April 2013 was in conformity with EU law.

51 The General Court noted, in paragraph 44 of the orders under appeal, that the Memorandum of Understanding of 26 April 2013 was adopted jointly by the ESM and the Republic of Cyprus and that, as is apparent from Article 13(4) of the ESM Treaty, the Commission signed it only on behalf of the ESM. Then, in reliance upon paragraph 161 of the judgment of 27 November 2012, *Pringle* (C-370/12, EU:C:2012:756), the General Court pointed out, in paragraph 45 of the orders, that, whilst the ESM Treaty entrusts the Commission and the ECB with certain tasks relating to the implementation of the objectives of that Treaty, the duties conferred on the Commission and the ECB within the ESM Treaty do not entail any power to make decisions of their own and, moreover, the activities pursued by those two institutions within the ESM Treaty commit the ESM alone.

52 It should be recalled that, as is apparent from the statement by the Eurogroup of 27 June 2012, the Commission and the ECB were entrusted with the task of negotiating with the Cypriot authorities a macro-economic adjustment programme to be set out in the form of a memorandum of understanding. When the Commission and the ECB participated in the negotiations with the Cypriot authorities, provided their technical expertise, gave advice and provided guidance, they acted within the limits of the powers granted to them by Article 13(3) of the ESM Treaty. Participation of the Commission and the ECB, as envisaged by that provision, in the procedure resulting in the signature of the Memorandum of Understanding of 26 April 2013 does not enable the latter to be classified as an act that can be imputed to them.

53 As the Court pointed out in paragraph 161 of the judgment of 27 November 2012, *Pringle* (C-370/12, EU:C:2012:756), the duties conferred on the Commission and the ECB within the ESM Treaty, important as they are, do not entail any power to make decisions of their own. Furthermore, the activities pursued by those two institutions within the ESM Treaty commit the ESM alone.

54 In addition, as the Advocate General has observed in point 53 of his Opinion, the fact that one or more institutions of the European Union may play a certain role within the ESM framework does not alter the nature of the acts of the ESM, which fall outside the EU legal order.

55 However, whilst such a finding is liable to have an effect in relation to the conditions governing the admissibility of an action for annulment that may be brought on the basis of Article 263 TFEU, it cannot prevent unlawful conduct linked, as the case may be, to the adoption of a memorandum of understanding on behalf of the ESM from being raised against the Commission and the ECB in an action for compensation under Article 268 TFEU and the second and third paragraphs of Article 340 TFEU.

56 In this connection, it should be pointed out that the tasks conferred on the Commission and the ECB within the ESM Treaty do not alter the essential character of the powers conferred on those institutions by the EU and FEU Treaties (judgment of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraph 162).

57 As regards the Commission in particular, it is stated in Article 17(1) TEU that the Commission 'shall promote the general interest of the Union' and 'shall oversee the application of Union law' (judgment of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraph 163).

58 Furthermore, the tasks allocated to the Commission by the ESM Treaty oblige it, as provided in Article 13(3) and (4) thereof, to ensure that the memoranda of understanding concluded by the ESM are consistent with EU law (see, to that effect, judgment of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraph 164).

59 Consequently, the Commission, as it itself acknowledged in reply to a question asked at the hearing, retains, within the framework of the ESM Treaty, its role of guardian of the Treaties as resulting from Article 17(1) TEU, so that it should refrain from signing a memorandum of understanding whose consistency with EU law it doubts.

60 It follows that the General Court erred in law in the interpretation and application of Article 268 TFEU and the second and third paragraphs of Article 340 TFEU by holding, in paragraphs 46 and 47 of the orders under appeal, on the basis merely of the finding that the adoption of the disputed paragraphs could not formally be imputed to the Commission or the ECB, that it did not have jurisdiction to consider an action for compensation based on the illegality of those paragraphs.

61 The appeals should therefore be upheld and the orders under appeal set aside.

**The actions before the General Court**

62 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, if the Court sets aside the decision of the General Court, it may itself give final judgment in the matter, where the state of the proceedings so permits. That is so in this instance.

63 The Court is in a position to rule on the appellants' claims, under Article 268 TFEU and the second and third paragraphs of Article 340 TFEU, relating to compensation for the damage allegedly suffered as a result of, first, the inclusion by the Commission and the ECB of the disputed paragraphs in the Memorandum of Understanding of 26 April 2013 and, secondly, the Commission's inaction in breach of the obligation to ensure, in the context of the adoption of the Memorandum of Understanding, that the latter was in conformity with EU law.

64 In accordance with settled case-law, the European Union may incur non-contractual liability under the second paragraph of Article 340 TFEU only if a number of conditions are fulfilled, namely the unlawfulness of the conduct alleged against the EU institution, the fact of damage and the existence of a causal link between the conduct of the institution and the damage complained of (judgment of 14 October 2014, *Giordano* v *Commission*, C-611/12 P, EU:C:2014:2282, paragraph 35 and the case-law cited).

65 As regards the first condition, the Court has already stated on many occasions that a sufficiently serious breach of a rule of law intended to confer rights on individuals must be established (see, inter alia, judgments of 4 July 2000, *Bergaderm and Goupil* v *Commission*, C-352/98 P, EU:C:2000:361, paragraph 42, and of 10 July 2014, *Nikolaou* v *Court of Auditors*, C-220/13 P, EU:C:2014:2057, paragraph 53).

66 In the present instance, the rule of law compliance with which the appellants criticise the Commission for not having ensured in the context of the adoption of the Memorandum of Understanding of 26 April 2013 is Article 17(1) of the Charter. That provision, which states that everyone has the right to own his or her lawfully acquired possessions, is a rule of law intended to confer rights on individuals.

67 Furthermore, whilst the Member States do not implement EU law in the context of the ESM Treaty, so that the Charter is not addressed to them in that context (see, to that effect, judgment of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraphs 178 to 181), on the other hand the Charter is addressed to the EU institutions, including, as the Advocate General has noted in point 85 of his Opinion, when they act outside the EU legal framework. Moreover, in the context of the adoption of a memorandum of understanding such as that of 26 April 2013, the Commission is bound, under both Article 17(1) TEU, which confers upon it the general task of overseeing the application of EU law, and Article 13(3) and (4) of the ESM Treaty, which requires it to ensure that the memoranda of understanding concluded by the ESM are consistent with EU law (see, to that effect, judgment of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraphs 163 and 164), to ensure that such a memorandum of understanding is consistent with the fundamental rights guaranteed by the Charter.

68 It should therefore be examined whether the Commission contributed to a sufficiently serious breach of the appellants' right to property, within the meaning of Article 17(1) of the Charter, in the context of the adoption of the Memorandum of Understanding of 26 April 2013.

69 It must be remembered that the right to property guaranteed by that provision of the Charter is not absolute and that its exercise may be subject to restrictions justified by objectives of general interest pursued by the European Union (see judgments of 16 November 2011, *Bank Melli Iran* v *Council*, C-548/09 P, EU:C:2011:735, paragraph 113, and of 12 May 2016, *Bank of Industry and Mine* v *Council*, C-358/15 P, EU:C:2016:338, paragraph 55).

70 Consequently, as is apparent from Article 52(1) of the Charter, restrictions may be imposed on the exercise of the right to property, provided that the restrictions genuinely meet objectives of general interest 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, judgments of 16 November 2011, *Bank Melli Iran* v *Council*, C-548/09 P, EU:C:2011:735, paragraph 114, and of 12 May 2016, *Bank of Industry and Mine* v *Council*, C-358/15 P, EU:C:2016:338, paragraph 56).

71 As is apparent from Article 12 of the ESM Treaty, the adoption of a memorandum of understanding such as that resulting from the negotiations between the Cypriot authorities and, in particular, the Commission corresponds to an objective of general interest pursued by the European Union, namely the objective of ensuring the stability of the banking system of the euro area as a whole.

72 Indeed, financial services play a central role in the economy of the European Union. Banks and credit institutions are an essential source of funding for businesses that are active in the various markets. In addition, the banks are often interconnected and certain of their number operate internationally. That is why the failure of one or more banks is liable to spread rapidly to other banks, either in the Member State concerned or in other Member States. That is liable, in turn, to produce negative spill-over effects in other sectors of the economy (judgment of 19 July 2016, *Kotnik and Others*, C-526/14, EU:C:2016:570, paragraph 50).

73 In this instance, the measures identified in the disputed paragraphs provide in particular for the taking over, by Bank of Cyprus, of Cyprus Popular Bank's insured deposits, for the conversion of 37.5% of Bank of Cyprus's uninsured deposits into shares with full voting and dividend rights, and for the temporary freezing of another part of those uninsured deposits, whilst it is stated that, should Bank of Cyprus be found to be overcapitalised relative to the core tier one target of 9% under stress, a buy-back of shares will be undertaken to refund holders of uninsured deposits by the amount of the over-capitalisation.

74 In view of the objective of ensuring the stability of the banking system in the euro area, and having regard to the imminent risk of financial losses to which depositors with the two banks concerned would have been exposed if the latter had failed, such measures do not constitute a disproportionate and intolerable interference impairing the very substance of the appellants' right to property. Consequently, they cannot be regarded as unjustified restrictions on that right (see, by analogy, judgment of 10 July 2003, *Booker Aquaculture and Hydro Seafood*, C-20/00 and C-64/00, EU:C:2003:397, paragraphs 79 to 86).

75 In the light of those factors, the Commission cannot be considered, by dint of having permitted the adoption of the disputed paragraphs, to have contributed to a breach of the appellants' right to property guaranteed by Article 17(1) of the Charter.

76 It follows that the first condition for establishing non-contractual liability of the European Union is not satisfied in this instance, so that the appellants' claims for compensation must be dismissed as lacking any foundation in law.

## Costs

77 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to costs. Under Article 138(2) of the Rules of Procedure, which is applicable to appeal proceedings by virtue of Article 184(1) thereof, where there is more than one unsuccessful party, the Court is to decide how the costs are to be shared.

78 As the appeals are upheld but the actions are dismissed, Ledra Advertising Ltd, Mr Eleftheriou, Ms Eleftheriou, Ms Papachristofi, Mr Theophilou and Ms Theophilou, and also the Commission and the ECB, are to bear their own costs.

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

1. **Sets aside the orders of the General Court of the European Union of 10 November 2014, *Ledra Advertising* v *Commission and ECB* (T-289/13, EU:T:2014:981), of 10 November 2014, *Eleftheriou and Papachristofi* v *Commission and ECB* (T-291/13, not published, EU:T:2014:978), and of 10 November 2014, *Theophilou* v *Commission and ECB* (T-293/13, not published, EU:T:2014:979);**

2. **Dismisses the actions brought before the General Court in Cases T-289/13, T-291/13 and T-293/13;**

3. **Orders Ledra Advertising Ltd, Andreas Eleftheriou, Eleni Eleftheriou, Lilia Papachristofi, Christos Theophilou, Eleni Theophilou, the European Commission and the European Central Bank (ECB) each to bear their own costs incurred both at first instance and on appeal.**

[Signatures]