



Reports of Cases

ORDER OF THE GENERAL COURT (First Chamber)

10 November 2014*

(Action for annulment and compensation — Stability support programme for Cyprus — Memorandum of Understanding on Specific Economic Policy Conditionality concluded between the Republic of Cyprus and the ESM — Jurisdiction of the General Court — Causal link — Action in part inadmissible and in part manifestly lacking any foundation in law)

In Case T-289/13,

Ledra Advertising Ltd, established in Nicosia (Cyprus), represented by C. Paschalides, Solicitor, and A. Paschalides, lawyer,

applicant,

v

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

and

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

defendants,

APPLICATION, first, for 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, and, secondly, for compensation for damage allegedly suffered by the applicant as a result of the inclusion of paragraphs 1.23 to 1.27 in the Memorandum of Understanding and an infringement of the Commission's supervisory obligation,

THE GENERAL COURT (First Chamber),

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

Registrar: E. Coulon,

makes the following

* Language of the case: English.

Order

Background to the dispute

ESM Treaty

- 1 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, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Republic of Cyprus, the Grand Duchy of Luxembourg, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic and the Republic of Finland ('the ESM Treaty'). In accordance with Articles 1, 2 and 32(2) of the ESM Treaty, the contracting parties to that Treaty, namely the Member States whose currency is the euro, established among themselves an international financial institution, the European Stability Mechanism (ESM), which has legal personality. The ESM Treaty entered into force on 27 September 2012.
- 2 Recital 1 in the preamble to 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. [The ESM] will assume the tasks currently fulfilled by the European Financial Stability Facility ("EFSF") and the European Financial Stabilisation Mechanism ("EFSM") in providing, where needed, financial assistance to euro area Member States.'
- 3 Article 3 of the ESM Treaty describes its purpose in the following terms:

'The purpose of the ESM shall be to mobilise funding and provide stability support under strict conditionality, appropriate to the financial assistance instrument chosen, to the benefit of ESM Members which are experiencing, or are threatened by, severe financing problems, if indispensable to safeguard the financial stability of the euro area as a whole and of its Member States. For this purpose, the ESM shall be entitled to raise funds by issuing financial instruments or by entering into financial or other agreements or arrangements with ESM Members, financial institutions or other third parties.'
- 4 Article 4 of the ESM Treaty 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] both conclude that a failure to urgently adopt a decision to grant or implement financial assistance, as defined in Articles 13 to 18, would threaten the economic and financial sustainability of the euro area. ...'

- 5 Article 5(3) of the ESM Treaty provides that '[t]he Member of the European Commission in charge of economic and monetary affairs and the President of the [European Central Bank], as well as the President of the Euro Group (if he or she is not the Chairperson or a Governor) may participate in the meetings of the Board of Governors [of the ESM] as observers'.
- 6 Article 6(2) of the ESM Treaty states that '[t]he Member of the European Commission in charge of economic and monetary affairs and the President of the [European Central Bank] may appoint one observer each [to the ESM Board of Directors]'.
- 7 Article 12 of the ESM Treaty defines the principles governing the provision of stability support and states the following in paragraph 1:

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

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

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

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

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

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

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

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

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

...

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

Financial difficulties of the Republic of Cyprus and measures adopted

- 9 During the first few months of 2012, certain banks established in Cyprus, including Cyprus Popular Bank Public Co Ltd (Laiki) and Trapeza Kyprou Dimosia Etaira Ltd (BoC), experienced financial difficulties. The Republic of Cyprus judged it necessary to recapitalise them and submitted a request for financial assistance from the European Financial Stability Facility (EFSF) or the ESM to the President of the Eurogroup.
- 10 By its 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 an MoU which would be negotiated by the European Commission together with the European Central Bank (ECB) and the International Monetary Fund (IMF), on the one hand, and by the Cypriot authorities, on the other.
- 11 The Republic of Cyprus and the other Member States whose currency is the euro reached a political agreement on a draft MoU in March 2013. By its 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 the Republic of Cyprus and the euro area, and called upon the relevant parties to accelerate the ongoing negotiations.
- 12 On 18 March 2013, the Republic of Cyprus declared a bank holiday on 19 and 20 March 2013, which were working days. The Cypriot authorities decided to extend the bank holiday until 28 March 2013 in order to avoid a run on the banks.
- 13 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 Government therefore drew up a new Bill providing only for the restructuring of two banks, BoC and Laiki.
- 14 On 22 March 2013, the Cypriot Parliament adopted the O peri exiysiis pistotikon kai allon idrimaton nomos (Law on the resolution of credit and other institutions, EE, Annex I(I), No 4379, 22.3.2013; 'the Law of 22 March 2013'). Under Articles 3(1) and 5(1) of that Law, the Central Bank of Cyprus (CBC) was entrusted, together with the Minister for 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 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. Moreover, 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 that the deposits in question are deposits of up to EUR 100 000.

- 15 By its statement of 25 March 2013, the Eurogroup indicated that an agreement had been reached 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 mentioned in the annex to that statement.
- 16 On 25 March 2013, the Governor of CBC put BoC and Laïki into resolution. Two decrees to that effect were published on 29 March 2013, on the basis of the Law of 22 March 2013:
- to peri diasosis me idia mesa tis Trapezas Kyprou Dimosias Etaireias Ltd Diatagma tou 2013, Kanonistiki Dioikitiki Praxi No 103 (2013 Decree on the bailing-in of BoC, Regulatory Administrative Act No 103 ('Decree No 103'), EE, Annex III(I), No 4645, 29.3.2013, p. 769 to 780), and
 - to Peri tis Polisis Orismenon Ergasion tis Cyprus Popular Bank Public Co Ltd Diatagma tou 2013, Kanonistiki Dioikitiki Praxi No 104 (2013 Decree on the sale of certain operations of Laïki, Regulatory Administrative Act No 104 ('Decree No 104'), EE, Annex III(I), No 4645, 29.3.2013, p. 781 to 788).
- 17 Decree No 103 provides for the recapitalisation of BoC — at the expense, inter alia, 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 BoC shares (37.5% of each uninsured deposit), into instruments that were convertible by BoC either into shares or into deposits (22.5% of each uninsured deposit), and into instruments which were convertible into deposits by CBC (40% of each uninsured deposit). Decree No 103 entered into force at 6 a.m. on 29 March 2013, in accordance with Article 10 thereof.
- 18 As regards Decree No 104, the combined provisions of Articles 2 and 5 provide for the transfer, at 6.10 a.m. on 29 March 2013, of certain assets and liabilities from Laïki to BoC, including deposits of up to EUR 100 000. Deposits over EUR 100 000 remained with Laïki, pending its liquidation.
- 19 When Decrees No 103 and No 104 entered into force, the applicant, Ledra Advertising Ltd, had funds on deposit at BoC. The application of the measures laid down by Decree No 103 resulted in a substantial reduction in the value of that deposit, the precise figures for which were supplied by the applicant.
- 20 At its meeting on 24 April 2013, the ESM Board of Governors:
- decided to grant stability support to the Republic of Cyprus in the form of a financial assistance facility ('the FAF'), in accordance with the proposal by the Managing Director of the ESM;
 - approved the draft MoU negotiated by the Commission (together with the ECB and the IMF) and the Republic of Cyprus;
 - mandated the Commission to sign the MoU on behalf of the ESM.
- 21 The MoU was signed on 26 April 2013 by the Minister for Finance of the Republic of Cyprus, the Governor of CBC and Mr O. Rehn, Vice-President of the Commission, on its behalf.

22 Under the heading ‘Restructuring and resolution of [Laiki] and [BoC]’, paragraphs 1.23 to 1.27 of the MoU, as supplied by the applicant in the annex to the application (‘the disputed passages’), 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 [Laiki], all the deposits were transferred to the [United Kingdom] subsidiary of [BoC]. The associated assets were folded into [BoC].

1.26 Second, [BoC] is taking over via a purchase and assumption procedure the Cypriot assets of [Laiki] at fair value, as well as the insured deposits and Emergency Liquidity Assistance exposure at nominal value. The uninsured deposits of [Laiki] 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 [BoC] by [Laiki] amounting to 9% of the risk weighted assets transferred. [BoC] 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 [BoC] 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 [Laiki]. Part of the remaining uninsured deposits of [BoC] 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 [BoC] and [Laiki] 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-program can be met. Should [BoC] 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.’

23 On 8 May 2013, the ESM Board of Directors approved the agreement relating to the FAF 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.

Procedure and forms of order sought

- 24 By application lodged at the General Court Registry on 24 May 2013, the applicant claims that the Court should:
- order the Commission and the ECB to pay it compensation equivalent to the diminution in value of its deposit at BoC;
 - ‘further and/or alternatively’ annul the disputed passages;
 - consider the action as a matter of urgency and, pending such consideration, adopt the ‘interim measures ... necessary under Article [279 TFEU] to preserve [its] position without in any way affecting the stabilisation assistance provided to [the Republic of Cyprus]’.
- 25 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. They contend that the Court should:
- dismiss the action as inadmissible;
 - order the applicant to pay the costs.
- 26 The Commission submits, in the alternative, that the action is manifestly lacking any foundation in law within the meaning of Article 111 of the Rules of Procedure.
- 27 The applicant submitted its observations on the objections of inadmissibility raised by the Commission and the ECB on 13 and 16 December 2013.

Law

- 28 Pursuant to Article 114(1) of the Rules of Procedure, the Court may, if a party makes an application to that effect, rule on the question of admissibility without considering the merits of the case. In accordance with Article 114(3), unless the Court otherwise decides, the remainder of the proceedings is to be oral. Under Article 114(4), the Court is to decide on the application or reserve its decision for the final judgment.
- 29 Furthermore, under Article 111 of the Rules of Procedure, where an action is manifestly lacking any foundation in law, the Court may, by reasoned order, without taking further steps in the proceedings, give a decision on the action.
- 30 In the present case, the Court considers that it has sufficient information from the documents in the file, and that there is no need to open the oral procedure.
- 31 It is appropriate to examine, first, the admissibility and merits of the first head of claim and, secondly, the admissibility of the second and third heads of claim.

Admissibility and merits of the first head of claim

- 32 The first head of claim consists of a claim for compensation pursuant to the second paragraph of Article 340 TFEU. However, the ECB contends in its objection of inadmissibility that the application does not comply with the procedural requirements laid down by Article 21 of the Statute of the Court of Justice of the European Union and Article 44(1)(c) of the Rules of Procedure of the General Court. That plea of inadmissibility must be considered as a preliminary point.
- 33 It should be noted in that regard that, under the first paragraph of Article 21 of the Statute of the Court of Justice, applicable to the proceedings before the General Court by virtue of the first paragraph of Article 53 of that Statute, and Article 44(1)(c) of the Rules of Procedure of the General Court, an application must contain the subject-matter of the dispute and a brief statement of the pleas in law on which the application is based. Those particulars must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the application, even without further information. In order to guarantee legal certainty and sound administration of justice, it is necessary, in order for an action to be admissible, that the basic legal and factual particulars relied on be indicated, at least in summary form, coherently and intelligibly in the application itself (order in Case T-85/92 *De Hoe v Commission* [1993] ECR II-523, paragraph 20, and order in Case T-154/98 *Asia Motor France and Others v Commission* [1999] ECR II-1703, paragraph 49).
- 34 It is settled case-law that, in order to satisfy the requirements set out in paragraph 33 above, an application seeking compensation for damage allegedly caused by an EU institution must state the evidence from which the conduct which the applicant alleges against the institution can be identified, the reasons for which the applicant considers that there is a causal link between that conduct and the damage it claims to have suffered, and the nature and extent of that damage (Case T-387/94 *Asia Motor France and Others v Commission* [1996] ECR II-961, paragraph 107, and Case T-113/96 *Dubois et Fils v Council and Commission* [1998] ECR II-125, paragraph 30).
- 35 In the present case, the applicant states, first of all, that the Commission signed the MoU under the powers conferred on it by Article 13 of the ESM Treaty, and that the disputed passages infringe Article 1 of Protocol No 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and Article 17 of the Charter of Fundamental Rights of the European Union.
- 36 Next, the applicant submits that there is ‘a sufficient causal connection’ between the insertion of the disputed passages in the MoU ‘required by the Commission pursuant to Article 13 of the [ESM Treaty] and the loss of the funds standing to the [applicant’s] credit of which [it] was ... deprived ... in flagrant violation of a superior rule of law for the protection of the individual’.
- 37 Lastly, the applicant identifies precisely the damage it claims to have suffered.
- 38 It must therefore be held that, as regards the first head of claim, the application complies with the procedural requirements laid down by Article 21 of the Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure of the General Court.
- 39 Next, it is appropriate to consider whether the first head of claim is inadmissible on other grounds, as the Commission and the ECB contend in their objections of inadmissibility. They submit, in essence, that the conduct which it is claimed gave rise to the damage suffered cannot be imputed to an EU institution.
- 40 On this point, it must be noted that, as is evident from paragraphs 35 and 36 above, the application mentions a single act or course of conduct which, according to the applicant, gave rise to the damage it claims to have suffered, that is the inclusion of the disputed passages in the MoU.

- 41 The applicant does not identify in the application any other act or any course of conduct adopted in breach of a rule of law and which would have resulted in the diminution in value of its deposit at BoC. That finding is confirmed by the applicant's statement in its observations on the objection of inadmissibility lodged by the ECB that '[i]t is in respect of the conditions attached to [the FAF] provided to [the Republic of Cyprus] on 26 April 2013 and the process by which they were required by the Commission and the ECB that caused the applicant damage for which [it] seeks compensation pursuant to Articles 268 [TFEU] and 340 [TFEU]'.
- 42 Under the provisions of Article 268 TFEU and the second and third paragraphs of Article 340 TFEU, in the case of non-contractual liability, the General Court has jurisdiction only in disputes relating to compensation for damage caused by the institutions of the European Union or by its servants in the performance of their duties.
- 43 Consequently, a claim for compensation that is directed against the European Union and is based on the mere illegality of an act or course of conduct that has not been adopted by an institution of the European Union or by its servants must be rejected as inadmissible (see, to that effect, order of 4 July 2013 in Case C-520/12 P *Diadikasia Symvouloi Epicheiriseon v Commission and Others*, not published in the ECR, paragraphs 35 to 38, and Case T-93/95 *Laga v Commission* [1998] ECR II-195, paragraph 47).
- 44 The MoU was adopted jointly by the ESM and the Republic of Cyprus. It was signed on 26 April 2013 by the Cypriot authorities mentioned in paragraph 21 above, on the one hand, and by the Vice-President of the Commission on the Commission's behalf, on the other. However, it is apparent from Article 13(4) of the ESM Treaty that the Commission is to sign the MoU only on behalf of the ESM.
- 45 It must be added in that regard that although the ESM Treaty entrusts the Commission and the ECB with certain tasks relating to the implementation of the objectives of that Treaty, it is apparent from the case-law of the Court of Justice that 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, that the activities pursued by those two institutions within the ESM Treaty solely commit the ESM (Case C-370/12 *Pringle* [2012] ECR, paragraph 161).
- 46 Consequently, it cannot be held that the adoption of the MoU originated with the Commission or the ECB.
- 47 In accordance with the case-law referred to in paragraph 43 above, the Court does not, therefore, have jurisdiction to consider the present claim for compensation, in so far as it is based on the illegality of certain provisions of the MoU.
- 48 Next, it must be noted that, in its observations on the objections of inadmissibility raised by the Commission and the ECB, the applicant submitted that the Commission '[had] not [surrendered] effective control of its overarching decision-making role under Article 136(3) [TFEU] pursuant to its powers under Article 17 [TEU] to act as the EU institution responsible for ensuring [that acts concluded under the ESM Treaty were] in conformity with EU law'.
- 49 In so far as that argument can be interpreted as meaning that the conduct which, according to the applicant, gave rise to the damage it claims to have suffered is the infringement by the Commission of an alleged obligation to guarantee that the MoU is in conformity with EU law, and without it being necessary to consider whether that is a new argument put forward in the course of the procedure, for the purposes of the combined provisions of Article 44(1)(c) and Article 48(2) of the Rules of Procedure, it must be noted that, according to established case-law, the European Union may incur non-contractual liability for the purposes of Article 340 TFEU only if a number of conditions are fulfilled, namely the unlawfulness of the conduct of which the EU institutions are accused, the

occurrence of actual damage and the existence of a causal link between the conduct and harm alleged (see order of 17 December 2008 in Case T-137/07 *Portela v Commission*, not published in the ECR, paragraph 76 and the case-law cited).

- 50 It is also apparent from well-established case-law that if any one of those conditions is not satisfied, the action for damages must be dismissed in its entirety and it is unnecessary to consider the other conditions for non-contractual liability (see order in *Portela v Commission*, cited in paragraph 49 above, paragraph 77 and the case-law cited).
- 51 It is necessary, in the present case, for the Court to begin by considering the question of the existence of a causal link between the allegedly unlawful omission for which the Commission is criticised, and the damage alleged by the applicant.
- 52 It is established case-law that the condition relating to a causal link required by Article 340 TFEU presupposes the existence of a sufficiently direct causal nexus between the conduct of the EU institutions and the damage (see order in *Portela v Commission*, cited in paragraph 49 above, paragraph 79 and the case-law cited).
- 53 It also follows from the case-law that, in cases where the conduct allegedly giving rise to the damage pleaded consists in refraining from taking action, it is particularly necessary to be certain that that damage was actually caused by the inaction complained of and could not have been caused by conduct separate from that alleged against the defendant institution (see order in *Portela v Commission*, cited in paragraph 49 above, paragraph 80 and the case-law cited).
- 54 In the present case, the conduct allegedly giving rise to the damage pleaded is a failure by the Commission to act when signing the MoU, in so far as the applicant submits that the Commission ought to have ensured that that MoU was in conformity with EU law (see paragraph 49 above). However, the MoU was signed after the reduction in the value of the applicant's deposit at BoC. That reduction actually occurred on the entry into force of Decree No 103, pursuant to which part of that deposit was converted into shares or convertible instruments. Therefore, the applicant cannot be regarded as having established with the necessary certainty that the damage it claims to have suffered was actually caused by the inaction alleged against the Commission.
- 55 It follows from all the foregoing considerations that the first head of claim must be rejected as in part inadmissible and in part manifestly lacking any foundation in law, and there is no need to consider the other pleas of inadmissibility and arguments put forward by the Commission and the ECB.

Admissibility of the second head of claim

- 56 It must be noted that, in the context of an action for annulment covered by Article 263 TFEU, the General Court has jurisdiction only to review the legality of acts of the institutions, bodies, offices or agencies of the European Union.
- 57 In applying for the disputed passages to be annulled, the applicant seeks the annulment in part of the MoU, which was adopted jointly by the Republic of Cyprus and the ESM.
- 58 Since neither the ESM nor the Republic of Cyprus is among the institutions, bodies, offices or agencies of the European Union, the General Court has no jurisdiction to examine the legality of acts which they have adopted together.
- 59 The application for annulment of the disputed passages is accordingly inadmissible.
- 60 The second head of claim must therefore be rejected.

Admissibility of the third head of claim

- 61 By its third head of claim, the applicant asks the General Court to grant an interim measure. However, it is clear from Article 104(3) of the Rules of Procedure that an application for interim measures is admissible only if it has been made by a separate document, which is not the case here.
- 62 Accordingly, the third head of claim must be rejected as inadmissible.
- 63 The action must therefore be dismissed in its entirety as in part inadmissible and in part manifestly lacking any foundation in law.

Costs

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

On those grounds,

THE GENERAL COURT (First Chamber)

hereby orders:

1. **The action is dismissed.**
2. **Ledra Advertising Ltd shall bear its own costs and pay those incurred by the European Commission and by the European Central Bank (ECB).**

Luxembourg, 10 November 2014.

E. Coulon
Registrar

H. Kanninen
President