

Statement in intervention

Case C-597/18 P*

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Council v K. Chrysostomides & Co. and Others

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ULKOMINISTERIÖ

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TO THE COURT OF JUSTICE OF THE EUROPEAN UNION

**STATEMENT IN INTERVENTION OF THE FINNISH GOVERNMENT
IN CASE C-597/18 P *Council v Chrysostomides and Others***

STATEMENT IN INTERVENTION

submitted by the **FINNISH GOVERNMENT**

in **Case C-597/18 P**

Council of the European Union

v

K. Chrysostomides & Co. and Others

other parties:

European Commission,

* Language of the case: English.

European Central Bank,

Euro Group and

European Union

1 Introduction

- 1 The Council of the European Union has appealed against the judgment of the General Court of the European Union of 13 July 2018 in Case T-680/13 *Chrysostomides*.¹ In the judgment the General Court dismissed the claims for damages brought by Chrysostomides and Others against the Council, the Commission, the European Central Bank, the Euro Group and the European Union.
- 2 The Council's appeal does not relate to the General Court's dismissal of the actions; the Council appeals against the judgment only in so far as the General Court rejected the Council's claim that the action should be declared inadmissible with respect to the Euro Group.
- 3 The Finnish Government agrees with the Council's appeal and submits that the judgment under appeal should be set aside in so far as the General Court declared the claim for damages concerning the Euro Group admissible.

2 Applicable EU legislation

- 4 Article 137 TFEU reads as follows:

'Arrangements for meetings between ministers of those Member States whose currency is the euro are laid down by the Protocol on the Euro Group.'

- 5 Article 268 TFEU reads as follows:

'The Court of Justice of the European Union shall have jurisdiction in disputes relating to compensation for damage provided for in the second and third paragraphs of Article 340.'

- 6 The second paragraph of Article 340 TFEU provides as follows:

'In the case of non-contractual liability, the Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties.'

¹ Case T-680/13, *K. Chrysostomides & Co. and Others v Council of the European Union, European Commission, European Central Bank (ECB), Euro Group and European Union*, EU:T:2018:486.

- 7 The Protocol (No 14) on the Euro Group reads as follows:

‘Article 1

The Ministers of the Member States whose currency is the euro shall meet informally. Such meetings shall take place, when necessary, to discuss questions related to the specific responsibilities they share with regard to the single currency. The Commission shall take part in the meetings. The European Central Bank shall be invited to take part in such meetings, which shall be prepared by the representatives of the Ministers with responsibility for finance of the Member States whose currency is the euro and of the Commission.

Article 2

The Ministers of the Member States whose currency is the euro shall elect a president for two and a half years, by a majority of those Member States.’

3 Legal assessment

- 8 The General Court found in paragraph 112 of the judgment under appeal that, in applying the second paragraph of Article 340 TFEU, it has to be determined whether the EU institution responsible for the act or conduct complained of was established by the Treaty and whether its purpose is to contribute to the achievement of the EU’s objectives. In paragraph 113 of the judgment, the General Court gave the following reasons for the conclusion that the Euro Group fulfils those criteria:

‘Article 137 TFEU and Protocol No 14, of 26 October 2012, on the Euro Group (OJ 2012 C 326, p. 283), annexed to the TFEU, make provision, inter alia, for the existence, the composition, the procedural rules and the functions of the Euro Group. In that last regard, Article 1 of that protocol provides that the Euro Group is to meet “to discuss questions related to the specific responsibilities [the ministers composing it] share with regard to the single currency”. Those questions concern, under Article 119(2) TFEU, the activities of the European Union for the purposes of the objectives set out in Article 3 TEU, which include the establishment of an economic and monetary union whose currency is the Euro.’

- 9 The Finnish Government submits that the reasoning cited above is not sufficient to show that the Euro Group is an institution established by the Treaty whose acts may give rise to non-contractual liability of the European Union within the meaning of Article 340 TFEU. ²
- 10 Although the position of the Euro Group is also recognised in the Treaties, the mere mention of its existence and the purpose of meetings is not enough to make

² Correspondingly, point 27 of the appeal.

in an institution *of the Union*. From the wording of Article 137 TFEU and the Protocol on the Euro Group, it is apparent that, as regards the Euro Group, what is concerned is meetings between ministers *of the Member States* whose currency is the euro. The acts of the Euro Group are thus acts carried out by representatives of the governments of those Member States. The Commission too has emphasised in its response that the ministers of finance of the Member States have a completely different role when acting as members of the EU council of ministers or acting as representatives of the Member States in unofficial meetings.³

- 11 The Euro Group is not an institution regulated in the Treaties in the same way as, for example, the Ombudsman, whose competence to examine a claim for damages under Article 340 TFE was stated in Case T-209/00 *Lamberts*.⁴ The Finnish Government observes that the right of a citizen of the Union to apply to the European Ombudsman in any of the Treaty languages and to obtain a reply in the same language is laid down in Article 20(2)(d) TFEU and in the third and fourth paragraphs of Article 24 TFEU.
- 12 The establishment of the institution of ombudsman is actually governed by Article 228 TFEU, which precisely defines competences, the procedure to be followed in a complaint, the annual report, and the appointment, removal and independence of the Ombudsman. The article also empowers the Parliament to lay down the regulations and general conditions governing the performance of the Ombudsman's duties.
- 13 The above factors show that the European Ombudsman is an institution established by the Treaty. There is no equivalent EU legislation with respect to the Euro Group.
- 14 Chrysostomides and Others refer in point 45 of their response to the fact that the Euro Group exercises considerable power. That may in itself hold good, but it should be observed that the finance ministers exercise that power on behalf of the Member States. The Treaty does not give the Euro Group any competence to make binding decisions, so that the informal position of the Euro Group also does not infringe the right to effective means of legal protection.
- 15 Important decisions are often preceded by a political consensus agreed on between the representatives of the Member States, but only the formal decision-making can produce legal effects. In so far as a common understanding is reached in the Euro Group on a certain way of proceeding, implementing it requires in every case legally binding measures at EU or national level, the validity of which can be reviewed by the EU judicature with respect to acts of the EU institutions and by the national courts of the relevant Member State with respect to national acts.

³ Response of the Commission, point 23.

⁴ Case T-209/00, *Lamberts v Ombudsman*, EU:T:2002:94.

- 16 According to settled case-law, the EU judicature has no jurisdiction to hear actions for damages whose subject matter is acts done by the Member States, and such actions must therefore be declared inadmissible.⁵ Bearing in mind that the acts at issue were acts carried out by the Member States in the framework of a meeting of the Euro Group, the General Court erred in finding that it had jurisdiction to examine the action concerning the non-contractual liability in damages of the EU with respect to such acts.

4 Conclusion

- 17 On the above grounds, the Finnish Government asks the Court of Justice to:
- allow the appeal, and
 - set aside the judgment under appeal in so far as it declared the claim for damages admissible with respect to the Euro Group.

Respectfully

For the Finnish Government [signature]

Agent⁶ Joni Helikoski

[signature]

Deputy Agent⁷ Sami Hartikainen

⁵ Case C-72/90 *Asia Motor France v Commission*, EU:C:1990:230, paragraph 14, and Case T-277/97 *Ismeri Europa v Court of Auditors*, EU:T:1999:124, paragraph 49.

⁶ Legislative adviser Joni Helikoski acts as Finland's Agent before the Court of Justice of the European Union under Article 93 of the Rules of Procedure of the Ministry of Foreign Affairs (No 550/2008 of 28 August 2008) and Decision HEL7882-5 of the Ministry of Foreign Affairs (25 January 2010).

⁷ Sami Hartikainen acts as Finland's Deputy Agent before the Court of Justice of the European Union under Article 93 of the Rules of Procedure of the Foreign Ministry (No 550/2008 of 28 August 2008) and Decision HEL8335-11 of the Foreign Ministry (13 August 2012).