



Brussels, 7 January 2019

**TO THE PRESIDENT OF THE COURT OF JUSTICE OF THE
EUROPEAN UNION**

APPLICATION FOR LEAVE TO INTERVENE

(Pursuant to Article 40 of the Statute of the Court of Justice and of Articles
129-130 of the Rules of Procedure of the Court of Justice)

Submitted by:

1) Amira Maria,

[Redacted text block]

PAPPAS & ASSOCIATES

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-Applicants for leave to intervene-

Represented by Spyros Pappas, Member of the Athens and Brussels Bars, Pappas & Associates, 49-51 Stevin Street, B-1000 Brussels, Belgium, agreeing that service is to be effected on him by e-curia, according to Article 57 of the Procedural Rules of the Court of justice of the European Union and the Court's Decision of 16 October 2018 on the lodging and service of procedural documents by means of e-Curia (L 293/36, 20.11.2018);

In support of:

Dr. K. Chrysostomides & Co. LLC and Others;

In case C-597/18 P (2018/C 427/24, 26.11.2018)

Versus

Council of the European Union (represented by: A. de Gregorio Merino, E. Chatziioakeimidou, I. Gurov, Agents)

-Appellant-

Aiming to set aside the parts of the contested judgment T-680/13 in which the General Court dismisses the plea of inadmissibility raised by the Council in respect of the Euro Group; and order the respondents to pay the costs of the appeal.

The other parties being:

European Commission, European Central Bank, Euro Group, represented by the Council of the European Union, European Union, represented by the European Commission

Maria Amira and Others have the honour to request the President of the Court to allow them to intervene in the abovementioned case. The circumstances establishing their request are as follows:

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Statement of the circumstances establishing the right to intervene

1. By its Judgment of 13 July 2018 in Case T-680/13, the General Court concluded *“that the Euro Group is a body of the Union formally established by the Treaties and intended to contribute to achieving the objectives of the Union. The acts and conduct of the Euro Group in the exercise of its powers under EU law are therefore attributable to the European Union”* (par. 113). Consequently, *“the Court has jurisdiction to hear the present action (under Article 268 TFEU seeking compensation for damages) in so far as it relates....to the alleged communication of precise assurances, ...by the Euro Group, that the harmful measures would not be adopted...”* (par. 208).
2. As it derives from the summary of the Appeal that is published on 26.11.2018 in the OJ of the EU (C-427/24), the Appellant *“claims that the Court should:*
-set aside the parts of the contested judgments in which the General Court dismisses the plea of inadmissibility raised by the Council in respect of the Euro Group;
-and order the respondents to pay the costs of the appeal”.
3. On the other hand, the applicants for leave to intervene had brought an action, in Case T-868/16, on compensation for the damage they suffered from their unlawful, forced participation in the Private Sector Involvement plan for the restructuring of the government debt of the Hellenic Republic, via the activation of *retrofit* Collective Action Clauses by the European Union, or, in the alternative, for the disproportionate damage they suffered from the unlawful exclusion of Greece’s official sector creditors by the European Union from the restructuring, thus transferring the entire burden of the restructuring solely to a sub-group of Greece’s ordinary creditors, namely Greece’s private creditors; in any case, the Interveners claimed the ECB and the ESCB to be held liable and ordered to compensate them in accordance with Article 340(3) TFEU for its exclusion from the PSI.
4. It is evident from their application in Case T-868/16 that the Euro Group was considered as part of the European Union institutional framework and that its positions caused the damage they suffered. Among others they sustained: *“11. Eventually, in February 2012 the Greek government and its official creditors reached an agreement with the bondholders represented by the IIF. The Eurogroup approved the final details of the second financial assistance programme on 21 February 2012. More specifically, with regard to the PSI, the Eurogroup stated that: “The Eurogroup welcomes the agreement reached with the Greek government on a policy package that constitutes the basis for the successor programme. [...] 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 Greece's debt sustainability. The Eurogroup considers that the necessary elements are now in place for Member States to carry out the relevant national procedures to allow for the provision by EFSF of (i) a buy back scheme for Greek marketable debt instruments for Eurosystem monetary policy operations, (ii) the euro area's contribution to the PSI exercise, (iii) the repayment of accrued interest on Greek government bonds, and (iv) the residual (post PSI) financing for the second Greek adjustment programme, including the necessary financing for recapitalisation of Greek banks in case of financial stability concerns. The Eurogroup takes note that the Eurosystem (ECB and NCBs) holdings of Greek government bonds have been held for public policy purposes. The Eurogroup takes note that the income generated by the Eurosystem holdings of Greek Government bonds will contribute to the profit of the ECB and of the NCBs. The ECB's profit will be disbursed to the NCBs, in line with the ECB's statutory profit distribution rules. The NCBs' profits will be disbursed to euro area Member States in line with the NCBs' statutory profit distribution rules. [...] The respective contributions from the private and the official sector should ensure that Greece'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 130 bn euro until 2014. **It is understood that the disbursements for the PSI operation and the final decision to approve the guarantees for the second 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 Greece 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 second 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 Greece during the life of the programme and beyond until it has regained market access, provided that Greece fully complies with the requirements and objectives of the adjustment programme"... 12. It is therefore evident from the above decisions of 20 June 2011 by the Eurogroup, of 23/24 June 2011 by the European Council, of 21 July 2011 by the Heads of State or Government of the euro area and EU Institutions,

of 26 October 2011 by the Heads of State or Government of the euro area and the Eurogroup's approval of 21 February 2011, that the Union designed the entire second financial assistance programme for Greece and decided that private sector creditors should contribute to that programme within the framework of a debt restructuring".

5. The oral hearing of Case T-868/16 was held on 12 September 2018. However on 26 October 2018 the General Court proposed *"to stay the proceedings in the present case under Article 69(d) of the Rules of Procedure until the Court of Justice of the European Union has delivered its final rulings in Cases C-597/18 P, Council v K. Chrysostomides & Co. and Others, C-598/18 P, Council v Bourdouvali and Others, C-603/18 P, K. Chrysostomides & Co. and Others v Council, and C-604/18 P, Bourdouvali and Others v Council, regarding appeals brought by the Council of the European Union and the Applicants, respectively, against the General Court's judgments of 13 July 2018, K. Chrysostomides & Co. and Others v Council and Others (T-680/13, EU:T:2018:486), and Bourdouvali and Others v Council and Others (T-786/14, not published, EU:T:2018:487)"*, reopened by Order of the same date the oral part of the procedure *"considering that the case must be decided on the basis of an argument which has not been debated between the parties"*, and finally, on 14 November 2018, *"The President of the Chamber has decided, in accordance with Article 69(d) of the Rules of Procedure, to stay the proceedings until the decisions of the Court of Justice ruling on the appeals brought against the decisions of the General Court in Cases C-597/18 P, Council v K. Chrysostomides & Co. and Others, C-598/18 P, Council v Bourdouvali and Others, C-603/18 P, K. Chrysostomides & Co. and Others v Council, and C-604/18 P, Bourdouvali and Others v Council"*.
6. Subsequently, the proceedings in Case T-868/16 have been stayed until the appeal against the abovementioned decisions of the General Court will have been decided.
7. In this way, a fundamental argument of the applicants for leave to Intervene, i.e. the role and the qualification of Euro Group as forming part of the European Union, will be definitively decided in the proceedings of the Cases C-597/18 P, C-598/18 P with direct consequences on their Case T-868/18 of which proceedings have been stayed. That is the reason why the applicants for leave to intervene would respectfully request the opportunity to expose their position during the proceedings before the Court of Justice.
8. In this regard it is relevant to refer to the consideration in par. 101 of the General Court in Case T-680/13, according to which: *"First of all, it should be noted that the assessment of whether a contested act or contested conduct can be attributed to the defendants may be relevant, first, in the context of the assessment of the Court's jurisdiction, in so far as that Court does not have jurisdiction to hear actions for compensation for damage imputable not to the ECB, the institutions of the Union within the meaning*

of the second paragraph of Article 340 TFEU or their servants in the performance of their duties, but to a Member State or other entity external to the EU and, secondly, in the context of the examination of the substance of an action, given that it is one of the elements allowing it to be determined whether one of the three conditions for the EU to incur liability is satisfied, namely the existence of a causal link between the conduct alleged against the ECB, the EU institutions within the meaning of the second paragraph of Article 340 TFEU or their servants in the performance of their duties and the damage alleged (see, to that effect, judgment of 3 May 2017, Sotiropoulou and Others v Council, T-531/14, not published, EU:T:2017:297, paragraph 57). In the present case, in the light in particular of the parties' arguments (see paragraphs 87 to 98 above), the Court considers that it is necessary to examine the question of attribution in the context of the examination of the Court's jurisdiction" (emphasis added).

9. This substantial issue was examined separately from the purely formal question of admissibility (see, par. 209 in Case T-680/13).

- **Admissibility of the request for intervention**

10. The Appeal against the Judgment T-597/18 P has been published in the Official Journal of the European Union on 26 November 2018 (C-427/24). Hence, this request is made in accordance with the procedural rules specified in Article 130(1) of the Rules of the Court.
11. Besides, all others formal requirements foreseen in Article 130(2-4) of the Procedural Rules of the Court of Justice for the submission of the present request are fulfilled.

- **Purpose of the request**

12. The purpose of the requested intervention is the rejection of the Appellant's request. To this end, it will be supported that:
 - a. the General Court hasn't erred in law in deciding that the Euro Group is a 'body of the Union formally established by the Treaties';
 - b. the General Court hasn't erred in law in dismissing the plea of inadmissibility of the Council while failing to identify any 'powers' conferred on the Euro Group by the Treaties;
 - c. the General Court hasn't erred in law in deciding that the admission of the plea of inadmissibility, submitted by the Council, would result in 'the establishment, within the legal system of the European Union itself, of entities whose acts and conduct could not result in the European Union incurring liability'.

- **The right for intervention**

13. The applicants for leave to intervene during their pleadings in the oral part before the General Court referred to the conclusions in par. 113 and 208 of the Judgment of 13 July 2018 in Case T-680/13 and built on it with the view to supporting their pleas. In view of the Decision of the President of the Chamber to stay proceedings in Case T-868/18 awaiting the final Judgement of the Court of Justice in Case C-597/18 P the applicants for leave to intervene will find themselves without having being heard in relation to a fundamental argument of theirs if they are not granted the requested leave to intervene.

7. Under these circumstances, the issue at stake having being raised in parallel in the appealed cases and in their case for which staying of proceedings has been decide, and considering Article 47 of the Charter of Fundamental Rights of the European Union on the right to an effective remedy and to a fair trial, it would be justified and in the spirit of the Charter the applicants for leave to intervene to be granted this right, contributing thus, from their own point of view, to the enlightenment of the question and to the rendering of Justice.

8. Consequently and in compliance with article 40, paragraph 2, of the Statute of the Court of Justice of the European Union the applicants for leave to intervene have an interest in the result of the case.

9. In view of the foregoing the applicants for intervention respectfully request the Court to:

- a. allow them to intervene in the case at hand with the aim to support the defendants;
- b. impose on the Appellant the costs of the proceedings

Brussels, 7 January 2019

On behalf of the applicants for intervention

Spyros A. Pappas
Member of the Brussels and the Athens Bars