OPINION OF ADVOCATE GENERAL
PITRUZZELLA
delivered on 28 May 2020 (1)

Joined Cases C−597/18 P, C−598/18 P, C−603/18 P and C−604/18 P

Council of the European Union
v
Dr. K. Chrysostomides & Co. LLC,
and the other parties whose names appear in Annex I (2)
European Commission,
European Central Bank (ECB),
Euro Group,
European Union (C−597/18 P)
and
Council of the European Union
v
Eleni Pavlikka Bourdouvali,
and the other parties whose names appear in Annex II (3)
European Commission,
European Central Bank (ECB),
Euro Group,
European Union (C−598/18 P)
and
Dr. K. Chrysostomides & Co. LLC,
and the other parties whose names appear in Annex I (C−603/18 P)
Eleni Pavlikka Bourdouvali,
and the other parties whose names appear in Annex II,
(C−604/18 P)
v
Council of the European Union,
European Commission,
European Central Bank (ECB),
Euro Group,
European Union (C−603/18 P and C−604/18 P)

(Appeals — Non-contractual liability — Economic and monetary policy — Stability support programme for Cyprus — Euro Group — Legal nature — Jurisdiction of the EU Courts)

1. What is the legal nature of the Euro Group? What is its place within the complex constitutional framework of Economic and Monetary Union (‘EMU’)? Can the Euro Group be regarded as an

'institution' within the meaning of the second paragraph of Article 340 TFEU? Consequently, do the EU Courts have jurisdiction to hear actions for damages against the Euro Group, brought under that provision, in respect of losses caused by allegedly harmful acts of that body?

2. These are the questions I shall address in this Opinion, which concerns two appeals brought by the Council of the European Union, (4) supported by the European Commission, against two judgments of the General Court ('the judgments under appeal'), (5) in which the General Court dismissed the objections of inadmissibility raised by the Council with regard to actions for damages brought, inter alia, against the Euro Group.

3. The Council's two appeals, on which I shall focus, at the Court's request, are joined to two other appeals, (6) brought by depositors and shareholders of two Cypriot banks (the parties named in Annexes I and II, 'the applicants at first instance') also against the judgments under appeal. The applicants at first instance seek to have those judgments set aside in so far as the General Court dismissed the actions for damages which they had brought against the Council, the Commission, the European Central Bank ('the ECB') and the Euro Group in respect of losses allegedly caused by a series of actions undertaken by those defendants, including a series of statements made by the Euro Group. (7)

4. The present cases are unquestionably of constitutional significance. They afford the Court an opportunity to clarify the legal nature of the Euro Group, a body that certainly has considerable political influence, but is at the same time the body within the European constitutional and institutional framework that has perhaps aroused the most debate and is the least easy to circumscribe.

I. Legal context

5. Article 137 TFEU states that 'arrangements for meetings between ministers of those Member States whose currency is the euro are laid down by the Protocol on the Euro Group'.

6. Protocol No 14 on the Euro Group, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union ('Protocol No 14') states, in its preamble, that 'THE HIGH CONTRACTING PARTIES, DESIRING to promote conditions for stronger economic growth in the European Union and, to that end, to develop ever-closer coordination of economic policies within the euro area, CONSCIOUS of the need to lay down special provisions for enhanced dialogue between the Member States whose currency is the euro, pending the euro becoming the currency of all Member States of the Union, HAVE AGREED UPON the … provisions' of Articles 1 and 2 of that protocol.

7. Article 1 of Protocol No 14 states that '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'.

8. Article 2 of Protocol No 14 states that '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'.

II. Facts

9. The background to the dispute is precisely explained in paragraphs 10 to 46 of the judgments under appeal, which should be referred to for further details.

10. For the purposes of this Opinion, suffice it to recall that, during the financial crisis that began in 2011, a number of banks established in Cyprus, including the Cyprus Popular Bank and the Bank of

Cyprus, encountered serious financial difficulties in the course of 2012.

11. Intervening in support of its banking system, the Republic of Cyprus submitted to the President of the Euro Group, in June 2012, a request for financial assistance, which led to the negotiation of a Memorandum of Understanding regarding a macroeconomic adjustment programme between the Commission, together with the ECB and the International Monetary Fund (IMF), and the Cypriot authorities.

12. The Memorandum of Understanding was approved on 24 April 2013 by the Board of Governors of the European Stability Mechanism (ESM), was signed on 26 April 2013 and was approved on 30 April 2013 by the Cypriot Parliament.

13. On 25 April 2013, acting under Article 136(1) TFEU, the Council adopted Decision 2013/236 addressed to Cyprus on specific measures to restore financial stability and sustainable growth. (8)

14. Both before the adoption of the Memorandum of Understanding and after its signature and approval, the Euro Group issued several public statements concerning the financial assistance for the Republic of Cyprus.

15. More specifically, by a statement of 25 March 2013, the Euro Group indicated, inter alia, that an agreement had been reached on the key elements of a future macroeconomic adjustment programme that was supported by all the Member States whose currency is the euro, as well as by the Commission, the ECB and the IMF. By a statement of 13 May 2013, the Euro Group welcomed the decision of the ESM Board of Governors to approve the first tranche of the financial assistance and confirmed that the Republic of Cyprus had put in place the measures agreed in the Memorandum of Understanding of 26 April 2013. By a statement of 13 September 2013, the Euro Group welcomed, first, the results of the first review mission carried out by the Commission, the ECB and the IMF and, secondly, the fact that the Bank of Cyprus had been taken out of resolution.

III. Procedure before the General Court and the judgments under appeal

16. By applications lodged with the General Court on 20 December 2013 (in Case T−680/13) and on 1 December 2014 (in Case T−786/14), respectively, the applicants at first instance brought the actions for damages mentioned in point 3 above, inter alia, against the Euro Group.

17. In the course of the proceedings before the General Court, the Council, the Commission and the ECB, each by separate document, (9) raised objections of inadmissibility under Article 114 of the Rules of Procedure of the General Court.

18. By the judgments under appeal, the General Court dismissed the actions brought by the applicants at first instance and ordered them to pay the costs.

IV. Forms of order sought

19. In Cases C−597/18 P and C−598/18 P, which are the focus of this Opinion, the Council claims that the Court of Justice should set aside the parts of the judgments under appeal in which the General Court dismissed the pleas of inadmissibility which it had raised with regard to the actions for damages brought against the Euro Group, and should order the applicants at first instance to pay the costs.

20. In those same cases, the applicants at first instance contend that the Court should dismiss the Council’s appeals and order it to pay the costs.

21. The Commission claims that the Court should allow the Council’s appeals and order the applicants at first instance to pay the costs of both sets of proceedings.

22. The Republic of Finland, which was granted leave to intervene in support of the form of order sought by the Council, by order of the President of the Court of 21 February 2019, claims that the Court should allow the Council's appeals and set aside the judgments under appeal in so far as they held that the actions for damages brought by the applicants at first instance were admissible against the Euro Group.

V. Analysis of the appeals

23. The appeals brought by the Council, on which, as indicated, I shall focus in this Opinion, dispute the General Court's reasoning in the judgments under appeal (in paragraphs 106 to 114 of the judgment in Case T−680/13 and in paragraphs 102 to 110 of the judgment in Case T−786/14, respectively) and the resulting conclusion that the Euro Group must be classified as an 'institution', within the meaning of the second paragraph of Article 340 TFEU, with the consequence that harmful actions on its part may be imputed to the European Union.

A. The General Court's reasoning in the relevant parts of the judgments under appeal

24. In the judgments under appeal, the General Court began by pointing out that, according to the case-law, the term 'institution' used in the second paragraph of Article 340 TFEU covers not only the institutions of the European Union listed in Article 13(1) TEU, but also all other EU bodies established by the Treaties and intended to contribute to the achievement of the EU's objectives. (10)

25. The General Court then went on to hold that the fact that, in its judgment of 20 September 2016, *Mallis and Others* v *Commission and ECB* (C−105/15 P to C−109/15 P, EU:C:2016:702, '*Mallis*', see, in particular, paragraph 61), the Court of Justice held that the Euro Group could not be classified as 'a body, office or agency of the Union' within the meaning of Article 263 TFEU did not preclude it from being classified as an 'institution' within the meaning of the second paragraph of Article 340 TFEU. The General Court pointed out in that connection that, as was clear from the case-law, first, actions for annulment and actions for damages are separate and independent forms of judicial remedy and have different functions and, secondly, that, in order for a harmful act or harmful conduct to be capable of giving rise to non-contractual liability on the part of the European Union, it is not necessary for that act or conduct also to be capable of forming the subject matter of an action for annulment under Article 263 TFEU. (11)

26. The General Court concluded from this that the identification of EU entities which can be classified as an 'institution' for the purposes of the second paragraph of Article 340 TFEU must be undertaken according to the criteria relevant to that provision, which are different from those relevant to Article 263 TFEU. Consequently, according to the General Court, to that end it is necessary to determine whether the EU entity responsible for the act or conduct complained of was established by the Treaties and is intended to contribute to the achievement of the European Union's objectives. (12)

27. The General Court thus found that, since Article 137 TFEU and Protocol No 14 make provision for the existence, the composition, the procedural rules and the functions of the Euro Group, that body must be considered a body of the European Union, formally established by the Treaties and intended to contribute to achieving the objectives of the European Union. Consequently, the General Court concluded that the acts and conduct of the Euro Group in the exercise of its powers under EU law are attributable to the European Union. (13)

28. Lastly, the General Court held that any contrary solution would conflict with the principle of a 'Union based on the rule of law', in that it would permit the establishment within the EU legal system of bodies whose acts and conduct could not result in liability of the part of the European Union. (14)

B. Outline of the arguments of the parties

29. In its appeals, the Council puts forward a single ground of appeal, submitting that the General Court's conclusion in the judgments under appeal that acts of the Euro Group may give rise to non-

contractual liability on the part of the European Union is based on several errors of law.

30. First of all, the General Court misinterpreted *Mallis* and the case-law cited in the judgments under appeal. According to the Council, it in no way follows from that case-law that the mere mention of the Euro Group in the Treaties means that it can be regarded as an 'institution' within the meaning of Article 340 TFEU. Article 137 TFEU and Protocol No 14 merely recognise, rather than establish, the Euro Group, which was established in 1997 by the European Council.

31. It was not possible for the General Court to find either that the Euro Group has legal personality or, alternatively, that it has powers conferred on it by the Treaties, as is required by the case-law which it cited. The mere presence of provisions concerning the existence thereof, and procedural rules for informal meetings does not support the inference that powers have been conferred. The General Court therefore also infringed the principle of conferral referred to in Article 5(2) TEU.

32. Lastly, the lack of jurisdiction of the EU Courts in respect of actions for damages brought against the Euro Group does not pose a problem from the point of view of the principle of effective judicial protection, since individuals have other means of obtaining judicial review. First, the Commission could be held liable for the unlawfulness of acts of the ESM in connection with which it has exercised powers. (15) Secondly, individuals may apply to national courts for protection of their rights. Thirdly, the Courts of the European Union have power to review the acts adopted by the Council preceding and prefiguring the conditionality of the ESM. (16)

33. The Commission, which has intervened in support of the Council, submits, first, that the Euro Group does not fall within the scope *ratione personae* of Article 340 TFEU since it is an informal meeting of ministers of the Member States whose currency is the euro and therefore does not form part of the institutional framework of the European Union. Secondly, the Commission submits that Articles 263 TFEU and 340 TFEU have the same scope *ratione personae*. According to the Commission, the General Court was not able to substantiate its reasoning with case-law precedents according to which a body whose acts cannot be challenged under Article 263 TFEU may, on the other hand, be sued in an action for damages under Article 340 TFEU.

34. The Finnish Government, which has also intervened in support of the Council, submits that, although the Euro Group's existence is recognised by the Treaties, the mere mention of the Euro Group is not sufficient to raise it to the level of an 'institution' of the European Union.

35. The applicants at first instance submit, first, that *Mallis* is not relevant, since it concerned an action for annulment and not an action in non-contractual liability. They contend that it is apparent from the case-law that the admissibility of an action in non-contractual liability is not subject to the condition that the body has the power to adopt binding acts. To deny the possibility of the European Union's assuming liability for acts adopted by the Euro Group would amount to disregarding the fundamental right to effective judicial protection. Secondly, they dispute the argument that the Euro Group was not established by the Treaties. Its existence was in fact formalised by the Treaty of Lisbon, by means of Article 137 TFEU and Protocol No 14. Thirdly, the Euro Group is not merely an informal discussion forum; it has responsibilities relating to the development of the economic and budgetary policies of the European Union. Lastly, the applicants at first instance deny that individuals may have recourse to other legal remedies in order to obtain legal protection, principally for two reasons: the assumption of liability by the Commission in the exercise of its powers cannot substitute for the assumption of liability by the Euro Group, and the possibility of bringing legal proceedings before the national courts is not satisfactory for individuals, since only acts attributable to the national authorities, not those adopted by bodies established by the Treaties, may be challenged.

C. Legal analysis

1. Preliminary observations

36. The appeals brought by the Council raise the question of whether the Euro Group may be classified as an 'institution' within the meaning of the second paragraph of Article 340 TFEU and whether the Courts of the European Union consequently have jurisdiction to hear actions for damages brought against the Euro Group, pursuant to that provision, in respect of losses caused by allegedly harmful acts of that body.

37. As regards actions concerning the non-contractual liability of the European Union, it should be recalled that, under the second paragraph of Article 340 TFEU, the European Union is, in accordance with the general principles common to the laws of the Member States, to make good any damage caused by its institutions or by its servants in the performance of their duties.

38. In accordance with settled case-law, the European Union's non-contractual liability under the second paragraph of Article 340 TFEU is subject to the fulfilment of a number of conditions, 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. (17)

39. It is apparent from the case-law that the concept of 'institution' within the meaning of the second paragraph of Article 340 TFEU is broader than that referred to in Article 13(1) TEU. Indeed, the term 'institution' used in the second paragraph of Article 340 TFEU must not be understood as referring only to the EU institutions in the strict sense, as they are listed in Article 13(1) TEU. The term also covers, with regard to the system of non-contractual liability established by the Treaties, all other EU bodies established by the Treaties and intended to contribute to the achievement of the EU's objectives. Consequently, actions taken by those bodies in the exercise of the powers assigned to them by EU law may be imputed to the European Union, in accordance with the general principles common to the Member States referred to in the second paragraph of Article 340 TFEU. (18)

40. In order to determine whether or not the Euro Group may be classified as an 'EU institution' for the purposes of the second paragraph of Article 340 TFEU, such that the harmful consequences of its actions may be imputed to the European Union, it is necessary to understand the legal nature of that body and its place within the institutional framework of EMU. To that end, I shall begin by analysing the constitutional architecture of EMU in the light of the Court's case-law (Section 2). I shall then analyse the Euro Group itself, with reference to its inception, its functions and its *modus operandi* (Section 3). The results of that analysis will make it possible to determine the legal nature of the Euro Group and its constitutional classification (Section 4). Lastly, I shall make a number of observations about the requirements of compliance with the principle of effective judicial protection (Section 5).

2. The constitutional architecture of EMU

41. Since its inception, EMU has been characterised by an 'asymmetrical' constitutional architecture in relation to its two constituent elements, namely monetary policy and economic policy. (19) That asymmetry has concerned both the attribution of powers and, consequently, the actual constitutional and institutional structure.

42. In so far as concerns the attribution of powers, while, on the one hand, responsibility for monetary policy for the Member States whose currency is the euro has been vested exclusively in the European Union, (20) on the other hand, the conduct of economic policies, including budgetary and fiscal policies, has remained within the competence of the Member States.

43. In the absence of any conferral of a general competence by means of a genuine transfer of powers, as in the case of monetary policy, in the field of economic policy the European Union solely exercises — pursuant to the provisions of Chapter 1 of Title VIII of Part Three of the TFEU — powers to coordinate the economic policies of the Member States (21) and, for the Member States whose currency is the euro, under the specific provisions applicable to them, powers to coordinate and supervise their budgetary discipline and to set out economic policy guidelines. (22)

44. The asymmetrical nature of the powers conferred on EMU has entailed a corresponding asymmetry in EMU's constitutional and institutional organisation, for which reason the institutional equilibrium governing EMU is unique.

45. While, under the Treaties, there is an institutional framework for the exercise of the European Union's exclusive competence in respect of monetary policy, composed of the ECB and the European System of Central Banks, (23) in so far as economic policy is concerned, the overall framework is more complex.

46. Indeed, the coordination of the economic policies of the Member States takes place in a sphere that necessarily involves three distinct operational levels: a national level, an EU level and an intergovernmental level.

47. At national level, the economic and fiscal policies in respect of which competence has been maintained by the Member States are carried out. At EU level, the economic policies of the Member States are coordinated and, for countries within the euro area, the abovementioned supervisory powers are exercised. As for the intergovernmental level, that has always been one of the preferred routes for furthering economic integration among States and it remains a parallel path which sometimes overlaps with that of the European Union.

48. The complexity of the constitutional structure of EMU that I have outlined has been further accentuated as a result of the measures taken in response to the financial crisis. Indeed, the European Union and the Member States have intervened by way of a series of adjustment measures adopted both within the institutional and legal framework of the European Union and outside that framework.

49. While on the basis of EU law various measures have been adopted with the aim of preventing a new financial crisis, (24) outside the institutional and legal framework of the European Union the Member States of the euro area have considerably increased cooperation, at the intergovernmental level, in particular by way of the conclusion, on 2 February 2012, of the Treaty establishing the European Stability Mechanism ('the ESM Treaty') and, on 2 March 2012, of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union ('the Fiscal Compact').

50. Those various measures and, consequently, their implementation, although having legally and institutionally different bases, that of the European Union, on the one hand, and an intergovernmental basis outside the legal framework of the European Union, on the other, nevertheless form part of a common overall framework and are closely connected.

51. The strong interrelationship between measures adopted at EU level and those adopted at intergovernmental level has engendered forms of cooperation within the framework of EMU — which were, however, already being envisaged before the crisis — that, being at the boundary between those two levels, might be described as the 'semi-intergovernmental' method. This is intergovernmental cooperation in the sense that it takes place outside the legal and institutional framework of the European Union, yet it has strong links and interdependencies with both the law and the institutional framework of the European Union.

52. Thus, from a legal point of view, there is a substantive connection between the acts adopted by the European Union and the treaties adopted by the Member States at the intergovernmental level, in the sense that, first, the obligation for Member States to participate in such treaties arises directly from their status under EU law (25) and, secondly, there are normative cross-references between these acts and treaties. (26)

53. From an institutional perspective, those forms of cooperation are characterised by a high level of involvement on the part of the EU institutions in intergovernmental activities, and vice versa. For example, the Commission and the ECB have important functions in the framework of the ESM Treaty (27) and the Commission is heavily involved in implementing the provisions of the Fiscal Compact. (28)

54. In a situation of this kind, with constitutional and legal complexities and interconnections, it can become somewhat difficult to draw a clear boundary between actions undertaken at intergovernmental level and actions taken at EU level and, consequently, also between intergovernmental bodies and EU bodies.

55. In recent years, the Court has been called upon on several occasions, in a series of cases arising from situations connected with the financial crisis, to address issues relating to the constitutional architecture of EMU. In its case-law, the Court has always sought to maintain the delicate constitutional and institutional balance arising from the decisions taken by the Member States.

56. Thus, in *Pringle* (29) the Court, sitting in plenary session, held the ESM Treaty compatible with EU law. In that highly important case, the Court ruled, in particular, that EU law does not prevent the Member States, in areas which do not fall under the exclusive competence of the European Union, from entrusting the EU institutions with tasks such as coordinating a collective action which they have undertaken outside the framework of the European Union, provided that such tasks do not alter the essential character of the powers conferred on those institutions by the EU and FEU Treaties. (30)

57. Also highly important are the judgments in *Ledra* (31) and *Mallis*. (32) In both those cases the Court of Justice was asked to address the same factual context, the Cypriot financial and banking crisis, as that of the cases before the General Court which led to the judgments under appeal.

58. More specifically, in *Ledra*, the Court had occasion to clarify that the fact that duties conferred on the Commission and the ECB in the context of the ESM Treaty do not entail any power for the Commission and the ECB to make decisions of their own, and commit the ESM alone, does not mean that proceedings cannot be brought against those institutions in the EU Courts for compensation of harm caused by unlawful conduct on their part in the performance of such duties. In particular, the Court pointed out that, when acting in the intergovernmental context within the framework of the ESM Treaty, the Commission retains its role of guardian of the Treaties, as resulting from Article 17(1) TEU. (33)

59. In *Mallis*, on the other hand, the appellants had, by actions for annulment, specifically challenged the Euro Group statement of 25 March 2013, that statement also forming part of the basis of the actions for damages brought by the applicants at first instance before the General Court which led to the judgments under appeal in the present case. The Court of Justice held that that statement could not be regarded as a joint decision of the Commission and the ECB and that the fact that those two EU institutions participated in the meetings of the Euro Group did not alter the nature of the latter's statements and could not result in such statements being considered to be the expression of a decision-making power of those two EU institutions. (34)

60. In so far as the Euro Group is concerned specifically, in *Mallis*, in paragraph 61, the Court noted 'not only that the term "informally" is used in the wording of Protocol No 14 on the Euro Group … but also that the Euro Group is not among the different configurations of the Council of the European Union' (35) and that, accordingly, 'the Euro Group cannot be equated with a configuration of the Council or be classified as a body, office or agency of the European Union within the meaning of Article 263 TFEU'.

61. It is within the complex constitutional architecture of EMU that I have just described, and upon which the relevant case-law of the Court has elaborated, that the Euro Group finds its place.

3. The Euro Group

(a) The inception of the Euro Group and why it was created

62. The Euro Group was formally established at the Luxembourg European Council of 12 and 13 December 1997. (36) In the resolution adopted on that occasion, after stating that 'the ECOFIN Council is the centre for the coordination of the Member States' economic policies and is empowered to act in the

relevant areas' and that 'the defining position of the ECOFIN Council at the centre of the economic coordination and decision-making process affirms the unity and cohesion of the [European Union]', the European Council established that 'the Ministers of the States participating in the euro-area may meet informally among themselves to discuss issues connected with their shared specific responsibilities for the single currency' and that 'the Commission, and the European Central Bank … when appropriate, will be invited to take part in the meetings'.

63. The reason underlying the establishment of the Euro Group is to be found in a two-fold requirement that arose upon the introduction of the euro in the Member States of the European Union which share the single currency. On the one hand, there was the need for greater efficacy in the coordination of the economic policies of those States, especially, but not only, from a macroeconomic perspective; on the other, there was the need for a connection to be made between monetary policy and economic policy.

64. However, since the Council, as an institution of the European Union consisting in the representatives of all the Member States, was incapable of responding effectively to those requirements for enhanced coordination and connection — which apply only to some Member States of the European Union — and since there was no intention of altering the institutional structure established by the Treaties or of diminishing the Council's role as an institution, it was decided to take the approach of creating an intergovernmental forum exclusive to the Member States of the euro area, one which would enable those States, through their finance ministers, to exchange opinions on matters affecting their own interests which, as a result of the introduction of the single currency, had become closely connected. From the outset, the establishment of the Euro Group thus reflected the intention of the Member States of the euro area to address jointly matters of specific interest to them (but not of concern to the other Member States) and, to that end, to meet informally, outside the Council, in order to coordinate and to harmonise their positions, without however threatening either the integrity of the Council as the fulcrum of the European Union's decision-making process in economic matters or the independence of the ECB.

65. Conceived of thus as an instrument of intergovernmental coordination between true national level and Community level, the Euro Group swiftly acquired significant political importance as the principal mediator in the economic coordination of the euro area.

66. The Euro Group met for the first time in Luxembourg on 4 June 1998. In the early years of its existence, it operated in a sort of legal grey area. However, the work which was undertaken informally within the body progressively became the subject of certain organisational measures aimed at structuring its activities and lending rigour to the forum, in order to improve its operation. For example, provision was made for it to publish statements and communications, when considered appropriate, (37) and it was decided in 2004 that the body should have a permanent president who would be appointed for a term of two years. (38)

(b) The Euro Group following the adoption of the Treaty of Lisbon: composition and operation

67. It was only with the adoption of the Treaty of Lisbon that the Euro Group gained recognition under primary EU law, more specifically, by Article 137 TFEU and Protocol No 14.

68. Article 137 TFEU does no more than refer to Protocol No 14 as regards the arrangements for meetings between ministers of the Member States whose currency is the euro.

69. The content of Protocol No 14, on the other hand, is more substantial. First of all, in the preamble, it refers to the aim of promoting conditions for stronger economic growth in the European Union and to the associated need to develop ever-closer coordination of economic policies within the euro area and, consequently, to lay down special provisions for enhanced dialogue between the Member States of the euro area, pending the euro becoming the currency of all Member States of the European Union. Next, in Article 1, it expressly mentions the composition of the Euro Group, indicating its informal nature, and the purpose of the meetings, as well as the participation of the Commission and the ECB. Then, in Article 2, it mentions the election of the president of the Euro Group.

70. However, the Euro Group is referred to not only in primary EU law, but also in other acts, both of secondary EU law and outside the legal framework of the European Union.

71. In so far as secondary EU law is concerned, the Euro Group is mentioned in Regulation No 473/2013 (39) and in the Single Supervisory Mechanism Regulation. (40) As regards acts adopted at intergovernmental level, the Euro Group and its president are mentioned in both the Fiscal Compact (41) and the ESM Treaty. (42)

72. In so far as its composition is concerned, as indicated in Article 1 of Protocol No 14, the Euro Group is composed of the ministers (43) of the Member States whose currency is the euro. (44)

73. According to the third sentence of Article 1 of Protocol No 14, the Commission is to take part in the meetings of the Euro Group. Following the entry into force of Protocol No 14 the Commission's participation became compulsory, which it had not been previously, when the Commission participated in meetings of the Euro Group only upon invitation, even if, in practice, its participation was systematic. (45)

74. According to the fourth sentence of Article 1 of Protocol No 14, the ECB, is, by contrast, to be 'invited' to take part in such meetings. In the ECB's case, the adoption of the Treaty of Lisbon did not alter the optional nature of the institution's participation — which is linked to the need for it to be independent (46) — but merely rendered it compulsory for it to be invited to meetings. (47)

75. In practice, where appropriate, invitations to attend meetings are also extended to the Managing Director of the ESM and, for discussions on economic programmes in which it is involved, the IMF. (48)

76. Article 2 of Protocol No 14 states that the ministers of the Member States whose currency is the euro are to elect, by a majority of those Member States, a president of the Euro Group for two and a half years, (49) who is in a sense the face of the Euro Group to the outside world. (50)

77. The Euro Group usually meets once a month on the eve of the Economic and Financial Affairs (ECOFIN) Council meeting, but additional meetings may be held if necessary. As was made clear at the hearing, the Euro Group does not have its own secretariat, although it does have changing organisational support and, for the logistical needs of its operation, it can call on the secretariat of the Council or, as the case may be, on the secretariat of the Commission. The work of the Euro Group is prepared within the Euro Group Working Group, a preparatory body composed of representatives of the Member States of the euro area, the Economic and Financial Committee, the Commission and the ECB.

78. As regards the purpose of the meetings, as is stated in the second sentence of Article 1 of Protocol No 14, the ministers of the Member States whose currency is the euro are to meet 'to discuss questions related to the specific responsibilities they share with regard to the single currency', so as to attain the objective, mentioned in the preamble to the protocol, of developing 'ever-closer coordination of economic policies within the euro area', in the context of an 'enhanced dialogue between [those] Member States'.

79. As the Commission noted at the hearing, the Euro Group may discuss both questions which fall within the scope of EU law and questions beyond that scope.

80. For example, clearly within the scope of EU law are the discussions within the Euro Group which relate to the draft budgetary plans that are sent by the Member States and the examination of the Commission's opinions on those drafts, as well as the discussions of the budgetary situation and prospects in the euro area as a whole, on the basis of the overall assessment made by the Commission, in accordance with Article 6(1) and Article 7(5) of Regulation No 473/2013. The same is true of the discussions of reports on the execution of the tasks conferred on the ECB in relation to the prudential supervision of credit institutions, in accordance with Article 20(2), (3), (4) and (6) of the Single Supervisory Mechanism Regulation. (51)

81. Falling, on the other hand, within an intergovernmental legal framework, and thus outside the scope of EU law, are, for example, the activities of the Euro Group which relate to the Euro Summits, as provided for in the Fiscal Compact. (52)

82. There is, in any event, a high degree of flexibility as regards the purpose of meetings, the Euro Group being at liberty to discuss any subject which, having an impact on the economic situation in the euro area, calls for coordination among the Member States of the euro area.

83. The outcomes of meetings are presented to the public by the President of the Euro Group in press conferences. The Euro Group may also issue public written statements. Its written and oral statements make known the outcome of any informal political agreement reached on questions debated within the Euro Group.

(c) The informal nature of the Euro Group

84. A fundamental characteristic of the Euro Group is its informal nature, a requirement that was already mentioned in the resolution of the 1997 European Council and which is restated verbatim in the first sentence of Article 1 of Protocol No 14.

85. The express characterisation of the Euro Group's meetings as taking place 'informally' reflects the intention that the assembly should be a forum for political discussion, one that involves a limited number of participants (53) and is confidential and flexible, so as to create the proper conditions to facilitate discussions between ministers and so make it considerably easier to overcome differences and resolve potential conflicts, and consequently reach political agreement.

86. The reason for introducing a requirement of informality is to be found in the two-fold requirement that underlies the creation and very existence of the Euro Group, which I mentioned in points 63 to 65 of this Opinion. On the one hand, the requirement of informality is responsive to concerns relating to the relations between Member States of the euro area and other Member States and to the intention not to diminish the powers of the ECOFIN Council, which is the fulcrum of the European Union's decision-making powers in the field of economic coordination. That is why it was decided that the Euro Group, as an informal body, should have no decision-making powers of its own, as indeed was confirmed by the Court in *Mallis*. (54) On the other hand, the requirement of informality is responsive to the concern to ensure the ECB's independence from political powers, in particular those of the Member States. Informality therefore became a precondition of the dialogue between authorities responsible for monetary policy and authorities responsible for the economic policy of EMU.

87. Moreover, matters such as fiscal or budgetary strategies or economic growth prospects do not always demand immediate decisions, but instead call for a regular dialogue and an ongoing exchange of views that enables each minister to develop, in complete confidentiality, an analysis of the situation in his or her Member State, with an eye to its European context, and thus of the possible choices he or she may be facing.

88. The Euro Group nevertheless exerts considerable influence at all levels of EMU governance, as has recently been demonstrated in fact: (55) at EU level, it is able to direct the deliberations of the ECOFIN Council by means of coordinated positions of the Member States of the euro area within the Council itself; at that level, the Euro Group also plays an important political role in the areas mentioned in point 80 above; at national level, it is able to coordinate measures and actions taken nationally by individual Member States; and at the intergovernmental level, for example, the ministers participating in the Euro Group are also members of the Board of Governors of the ESM. (56)

89. The influence which the Euro Group has nevertheless remains a purely political influence. Indeed, being an informal body, not only does the Euro Group have no competences of its own, it also has no power to penalise any failure on the part of participants to implement agreed policy objectives. The ministers who participate in its meetings remain legally free to depart from any political agreements

reached within the Euro Group when they participate in decision-making bodies of the European Union or in national or intergovernmental decision-making bodies. The Euro Group's ability to influence economic governance is dependent on its ability to generate voluntary adherence to common positions. In other words, the outcome of discussions within the Euro Group must truly be a consensus. (57)

90. Moreover, the fact that the Euro Group has no competences of its own means that political agreements reached in that assembly must necessarily be implemented by means of acts adopted in other fora, such as acts of the European Union, or of the Member States or of intergovernmental bodies outside the EU legal framework, like the ESM.

4. The legal nature of the Euro Group

91. Within the complex constitutional framework that I have outlined, and in the light of the characteristics of the Euro Group that I described in the previous section, what is the legal nature of the Euro Group?

92. In order to answer that question, it is necessary to analyse the relevant provisions of the Treaties read in the light of the role which the Euro Group plays within the particular constitutional architecture of EMU. Since it is unquestionable that the Euro Group was first created as an intergovernmental body outside the institutional and legal framework of the European Union, (58) the goal of interpreting the relevant provisions of primary EU law will be to ascertain whether the Treaty of Lisbon merely recognised the Euro Group or whether it sought to alter its legal nature, so that, having now become a part of the institutional and legal framework of the European Union, the Euro Group could be considered an institution within the meaning of the second paragraph of Article 340 TFEU.

93. With that in mind, from a *literal* point of view, it should be noted that both Article 137 TFEU and the terms of Protocol No 14 maintained the description of the body as a 'group' — rather than reclassifying it as a 'council' or 'committee' — and, most importantly, expressly refer to meetings of 'the Ministers of the Member States whose currency is the euro' being conducted 'informally'. (59) That wording takes up almost verbatim the wording used in the resolution of the 1997 European Council. (60)

94. Leaving aside the classification of the meetings as 'informal', which is linked to the specific function of the Euro Group, on which I shall expand presently, (61) I think that the express reference to the ministers of the Member States indicates that, when they take part in meetings of the Euro Group, the participants are acting in their national capacity as ministers.

95. That reading is, in my view, supported by the next sentence of Article 1 of Protocol No 14, which states that the meetings are to discuss 'questions related to the *specific responsibilities they share* with regard to the single currency'. That wording makes it clear that the responsibilities addressed in the meetings are responsibilities which remain with the individual ministers, by reason of their national powers, rather than responsibilities which are transferred to the forum in which they are meeting, even though those responsibilities, conferred on each participant at national level, overlap as a result of the creation of the single currency.

96. A literal interpretation, while certainly not decisive, as such, in a case like the present, nevertheless seems to reflect an intention on the part of the drafters of the Treaty of Lisbon to acknowledge the existence of the Euro Group as an intergovernmental discussion forum, rather than to establish it as a stand-alone body of the European Union.

97. That interpretation appears to be confirmed, from a *schematic* point of view, (62) on comparing the wording used in Article 137 TFEU and Protocol No 14 with that used in other provisions of the Treaties. Indeed, the wording used in relation to the Euro Group is very plainly different, first of all, from that used for the composition of the Council in Article 16(2) TEU, according to which 'the Council shall *consist* of a *representative* of each Member State at ministerial level'. (63) The provision concerning the Council thus

refers not to ministers acting in their national capacity, but to the Council as an EU institution consisting of the representatives within that body of each Member State.

98. Secondly, the wording used in Article 137 TFEU and Protocol No 14 is also plainly different from that used in Article 136(2) and Article 138(3) TFEU, which concern deliberations regarding measures specific to the Member States whose currency is the euro. (64) Those provisions stipulate that 'only *members of the Council representing Member States* whose currency is the euro shall take part in the vote'. (65) That same wording is also used in Article 15 of Regulation No 472/2013 and wording to the same effect is to be found in Article 139(4) TFEU, read in conjunction with Article 139(1) TFEU.

99. Such markedly different wording confirms, in my view, that, when the drafters of the Treaty of Lisbon intended to refer to the representatives of the Member States whose currency is the euro within an institution or body of the European Union, they chose different wording from that used in relation to the Euro Group.

100. Moreover, from a *historic* viewpoint, a perusal of the acts of the Convention on the Future of Europe, which was the original source of the provisions in question, reveals no intention of including the Euro Group within the EU institutional framework, but rather indicia to the contrary. (66)

101. From a *teleological* viewpoint, it is apparent from the analysis of the origins and function of the Euro Group within the constitutional architecture of EMU, carried out above, that the reference to the Euro Group in Article 137 TFEU and Protocol No 14 is intended as a formal recognition of a pre-existing entity outside the EU institutional framework. By means of that recognition, EU institutions were also empowered, formally, by provisions of primary law, to participate in that assembly, specifically, the Commission, whose participation became compulsory, and the ECB, which it became compulsory to invite. Moreover, without any autonomous decision-making body for the Member States of the euro area having been created, that recognition made it possible, while meeting the requirements of the other Member States, to preserve undiminished the Council's fundamental role in the field of economic coordination.

102. Externality to the legal framework of the European Union allows the Euro Group to maintain informality, which is an essential requirement of its operation. This in fact allows the Euro Group to operate as a forum for political discussion in which complex interests may be reconciled and compromises reached between the Member States whose currency is the euro.

103. The Euro Group operates, as I have already emphasised, as a coordination mechanism, as a 'bridge' between the different levels in which EMU governance takes place, namely the national level, the EU level, for which coordination is achieved by means of the participation in its meetings of the Commission and the ECB, and the intergovernmental level external to the EU legal framework.

104. In particular, the compulsory participation of the Commission, which maintains its role as guardian of the Treaties, as provided for in Article 17(1) TUE, (67) is intended, inter alia, to ensure that the activities of the discussion forum are conducted in a manner consistent with EU law, with which they are connected. Furthermore, in accordance with the principle of equal treatment of the Member States, the Commission is under an obligation to remain neutral and it is in a position to offer a better overview of the issues inherent to the euro area and to stimulate a more balanced dialogue among the various players involved. (68) In so far as the ECB's participation is concerned, this satisfies the requirement, to which I have alluded, of ensuring a link between economic policy and monetary policy within EMU, (69) while preserving that institution's independence.

105. The conclusion that the Euro Group is external to the EU institutional framework is not, in my view, called into question by the fact that that body is mentioned in provisions of secondary EU law. Those provisions do not, in fact, define any conferral of specific powers on the Euro Group, but enable it to receive information and to conduct informed discussions concerning questions relating to the economic policies of the euro area or of significance in relation to the single currency. The provisions in question do

of course involve the Euro Group in the oversight mechanisms and accountability mechanisms provided for by EU law. However, as is consistent with the semi-intergovernmental approach I mentioned in points 51 to 53 above, those provisions are responsive to the need to establish a connection between the EU's powers and the economic policies that remain within the competence of the Member States.

106. In conclusion, it follows, in my view, from all the foregoing considerations that the Euro Group must be considered the embodiment of a particular form of intergovernmentalism that is present within the constitutional architecture of EMU. (70) Created as a purely intergovernmental body within the complex EMU framework for the coordination of Member States' economic policies, it provides a bridge between the State sphere and the EU sphere. The Treaty of Lisbon recognised the existence of the Euro Group outside the EU legal framework and formalised the involvement of the Commission and the ECB in its work. It did not, however, intend to alter its legal nature, which is closely linked to its function as a bridge between the Member States and the European Union.

107. It follows from all the foregoing that, the Euro Group being a body outside the institutional and legal framework of the European Union, the EU Courts have no jurisdiction to hear actions for damages brought against it, under the second paragraph of Article 340 TFEU, in respect of possible losses caused by allegedly harmful actions taken by it. Accordingly, since the General Court acknowledged such jurisdiction in the judgments under appeal, those judgments are vitiated by an error of law and should be set aside in so far as they hold that the EU Courts have jurisdiction to hear actions for damages brought against the Euro Group.

108. That conclusion is not called into question by considerations relating to the rule of law (or to the principle of a 'Union based on the rule of law', to use the words of the General Court) and relating to the requirements of observance of the principle of effective judicial protection. I shall address that matter in the section that follows.

5. The principle of effective judicial protection

109. In the judgments under appeal, the General Court held that failure to recognise the Euro Group as a body of the European Union would conflict with the principle of a 'Union based on the rule of law', in that it would permit the establishment within the EU legal system of entities whose acts and conduct could not result in liability of the part of the European Union. (71)

110. The principle of effective judicial protection is a general principle of EU law stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and which is now reaffirmed by Article 47 of the Charter of Fundamental Rights of the European Union. (72)

111. The conclusion regarding the legal nature of the Euro Group which precludes its classification as an institution within the meaning of the second paragraph of Article 340 TFEU does not undermine the full application of the principle of effective judicial protection, nor does it contradict the notion of a 'Union based on the rule of law'. Indeed, individuals are ensured judicial protection by the fact that they can bring an action in non-contractual liability against institutions which adopt acts and conduct giving effect to and developing on the conclusions of the Euro Group.

112. As I stated in point 90 of this Opinion, political agreements reached within the Euro Group, in the absence of any formal powers, will be crystallised and given effect by means of acts and activities of other bodies either within the European Union or outside its legal framework. The work of the Euro Group is thus preliminary to the adoption of conduct on the part of other bodies. The Euro Group intervenes at one stage, albeit an important stage, of a larger decision-making process.

113. The fact that the Euro Group should not be categorised as an 'institution' for the purposes of the second paragraph of Article 340 TFEU does not preclude liability on the European Union's part for actions

whereby the Council or the Commission has implemented a decision of the Euro Group, provided that the conditions to which I referred in point 38 of this Opinion are fulfilled. Individuals are able to bring an action for damages, in accordance with the second paragraph of Article 340 TFEU, against the EU authority, in most cases the Council, which has implemented an agreement concluded within the Euro Group.

114. Thus, in so far as the present case is concerned, the applicants at first instance were, first of all, able to bring proceedings against the Council seeking compensation in respect of the adoption of Decision 2013/236 (or at least in respect of certain measures laid down in that decision) and against the Commission and the ECB in respect of their monitoring of the implementation of the macroeconomic adjustment programme for Cyprus under Article 1(2) of Decision 2013/236. (73)

115. Moreover, in accordance with the principles set out in *Ledra*, the applicants at first instance were able to bring proceedings against the Commission and the ECB seeking compensation for losses suffered as a result of allegedly unlawful conduct on the part of those institutions in the negotiation and signing of the Memorandum of Understanding of 26 April 2013. (74)

116. Thus, the applicants at first instance were ensured the opportunity of suing for compensation of the losses they allegedly sustained as a result of the implementation of what they term the 'binding course of action' established in the Euro Group's statement of 25 March 2013. (75)

117. Alongside such remedies, an action for damages brought against the Euro Group would add very little. Even if such an action were admissible in accordance with the second paragraph of Article 340 TFEU, its purpose would in any event be to impute to the European Union any harmful conduct allegedly adopted by the Euro Group. It is clear that the Euro Group does not have legal personality (76) and that the European Union and the ECB alone (77) possess legal personality. Consequently, any harm caused by the conduct of the Euro Group would be imputed to the European Union. The outcome does not change if the European Union may, as I have emphasised, be called upon to answer for the conduct of the Council or the Commission in implementing decisions of the Euro Group.

118. It is appropriate that I should also give consideration to the Commission's participation in meetings of the Euro Group.

119. I would first of all point out that, in order to determine whether an infringement of the rights of individuals — which must result from a sufficiently serious breach of a rule of law intended to confer rights on individuals (78) — may or may not be imputed to an EU institution under the second paragraph of Article 340 TFEU, it is essential to define precisely the conduct that may be imputed to the institution which was a substantial cause of the infringement. It is, therefore, necessary to consider the chain of events and determine whether, if the institution in question had decided to act differently, the infringement in question would not have materialised.

120. In so far as concerns, specifically, statements made by the Euro Group, the Court has already had occasion to clarify that such statements, by means of which the outcome of discussions that have taken place within the Euro Group and the political agreements reached in that forum are made known to the public, do not constitute the expression of a decision-making power on the part of Commission (79) and therefore cannot, as such, be imputed to that institution.

121. Nevertheless, the Court has also emphasised that it is clear from Article 17(1) TEU that the Commission 'shall promote the general interest of the Union' and 'shall oversee the application of Union law' (80) and that it retains its role as guardian of the Treaties, as provided for in that provision, even when acting outside the legal framework of the European Union. (81)

122. It must be pointed out that meetings of the Euro Group are intended to facilitate ever-closer coordination of economic policies within the euro area. Through its participation in those meetings, which became compulsory after the entry into force of the Treaty of Lisbon, the Commission makes a substantial

contribution to the discussions that take place within the Euro Group and to its work. In those circumstances, it must be considered that, by means of its participation in the meetings of that body, the Commission promotes the general interest of the Union. (82)

123. Accordingly, when the Commission participates in meetings of the Euro Group, it must not contribute, through its conduct, to an infringement of the EU rules. (83)

124. I would emphasise that, even when acting outside the EU framework, EU institutions must scrupulously observe EU law, and the Charter of Fundamental Rights remains applicable to them. (84)

125. The Commission's mandatory participation in Euro Group meetings, at which it retains its role as guardian of the Treaties, as provided for by Article 17(1) TEU, and the functions which it fulfils at those meetings enable it to check that the conduct of the Euro Group's activities is consistent with EU law and, in particular, the Charter. (85)

126. It follows from the foregoing that it is not precluded that, in exceptional circumstances, the harmful consequences ensuing from a failure on the Commission's part to check the consistency with EU law of a decision adopted by the Euro Group may be attributed to the Commission. (86) That increases the effectiveness of the judicial protection which individuals are guaranteed.

6. Closing remarks

127. It is clear from the analysis carried out that, in my view, the General Court erred in assuming jurisdiction to hear actions for damages brought, pursuant to the second paragraph of Article 340 TFEU, against the Euro Group. Consequently, the judgments under appeal should be set aside in so far as they assume such jurisdiction on the General Court's part.

128. In the present case, I am of the view that, in accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, the state of the proceedings permits the Court to give final judgment on that aspect of the dispute. Indeed, it is clear from the conclusions set out in points 106 and 107 of this Opinion that the pleas of inadmissibility raised by the Council at first instance in respect of the Euro Group should be upheld.

129. Lastly, as regards costs, if the Court agrees with my assessment, the applicants at first instance will be unsuccessful in Cases C−597/18 P and C−598/18 P and should pay the costs in those two cases, while the Republic of Finland should be ordered to bear its own costs. (87)

VI. Conclusion

130. In the light of the foregoing considerations, I propose that the Court should:

(1) Set aside the judgments of the General Court of the European Union 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) in so far as they dismiss the pleas of inadmissibility raised by the Council of the European Union in respect of the Euro Group;

(2) Find the actions at first instance brought by K. Chrysostomides & Co. and Others and by Bourdouvali and Others inadmissible in so far as they were brought against the Euro Group;

(3) Order K. Chrysostomides & Co. and Others and Bourdouvali and Others to pay the costs of the appeals in Cases C−597/18 P and C−598/18 P;

(4) Order the Republic of Finland to bear its own costs.

1 Original language: Italian.

2 The list of the other parties is annexed only to the version of the Opinion notified to the parties.

3 The list of the other parties is annexed only to the version of the Opinion notified to the parties.

4 *Council* v *K. Chrysostomides & Co. and Others* (C−597/18 P) and *Council* v *Bourdouvali and Others* (C−598/18 P).

5 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).

6 *K. Chrysostomides & Co. and Others* v *Council and Others* (C−603/18 P) and *Bourdouvali and Others* v *Council and Others* (C−604/18 P).

7 For details of the claims, see paragraphs 75 to 79 and paragraphs 71 to 75 of the judgments in Cases T−680/13 and T−786/14 respectively.

8 OJ 2013 L 141, p. 32.

9 See paragraphs 50 to 55 of the judgments under appeal.

10 Paragraphs 106 (in Case T−680/13) and 102 (in Case T−786/14) of the judgments under appeal.

11 Paragraphs 107 to 110 (in Case T−680/13) and 103 to 106 (in Case T−786/14) of the judgments under appeal, and the case-law cited.

12 Paragraphs 111 and 112 (in Case T−680/13) and 107 and 108 (in Case T−786/14) of the judgments under appeal. See the case-law mentioned in footnote 18 below.

13 Paragraphs 113 (in Case T−680/13) and 109 (in Case T−786/14) of the judgments under appeal.

14 Paragraphs 114 (in Case T−680/13) and 110 (in Case T−786/14) of the judgments under appeal.

15 The Council refers to paragraphs 56 to 60 of the judgment of 20 September 2016, *Ledra Advertising and Others* v *Commission and ECB* (C−8/15 P to C−10/15 P, EU:C:2016:701; '*Ledra*').

16 The Council refers to Regulation (EU) No 472/2013 of the European Parliament and of the Council of 21 May 2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area

experiencing or threatened with serious difficulties with respect to their financial stability (OJ 2013 L 140, p. 1), and specifically to Article 7 thereof.

17 *Ledra*, paragraph 64 and the case-law cited.

18 See, to that effect, judgment of 2 December 1992, *SGEEM and Etroy* v *ECB* (C−370/89, EU:C:1992:482, paragraphs 12 to 16), and judgment of the General Court of 10 April 2002, *Lamberts* v *European Ombudsman* (T−209/00, EU:T:2002:94, paragraph 49), confirmed by the Court of Justice in the judgment of 21 March 2004, *Ombudsman* v *Lamberts* (C−234/02 P, EU:C:2004:174).

19 EMU's asymmetrical structure was already foreshadowed in the Delors Report (Report on Economic and Monetary Union in the European Community), published on 12 April 1989. The suggestions made in the report were substantially taken up by the Madrid European Council of 26 and 27 June 1989, which initiated the creation of EMU, which took place in three stages (see, inter alia, paragraphs 16, 17 and 19 of the Delors Report).

20 See Article 3(1)(c) TFEU.

21 See Article 5(1) TFEU.

22 See the second subparagraph of Article 5(1) TFEU and Chapter 4 of Title VIII of Part III of the TFEU.

23 See, on this point, Chapter 2 of Title VIII of Part Three of the TFEU, Section 6 of Chapter 1 of Title I of Part Six of the TFEU and Protocol No 4 on the Statute of the European System of Central Banks and of the European Central Bank. See also Opinion of Advocate General Cruz Villalón in *Gauweiler and Others* (C−62/14, EU:C:2015:7, point 107 et seq.).

24 Two series of measures have been adopted: first, the so-called 'Six-Pack' measures adopted in 2011 (for further details and references, see the European Commission's document Memo/11/898 of 12 December 2011); secondly, the 2013 reform known as the 'Two-Pack', designed to enhance economic integration and convergence among euro area Member States (Regulation No 472/2013, cited in footnote 16 above, and Regulation (EU) No 473/2013 of the European Parliament and of the Council of 21 May 2013 on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area (OJ 2013 L 140, p. 11). Those measures are currently being reviewed and debated (see the Commission press release of 5 February 2020, IP/20/170).

25 See, for example, recital 7 of the ESM Treaty.

26 See, for example, Article 13(3) of the ESM Treaty and Article 2 of the Fiscal Compact, both of which acknowledge the primacy of EU law. Conversely, see, for example, Regulation No 472/2013, which cites the ESM Treaty a number of times.

27 See, on this point, paragraphs 156 and 157 of the judgment of 27 November 2012, *Pringle* (C−370/12, EU:C:2012:756; '*Pringle*'), in which the Court listed, with the relevant legislative references, the duties assigned to the Commission and the ECB under the ESM Treaty.

28 See Article 3(2), Article 5(1) and (2), Articles 6, 7, 8 and Article 12(1) and (4) of the Fiscal Compact.

29 See footnote 27 above.

30 See, specifically, paragraphs 55 to 70 and 155 to 169.

31 See footnote 15 above.

32 See point 25 above.

33 Paragraphs 53 to 60 and, in particular, paragraph 59.

34 See paragraphs 57 and 60 of *Mallis*.

35 Enumerated in Annex I to its Rules of Procedure, adopted by Council Decision 2009/937/EU of 1 December 2009 (OJ 2009 L 325, p. 35), the list of which is referred to in Article 16(6) TEU.

36 Resolution of the European Council of 13 December 1997 on economic policy coordination in stage 3 of EMU and on Treaty Articles 109 and 109b of the EC Treaty (OJ 1998 C 35, p. 1; 'the resolution of the 1997 European Council'; see in particular point 6).

37 The Euro Group's first statement was published on 8 May 2000 (see *Agence Europe*, 7712, 8/9 May 2000, p. 9).

38 Initially, the chair of the Euro Group mirrored that of the rotating presidency of the Council except where the Council presidency was held by a country outside the euro area, in which case the chair was held by the next euro area country that would hold the Council presidency.

39 See footnote 24 above. See, in particular, recitals 16, 23 and 34 and Article 6(1), Article 7(3) and (5) and Article 8(1) and, concerning the president of the Euro Group, Article 15(1). Regulation No 472/2013 mentions 'the Eurogroup Working Group' and its president (see point 77 below of this Opinion).

40 See Article 20(2), (3) and (6) of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ 2013 L 287, p. 63).

41 See, in particular, Article 12(4), which entrusts the Euro Group with the preparation and continuity of Euro Summit meetings and states that the President of the Euro Group may be invited to attend such meetings for that purpose.

42 See recital 11 and Article 5(2), which allows the Board of Governors to decide to be chaired by the President of the Euro Group, and Article 5(3) and (7)(b).

---

43 As is explained in more detail in point 97 of this Opinion below, the wording of both Article 137 TFEU and the first sentence of Article 1 of Protocol No 14 is different from that of Article 16(2) TEU, concerning the composition of the Council, which provides for each Member State to be represented 'at ministerial level'. The difference in wording means that, because of the 'exclusive' nature of the Euro Group, by contrast with the Council, only actual ministers may participate in meetings of the forum, and not under-secretaries. Although it is not specifically stated, generally it is the finance ministers of the euro area Member States that participate, because of their powers.

---

44 The Euro Group's web pages (https://www.consilium.europa.eu/en/council-eu/eurogroup) indicate that, in practice, however, the Euro Group may meet in what is termed an 'inclusive format', with ministers from the other Member States participating in the discussions.

---

45 Generally, the Euro Group meetings are attended by the Member of the Commission responsible for economic and monetary affairs and the euro, accompanied by the Director-General of the Commission's Directorate-General for Economic and Financial Affairs.

---

46 The optional nature of the ECB's participation may be explained by the need to allow the ECB to decide whether or not its attendance at any given meeting is compatible with its independence. In practice, the ECB always attends meetings of the Euro Group. Normally, it is the President of the ECB who attends. However, pursuant to Article 13(2) of the Statute of the European System of Central Banks and of the ECB (Protocol No 4 annexed to the Treaties), the President may appoint a nominee.

---

47 Protocol No 14 no longer contains the words 'when appropriate' which appeared in the resolution of the 1997 European Council.

---

48 This is apparent from the Euro Group's web pages, referred to in footnote 44 above.

---

49 The president is elected by a simple majority of those entitled to vote (the ministers of each of the Member States whose currency is the euro), rather than by a majority of those attending.

---

50 Neither Protocol No 14 nor any other official publication gives specific details of the duties of the president of the Euro Group. However, it may be gleaned from the Euro Group's web pages that its president has the following duties: to chair meetings of the Euro Group and to fix the agenda, to prepare the Euro Group's long-term work programme, to present the results of Euro Group's discussions to the public and to the ministers of EU-Member States outside the euro area, to represent the Euro Group in international fora (such as the G7) and to inform the European Parliament of the Euro Group's priorities (see the Euro Group's web pages, referred to in footnote 44 above). In accordance with Article 5(2) of the ESM Treaty, the president of the Euro Group may also be elected chairperson of the Board of Governors of the ESM, if the members of the Board so decide.

---

51 See footnote 40 above.

---

52 See footnote 41 above.

53 In practice, meetings of the Euro Group are attended only by the ministers, the Member of the Commission and the President of the ECB, along with one other person, bringing the total number of participants to about 40, which is far fewer than attend meetings of the ECOFIN Council, who may be more than 150 in number.

54 See point 60 above.

55 The Euro Group was recently given the task of developing strategies to face the economic consequences of the COVID-19 pandemic: see the Joint statement of the members of the European Council of 26 March 2020, point 14.

56 See Article 5(1) of the ESM Treaty.

57 For an interesting analysis of how the Euro Group actually operates, with particular reference to the informal nature of its meetings, see Puetter, U., *The Eurogroup, How a Secretive Circle of Finance Ministers Shape European Governance*, Manchester, 2006, in particular, p. 5.

58 As explained in point 62 above, the Euro Group was in fact instituted by means of an act outside the system of sources of EU law, by a body, the European Council, which, at the time when the Euro Group was created, was outside the institutional framework of the European Union.

59 See, specifically, the first sentence of Article 1 of Protocol No 14.

60 The most important linguistic difference, in the Italian version, is the replacement of the words 'i ministri … *possono riunirsi* in modo informale' with 'i ministri … *si riuniscono* a titolo informale'. However, from a literal viewpoint, that change tends to me to confirm the interpretation which I propose in the following points, according to which Protocol No 14 does not authorise the ministers of the Member States whose currency is the euro to meet, but records the fact that they do meet. The Italian version matches the French, German, Dutch and Portuguese versions. The Spanish version uses the future tense 'mantendrán'. The English version is, on the other hand, more ambiguous, because the words 'may meet' are replaced with the words 'shall meet'. Nevertheless, the word 'shall', which generally indicates an obligation, appears to refer to the informal nature of the meeting (shall meet *informally*), which, as has been seen, is a fundamental characteristic of the Euro Group (see point 84 et seq. above).

61 See point 102 below.

62 From a schematic point of view, it may also be observed that the Euro Group is mentioned in the Treaties not among the institutions, but in the chapter setting out provisions specific to Member States whose currency is the euro and in a special protocol. Again, this is just an indication, rather than being decisive.

63 My italics.

64 Article 136(2) TFEU concerns deliberations regarding the measures specific to the Member States whose currency is the euro referred to in Article 136(1) TFEU. Article 138(3) TFEU concerns deliberations regarding measures adopted, pursuant to Article 138(2) TFEU, to ensure unified representation of the Member States whose currency is the euro within the international financial institutions and conferences.

---

65 My italics.

---

66 See, for example, the contribution entitled 'French-German contribution on Economic Governance' (CONV 470/02), in which a proposal is made to '*recognise* the Eurogroup in a Protocol annexed to the Treaty' (my italics) and another to create a Euro-ECOFIN Council consisting exclusively of representatives of the Member States of the euro area, as previously proposed by the Commission (see CONV 391/02). The second proposal, which would essentially have led to the creation within the European Union of an ad hoc deliberating body for the Member States whose currency is the euro, was not taken up.

---

67 See, by analogy, paragraph 59 of *Ledra*.

---

68 As a body which collects and processes the information which it needs in order to carry out its supervisory tasks, the Commission is also able to provide an overview of common economic developments and has proved particularly adept at deciphering the economic situation of the euro area. The Commission consults the Euro Group on all important decisions for which it is responsible in the framework of EMU.

---

69 See points 63 to 68 above.

---

70 It is certainly not the embodiment of a form of enhanced cooperation between the Member States, since the requirements of Article 20 TEU and Articles 326 to 334 TFEU are not satisfied. Nor does it appear to be comparable to other forms of cooperation which existed in the past, such as cooperation in the fields of justice and internal affairs within the framework of the Treaty of Maastricht.

---

71 Paragraphs 114 (in Case T−680/13) and 110 (in Case T−786/14) of the judgments under appeal.

---

72 See, inter alia, judgment of 24 June 2019, *Commission* v *Poland (Independence of the Supreme Court)* (C−619/18, EU:C:2019:531, paragraph 49).

---

73 See paragraphs 192 and 198 (Case T−680/13) and 191 and 197 (Case T−786/14) of the judgments under appeal.

---

74 See paragraphs 201 and 203 (Case T−680/13) and 200 and 202 (Case T−786/14) of the judgments under appeal and the paragraphs of *Ledra* cited therein.

---

75 See paragraph 20 of the appeal in Case C−603/18 P.

---

76 See, on this point, Opinion of Advocate General Wathelet in Joined Cases *Mallis and Others* v *Commission and ECB* (C−105/15 P to C−109/15 P, EU:C:2016:294, point 63).

77 See Article 47 TEU and Article 282(3) TFEU.

78 See *Ledra*, paragraph 65 and the settled case-law cited therein.

79 See *Mallis*, paragraph 57.

80 See *Pringle*, paragraph 163 and *Ledra* paragraph 57.

81 See, by analogy, *Ledra*, paragraph 59.

82 See, by analogy, *Pringle*, paragraph 164.

83 See, in that connection, point 69 of the Opinion of Advocate General Wahl in Joined Cases *Ledra Advertising and Others* v *Commission and ECB* (C−8/15 P to C−10/15 P, EU:C:2016:290).

84 See *Ledra*, paragraph 67 and points 69 and 85 of the Opinion of Advocate General Wahl in Joined Cases *Ledra Advertising and Others* v *Commission and ECB* (C−8/15 P to C−10/15 P, EU:C:2016:290). See also point 176 of the View of Advocate General Kokott in *Pringle* (C−370/12, EU:C:2012:675).

85 See, by analogy, *Pringle*, paragraph 164. I should, however, point out that, by contrast with the position under the ESM Treaty, Article 13(3) and (4) of which confer specific tasks, entailing a power (or duty) to block the entire process of adopting potentially infringing conduct (see paragraphs 58 and 59 of *Ledra* and point 82 of the Opinion of Advocate General Wathelet in Joined Cases *Mallis and Others* v *Commission and ECB* (C−105/15 P to C−109/15 P, EU:C:2016:294), the Commission has no analogous powers within the Euro Group.

86 See, by analogy, paragraph 64 of *Ledra*.

87 In accordance with Article 184(2), Article 138(1) and Article 140(1) of the Rules of Procedure of the Court of Justice, the latter two articles apply to appeal proceedings by virtue of Article 184(1) of the rules.