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Judgment of the General Court in Case T-134/21 | Malacalza Investimenti and Malacalza v ECB

Non-contractual liability on the part of the European Union: the General Court of the European Union dismisses the action for damages brought by Malacalza Investimenti and Mr Vittorio Malacalza against the ECB

None of the instances of unlawful conduct alleged against the ECB in the context of its supervision of Banca Carige is capable of giving rise to non-contractual liability on the part of the European Union

Banca Carige is a major credit institution established in Italy, listed on the stock exchange and subject to direct prudential supervision by the European Central Bank (ECB) since 2014. Between 2015 and 2019, the ECB adopted several intervention measures in the context of that supervision.

The action was brought by Malacalza Investimenti, an investment company, and by Mr Vittorio Malacalza, an individual shareholder. Both applicants claim that the General Court of the European Union should order the European Union to pay them, respectively, the sums of EUR 870 525 670 (for the former) and EUR 9 546 022 (for the latter) as compensation for the harm which they consider they have suffered as a result of actions undertaken by the ECB in the context of its supervisory functions over Banca Carige. In their view, some of those actions are contrary to the duties associated with those functions, in particular to the principles of protection of property, proportionality, sound administration, impartiality, equal treatment, transparency, good faith and the protection of legitimate expectations.

In its judgment, the General Court recalls that, in order for the European Union to incur non-contractual liability, individuals and undertakings must establish that three conditions are satisfied cumulatively: the unlawfulness of the conduct attributable to the institution or its servants in the performance of their duties, the fact of damage and the existence of a causal link between the alleged conduct and the damage complained of. The first of those conditions is satisfied where the contested conduct involves a rule of law intended to confer rights on individuals and undertakings and where the breach alleged against the institution is sufficiently serious. On that basis, Malacalza Investimenti and Mr Malacalza must prove, in order to succeed, that the ECB seriously and manifestly disregarded, beyond its discretion, a rule of EU law which confers rights on them. In its judgment, **the General Court concludes that that requirement had not been satisfied**. Either the relevant rules of EU law do not confer any rights on individuals and undertakings, or the infringement in question is not sufficiently serious, or the arguments put forward by Malacalza Investimenti and Mr Malacalza are inadmissible.

The General Court thus dismisses the action without assessing whether the other conditions for the European Union to incur non-contractual liability are satisfied.

NOTE: An action for damages may be brought by any person who considers that the European Union has incurred non-contractual liability. Such liability presupposes that three cumulative conditions are met, namely (1) a sufficiently serious breach of a rule of law intended to confer rights on individuals, (2) the fact of damage and (3) the existence of a causal link between the unlawful conduct of the European Union and the harm suffered.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

Unofficial document for media use, not binding on the General Court.

The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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