Malacalza Investimenti and Malacalza v ECB

1. Keywords and summary

Malacalza Investimenti and Malacalza v ECB

General Court – Case T-134/21 – Judgment of 5 June 2024 – ECLI:EU:T:2024:362

[under appeal: case C-557/24 P]

ECB's non-contractual liability within the SSM

ECB's supervisory tasks – ECB's non-contractual liability – No limitation of the ECB's non-contractual liability from rules on NCA's liability

The ECB's non-contractual liability is based, in accordance with Article 340, para 3, TFEU, on the general rules applicable to EU institutions. Therefore,such a liability is dependent (only) on the following three cumulative conditions: i) the unlawfulness of the conduct attributable to the ECB in the performance of its duties; ii) the occurrence of damage; iii) the existence of a causal link between the alleged conduct and the damage complained of. These rules apply also to the ECB's supervisory activity under the SSM, even when it is required to perform tasks conferred upon national competent authorities and/or to apply national legislation.

The application of the above recalled Union law framework is not precluded by the case-law of the Court of Justice allowing Member States to exclude the non-contractual liability of their supervisory authorities when they act in the public interest (judgment of 12 October 2004, *Paul and Others*, C-222/02, EU:C:2004:606). In that precedent, the Court of Justice established a relationship between, on the one hand, the purpose of the rule allegedly breached and, on the other hand, the possibility – or on the contrary the impossibility – for individuals to seek to establish the non-contractual liability of the supervisory authorities. In that judgment, the Court held that, provided that the functions of the national supervisory authority were fulfilled in the public interest, EU law did not preclude national law, in that case German law, from excluding the liability of the supervisory authority. Similarly, the non-contractual liability of the EU institutions has been relied upon in situations involving a rule creating rights for the applicants and has been excluded in situations not involving the creation of such rights, in particular situations where the rules relied on pursued an objective of public interest or were institutional in nature, in particular by conferring or allocating powers between the institutions.

At the same time, it is irrelevant for the application of the ECB's non-contractual liability regime established by EU law the fact that the majority of the Member States limit the liability of supervisory authorities to cases of

intentional fault or serious misconduct. In particular, it is to be rejected the argument according to which, in order to preserve the ECB's actions by allowing it to act in the public interest without being paralysed by the fear of being called into question even in the event of slight fault or mere unlawfulness, that approach should be followed at EU level as a general principle common to the laws of the Member States referred to Article 340, para 3, TFEU. On the contrary, the principle of equivalence requires that all the rules applicable to actions apply without distinction to actions alleging infringement of EU law and to similar actions alleging infringement of national law. Therefore, since EU law precludes the non-contractual liability of a Member State for breach of EU law from being made subject to conditions which, like those relating to the existence of intentional fault or serious misconduct, go beyond the sufficiently serious infringement of that EU law, the same applies to non-contractual liability of EU institutions.

ECB's SUPERVISORY TASKS – ECB's non-contractual liability – Rules conferring rights on individuals – ECB's discretion

According to the case-law, the unlawfulness of an EU institution's conduct, for the purposes of establishing its non-contractual liability, requires that (i) the contested conduct must involve a rule of law intended to confer rights on individuals and (ii) the breach alleged against the institution must be sufficiently serious.

As regards the first requirement, a rule of law is intended to confer rights on individuals where it creates an advantage for individuals which could be defined as a vested right, is designed for the protection of their interests or entails the grant of rights to individuals, the content of those rights being sufficiently identifiable. The protection offered by the rule invoked must be effective vis-à-vis the person who invokes it: a rule cannot be taken into account if it does not confer any right on the person who invoked it, even if it confers a right on other natural or legal persons.

As regards the second requirement, the test held to be decisive for determining whether a breach is sufficiently serious is whether the institution concerned gravely and manifestly disregarded the limits on its discretion. Thus, a determining factor is the extent of the discretion available to the institution. For that purpose, it is for the Courts of the European Union to take account of the complexity of the situation to be regulated, the difficulties in the application or interpretation of the legislation, the clarity and precision of the rule infringed, and whether the error made was inexcusable or intentional. In those circumstances, mere errors of assessment cannot of themselves be sufficient to define an infringement as manifest and grave.

Where the conduct complained of was adopted by the ECB in the exercise of the prudential supervision tasks conferred on it in order to enable it to ensure the safety and soundness of credit institutions, it must be recalled that in order for

the ECB to be able to perform those tasks, Article 4 of SSMR confers on the ECB the power to carry out transactions such as authorising and withdrawing banking licences, monitoring the application of existing regulatory prudential requirements and internal risk assessment systems, the possibility of imposing additional own funds requirements and the possibility of imposing appropriate governance rules. When carrying out those operations, the ECB, as stated in recital 17 of SSMR, is to assess the risk profile of the banks concerned and determine, for each, the events likely to affect it, taking into account the diversity of institutions, their size and their business models. Such analyses involve making assessments which, on account of their complex nature, justify granting the ECB, according to the case-law, a broad discretion.

Therefore, in order to establish the ECB's non-contractual liability, it must be proved to the requisite legal standard that the ECB seriously and manifestly disregarded, beyond the broad discretion conferred on it in the exercise of its prudential supervision tasks, a rule of EU law conferring rights on individuals.

ECB's SUPERVISORY TASKS – ECB's non-contractual liability – ECB's failure to act

Omissions by the institutions may give rise to their non-contractual liability only where they infringe a legal obligation to act under a provision of EU law.

ECB's SUPERVISORY TASKS – ECB's non-contractual liability – Rules conferring rights on individuals – Articles 53(1)(da), 53a(1)(d), 56, 67(1)(e), and Article 69*octiesdecies*(1)(a) of TUB do not confer rights on individuals – Temporary administration – Amendments to credit institutions' statutes – No ECB obligation to correct misleading statements of stakeholders of a credit institution

Articles 53(1)(da), 53a(1)(d), 56, 67(1)(e), and 71(6) of TUB, applicable by the ECB under Article 9 of SSMR according to which the ECB is to act as the competent authority in place of the national authority where the credit institutions to be supervised fall within its remit under Article 4 of that regulation, do not confer individual rights on individuals and, as such, cannot constitute the basis for the allegation of an unlawful conduct of the ECB in the context of a claim of non-contractual liability of the same institution.

More precisely, Article 53(1)(da) of TUB entrusts the supervisory authority with the task of publishing information on credit institutions, in particular information on capital adequacy, risk limitation, shareholdings that may be held, governance and administrative or accounting organisation. Article 67(1)(e) of TUB provides that, for the exercise of consolidated supervision, the supervisory authority is to issue to the parent company, by means of general measures, information concerning the

banking group as a whole or its components, on capital adequacy, risk limitation in its various configurations, shareholdings, corporate governance, administrative and accounting organisation, internal controls and remuneration and incentive schemes. It follows from their wording that those provisions impose on the ECB a general obligation to publish categories of information in the public interest, namely to ensure the proper functioning and the stability of markets. However, they do not in themselves impose on the ECB, directly or indirectly, any obligation to react in a specific way when statements are made, by certain stakeholders, concerning the soundness of certain institutions, that are construed as misleading by other stakeholders. Consequently, no right of any kind can be inferred from those provisions, for investors, to have the ECB intervene in each Member State whenever comments are made there about the institutions subject to its supervision which might be judged by investors to be wholly or partly unfounded.

Article 53a(1)(d) of the TUB provides that, where the situation so requires, the supervisory authority may adopt specific measures in respect of one or more banks or the banking system as a whole. These measures may include the restriction of the activities or territorial structure of the bank; the prohibition, for the latter, on carrying out certain transactions, even of a corporate nature, and distributing profits or other items of capital, and, in the case of financial instruments which may be included in the capital for supervisory purposes, a prohibition on paying out interest; the setting of limits on the total amount of the variable part of the remuneration in the bank where that is necessary to maintain a sound capital base and, for banks receiving State support in the form of extraordinary interventions, the setting of limits on the total remuneration of company directors. In the light of its wording, it is apparent that, as such, Article 53a(1)(d) of TUB is irrelevant when determining whether an obligation has been imposed on the ECB in order to compel it to correct statements attributed to certain stakeholders and deemed incorrect by others concerning the financial stability of the bank. No such obligation is imposed in that regard on the ECB, directly or indirectly.

Under Article 56 of TUB, in carrying out the tasks entrusted to it, the supervisory authority is to ascertain whether the amendments made to the statutes of credit institutions are compatible with the constraints arising from sound and prudent management before those amendments can be entered in the companies register. Consequently, the objective to be taken into account in the context of the assessment carried out by the supervisory authority on the basis of said Article 56 is the stability of the credit institution and, more broadly, of the financial system as a whole. In those circumstances, it must be held that Article 56 of TUB does not in itself confer rights on individuals.

In so far as Article 69*octiesdecies*(1)(a) of TUBmerely gives the supervisory authority the power to adopt an early intervention measure where, at the end of its assessment, the conditions which it lays down are satisfied, it does not in itself confer on individuals rights the observance of which they may request that the Courts of the European Union ensure. This conclusion cannot be called into question by the argument that the rights and interests which shareholders have are

affected since they are deprived of any possible involvement in the management of the bank following the adoption, by the ECB, of the early intervention measure. In that regard, it must be held that any effect produced by an intervention on the part of the ECB on the interests of the shareholders of a credit institution cannot be taken into account in order to establish the non-contractual liability of that institution if the rule on which that intervention is based is not intended specifically to create or protect a right conferred on them in a sufficiently defined manner.

ECB'S SUPERVISORY TASKS – ECB's non-contractual liability – Rules conferring rights on individuals – Article 71(6) of TUB confers rights on individuals – ECB's discretion – Temporary administration

It follows from Article 71(6) of TUB that in order to be able to perform their duties, temporary administrators appointed by the supervisory authority to manage a credit institution under temporary administration must have a number of characteristics, one of which being that they must be free from conflicts of interest. Such a requirement implies, on the part of the ECB, that when appointing temporary administrators it must verify that there are no conflicts of interest among the persons concerned. The requirement to be free from conflict of interest falls, in general, within the scope of the principle of impartiality, which, according to the case-law, is intended to protect, first, the public interest and, second, the interest of individuals who might be adversely affected as a result of the presence of that conflict of interest. Thus, according to the case-law, the principle of impartiality creates, in relation to individuals who may be affected, a subjective right which, if it is breached in a sufficiently serious manner, is capable of incurring non-contractual liability of the EU for any damage caused by an institution in the performance of the tasks entrusted to it. In those circumstances, it must be held that Article 71(6) of TUB is intended to confer rights on individuals for the purposes of a claim of non-contractual liability of the ECB.

This notwithstanding, the ECB is entitled to take the view, in the exercise of the broad discretion characterizing its power under Article 71(6) of TUB, without exceeding the limits thereof, that it is appropriate to entrust the management of the temporary administration to persons familiar with the credit institution covered by the measure at issue, since such familiarity would enable them to react more quickly in a crisis context in the face of the successive difficulties that arose.

ECB'S SUPERVISORY TASKS – ECB's non-contractual liability – Rules conferring rights on individuals – Articles 4 and 16(1) and (2) of SSMR do not confer rights on individuals

Article 4 of SSMR confers powers on the ECB in prudential matters and provides, more specifically, that the ECB is to be 'exclusively competent' to

exercise a number of those powers, thus allocating between that institution and the national authorities the tasks that may be envisaged in that type of area. Accordingly, that provision, in so far as it assigns powers to the institutions and allocates those powers amongst those institutions, seeks to implement the general objective of organising a regulatory system relating to an area of activity in the public interest without granting, in itself, rights to individuals.

Article 16(1) and (2) of SSMR empowers the ECB, for the purposes of carrying out the tasks conferred on it, to require credit institutions to take various measures at an early stage where those institutions do not comply with the prudential requirements or are at risk of failing to comply with them, or where other weaknesses prevent those institutions from ensuring sound management or satisfactory risk coverage. These measures may consist, inter alia, in requiring the strengthening of own funds, restricting or limiting the business of the credit institution, requesting the divestment of activities posing excessive risks to the soundness of the institution or removing members of the management body of institutions who do not comply with the obligations imposed on them. Again, such a provision, in so far as it confines itself to granting authorisation, does not, in itself, contain rules intended to confer rights on individuals, but structures the operation of the system of banking supervision in the public interest and is not, on that basis, capable of giving rise to non-contractual liability on the part of the European Union.

Therefore, it must be held that since they are not intended to confer rights on individuals, Article 4 and Article 16(1) and (2) of SSMR cannot form the basis of a claim of unlawful conduct alleged against the ECB in the context of the prudential supervision which it carried out on a bank such as to give rise to liability on the part of the EU in respect of that conduct.

ECB's SUPERVISORY TASKS – ECB's non-contractual liability – Rules conferring rights on individuals – Principle of equal treatment – ECB's discretion

The principle of equal treatment, enshrined in Articles 20 and 21 of the Charter, requires that comparable situations must not be treated differently or different situations must not be treated in the same way unless such treatment is objectively justified. On that basis, the principle of equal treatment is capable, according to the case-law, of conferring rights on individuals. However, it is for the applicant to precisely identify the comparable situations which it considers to have been treated differently or the different situations which it considers to have been treated identically.

In any case, it should be noted that, in the exercise of its supervisory tasks, the ECB is to carry out technical assessments taking into account a wide range of variables, including levels of capital and liquidity, business models, governance, risks, systemic impact and macroeconomic scenarios. Thus, the prudential

supervision of credit institutions is not confined to a quantitative and mechanical comparison of isolated and extrapolated figures but requires an overall prudential assessment of the credit institution's situation which goes hand in hand with a broad discretion.

ECB's SUPERVISORY TASKS – ECB's non-contractual liability – Rules conferring rights on individuals – Principle of proportionality – ECB's discretion

As a general principle of law, the principle of proportionality is enshrined in Article 5(4) TEU and is capable, according to the case-law, of conferring rights on individuals. Thus, the EU may incur non-contractual liability where individuals establish that the ECB caused them harm by adopting conduct contrary to the principle of proportionality, if they demonstrate that that principle was seriously and manifestly breached by that institution.

According to the case-law, the principle of proportionality requires that acts of the EU institutions be such as to enable the legitimate objectives pursued by the legislation at issue to be attained without exceeding the limits of what is necessary in order to achieve those objectives; when there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued.

Nonetheless, when hearing a request for review of compliance with the principle of proportionality, the court having jurisdiction must respect the discretion conferred on the EU institutions. The ECB enjoys a broad discretion in the exercise of its prudential supervision tasks.

ECB's SUPERVISORY TASKS – ECB's non-contractual liability – Rules conferring rights on individuals – Principle of the protection of legitimate expectations – No ECB obligation to correct misleading statements of stakeholders of a credit institution

The principle of the protection of legitimate expectations is a general principle of EU law intended to confer rights on individuals. The possibility of relying on the principle of the protection of legitimate expectations is subject to three cumulative conditions: (i) precise, unconditional and consistent assurances originating from authorised and reliable sources must have been given to the person concerned by the EU authorities; (ii) those assurances must be such as to give rise to a legitimate expectation in the mind of the person to whom they are addressed; (iii) assurances given must comply with the applicable rules.

Where a prudent and circumspect economic operator could have foreseen the adoption of a measure likely to affect his, her or its interests, he, she or it cannot plead a violation of the principle of the protection of legitimate expectation if the measure is adopted. Moreover, economic operators cannot justifiably claim

a legitimate expectation that an existing situation which may be altered by the authorities in the exercise of their discretionary power will be maintained.

The ECB's failure to intervene to correct allegedly misleading statements by shareholders of a credit institution on the financial situation of that credit institution cannot be regarded as the provision by the ECB to other shareholders of the same credit institution of assurances as to the conduct which it intended to adopt vis-à-vis the bank and, second and in any event, as regards its form. Therefore, such a failure clearly does not satisfy the requirement that assurances must be precise, unconditional and consistent in order to give rise to legitimate expectations.

ECB's SUPERVISORY TASKS – ECB's non-contractual liability – Rules conferring rights on individuals – Right to property – No ECB obligation to correct misleading statements of stakeholders of a credit institution

Pursuant to Article 17(1) of the Charter, everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest. The right to property constitutes a rule of law conferring rights on individuals.

In order for a claim for damages based on the ECB's non-contractual liability to be admissible when a breach of the right to property is alleged, the applicant must establish that the ECB's measures concerned caused the loss of property and that that result has not been caused, directly or indirectly, in whole or in part, by other facts or other circumstances.

2. The General Court's landmark ruling in Banca Carige case on ECB's liability within the SSM

by Luca Alessandria

1. By its ruling of the 5th of June 2024,[1] the General Court dismissed the actions brought against the European Central Bank (ECB) under Article 340 TFEU by a shareholder and a former director of Banca Carige, who sought compensation for damages allegedly suffered as a result of the ECB's unlawful conduct in the exercise of its supervisory functions.

In their legal action, the applicants asserted that, in conducting the rescue operation of Banca Carige, the ECB had incurred non-contractual liability for

[1] GC, 5 June 2024, T-134/21, *Malacalza Investimenti and Malacalza v. ECB*.

committing several sufficiently serious breaches of EU and Italian law provisions relevant to the SSM framework as rules for banking supervision.[2] Violations alleged by the applicant included *inter alia* the failure to rectify misleading statements made about the soundness of the bank by its directors, the appointment of temporary administrators who had a conflict of interest, the approval of an increase in capital contrary to the pre-emption rights provided for in the bank's statutes and (more broadly) the adoption of intervention measures running contrary to the principle of equal treatment, proportionality and protection of legitimate expectations.

2. The Court, on the contrary, held that the preconditions for the ECB's liability under Article 340(3) TFEU were not met.[3] The starting point of the Court's legal reasoning is the definition of the liability regime of the ECB's supervisory activity under the SSM. It seems relevant to analyse the reasoning followed by the General Court, because it differs from the one adopted with regard to the liability of national banking supervisory authorities in previous rulings.[4]

In fact, even though under Articles 4 and 9 of Regulation No 1024/2013 the ECB may be required to carry out the tasks conferred on the national authorities in the context of the prudential supervision of credit institutions, the General Court distinguished the case from the precedent *Peter Paul and Others* (C-222/02), in which the Court of Justice held that MS are allowed to exclude the non-contractual liability of national prudential supervisory authorities where they act within the framework of rules adopted in the public interest.[5] Indeed, the EU judge held that such *ratio decidendi* cannot be applied directly to ECB's liability regime since it concerns only national authorities.

In contrast, the GC clarified that the attribution of non-contractual liability to the ECB should be based on the general rules applicable to EU institutions, as established by the case-law of the Court of Justice.[6] These rules presuppose the simultaneous existence of three conditions: 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.

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2 Indeed, it should be borne in mind that Article 4, para 3 SSMR states: "For the purpose of carrying out the tasks conferred on it by this Regulation, and with the objective of ensuring high standards of supervision, the ECB shall apply all relevant Union law, and where this Union law is composed of Directives, the national legislation transposing those Directives".

3 Article 340, para 3 TFEU: "the European Central Bank shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its servants in the performance of their duties".

4 See, ECJ, 12 October 2004, C-222/02, *Peter Paul*; ECJ, 4 October 2018, C-571/16, *Nikolay Kantarev v. Balgarska Narodna Bank*; ECJ, 25 March 2021, C-501/18, *BT v. Balgarska Narodna Bank*.

5 See previous footnote.

6 See ECJ, 20 September 2016, C-8/15 P to C-10/15 P, *Ledra Advertising and Others v. Commission and ECB*, para 64; GC, 7 October 2015, T-79/13, *Accorinti and Others v. ECB*, para 65 and the case-law cited.

The Court thus rejected the ECB's request to refer to the laws of the Member States to define the rules on non-contractual liability applicable to the European Union in the field of prudential supervision. The ECB had argued that the majority of the Member States limit the liability of supervisory authorities to cases of intentional fault or serious misconduct and that such approach should be followed at EU level (being a general principle common to the laws of the Member States pursuant to Article 340, para 3 TFEU) in order to preserve the Authority's actions by allowing it to act in the public interest without being paralysed by the fear of being called into question even in the event of slight fault or mere unlawfulness. On the contrary, the General Court invoked a reversed principle of equivalence to affirm that, since the liability of Member States for breach of EU law cannot depend upon a condition based on any concept of 'fault going beyond that of a sufficiently serious breach of [EU] law',[7] neither can the EU institutions' liability be made subject to such conditions.

As a consequence, according to the GC's judgment, the general rules (and requirements) on non-contractual liability of EU institutions under Article 340 TFEU shall apply to the ECB's supervisory activity under the SSM, even when it is required to carry out task conferred to NCAs and/or apply substantive national legislation.

3. In the case at hand, though, the claimants failed to demonstrate an unlawful conduct by the ECB, that is, according to the case-law, a conduct infringing a rule of law intended to confer rights on individuals and constituting a "sufficiently serious breach".

In particular, the General Court excluded that the rules allegedly infringed by the ECB were of such a nature as to confer rights on the credit institution's investors. On the contrary, provisions of the Consolidate Law on Banking (TUB) such as Article 53, para 1, lett. d *bis*, on information to be published by the ECB on credit institutions, Article 53 *bis*, para 1, lett. d) on the adoption of specific measures, Article 56, on the review of statutes' amendments, Articles 69 *octiesdecies* and 69 *noviesdecies*, on early intervention measures, as well as Articles 4 and 16 of Reg. (EU) No 1024/2013, merely confer powers on the supervisory authority in pursuit of a public interest, without being intended to confer rights on individuals. It follows that such provisions which, in the view of the EU judge, only "structure the operation of the system of banking supervision in the public interest", cannot give rise to non-contractual liability on the part of the EBC.

Moreover, even where the plaintiff had invoked rules capable of conferring rights on private individuals (such as the principle of equal treatment, the principle of impartiality and the principle of legitimate expectations), the Court held that a sufficiently serious breach of those rules by the ECB had not been demonstrated. In this regard, the General Court recalled that, in assessing the sufficiently serious

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[7] ECJ, 5 March 1996, C-46/93 and C-48/93, *Brasserie du pêcheur and Factortame*.

nature of the breach, the extent of the discretion available to the institution is of primary importance. Indeed, it stems from the case-law of the ECJ that the test held to be decisive for determining whether a breach is sufficiently serious is whether the institution concerned gravely and manifestly disregarded the limits on its discretion. According to the GC's judgement, this was not the case.

Instead, the General Court observed that the conduct complained of was adopted by the ECB in the exercise of the prudential supervision tasks conferred on it in order to enable it to ensure the safety and soundness of credit institutions. When carrying out those tasks, the ECB is to assess the risk profile of the banks, an analysis that, on account of its complex nature, justify granting the ECB, according to the case-law, a broad discretion.[8] Such broad discretion granted to the ECB within the SSM is a consequence of the fact that the supervision implies technical assessments taking into account a wide range of variables, including levels of capital and liquidity, business models, governance, risks, systemic impact and macroeconomic scenarios. Thus, as elucidated by the EU judge, the prudential supervision of credit institutions is not confined to a quantitative and mechanical comparison of isolated and extrapolated figures, but requires an overall prudential assessment of the credit institution's situation which goes hand in hand with a broad discretion.

In this context, the claims made by the applicants that, by adopting the early intervention measures toward Banca Carige, the ECB gravely and manifestly disregarded the principle of equal treatment and of proportionality, beyond the broad discretion conferred upon it, were found unsubstantiated by the GC. The EU Court held that the applicants failed to establish the existence of a genuine difference in treatment between Banca Carige and other Italian credit institutions and to demonstrate that the ECB seriously and manifestly breached the principle of proportionality.

4. The judgment under discussion is of particxular importance, as it is the first to address the liability of the ECB as a supervisory authority within the SSM. It appears pertinent to note that, on the merits, all allegations of unlawful conduct on the part of the credit supervisory authority with regard to Banca Carige have been dismissed. Moreover, the ruling sets a very significant precedent, as it provides important clarifications on the ECB's liability regime under Article 340(3) TFEU. In fact, the Court has for the first time brought the ECB's supervisory activity, which implies the exercise of powers attributed to national authorities and even the application of national law, within the scope of the rules on the non-contractual liability of EU institutions. In doing so, the Court also elucidated the prerequisites for the ECB's non-contractual liability, excluding that the provisions intended to attribute powers to the supervision authorities can be relied on by individuals in an action for damages. However, the GC's assertion

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[8] See, to that effect, ECJ, 8 May 2019, C-450/17 P, *Landeskreditbank Baden-Württemberg v. ECB*, para 86; ECJ, 4 May 2023, C-389/21 P, *ECB v. Crédit Lyonnais*, para 55; GC, 13 December 2017, T-712/15, *Crédit mutuel Arkéa v. ECB*, para 181.

that the (numerous) national regulations limiting supervisory authority liability to cases of intentional fault or gross negligence do not constitute a general principle common to the Member States lacks sufficient substantiation**.**

Therefore, it can be expected that the issues addressed by the General Court in this case will continue to be the subject of future developments.

3. Reference to "notes de doctrine"

Barbora Budinska, *No compensation for Banca Carige shareholders (Malacalza Investimenti and Malacalza v ECB, T-134/21)*, EU Law Live, 9 July 2024.

Daniele Amoroso, Massimo Francesco Orzan, *Responsabilità extracontrattuale dell'Unione e vigilanza prudenziale della BCE*, Giurisprudenza Italiana, No 8-9, 1 August 2024.