THE HIGH COURT

COMMERCIAL

[2016 No. 4531P]

BETWEEN

JERRY BEADES

PLAINTIFF

AND

EUROPEAN BANKING AUTHORITY, EUROPEAN SECURITIES AND MARKETS AUTHORITY, EUROPEAN SYSTEMIC RISK BOARD AND EUROPEAN CENTRAL BANK, CENTRAL BANK OF AUSTRIA, CENTRAL BANK OF BELGIUM, CENTRAL BANK OF CYPRUS, CENTRAL BANK OF ESTONIA, CENTRAL BANK OF FINLAND, CENTRAL BANK OF FRANCE, CENTRAL BANK OF GERMANY, CENTRAL BANK OF GREECE, CENTRAL BANK OF ITALY, CENTRAL BANK OF LATVIA, CENTRAL BANK OF LITHUANIA, CENTRAL BANK OF LUXEMBOURG, CENTRAL BANK OF MALTA, CENTRAL BANK OF THE NETHERLANDS, CENTRAL BANK OF PORTUGAL, CENTRAL BANK OF SLOVAKIA, CENTRAL BANK OF SLOVENIA, CENTRAL BANK OF SPAIN, AND CENTRAL BANK OF IRELAND

DEFENDANTS

JUDGMENT of Ms. Justice Costello delivered on the 21st day of December 2016

Introduction

1. Six motions were brought for hearing before this Court; the application of the first to fourth defendants in these proceedings (the "Institutional Proceedings") seeking an order setting aside the service of the proceedings on them ("the set aside applications"); the application of the twenty-third defendant in the Institutional Proceedings seeking, in essence, an order striking out the proceedings against it ("the Central Bank of Ireland's strike out application"); and the application of the twenty-second defendant in related proceedings entitled *Beades v Elderfield & Ors* [2016] 4530P (the "Individual Proceedings") seeking, in essence, an order striking out the proceedings against him ("Governor Lane's strike out application") (together, being "the strike out applications"). This judgment is concerned with the set aside applications of the first four named defendants and the Central Bank of Ireland's strike out application.

2. The first motion is brought by the first four named defendants respectively, three European bodies and one European institution, for ease of reference "the European Bodies" seeking an order pursuant to O.11A, r.8 and/or O.12, r.26 of the Rules of the Superior Courts 1986, and/or the inherent jurisdiction of this court and/or pursuant to Articles 263 and 265 of the Treaty on the Functioning of the European Union ("TFEU") and/or Article 61(2) and (3) of Regulation (EU) no. 1093/2010 setting aside the service of the plenary summons on each of the first four named defendants.

3. The second motion is brought by the twenty-third named defendant, the Central Bank of Ireland, for an order dismissing and/or striking out the plaintiff's proceedings and/or reliefs sought against the Central Bank of Ireland pursuant to O.19 r.27 and/or r.28 and/or pursuant to the inherent jurisdiction of this court. In the alternative, an order is sought striking out the proceedings on the basis that the plaintiff has no *locus standi* to maintain these proceedings and further on the grounds that the proceedings are in essence, public law proceedings involving administrative proceedings involving administrative decisions which, having regard to the nature of the claim, can only be brought by way of judicial review proceedings in respect of which prior leave must be obtained.

Background

4. The plaintiff commenced these proceedings by way of a plenary summons on 20th May, 2016. He purported to serve the plenary summons on the 1st – 22nd named defendants pursuant to the provisions of O.11A of the Rules of the Superior Courts 1986. Order 11A permits service out of the jurisdiction in relation to proceedings governed by Article 1 of Regulation E.U./1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matter, O.J. L 251/1 20.12.2012, or by Article 1 of the Lugano Convention (Civil and Commercial Matters). Order 11A r.2 provides that service of an originating summons or notice of an originating summons out of the jurisdiction is permissible without leave of the court if firstly, the claim made is one which by virtue of Regulation E.U./1215/2012 or the Lugano Convention ("the Brussels Regulation") and the Jurisdiction of Courts and Enforcement of Judgments Act 1998, the court has power to determine and hear, and secondly, no proceedings between the parties concerning the same cause of action are pending in another Member State/ Contracting State of the Lugano Convention. The plenary summons was endorsed to state that the proceedings were brought under the Brussels Regulation, but no particular provision of the Regulation under which the High Court should assume jurisdiction was identified. The plenary summons was accompanied by a letter dated 24th May, 2016, addressed to the Minister for Finance ("the letter to the Minister").

5. The Institutional proceedings were served on the Central Bank of Ireland on 25th May, 2016, and on the European Bodies respectively, on 30th May, 2016. The plaintiff also sent letters containing a copy of these proceedings to a number of other National Central Banks namely, the Central Bank of Austria, Belgium, Cyprus, Estonia, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Malta, Netherlands, Portugal, Slovenia, Slovakia and Spain ("The National Central Banks").

6. The plaintiff issued a second, related set of proceedings mirroring the Institutional Proceedings to the individuals who occupy the positions of Governor, President, Chair or equivalent in certain of the defendant institutions in the Institutional Proceedings, including the former Deputy Governor of the Central Bank of Ireland. These are referred to as the "Individual Proceedings".

7. By orders of 4th July, 2016, both sets of proceedings were entered into the Commercial List. The European Bodies were given leave to issue set aside applications and the Central Bank of Ireland to file a strike out application.

8. The remaining defendants in both sets of proceedings, the National Central Banks and the defendants in the Individual Proceedings, have not entered appearances before the court on the basis that they consider that to do so would infringe their sovereign immunity and/or immunities arising under Articles 10 and/or 11 of Protocol (No.7) on the privileges and immunities of the European Union O.J. C 326/1. 26.10.2012.. The defendants (except Mr Matthew Elderfield and Jacques de Larosiéré) have set out their positions in correspondence to the Central Bank of Ireland and to Governor Lane. The plaintiff has not served Mr. Elderfield or Mr. de Larosiéré with a copy of the plenary summons in the Individual Proceedings.

The Plaintiff's Claim in these proceedings

9. In the general endorsement of claim of the plenary summons the plaintiff seeks the following reliefs:-

> *"1. A Mandatory Injunction compelling the Defendants and each of them individually and collectively to adhere to their mandates as provided by their constituting instruments.*
>
> *2. A Declaratory Order ordering the Defendants and each of them individually and collectively to adhere to their mandates as provided by their constituting instruments.*
>
> *3. A Mandatory Injunction compelling the Defendants and each of them individually and or collectively to investigate all Banks and other financial Institutions their servants and agents within their remit involved in the Oil Industry directly, indirectly or otherwise their subsidiaries and their servants and agents.*
>
> *4. A Declaratory Order ordering the Defendants and each of them individually and or collectively to investigate all Banks and other financial Institutions their servants and agents within their remit involved in the Oil Industry directly, indirectly or otherwise their subsidiaries and their servants and agents.*
>
> *5. A Mandatory Injunction compelling the Defendants and each of them individually and or collectively to sanction all Banks and other financial institutions within their remit involved in manipulation of the global oil prices.*
>
> *6. A Declaratory Order ordering the Defendants and each of them individually and or collectively to sanction all Banks and other financial institutions within their remit involved in manipulation of the global oil prices.*
>
> *7. A Mandatory Injunction compelling the Defendants and each of them individually and or collectively to direct all Banks and other financial institution within their remit to cease their activities divest themselves of all assets and other involvement in the Oil Industry including their respective subsidiaries servants and agents.*
>
> *8. A Declaratory Order ordering the Defendants and each of them individually and or collectively to direct all Banks and other financial institutions) within their remit to cease their activities divest themselves of all assets and other involvement in the Oil Industry including their respective subsidiaries servants and agents.*
>
> *9. A Mandatory Injunction compelling the Defendants and each of them individually and collectively to regulate the European Banking System and to implement and comply with the Basel (sic) Rules.*
>
> *10. A Declaratory Order ordering the Defendants and each of them individually and collectively to regulate the European Banking System and to implement and comply with the Basel (sic) Rules."*

10. The plaintiff therefore seeks a number of mandatory injunctions and declaratory orders *inter alia* compelling the institutional defendants individually and collectively, to adhere to their mandates as provided by their constitution instruments; to investigate all banks and other financial institutions, their servants and agents within their remit involved in the oil industry directly, indirectly or otherwise through their servants and agents; to sanction all banks and other financial institutions within their remit involved in the manipulation of global oil prices; to direct all banks and other financial institutions within their remit to cease their activities, divest themselves of all assets and other involvement in the oil industry, including their respective subsidiaries, servants and agents; to regulate the European Banking System and to implement and comply with the Basel Rules.

The Institutions

11. In order to understand the nature of the plaintiff's claims, an explanation of the institutional framework of EU-level financial regulations as well as the functioning and members of the European System of Central Banks ("the ESCB") and the Eurosystem, along with the roles within it of the ECB and the National Central Banks is necessary, as provided by Ms. Eadaoin Rock on behalf of the Central Bank of Ireland, Mr Jonathan Overett Somnier on behalf of the EBA, Mr Lenihan on behalf of the ECB and ESRB and Mr Cian Carroll on behalf of ESMA sworn in support of the set aside applications. Their evidence established the following.

The European System of Central Banks, the Eurosystem and the European Central Bank

12. The ESCB and the Eurosystem are established under the Treaty on the Functioning of the European Union ("TFEU"), the Treaty on European Union ("TEU") and the Statute of the European System of Central Banks ("The ESCB") and of the European Central Bank ("ECB"). The ESCB comprises the ECB and the National Central Banks of all 28 EU Member States. The Eurosystem comprises the ECB and the National Central Banks of the Member States whose currency is the euro, (Article 282 TFEU) that is the National Central Banks that are the defendants in these proceedings.

13. The Eurosystem conducts the monetary policy of the Union, along with the other tasks conferred upon it by the Treaties, which include that the Eurosystem contributes to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system (Articles 127(5) and 139(2)(c) TFEU, Articles 3.3 and 42.1 of Protocol (No.4) on the Statute of the European System of Central Banks and of the European Central Bank. O.J. C 326.230 . 26.10.2012).

The European Central Bank

14. The ECB is a Union institution established under Article 13 of the TEU, the TFEU and the Statute of the ESCB and of the ECB, with legal personality (Article 282(3) TFEU) responsible for ensuring that the tasks conferred upon the Eurosystem are implemented either by its own activities or through the National Central Banks (Article 9.2 of the Statute of the ESCB and of the ECB).

15. The Eurosystem is governed by the decision-making bodies of the ECB, namely the Governing Council and the Executive Board (Article 129(1) TFEU). The Executive Board of the ECB comprises the President (currently Mr. Mario Draghi), the Vice-President, and four other members, while the Governing Council comprises the members of the Executive Board of the ECB and the Governors of the National Central Banks of the Member States whose currency is the euro (Article 283 TFEU).

16. In addition to its Eurosystem tasks, the ECB also has specific tasks conferred upon it by the Council of the European Union concerning policies relating to the prudential supervision of credit institutions in Council Regulation E.U./1024/2013 of 15 October 2013, conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, O.J. L.287/63 29.10.2013, adopted in accordance with Article 127(6) TFEU. The ECB carries out its tasks under Council Regulation E.U./1024/2013 within a "Single Supervisory Mechanism" ("SSM") composed of the ECB and national competent authorities

of Member States participating in the SSM (currently the euro area Member States).

17. Not all of the National Central Banks are national competent authorities for the purposes of the SSM, depending on the respective institutional arrangements and national laws of the Members States participating in the SSM. In the case of certain EU Member states, the national competent authority is a public authority separate from the National Central Bank. The ECB is responsible for the effective and consistent functioning of the SSM and the direct supervision of significant credit institutions. The specific tasks conferred on the ECB under Article 4 of Council Regulation E.U./1024/2013 include, inter alia, to authorise credit institutions and to withdraw authorisations of credit institutions established in participating Member States, and to ensure compliance with the Union law which imposes prudential requirements on credit institutions in the areas of own funds requirements, securitisation, large exposure limits, liquidity, leverage, and reporting and public disclosure of information on those matters.

18. The ECB directly supervises the 129 significant banks of the participating EU Member states which hold almost 82% of the banking assets in the euro area for prudential matters with the assistance of the national competent authorities. In Ireland the directly supervised banks are Allied Irish Banks plc, AIB Mortgage Bank, EBS Limited, EBS Mortgage Finance, Permanent TSB Group Holdings plc, Permanent TSB plc, the Governor and Company of the Bank of Ireland, Bank of Ireland Mortgage Bank and Ulster Bank Ireland Limited. Ongoing supervision of the significant banks is carried out by the Joint-Supervisory Teams ("JSTs"). Each significant bank has a dedicated JST comprising staff of the ECB and the national competent authorities. In addition, banks which are not considered significant, known as *"less significant institutions*", are continued to be directly supervised by their national competent authorities in close cooperation with the ECB. The ECB can decide at any time to directly supervise any one of these banks where this is necessary to ensure consistent application of high supervisory standards. The Central Bank of Ireland is the national macro-prudential authority in Ireland but the ECB also has certain macro-prudential powers. It will accordingly be apparent that the ECB is involved directly or indirectly with the supervision of all banks within the euro area.

The European Banking Authority

19. The EBA is an independent authority established by the European Union under Regulation E.U./1093/2010. The EBA's overall objective is to protect the public interest by contributing to the short, medium and long-term stability and effectiveness of the financial system, for the Union economy, its citizens and businesses. To secure this objective, the EBA contributes to improving the functioning of the internal market, including, in particular, a sound, effective and consistent level of regulation and supervision across the European banking sector; ensuring the integrity, transparency, efficiency and orderly functioning of financial markets; strengthening international supervisory coordination; preventing regulatory arbitrage and promoting equal conditions of competition; ensuring the taking of credit and other risks are appropriately regulated and supervised; and enhancing customer protection.

20. The main task of the EBA is to contribute to the creation of the European Single Rulebook in banking, the objective of which is to provide a single set of harmonised prudential rules for financial institutions throughout the EU. The EBA also plays an important role in promoting convergence of supervisory practices and is mandated to assess risks and vulnerabilities in the EU banking sector.

The European Securities and Markets Authority

21. The ESMA is an independent authority established by the European Union under Council Regulation E.U./1095/2010 of 24 November 2010, establishing a European Supervisory Authority (ESMA). The ESMA'S overall objective is to protect the public interest by contributing to the short, medium and long-term stability and effectiveness of the financial system, for the Union economy, its citizens and businesses. To secure this objective, the ESMA contributes to improving the functioning of the internal market, including in particular a sound, effective and consistent level of regulation and supervision across the European financial markets sector; ensuring the integrity, transparency, efficiency and orderly functioning of financial markets; strengthening international supervisory coordination; preventing regulatory arbitrage and promoting equal conditions of competition; ensuring the taking of investment and other risks are appropriately regulated and supervised; and enhancing customer protection.

22. The main tasks of the ESMA are the completion of a single rulebook for EU financial markets; assessing risks to investors, markets and financial stability; promoting convergence amongst EU member financial markets supervisors; and direct supervision of specific financial entities.

The European Systemic Risk Board

23. The ESRB is a Union body established under Council Regulation E.U./1092/2010 of 24 November 2010, on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board O.J. L 331/1 15.12.2010, which does not have legal personality. It forms part of the legal personality of the European Union, and, under Article 335, the Union enjoys in each of the Member States the most extensive legal capacity accorded to legal persons under their respective national laws. It was established following the financial crisis and is responsible for the macro-prudential oversight of the financial system within the Union in order to contribute to the prevention or mitigation of systemic risks to financial stability in the Union.

24. The task of ensuring the Secretariat of the ESRB is conferred on the ECB which provides the ESRB with analytical, statistical, logistical and administrative support in accordance with Council Regulation E.U./1096/2010 of 17 November 2010, conferring specific tasks upon the European Central Bank concerning the functioning of the European Systemic Risk Board, O.J. L.331/162 15.12.2010. The ESRB is currently chaired by the President of the ECB in accordance with Article 5 of the Regulation E.U./1092/2010.

The letter to the Minister

25. In his letter to the Minister of 24th May, 2016, the plaintiff set out his grounds and reasons for these proceedings and the Individual Proceedings. It is a lengthy letter and I have selected the following extracts as being of particular relevance to these applications:-

> *"This e-mail is to bring your immediate attention towards a systemic failure that exists in terms of European-wide regulation and wholesale market manipulation that will profoundly impact upon Irish and European citizens."*

Having referred to the Institutional Proceedings, the letter continues:-

> *There is no formal mechanism for an EU citizen to engage with the European financial regulators in a way that is substantive. Therefore proceedings were initiated with the High Court in Dublin in May 20th, 2016…*
>
> *I am not a financial or commodities trader and you might ask on what basis, I as a business man am pursuing this as a citizen in the courts.*

My action is aimed at preventing the financial regulators allowing, permitting or condoning a repeat of the disaster which befell the economies of the world 10 years ago from the recurrent over-exposure and reliance on oil prices and assets."

26. He outlined his previous history in relation to bank regulatory matters between 2006 and 2009, and his concerns about a possible future global financial collapse arising from the banks' exposure to the oil industry and to what he describes as non-performing loans advanced when the price of oil was $149 a barrel. He then continues:-

"This requires a European-wide solution and on this basis I have initiated proceedings on a pan-European basis. One of the stated objectives of the European Central Bank (ECB) is to ensure the safety and soundness of the European banking system. The failure to act in relation to the impending debt crisis arising from the oil industry collapse is directly in contradiction to this stated aim to ensure the safety and soundness of the European banking system.

...These legal proceedings are an attempt to highlight the recurrence of this 'group think'.

…The European Central Bank has a responsibility to regulate the banking sector in the Eurozone, it is responsible for protecting the Euro currency for all of us as European citizens. Separately, the European Banking Authority (EBA) is an independent EU authority working to ensure that there is appropriate supervision and regulation across the European banking sector. As European citizens we need to know that they will stop the contagion from the ongoing implosion of lending into the oil and exploration sector.

It is clear that what is required are European-wide rules to ensure transparency while protecting the financial system from sudden and profound shocks. In its simplest form, the ECB can introduce (or amend existing) regulations so as to ensure that banks operating in the Eurozone when lending to the global energy sector must do so on the basis of the lowest value of oil over the previous five or ten years.

The legal proceedings initiated in the High Court in Dublin are designed to ensure that the ECB and the governors in the various other central banks actually regulate this risky behaviour."

27. It is in this context that the European Bodies and the Central Bank of Ireland brought their motions respectively to set aside the service of the plenary summons and to strike out the proceedings.

Submissions of the European Bodies on their motions to set aside the Proceedings

28. Counsel on behalf of the European Bodies argues that, the Irish courts, as any other courts of any Member State of the EU, have no jurisdiction to rule on matters which fall within the exclusive jurisdiction of the CJEU as defined in Articles 263 ad 265 TFEU on three grounds.

29. First, Article 263 provides that the EU Courts have exclusive jurisdiction to annul a decision of an EU institution, including the ECB, and of EU bodies and agencies including the EBA and ESMA. Article 263 TFEU provides as follows:

"The Court of Justice of the European Union shall review the legality of legislative acts, of acts of the Council, of the Commission and of the European Central Bank, other than recommendations and opinions, and of acts of the European Parliament and of the European Council intended to produce legal effects vis-á-vis third parties. It shall also review the legality of acts of bodies, offices or agencies of the Union intended to produce legal effects vis-á-vis third parties."

30. Article 264 TFEU further clarifies the EU Courts' jurisdiction as follows:

"If the action is well founded, the Court of Justice of the European Union shall declare the act concerned to be void."

31. Article 265 TFEU addresses the failures of institutions, bodies, offices and agencies of the EU to act and provides:

"Should the European Parliament, the European Council, the Council, the Commission or the European Central Bank, in infringement of the Treaties, fail to act, the Member States and the other institutions of the Union may bring an action before the Court of Justice of the European Union to have the infringement established. This Article shall apply, under the same conditions, to bodies, offices and agencies of the Union which fail to act.

The action shall be admissible only if the institution, body, office or agency concerned has first been called upon to act. If, within two months of being so called upon, the institution, body, office or agency concerned has not defined its position, the action may be brought within a further period of two months.

Any natural or legal person may, under the conditions laid in the preceding paragraphs, complain to the Court that an institution, body, office or agency of the Union has failed to address to that person any act other than a recommendation or an opinion."

32. Secondly, Counsel for the European Bodies submits that under the following applicable governing regulations for each of the EBA, ESMA, ESRB and, in the case of the ECB, also under the TFEU and Statute of the ESCB and of the ECB, the exclusive jurisdiction of the CJEU is expressly provided. In that regard, the defendants submit:

(i) The EBA is an EU body established under Council Regulation E.U./1093/2010, Articles 61(2) and (3) of which provide:

" (2) Member States and the Union institutions, as well as any natural or legal person, may institute proceedings before the Court of Justice of the European Union against decisions of the Authority, in accordance with Article 263 TFEU.

(3) In the event that the Authority has an obligation to act and fails to take a decision, proceedings for failure to act may be brought before the Court of Justice of the European Union in accordance with Article 265 TFEU."

(ii) The ESMA is an EU body established under Council Regulation E.U./1095/2010. Articles 61(2) and (3) of which are identical to the above set out provisions governing the exclusive jurisdiction of the acts or failures to act by the EBA.

(iii) The ESRB is a Union body established under Council Regulation E.U./1092/2010. In so far as it is capable of taking or

failing to take any decisions which could be reviewed by a court, under Article 263 and/or 265 TFEU, only CJEU could have jurisdiction to undertake such a review.

(iv) The ECB is a Union institution established under Article 13 TEU and under the Statute of the ESCB and of the ECB. The relevant provisions of Article 35 of the ESCB and of the ECB provide as follows;

> *"35.1 The acts or omissions of the ECB shall be open to review or interpretation by the Court of Justice of the European Union in the cases and under the conditions laid down in the Treaty on the Functioning of the European Union…*
>
> *35.3 The ECB shall be subject to the liability regime provided for in Article 340 of the Treaty on the Functioning of the European Union. The national central banks shall be liable according to their respective national laws…*
>
> *35.6 The Court of Justice of the European Union shall have jurisdiction in disputes concerning the fulfilment by a national central bank of obligations under the Treaties and this Statute. If the ECB considers that a national central bank has failed to fulfil an obligation under the Treaties and this Statute, it shall deliver a reasoned opinion on the matter after giving the national central bank concerned the opportunity to submit its observations. If the national central bank concerned does not comply with the opinion within the period laid down by the ECB, the latter may bring the matter before the Court of Justice of the European Union."*

33. Thirdly, they submit that the principle of exclusive jurisdiction is reflected in the established case law of the EU Courts, as applied by the Irish Courts, and represents the practical expression of the doctrine of supremacy of EU law. The CJEU in *Foto-Frost v Hauptzollamt Lubeck-Ost*, Case No. C-314/65 expressed the principle as follows:

> *"14. Those courts [national courts] may consider the validity of a Community act and, if they consider that the grounds put forward before them by the parties in support of invalidity are unfounded, they may reject them, concluding that the measure is completely valid. By taking that action they are not calling into question the existence of the Community measure.*
>
> *15. On the other hand, those courts do not have the power to declare acts of the Community institutions invalid. As the Court emphasized in the judgment of 13 May 1981 in Case International Chemical Corporation v Amministrazione delle Finanze [1981] ECR 1191, the main purpose of the powers accorded to the Court by Article 177 is to ensure that Community law is applied uniformly by national courts. That requirement of uniformity is particularly imperative when the validity of a Community act is in question. Divergences between courts in the Member States as to the validity of Community acts would be liable to place in jeopardy the very unity of the Community legal order and detract from the fundamental requirement of legal certainty…*
>
> *20. The answer to the first question must therefore be that the national courts have no jurisdiction themselves to declare that acts of Community institutions are invalid."*

34. They also relied upon *JTI Ireland v Minister for Health* [2015] IEHC 481. and *Kearns v European Commission* [2006] 2 IR 1, as examples where the High Court acknowledges and recognises that the CJEU has exclusive jurisdiction in relation to claims concerning Union institutions and bodies.

35. Counsel submits that the nature of the claims against the EU Institutional defendants and relief in this case would require a finding that those bodies had failed to act and/or acted unlawfully in the exercise of their statutory duties under the EU Treaties and relevant EU legislation. It is submitted that such a determination falls within the exclusive jurisdiction of the CJEU under Article 263 TFEU (action for annulment) and/or Article 265 TFEU (article for failure to act). Counsel for the European Bodies submits that the Irish Courts have no jurisdiction in respect of these claims against the EBA, ESMA ESRB or the ECB.

36. The second basis upon which the European Bodies seek to have service of the plenary summons upon them set aside is based upon the provisions of the Brussels Regulation. Counsel for the European Bodies relies upon two arguments. In the first place he submits that administrative matters are excluded from the scope of the Regulation. Article 1(1) provides that "*it shall not extend, in particular, to revenue, customs or administrative matters*." He says that the proceedings are administrative proceedings within the meaning of Article 1(1); that the Article expressly excludes administrative proceedings and the plaintiff accepts that these are administrative proceedings; accordingly they must fall outside the scope of the Regulation.

37. In addition, the Article says that the Regulation does not apply to acts concerning '*the liability of the State for acts and omissions in the exercise of State authority (acta iure imperii)*." As the Article expressly excludes cases concerning the liability of the State, it can be further assumed that the Regulation cannot be relied upon as a basis for establishing jurisdiction before a national court in respect of acts or omissions of an EU institution or body. They therefore argue that the proceedings are outside the scope of the Regulation and it follows that the proceedings could not be served upon the European Bodies pursuant to O.11A, which relates to proceedings governed by the Regulation. On this separate basis, they seek to have the proceedings set aside.

38. The third ground advanced for the application to set aside the plenary summons is also based upon the Brussels Regulation. Even if it is assumed for the purposes of argument that the Regulation could apply to the proceedings, they submit that the plaintiff, in purporting to serve the European Bodies out of the jurisdiction under O.11A, has failed to comply with O.4 of the Rules of the Superior Court 1986, and/or the relevant provisions of the Regulation itself, by omitting properly to endorse, and to serve a notice of the plenary summons (as opposed to the original), and also failing to indicate under which provision of the Regulation the plaintiff asserts that the Irish courts are entitled to assume jurisdiction. They submit that this procedural objection is entirely without prejudice to the primary objection to jurisdiction that is relied upon by the defendants.

The Plaintiff's Response

39. The plaintiff issued the proceedings on 20th of May, 2016. The European Bodies applied to have the proceedings entered into the commercial list of the High Court (which application was opposed by the plaintiff) and having been entered into the list, the European Bodies were given leave to bring these motions and the hearing of these motions was fixed to commence on 25th of October, 2016. The motion papers were served upon the plaintiff on 20th of July, 2016. On 18th of July the hearing date was changed to 8th November, 2016. Thus by 20th July, 2016, the plaintiff was fully informed of the case being made by the European Bodies and the other two moving parties and that the motions were listed for hearing on 8th November, 2016.

40. By orders of the court of 4th July, 18th July, 25th July, 16th September and 10th October, 2016, further directions were given in the proceedings which *inter alia* extended the time for the plaintiff to file a replying affidavit and to deliver written submissions. Thus the plaintiff was afforded many opportunities to deliver a replying affidavit but he chose not to avail of these opportunities prior to the matter coming on for hearing before me on 8th November, 2016. The plaintiff had appealed the order admitting the proceedings into the commercial list of the High Court to the Court of Appeal and had sought a stay on the orders directing a trial of these motions on the 8th November, 2016. The appeal and the stay were refused on the 4th day of November, 2016.

41. On 8th November, 2016, the plaintiff sought an adjournment on the basis that he was not ready to deal with the motions and wanted time to put in replying affidavits. I refused this application and the motions proceeded in the absence of any replying affidavit but he was afforded the opportunity to make submissions and he was granted considerable latitude in relation to allegations of fact advanced during his submissions which were not set out in affidavits before the court.

42. It is abundantly clear that the plaintiff feels very passionately about the issues he seeks to litigate in these proceedings. He is very concerned that Ireland and Europe should not repeat what he regards as errors in banking regulation which led to the property driven banking crisis in Ireland and the European Union from 2008. He freely acknowledges that the proceedings were brought as part of a wider campaign rather than as an end in itself and he says that he brings these proceedings as a citizen of Ireland and the European Union.

43. He was asked specifically to address the question of the jurisdiction of the High Court to try these proceedings in light of the submissions advanced by the European Bodies. In reply, he accepted the accounts on affidavit given on behalf of the European Bodies explaining the establishment and role of the European Bodies. He submits that a citizen should be entitled to sue in his own courts. He says his rights are not being protected as they should be; that he should be allowed to sue in this jurisdiction and he should not "*have to go to Europe*". He submits that it is almost impossible for a citizen to bring litigation in the Court of Justice of the European Union and, by implication; he ought to be permitted to bring the proceedings in this court. He submits that the Irish people did not vote in referenda to confer exclusive jurisdiction on the CJEU and that this is an answer to the arguments of the European Bodies. He argues that he has a right of access to the courts under the Constitution and Article 6 of the European Convention on Human Rights and, by implication, this right is to be vindicated by permitting him to bring these proceedings in a national court.

44. Separately, and it has to be said somewhat inconsistently, given that one of the reasons the plaintiff seeks to justify instituting the proceedings in the High Court is that there are significant difficulties experienced by a litigant in person in bringing a case before the CJEU, he also asks that the court should make a reference to the CJEU on the issue of the claimed exclusive jurisdiction of the CJEU in relation to the matters raised in these proceedings.

45. With regard to the Brussels Regulation, he accepts that in fact the proceedings do not come within any of the Articles of the Regulation and therefore they could not have been endorsed as required by O.4 of the Rules of the Superior Courts. On one hand, he accepts that the proceedings are administrative proceedings but on the other hand he argues that if the proceedings were entered into the commercial list of the High Court then they are commercial proceedings and come within the scope of the Brussels Regulation. He submits that even if he was wrong in the manner in which he served the proceedings, he should nonetheless not be prevented from bringing his proceedings.

Discussion

46. The general endorsement of claim with the plenary summons makes it clear that these proceedings will involve assessing the acts or omissions of the European Bodies. Article 263 TFEU provides that the CJEU shall review the legality of the acts of *inter alia* the European Bodies which are intended to produce legal effects vis-à-vis third parties. Article 265 TFEU provides that proceedings in relation to the failure of European Union institutions and bodies to act may be brought before the CJEU. Thus the proceedings may be brought before the CJEU. The question is, does this mean that they may also be brought before a national court?

47. In my opinion, the answer to this question must be no. Any other answer is not compatible with the doctrine of the supremacy of European law over domestic law. It is clear from *Foto-Frost v Hauptzollamt Lubeck-Ost* (Case 314/85) [1987] E.C.R 4199, that national courts do not have the power to declare acts of the Community institutions invalid. This must apply to the ECB as it is an institution of the EU. The reasoning applies equally to acts (or omissions) of Union bodies and thus, there is no room for two different constructions of Articles 263 and 265, one relating to Union institutions and one to Union bodies.

48. This answer is underscored by the Regulations establishing the Union bodies concerned in these proceedings. Articles 61 (2) and (3) of Council Regulations E.U./1093/2010 and E.U./1095/2010 each provide that proceedings may be instituted before the Court of Justice of the European Union in accordance with Articles 263 and 265 TFEU. It is clear that as regards proceedings brought against these bodies, they are to be treated in the same manner as European institutions. That means that the CJEU has exclusive jurisdiction to try the proceedings and national courts have no jurisdiction to try any such proceedings.

49. It is important to record that this rule of law does not deprive citizens of any right of action or any access to the courts. It is a rule which establishes the correct forum. Article 265 TFEU expressly sets out conditions under which natural or legal persons may bring proceedings pursuant to Article 265 before the CJEU. Regulation 61 (2) of Regulations E.U./1093/2010 and E.U./1095/2010 states that natural or legal persons may bring proceedings before the CJEU against the relevant body. There is no question of a citizen of Ireland being denied a right of access to the courts guaranteed under the Constitution, or a right of access protected by Article 6 of the European Convention of Human Rights.

50. Article 265 TFEU confers an express power on a natural person such as the plaintiff to complain to the CJEU that an institution, body, office or agency of the Union has failed to act. The Article makes clear that the action will only be admissible if the institution, body, office or agency concerned has first been called upon to act. It then has two months to define its position. If it fails to do so, then, and only then, an action may be brought within a further period of two months.

51. It is common case that the plaintiff did not write to any of the European Bodies calling upon them to act in a particular manner as required by Article 265. Therefore, the plaintiff has not satisfied the precondition established in Article 265 to enable any proceedings to be brought against any of the European Bodies under Article 265.

52. Finally, the ESRB is a Union body established under Council Regulation E.U./1092/2010. Insofar as it is capable of taking or failing to take any decisions which could be reviewed by a court, these would have to be brought under either Article 263 or 265 TFEU and as such only CJEU could have jurisdiction to determine those proceedings.

53. The arguments advanced by the plaintiff cannot confer on this court a jurisdiction it lacks as a matter of European Union law. Undoubtedly, unresourced citizens will encounter difficulties in bringing proceedings against institutions and bodies of the EU if they so

wish before the CJEU. That is not a matter to which I can have regard in determining issues of jurisdiction.

54. This is not an appropriate case to make a reference to the CJEU for a preliminary ruling. I do not require the opinion of the court to resolve any issue of European law before me. For this reason, I decline to make a reference as requested by the plaintiff.

55. For these reasons, I accept the submissions of the European Bodies that this court has no jurisdiction to hear this case and I will make an order setting aside the service of the plenary summons on each of the first four named defendants.

56. On the entirely separate grounds that the Brussels Regulation has no application to these proceedings, I am persuaded by the arguments advanced by the European Bodies. Article 1 (1) of the Brussels Regulation expressly states that it does not apply to administrative matters. During earlier hearings before the Court, the plaintiff on more than one occasion confirmed that the proceedings were administrative proceedings. Indeed, it formed one of the arguments upon which he objected to the admission of the proceedings into the commercial list of the High Court. Administrative proceedings are outside the scope of the Regulation. Accordingly, it was not open to the plaintiff to serve the proceedings upon *inter alia* the European Bodies pursuant to O.11 A of the Rules of the Superior Courts, 1986. That being so, they are not properly served and are not properly before the court.

57. Secondly, the plaintiff was asked to identify the provision of the Brussels Regulation which he says entitles the Irish courts to assume jurisdiction in respect of these proceedings. He accepted that there was no applicable provision. It is clear that the Regulation can not apply to the proceedings unless they come within a particular Article under which this court has jurisdiction. As there is none, the plaintiff was not entitled to avail of the provisions of Order 11A of the Rules of the Superior Courts 1986, in relation to the service of the proceedings outside of the jurisdiction upon the European Bodies.

58. On these two separate grounds I must therefore make an order setting aside service of the proceedings on the European Bodies.

59. In view of the fact that the plaintiff accepted that it would not have been possible to endorse the summons as required by the Regulation and the Rules of the Superior Courts, it follows that the argument of the European Bodies that the plenary summons was not correctly endorsed as required by O.4 is also correct and this constitutes a further ground upon which the purported service of the proceedings upon them under O.11A is bad in law and should be set aside.

Conclusion on the set aside application
60. The plenary summons purporting to have been served on each of these defendants is to be set aside pursuant to O.12 r. 26 of the Rules of the Superior Courts and pursuant to Articles 263 and 265 of the Treaty of the Functioning of the European Union.

The Central Bank of Ireland's strike out application
61. As set out in the introduction, the Central Bank of Ireland sought an order dismissing or striking out the proceedings against it.

Submissions of the Central Bank of Ireland
62. Counsel for the Central Bank of Ireland submits that it is entitled to an order, pursuant to O.19 r.27 and/or r.28 Rules of the Superior Courts and/or the inherent jurisdiction of the Court striking out the plaintiff's proceedings and/or pleas and claims made on the grounds that: (a) the plaintiff has no *locus standi*; (b) the proceedings impermissibly claim public law relief and should have been brought by way of judicial review; (c) the proceedings disclose no reasonable cause of action; (d) the proceedings are an abuse of process and a vehicle for the plaintiff to seek to scandalise the defendants and the court; (e) the court has no jurisdiction to make orders concerning acts undertaken by the Central Bank of Ireland in its role under the Eurosystem, which enjoy immunity from suit under Article 10 of Protocol (No 7) to the TFEU.

63. Firstly, it is submitted that the plaintiff has no *locus standi* to bring these proceedings; the plaintiff has no interest in this matter to distinguish him from any other member of the public, and has identified no legal right or cognisable interest which is affected or threatened. Counsel argues that the plaintiff himself, implicitly admitted this to be the case in the letter dared 24 May, 2016, addressed to the Minister for Finance and accompanied by the plaintiff's concurrent Plenary Summons in particular where he stated "*I am not a financial or commodities trader and you may ask on what basis, I as a businessman am pursuing this as a citizen in the courts*". He says that the plaintiff's own factual circumstances do not take him beyond an ordinary citizen and that the reasoning adopted by Haughton J., in *Beades v Ireland & Ors* [2016] IEHC 302, in particular, at para.67, applies here. The plaintiff could not obtain a "*benefit in any material or personal sense*" from the action. He submits that the plaintiff has not alleged any harm to himself flowing from the alleged wrongdoing by the Central Bank of Ireland. Consequently, he cannot establish *locus standi* and his claims ought to be dismissed on that ground alone.

64. Secondly, and relatedly, counsel submits that the claims and reliefs sought against the Central Bank of Ireland are quintessentially public law proceedings, which ought to have been brought by way of judicial review rather than plenary proceedings. Having regard to the nature of the claims, they involve administrative decisions and decision making procedures, which can only be brought by way of judicial review. He submits that the plaintiff has sought to circumvent the threshold requirements for seeking public law relief through judicial review, which he cannot meet, by issuing plenary proceedings. The plaintiff, who has not been injured himself, is claiming judicial review type relief without having to meet the standard of having a sufficient interest in the proceedings to permit the plaintiff to get over the relevant threshold for being granted leave.

65. Counsel further submits that the declaratory relief claimed is plainly directed to the exercise of public law powers by the Central Bank of Ireland and is clearly initiated outside the time limits prescribed by O.84 of the Rules of the Superior Courts, 1986.

66. Counsel for the Central Bank submits that the plaintiff has not identified, and would not be able to identify, any obligations owed to him by the Central Bank of Ireland, which has been breached or in respect of which action would be required to be taken. It is submitted that the plaintiff is seeking declaratory and mandatory orders of a public law nature in circumstances where he has neither provided any basis for establishing any failure on the part of the Central Bank of Ireland to take action, nor established any grounds upon which he would be entitled to make such public law claims.

67. Counsel for the Central Bank also states that there has been no prior communication to the Central Bank of Ireland setting out any basis for justifying a claim that they have not adhered to any mandate in respect of the subject matter of the proceedings or have failed in any alleged obligation to carry out the alleged investigation in respect of the relief claimed. It is submitted that the plaintiff has not claimed at any time prior to the institution of the proceedings that the Central Bank of Ireland has failed in any alleged obligation to require banks and financial institutions to cease their activities and divest themselves of all assets and other involvement in the oil industry. Further, he says that there has been no communication by the plaintiff to the Central Bank of Ireland justifying any claim that there has been a failure on its part to regulate the European banking system or to implement or comply with the Basel Accords. It is submitted that the fact that there was no such prior communication to the Central Bank of Ireland setting out

any basis for the claim, indicates that the plaintiff's choice not to apply by way of judicial review procedures and not to seek, and obtain, leave, is all the more serious.

68. Thirdly, counsel argues that the proceedings against the Central Bank of Ireland disclose no reasonable cause of action and on this basis, ought to be dismissed. He submits that the mandatory and declaratory orders sought by the plaintiff on their face are vague and lack legal certainty or clarity. As such, the plaintiff seeks orders which the court cannot make.

69. Fourthly, Counsel submits that the proceedings are an abuse of process and a vehicle for the plaintiff to seek to scandalise the defendants and the court. The Central Bank submits that the claims, reliefs sought and proceedings are frivolous, vexatious and an abuse of process. It is submitted that the proceedings amount to an abuse of process because (1) the plaintiff adopted the wrong procedure,(2) he deliberately failed to correspond with the defendants,(3) he lacks *locus standi*,,(4) the absence of any legal basis upon which the court could make any of the orders sought. It is submitted that the proceedings are being used as an opportunity for the plaintiff to scandalise and disrespect the Central Bank of Ireland and the Court and to make unfounded allegations against them for a collateral purpose.

70. The Central Bank relies upon the factors approved by Irvine J., in Behan v McGinley [2011] 1 IR 47, in support of this submission. It notes that these indicators were adopted by Haughton J., in *Beades v Ireland & Ors* and it submits that indicators (b) ("*the action would lead to no possible good*"), and (c) ("*action brought for an improper purpose*") are applicable to these proceedings.

71. Finally, it submits that the court has no jurisdiction to make orders concerning acts undertaken by the Central Bank of Ireland in its role under the Eurosystem, that it enjoys immunity in relation to such actions under Article 10 of Protocol (No 7) to the TFEU. Counsel for the Central Bank submits that the proceedings are bound to fail on the grounds that they would require the determination of issues in respect of which the CJEU has exclusive jurisdiction, for reasons identical to those advanced by the European Bodies in support of their applications to set aside these proceedings. It argues that the determination of any liability of the Central Bank of Ireland acting within the EU framework is equally a matter in respect of which this court has no jurisdiction. Counsel submits that as the Central Bank would be acting under the auspices of the ECB, it would be entitled to claim the equivalent immunities pertaining to the ECB under Article 263 and 265 TFEU, and Article 35 of Protocol (No. 4) on the Statute of the European System of Central Banks and of the European Central Bank

The plaintiff's submissions
72. The plaintiff says that he brings these proceedings as a concerned public interest citizen affected by the decisions (or lack of decisions) of the defendants. He says that he has *locus standi* to bring these proceedings which he says are public interest proceedings. He relies upon the decisions of *S.P.U.C v Coogan & Ors* [1989] 1 I.R.734, *Crotty v An Taoiseach & Ors* [1987] 1 I.R. 713, *McKenna v An Taoiseach & Ors* [1995] 2 I.R. 10, and *Lancefort Ltd v An Bord Pleanála & Ors* [1999] 2 I.R. 270. In his letter to the Minister for Justice he said:-

"*I as a businessman am pursuing this as a citizen in the courts*."

The plaintiff refers to the fact that he established a group called "Friends of Banking Ireland" to address the failures in the banking and regulatory system in Ireland, that he twice stood for election to Seanad Éireann and he refers to the fact that he had in 2006, warned against the regulatory failings and what he describes as the poor oversight from the Central Bank.

73. The plaintiff accepts that the proceedings are part of a wider campaign rather than an end in itself. In his letter to the Minister he said that the proceedings were an attempt to highlight the recurrence of "group think" in relation to banking regulation. In his letter he stated that "*there is no formal mechanism for an EU citizen to engage with the European Financial Regulators in a way that is substantive*". It was for this reason that the proceedings were initiated. He submits that he has nowhere else to go as he had been ignored by the Central Bank in the past.

74. In response to the submission that the proceedings ought to have been brought by way of judicial review, he says that he may have brought the wrong proceedings but the issues were too important to fail on that basis. The plaintiff says that if the Rules of Court do not permit a case such as his to be brought then the Rules of Court ought to be changed to allow a case of this kind to be brought in the High Court.

75. The plaintiff complains that his allegations in relation to the oil industry and the European banks have never been denied by any of the defendants.

76. The plaintiff denies that the Central Bank is entitled to immunity from suit. He denies that the fifth to twenty-second named defendants are entitled to sovereign immunity. He refers to events in Slovenia in relation to the Central Bank of Slovenia in support of this submission. He requests that the Court make a reference to the Court of Justice of the European Union in relation to the issue as to whether these parties enjoyed sovereign immunity.

Relevant legal principles
77. The Central Bank brings this application pursuant to O.19, rr.27 and 28 of the Rules of the Superior Courts 1986, and pursuant to the inherent jurisdiction of the Court. Pursuant to O.19, r. 28, the court may order any pleading to be struck out on the ground that it discloses no reasonable cause of action or may dismiss a case on the basis that it is shown by the pleadings to be frivolous or vexatious. (Rule 27 permits the court to strike out a portion of the pleadings in appropriate cases).

78. Since the case of *Barry v. Buckley* [1981] I.R. 306 it has been recognised that the Court has an inherent jurisdiction, apart from O.19, to stay proceedings if they are frivolous or vexatious or if they put forward a claim which must fail.

79. There have been many cases where the principles applicable to applications brought pursuant to O.19, r.28 of the Rules of the Superior Courts 1986, and the inherent jurisdiction of the Court to strike out or dismiss proceedings as being bound to fail or being frivolous or vexatious have been considered by the courts. The most recent decision of the Supreme Court is *Lopes v. Minister for Justice Equality & Law Reform* [2014] 2 I.R. 301. Clarke J. gave the decision of the Court with whom Laffoy J., and Dunne J., agreed. At para.16 he emphasised that it would be inappropriate to invoke the inherent jurisdiction of the Court in circumstances governed by the Rules of the Superior Courts. At para.17 he stated:-

> "*… An application under the RSC is designed to deal with a case where, as pleaded, and assuming that the facts, however unlikely that they might appear, are as asserted, the case nonetheless is vexatious. The reason why, as Costello J. pointed out at p. 308 of his judgment in Barry v. Buckley [1981] I.R. 306, an inherent jurisdiction exists side by side with that which arises under the RSC is to prevent an abuse of process which would arise if proceedings are*

brought which are bound to fail even though facts are asserted which, if true, might give rise to a cause of action. If, even on the basis of the facts as pleaded, the case is bound to fail, then it must be vexatious and should be dismissed under the RSC. If, however, it can be established that there is no credible basis for suggesting that the facts are as asserted and that, thus, the proceedings are bound to fail on the merits, then the inherent jurisdiction of the court to prevent abuse can be invoked.

[18] … It is also important to note the many cases in which it has been made clear that the inherent jurisdiction of the court should be sparingly exercised. …

[19] It is also important to remember that a plaintiff does not necessarily have to prove by evidence all of the facts asserted in resisting an application to dismiss as being bound to fail. …In order to defeat a suggestion that a claim is bound to fail on the facts, all that a plaintiff needs to do is to put forward a credible basis for suggesting that it may, at trial, be possible to establish the facts which are asserted and which are necessary for success in the proceedings. Any assessment of the credibility of such an assertion has to be made in the context of the undoubted fact, as pointed out by McCarthy J. in Sun Fat Chan v. Osseous Ltd. [1992] I.R. 425, at p.428, that experience has shown that cases which go to trial often take unusual turns on the facts which might not have been anticipated in advance."

80. In *Behan v. McGinley* [2011] 1 I.R.47 Irvine J., stated that for the purpose of the Court's adjudication on an application to strike out or dismiss a plaintiff's proceedings, either pursuant to O.19, r.28 of the Rules of the Superior Courts 1986, or the inherent jurisdiction of the Court, that the Court must consider whether the proceedings have been brought without any reasonable grounds. She followed the decision of Ó Caoimh J. in *Riordan v. Ireland (No. 5)* [2001] 4 I.R. 463 where the following matters were held to be indicators of proceedings which were potentially vexatious:-

"(a) the bringing up on one or more actions to determine an issue which has already been determined by a court of competent jurisdiction;

(b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief;

(c) where the action is brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;

(d) where issues tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;

(e) where the person instituting the proceedings has failed to pay the costs of unsuccessful proceedings;

(f) where the respondent persistently takes unsuccessful appeals from judicial decisions."

81. In the recent High Court decision of *Beades v. Ireland* [2016] IEHC 302 Haughton J., stated that the Court approaches its task when considering an application to strike out proceedings under O.19, r. 28 of the Rules of the Superior Courts 1986, on the basis of asking whether the matters pleaded in the statement of claim constitute a cause of action known to the law or likely to be established.

82. All of the cases emphasise that the jurisdiction is one which should be utilised rarely and with caution, but in cases which are bound to fail, it is appropriate, in the interests of justice, to strike out the proceedings.

Discussion

83. The court must consider whether or not the plenary summons discloses a reasonable cause of action. In my opinion, even on the basis of the facts alleged by the plaintiff in his letter to the Minister, which explains the plaintiff's proceedings, this case is bound to fail. Accordingly, it must be vexatious within the meaning of O.19, r.28 and should be dismissed under that rule. I am of this view for the following reasons.

84. In Delaney, "*Equity and the Law of Trusts in Ireland*" (6th Ed.) p. 635 the author discusses principles governing the grant of mandatory injunctions. She refers to enforcing mandatory injunctions which require the performance of some positive obligation, often of a continuing nature. This is the type of mandatory injunction sought by the plaintiff in these proceedings. She states:-

"To succeed in obtaining a mandatory order … it must be possible to specify with a sufficient degree of particularity precisely what action is required to comply with its terms and it must be quite clear 'what the person against whom the injunction or order is made is required to do or to refrain from doing'. Maugham L.J. laid down this requirement in Fishenden v. Higgs & Hill Limited [(1935) 153 LT 128, 142] in the following terms:

> *'I think a mandatory injunction, except in very exceptional circumstances, ought to be granted in such terms that the person against whom it is granted ought to know exactly what he has to do.'*

This statement was quoted with approval by Murphy J. in Bula Limited v. Tara Mines (No. 2) [[1987] IR 95, 104] in which he refused to grant mandatory interlocutory injunctions inter alia, because in his opinion, if granted in the terms sought, the orders would not be certain enough in their terms to enable it to be ascertained whether the defendants were complying with the injunctions granted by the Court."

85. It is immediately apparent that the reliefs sought in these proceedings are such that no court could grant. They seek declarations and mandatory injunctions. They are far too widely cast and far too vague. Simply put, it would be impossible for any of the parties to know whether or not they had complied with an order of the court if it was made in those terms. In my judgment, this is not simply a matter of drafting which could be corrected but is a matter of substance. It is absolutely essential that all parties should be able to ascertain what is required in order to comply with an order of court. If the orders sought were granted, the defendants would not know what they were required to do and it would not be possible to ascertain whether or not they had complied with the orders.

86. Secondly, the effect of granting any of these orders would be to constitute the court as a super-regulator of all European Banks of the European Banking System. The European Central Bank has exclusive competence in these matters pursuant to Council Regulation E.U./1024/2013. Article 4.1 provides:-

"Within the framework of Article 6, the ECB shall, in accordance with paragraph 3 of this Article, be exclusively competent to carry out, for prudential supervisory purposes, the following tasks in relation to all credit institutions established in the participating Member States:

(a) to authorise credit institutions and to withdraw authorisations of credit institutions subject to Article 14;

…

(f) to carry out supervisory reviews, including where appropriate in coordination with EBA, stress tests and their possible publication, in order to determine whether the arrangements, strategies, processes and mechanisms put in place by credit institutions and the own funds held by these institutions ensure a sound management and coverage of their risks, and on the basis of that supervisory review to impose on credit institutions specific additional own funds requirements, specific publication requirements, specific liquidity requirements and other measures, where specifically made available to competent authorities by relevant Union law;"

87. Chapter III of the Regulation confers powers on the ECB for the exclusive purpose of carrying out the tasks conferred on it by Articles 4(1) and other articles of the Regulation. In particular the ECB has power under Article 16(2) to:-

"(a) to require institutions to hold own funds in excess of the capital requirements laid down in the acts referred to in the first subparagraph of Article 4(3) related to elements of risks and risks not covered by the relevant Union acts;

…

(e) to restrict or limit the business, operations or network of institutions or to request the divestment of activities that pose excessive risks to the soundness of an institution;

(f) to require the reduction of the risk inherent in the activities, products and systems of institutions;"

88. Article 18(1) of Council Regulation E.U./1024/2013 provides:

"1. For the purpose of carrying out the tasks conferred on it by this Regulation, where credit institutions, financial holding companies, or mixed financial holding companies, intentionally or negligently, breach a requirement under relevant directly applicable acts of Union law in relation to which administrative pecuniary penalties shall be made available to competent authorities under the relevant Union law, the ECB may impose administrative pecuniary penalties of up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined, or up to 10 % of the total annual turnover, as defined in relevant Union law, of a legal person in the preceding business year or such other pecuniary penalties as may be provided for in relevant Union law. "

89. It is clear that Council Regulation E.U./ 1024/2013 confers upon the ECB exclusive competence in relation to these matters and they are the very subject matter of these proceedings. Any issue in relation to the performance of the Central Bank of Ireland of its obligations under the Euro system is a matter in the first place for the ECB and, thereafter, under either Articles 263 or 265 TFEU, for the CJEU.

90. Thirdly, Protocol (No. 4) on the Statute of the European System of Central Banks and of the European Central Bank provides at Article 33.6 as follows:-

"The Court of Justice shall have jurisdiction in disputes concerning the fulfilment by a national central bank of obligations under this statute. If the ECB considers that a national central bank has failed to fulfil an obligation under this Statute, it shall deliver a reasoned opinion on the matter after giving the national central bank concerned the opportunity to submit its observations. If the national central bank concerned does not comply with the opinion within the period laid down by the ECB, the latter may bring the matter before the Court of Justice.."

91. The issue of any liability of the Central Bank of Ireland acting within the EU Banking Framework is a matter in respect of which this Court has no jurisdiction. The plaintiff's case against the Central Bank is in relation to its role in the European Banking system. It is entitled to claim immunity from suit in the national court on the same basis which applies to the first four named defendants under Articles 263 and 265 TFEU in addition to Article 35 of Protocol (No.4) on the Statute of the European System of Central Banks and of the European Central Bank.

92. The proceedings are bound to fail in circumstances where this court lacks jurisdiction to determine the matters raised in the proceedings. In response to this argument, the plaintiff identified no legal basis which would justify him maintaining these proceedings against the Central Bank of Ireland in this Court.

93. Fourthly, the plaintiff accepts that he did not write to any of the defendants including the Central Bank of Ireland in relation to the matters that are the subject of these proceedings identifying his specific complaints and calling upon them to rectify what he says are their failings. In those circumstances, these proceedings are bound to fail. The plaintiff's complaints relate to the exercise of discretion by the relevant parties to the proceedings in regulatory matters. It is a pre-condition to seeking mandatory orders or declarations in relation to such matters that the complaining party informs the body concerned of his or her complaints or claims and requests that body to rectify the alleged wrongful acts or omissions, save in very exceptional circumstances which do not arise here. This did not occur in this case and therefore an essential precondition to the bringing of proceedings of this nature has not been met.

94. Fifthly, insofar as the plaintiff seeks orders to compel the defendants to introduce regulations, it has long been established that it is impermissible to bring proceedings against bodies for the purpose of forcing them to introduce regulations. In addition, the discretion in relation to the introduction of regulations in the sphere with which these proceedings are concerned is given to the institutions of the European Union and the ECB.

95. Furthermore the plaintiff himself accepts that new rules have been introduced. On 10th October, 2016, before McGovern J. the plaintiff stated:-

"In relation to the issues before the Court, the European Central Bank and the Irish Central Bank has [sic] put new rules in place so this case is actually not necessary."

On the first day of the hearing of these motions he stated:-

> *"… Surprise surprise, the ECB has regulated the [oil] industry. So this case is actually just being pursued against me. What I have actually alleged has been corrected by the parties in new regulation of the oil industries and oil trades and, therefore, this is, basically, this case is now being pursued to prevent a citizen doing what I did, taking a case against regulatory authorities which are entitled under the Constitution to take a case."*

96. If, on the plaintiff's own submissions, the case is in fact not actually necessary, then the continuance of the proceedings is unnecessary and would constitute an abuse of process.

97. The plaintiff sought to argue that the proceedings were public interest litigation and therefore ought to proceed. Even if it were the case that the proceedings could be regarded as public interest litigation, (and I do not accept that these proceedings could be regarded as public interest litigation) nonetheless public interest litigation is still subject to the Rules of Court and in particular to the provisions of O.19, r. 28 and the inherent jurisdiction of the Court. As I have set out my reasons for concluding that the proceedings are bound to fail, characterising them as public interest litigation cannot alter this conclusion.

98. Sixthly, had the plaintiff brought these proceedings by way of judicial review, I am satisfied that leave to bring judicial review would have been refused. There was no letter written to the defendants setting out in detail the matters complained of and calling upon them to rectify the alleged wrongful acts or omissions; the plaintiff on his own case does not satisfy the threshold of sufficient interest to be permitted to bring these proceedings; the fact that this court lacks jurisdiction to try the issues raised in the proceedings and, possibly, the fact that the proceedings were not instituted within the time limits prescribed by the Rules of Court.

99. The requirements for a successful application for leave to bring judicial review proceedings cannot be circumvented, even if unintentionally, in respect of claims that ought properly to have been brought by way of judicial review. In *O'Donnell v. Dun Laoghaire Corporation* [1991] I.L.R.M. 301 Costello J. held that the failure of a litigant to apply for an order of certiorari is not itself a ground for refusing declaratory orders sought in plenary proceedings. He indicated that in a motion to try a preliminary issue in a plenary action, the court could determine whether an application was so frivolous or vexatious or so devoid of merit that leave to issue the proceedings under O.84, r.20(1) would never have been granted and so stay the plenary action, or it could conclude on such motion that the plaintiff had no standing and dismiss it as it would have done under r.20(4) had an application for judicial review been brought. In relation to the argument that the proceedings had been delayed outside the time then provided for applications for judicial review under O. 84, r. 21 he held at pp.314-215:-

> *"It seems to me that in considering the effects of delay in a plenary action there are now persuasive reasons for adopting the principles enshrined in O.84, r. 21 relating to delay in applications for judicial review, so that if the plenary action is not brought within three months from the date on which the cause of action arose the court would normally refuse relief unless it is satisfied that had the claim been brought under O.84 time would have been extended. The rules committee considered that there were good reasons why public authorities should be protected in the manner afforded by O.84, r. 21 when claims for declaratory relief were made in applications for judicial review and I think exactly the same considerations apply when the same form of relief is sought in a plenary action. Furthermore, it is not desirable that the form of action should determine the relief to be granted and this might well be the result in a significant number of cases if one set of principles on the question of delay was applied in applications for judicial review and another in plenary actions claiming the same remedy."*

100. I am satisfied, following Costello J., that in assessing whether or not these proceedings ought to be dismissed either pursuant to O.19, r.28 of the Rules of the Superior Courts 1986, or the inherent jurisdiction of the Court, that the Court may consider in a case that ought to have been brought by way of judicial review whether leave to seek judicial review would never have been granted or whether the plaintiff had sufficient standing to seek judicial review had the relief been sought by way of an application for judicial review or whether the case has been brought outside of the strict time limits from bringing judicial review proceedings. If the answer is in the negative then the court is entitled to take this into account in considering a motion to dismiss the plenary proceedings under O.19 r.28 or the inherent jurisdiction of the court.

101. In this case I am satisfied that had the plaintiff proceeded by way of judicial review in respect of the matters the subject of these plenary proceedings he would have been refused leave to seek judicial review on the grounds that the proceedings could not satisfy the threshold for leave and separately that he lacked *locus standi* to bring the proceedings. It may well be that they would also be held to have been initiated out of time, but I do not have sufficient information on this aspect of the claim to reach a conclusion on this point. I have taken into account my conclusion that the plaintiff would not have been granted leave to seek judicial review in reaching my decision in relation to the strike out application.

Conclusion

102. For the reasons set out in my judgment, the plaintiff's case against the Central Bank of Ireland is bound to fail. It follows that it is vexatious within the meaning of O.19, r.28 and accordingly, I dismiss the proceedings on the basis of that rule. In view of the fact that the matter falls to be decided under the rule, following the observations of Clarke J. in *Lopes*, I decline to dismiss the proceedings pursuant to the inherent jurisdiction of the Court.